The Northern Territory - In Focus

The Budget Revealed

On 2 May 2017, Ms Nicola Manson, The treasurer of the NT Government introduced the budget for the 2017-2018 period. The highlights are: The entire budget amounts to $6.7 billion, the net debt estimate of $2.4 billion has increased to $3.6 billion, expected to climb to $5.5 billion in 2020/21, the fiscal balance is expected to fall to -$1.3 billion in 2017/18, worse than the -$459 million forecast last year and the Government delays the return to surplus from 2019/20 to beyond the forward estimates, deficit expected to be -$572 million in 2020/21.

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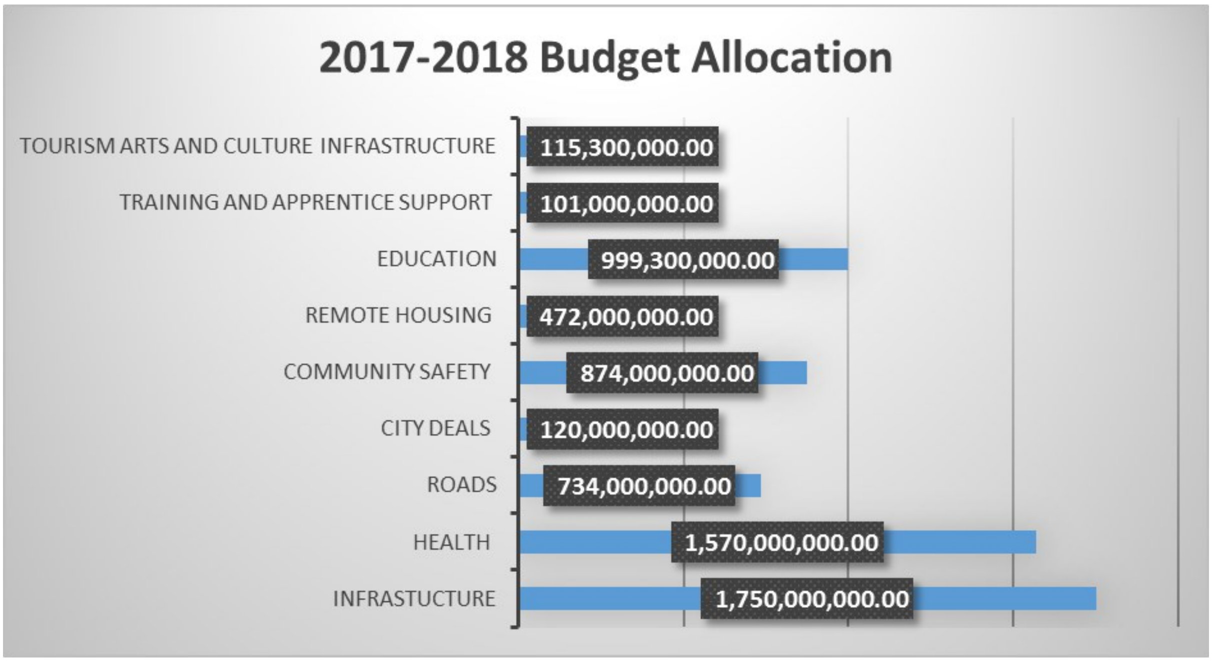

The treasurer issued a warning by stating difficult economic decisions lay ahead for the NT over the next 12 to 18 months. The projected budget deficit has increased significantly from $431 million to $1.3 billion from the recent elections held in 2016. The reasons that contributed to the deficit are, the unexpected GST cut of $2 billion from the Federal Government due to the negative population growth at minus 0.3 per cent. Another reason for the deficit was because of a 20% decrease in public sector investment.

Revenue streams to address budget gaps:

· Car registration fees would increase by 4% generating $5.3 million.

· Increase on tax on gambling machines which is expected to generate $3.1 million.

· Increased stamp duty on properties in excess of $3 million.

· Public sector to reduce costs by $55 million in current year and $95 million in the following year.

· Public sector wage increases will be reduced from 3% to 2.5% which is expected to save $36 million.

Based on the above it is clear that proposed revenue streams will not be sufficient to cover the budget deficit, the government will be forced to raise taxes, promote population growth, promote private sector investment and consider the controversial granting of fracking rights.

Private Sector to the Territory's Rescue

Chief Minister Michael Gunner announced five projects on 30 April 2017.

The five projects are listed as follows:

1. Land for Building Retirement Villages

The NT Government will provide funding in 2017-18 of $500,000 to initiate the first stages of these projects in three locations – Alice Springs, Darwin and the rural area. Expressions of interest will be let and market testing will occur in Alice Springs and the Rural area, with preliminary work undertaken for potential sites in inner Darwin or the CBD.

2. Support for Project Sea Dragon

The NT Government will provide $17.5 million to upgrade the Keep River Plains Road, to support Project Sea Dragon.

The $1.45 billion prawn farm – which has been awarded Major Project Status - would create around 1000 direct jobs and produce more than 100,000 tonnes of prawns a year.

3. Darwin-based Water Park

The NT Government will facilitate a feasibility study and market testing worth $500,000 from the upcoming Budget into a private sector led Darwin CBD based Water Park – similar to Bali's world-famous Waterbom Park.

4. Expression of interest to redevelop and revitalise the former Katherine sports and recreation club site.

5. Commercial Land Release Alice Springs

An Expression of Interest on land in Alice Springs for a potential commercial or tourism venture.

Darwin Innovation Hub (DIH)

On 5 May 2017, Paspalis Enterprises Pty Ltd announced that it has been awarded a $500,000.00 Federal grant from the Department of Industry, Innovation and Science to develop the Northern Territory's first innovation hub.

Partnering with the Northern Territory Government and Charles Darwin University, the DIH will focus on the commercialisation of research and looks forward to working with both organisations to deliver a successful incubator program in the Northern Territory and Asia Pacific region.

The DIH aims at assisting northern Australia start-ups business to build their capabilities and get their products and services into international markets, especially the Asian market. The focus of the DIH will be industry sectors relevant to the Northern Territory such as mining and exploration, indigenous business and remote health services.

Start-ups in DIH will benefit from commercial relationships with investors, industry experts and international organisations such as Nanyang University, the National Research Foundation of Singapore, and Oxford University Innovation.

In the meantime, Federal grant funding will ensure the creation of a new incubator in a market that has an undeveloped start up market. Therefore, this project shall have positive impact on Northern Territory start-ups.

457 Visa Abolished

The Prime Minister recently announced that the 457 visa scheme will be abolished. This visa scheme allowed employers to hire foreign workers for a period of up to 4 years if a particular job had been advertised for more than 4 weeks without getting the right applicant within the local area. Subsequently, the migrants on 457 visa could apply for permanent residency at the end of the 4 year visa.

The 457 visa will be replaced by Temporary Skilled Shortage (TSS) which aims to support businesses in addressing skills shortage in the workforce. TSS will have two streams of visa which will be the short term and medium term visa. The short term visa will only be a 2 year visa and will not give applicants the option to apply for permanent residency following its expiration. The medium term visa will be a 4 year visa and will allow workers to apply for permanent residency at its end. The latter option will require a higher standard of English language proficiency as well as a criminal check.

The Government sudden cancellation of 457 foreign workers scheme has spread uncertainty amongst businesses and employers. It is criticized to a large extent by business as they believe that the move does not align with Australia's stated commitment to increasing innovation, and causes uncertainty

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for foreign companies considering investing or doing business here. The 457 visa scheme had filled genuine skills shortage in the past decade which allowed the economy to ride out the volatile economic cycles especially after the GFC. Employers in regional areas may be adversely affected by these changes as it can be difficult to attract skilled employees to regional areas. This gap in skills shortage in regional areas was filled by foreign workers who were sponsored by employers to work for them.

The new scheme is praised by some who believe that the Government had put an end to the exploitation of foreign workers and of work visas. A number of industry groups also cautiously welcomed the changes and recognized the growing concern over the amount of foreign workers being employed believing hiring locals is cheaper and it is easier to hire people who have valuable local knowledge and experience.

Penalty Rates Overview

The decision made by the Fair Work Commission (FWC) to reduce penalty rates in respect to wages paid to employees on Sundays and public holidays comes into effect from 1 July 2017. The decision was made by the full bench who spent 39 days hearing evidence from 143 witnesses and also received 5900 submissions. The amendment will affect multiple industries such as pharmacy, hospitality, fast-food and retail.

On 6 June 2017 the FWC ruled that Sunday penalty rate cuts will be phased in from 1 July 2017 over four (4) financial years in the retail and pharmacy sectors, and over three (3) financial years in the hospitality and fast food sectors.

Below is an illustration of the Sunday penalty rate cuts after each phase in period:

Industry	Prior to Penalty Rates Case		Post Penalty Rates Case	
	% Rate	($/hr)	% Rate	($/hr)
Hospitality	175%	$33.09	150%	$28.37
Fast-Food	150%	$29.16	125%	$24.30
Retail	200%	$38.88	150%	$29.16
Pharmacy	200%	$48.34	150%	$36.26

On the other hand, public holiday rate reductions will take effect on 1 July 2017 immediately without phase in period for all four sectors mentioned above as well as in the restaurant sector.

The Australian Council of Trade Unions (ACTU) have estimated that around 500,000 workers will see their weekly wages decrease as much as $6,000 a year, the gender pay gap will be exacerbated as female workers represent 55% of those who stand to be affected.

Suggested benefits of the decision include: job creation due to reduced wages and improved customer service as a result of an increased number of employees and extended working hours on a Sunday. Disadvantages may include an increase in the number of casual jobs, extended work hours to compensate for the reduced wage rate, inability for employees to apply for financial assistance, budget deficits as much as $650 million and increased welfare spending according to Richard Dennis, chief economist at the Australian Institute Think Tank.

Professional Service Providers and Accessorial Liability under the Fair Work Act

Fair Work Ombudsman v Blue Impression Pty Ltd & Ors

2017 the Federal Circuit Court of Australia 810

Background

Blue Impression Pty Ltd (Blue Impression), Japanese fast food outlet operating in Melbourne was taken to court by the Fair Work Ombudsman for underpaying two Taiwanese workers nearly $10,000 in 2016.

The workers were allegedly paid flat rates as low as $16.50 an hour, which is below the minimum hourly rate and not enough to cover public holiday penalty rates and the weekend, night and casual loadings they were entitled to under the Fast Food Industry Award 2010.

Ezy Accounting 123 Pty Ltd (Ezy), an accountancy firm provided bookkeeping and data entry services to Blue Impression and was run by a certified practising accountant, Mr Lau, and his wife.

The Fair Work Ombudsman commenced legal action against Blue Impression, one of its managers and Ezy in the Federal Circuit Court. Blue Impression and the manager admitted the contraventions of the Fair Work Act 2009 (Cth) (Fair Work Act), while Ezy denied liability and claimed they were not aware of the relevant Award for the employees, or what the minimum wages were for the employees.

The Findings

The Court found out that Mr Lau had emailed Employsure, a specialist employment law firm retained by Blue Impression, regarding the pay rates of Blue Impression's employees. The email included the Award rates for weekday, Saturday and Sunday hours as well as the rates being paid by Blue Impression. Employsure responded to this email and questioned whether one of the employees was still being paid the amount reported by Ezy, as it was below the minimum wage. The Court therefore held that Ezy was involved in Blue Impression's contraventions.

Decision

The Court delivered its decision on 28 April 2017 that the accountancy firm, Ezy was willfully blind to, and therefore involved in, the unlawful labour practices of its client, Blue Impression.

The proceedings mark the first time the Fair Work Ombudsman has prosecuted an accounting firm for breaches by a client's business, relying on section 550 of the Fair Work Act.

Section 550 of the Fair Work Act

Section 550 of the Fair Work Act provides that a person who is 'involved in' an employer's contravention of a civil remedy provision of the Act can also be held liable as an accessory.

A person is 'involved in' a contravention if the person has aided, abetted, counselled or procured the contravention, induced the contravention, been knowingly concerned in the contravention or conspired with others to effect the contravention.

This Case highlighted that those in business advisory positions such as accountants, HR advisors and payroll providers must consider whether the work they perform for clients could facilitate a breach of the Fair Work Act, as professionals can be held responsible by the regulator, the Fair Work Ombudsman, for the labour practices of their clients under the accessorial liability provisions in the Fair Work Act 2009 (Cth) (Act).

Substantial Reforms on Small Business Lending – Khoury Report

The Khoury Report is the final review of the code of Banking Practice. Mr. Khoury is an independent governance expect appointed by the Australian Bankers Association (ABA) to conduct an independent review of the code. The aim of the reforms is to introduce new laws that will promote and reinvigorate competition amongst small businesses. These reforms are aimed at bringing benefits to the economy by allowing small businesses to compete against business with substantial market power. The report also focuses on transparency with customers and community, and encourages responsible lending. The report discusses financial difficulty, support for financial inclusion and open and fair treatment of complaints.

Significant Recommendations including:

Recommendation 7 requires further disclosure of terms and conditions and incorporates consumer protection provisions.

Recommendation 11 regarding notice period on enforcement proceedings now requires 30 days' notice to be given to borrowers before beginning enforcement proceedings unless urgent action is necessary to recover debt to avoid loss of value. There is also a 90 days' notice of the bank's intention to not roll over a loan that is maturing where a customer is not in default.

Further, recommendation 12 requires lenders to have arrangements to address potential conflict of interest between investigating accountants and receivers.

Finally, recommendation 99 on Khoury report recommends ABA seek ASIC approval of the Code of Conduct 2001. This change will increase the regulatory oversight of lenders.

The reforms are aimed at improving small business relationships with large suppliers. The process also aims at simplifying the process and introducing greater flexibility and collective bargaining framework. The Government also wants small businesses to grow and create more local jobs in the economy. It will also help in putting laws that will prevent firms with market power and engaging in behaviour that harms the competitive process. In addition, the Khoury report is aimed at rebuilding trust between banks and their customer's especially small businesses as they employ about 4.5 million people in Australia.

ABA Response:

On 28 March 2017, the Australian Bankers' Association (ABA) released its response to Khoury Report. Of the 99 recommendations recommended by the Khoury Report, the ABA supports 61 in their entirety, 19 in their principle, 10 that it supports in part, and either needs more time to consider the recommendation or disagrees with it entirely in respect to the remaining 9 recommendations.

The ABA's response to the above outlined four recommendations is:

Recommendation 7: The ABA supports the recommendation in principle and notes members will use 'best endeavours' to produce a one page summary of terms and conditions.

Recommendation 11: The ABA supports this recommendation in its entirety, save that this applies to a smaller pool of small business customers as per the definition of 'small business' set out in Recommendation 5 of the Khoury Report.

Recommendation 12: The ABA supports this recommendation in full, and commits to developing best practice guidelines on banks' appointments of investigative accountants, receivers, administrators and liquidators for small businesses.

Recommendation 99: The ABA supports this recommendation in full, and confirms that the industry will be working with ASIC on having the new Code approved under section 1101A of the *Corporations Act 2001* (Cth) and Regulatory Guide 183.

Carnell Report

On 6 February 2017, the Australian Small Business and Family Enterprise Ombudsman (ASBFEO)'s report for the inquiry into small business loans was released, the report is also known as Carnell Report.

The Ombudsman, Kate Carnell AO, made 15 recommendations, 4 to the federal government and 11 to the banking sector, to reform regulatory practices for small business lending following her investigation into the adequacy of the law and practices.

Key Recommendations including:

- For loans below $5 million, protection must be given against surprise defaults from financial covenants or adverse change clauses.
- A minimum 30-business day notice period must be provided for all changes to general restriction clauses and covenants.
- For loans below $5 million, a 90-business day notice period for roll over must be given before loans mature (with a longer period of time offered for rural properties and complex businesses).
- For loans below $5 million, a one-page summary of any clauses or covenants that may trigger a default or any other detrimental outcome must be supplied.
- For loans below $5 million, banks must put in place a new small business standard form contract that is short and written in plain English (implementation by December 2017).
- The banking industry must fund an external dispute resolution one-stop-shop with a dedicated small business unit that has appropriate expertise to resolve disputes relating to a credit facility limit of up to $5 million.
- A nationally consistent approach to farm debt mediation must be introduced.
- The Australian Securities and Investments Commission must establish a Small Business Commissioner.

<u>ABA Response:</u>

On 28 April 2017, the Australian Bankers' Association (ABA) released its response to the Carnell Report, in which the ABA highlighted the importance of the small businesses to the future of Australia and confirmed that the industry supported the Ombudsman's recommendations for more transparency around how banks work with small businesses. However, the ABA has not accepted several key recommendations made by the ASBFEO, and will only provide findings and details in a later report.

ASIC Industry Funding Model -- Registered Liquidators

The Government is proposing to introduce a new ASIC industry model which focuses on price signals to establish how resources are allocated. The government is committed to recover ASIC's regulatory costs from the entities that create the need for regulation rather than the taxpayers bearing the costs of financial sector misconduct.

The funding model incorporates two important amendments. The first change amends the levy methodology for registered liquidators. This implies that ASIC will recover the costs associated with regulating the registered liquidators sector. This will be achieved by charging a fixed levy of $2,500 for registered liquidators and a graduated levy based on each registered liquidator's share of total appointments. In addition, all notifiable events like meetings and notice of disclaimer of property are required to be published on the ASIC website.

The changes have been criticized by the liquidators' professional body, the Australian Restructuring & Insolvency Turnaround Association ("ARITA"). The main concern is it may cause significant harm to the structure of the profession regardless of methodology used and it will create a large burden on small businesses.

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Hall Chadwick are chartered accountants who specialise in turnaround and insolvency matters.

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