



Connect



FEBRUARY 2002

Newsletter to Members of APESMA CONNECT

APESMA Connect Charter for Small Businesses

This Charter was developed on the basis of responses to a Connect member survey and has been refined according to feedback over the last six months. It provides a framework for further development of Connect services and will be regularly reviewed and updated.

Connect is committed to supporting and encouraging members involved in self-managing work arrangements in these ten key areas.

- Education and training for independent contractors and consultants to develop business skills alongside their technical/professional skills;
- Facilitating business start-up;
- Lobbying for better legislation and regulation in relevant areas;
- Improving online access to business information;
- Providing information on taxation, business structures and financial matters;
- Strengthening the technological capacity of the small business operated by members;
- Facilitating access to information on successful e-business models;
- Developing stronger, more effective representation of independent contractors and consultants interests at union level;
- Assisting members with networking, working/tendering cooperatively and finding work both on a contract and/or permanent basis; and
- Providing general assistance to independent contractors and consultants consistent with APESMA's policies, approach and responsibility to its broad membership.

Mentors Online – closing date 28 February, 2002

Whether your interest is in business startup, getting non-paying clients to pay, balancing work and family responsibilities as an independent contractor or consultant, running a home business, possible growth strategies, e-business or marketing, Mentors Online gives you the chance to develop business skills and network with your professional peers.

The program is designed to be a hassle-free way of discussing professional, ethical and business issues with someone with established business acumen. The requirement for mentors to carry current PI insurance has been replaced with a Release from Liability which should help make the program available to a greater number of Connect members.

Mentors must have at least a rough draft of a business plan to participate in the program. All participants will receive a Certificate of Recognition at the end of the program.

Closing date for applications is 28 February 2002. Don't miss out. Visit the website www.apesma.asn.au/mentorsonline and click on the "How will I benefit?" heading under **The Program** section, and on the **To Register** heading if you decide to take part.



CONTENTS

Connect Charter

Mentors Online

Time Out competition winners

ETM Placements

Guide to Getting Started in Business

PSI Update

- IT Industry Conference paper on APSI now available
- Connect liaises with Helen Coonan, Assistant Treasurer and Minister for Revenue on the impact of the PSI Rules on APESMA Contractors
- ATO publications available
- Contact details for further information
- Status of Workcover and Professional indemnity payments for contractors deemed to not be running a personal services business

Partnership 2002 scholarship awarded

Business Matrix – new offices

BAS Alert

New titles for Small Business Monograph Series

Bonus PI insurance

Labor revising Small Business policies

Benchmarking from University of Melbourne survey

"Hindsight"

IIR Energy Industry Conference

The newsletter of APESMA Connect:
The professional Contractors' and
Consultants' Network



Time Out competition winners

Thank-you to all APESMA Connect members who participated in the Victorian and national surveys of Connect members and to those who agreed to participate in Nexus - Connect's online networking facility, thereby going into the draw for the Time Out accommodation packages. We had over 550 entries. The vouchers have been posted out to the winners. Thanks also to APESMA Insurance Services for sponsoring the competition.



The Winners ...

SA Michael Forbes is our winner in South Australia. He is a Transport Division member who joined APESMA in 1979. His area of expertise is Railway Signalling Engineering. After being employed by Australian National (Railways) for 17 years, he was made redundant when AN was privatised. After being offered contract work, he established his own company and has worked as a contractor since then.

NSW Genevieve Carrier is our winner in NSW. She is a food technologist who joined APESMA in 1998. Genevieve is currently owner/director of a consultancy, Rutherford Technical Services P/L, in partnership with another APESMA member, Lee Evans. Rutherford Technical Services is a Registered Training Organisation (RTO) able to provide accredited training and assessment in Food Processing and Frontline Management. In addition, Rutherford Technical Services provides food safety products and services to all sectors of the Food Industry – Manufacturing, Food Service and Retail. Products and services include training and food safety plans – customised and template form. If you would like more information, visit their website at www.rutherfordtech.com.au.

Vic Boi Can Tong is our Victorian winner. He is a Manufacturing Systems Engineer who completed his Graduate Diploma in Technology Management with

APESMA's Management Education Program in 2000. He has agreed to participate in Nexus – Connect's online networking facility.

QLD Raymond Scott is our Queensland winner. He is a Professional Engineer, recently retired from the electricity supply industry to establish a small consultancy business, together with his wife, Margaret McGrath. Details of Business Consulting Services P/L can be found at: www.users.bigpond.net.au/bcs/. Ray has been a member of APESMA for over 40 years.

ACT Rodney Sullivan is our winner in the ACT. He has been a member since 1979 and is a Professional Engineer. He currently operates in the capacity of a consultant to the Aeronautical Industry.

WA Murray Gominsek is our winner in Western Australia. Murray is an MFEA member, is undertaking study with our Management Education Program and has been a member of the Association since 1998.

Tas Rolf Imberger is our Tasmanian winner. Rolf is a Professional Engineer who consults in the building services industry. He has been a member of APESMA for over 18 years and registered with ETM Placements since 1998.

NT Matthew Tate is our winner in the Northern Territory. Matt is currently on a contract in East Timor and Connect made special arrangements for him to use the voucher on one of his return visits. Matt operates a small engineering consultancy TATE Group Pty Ltd (TG) based in Darwin, providing services to their main client Matchplay Engineering

Services Pty Ltd. In October 1999, Matchplay Engineering Services partnered with a surveying company Ausurv Pty Ltd to set up operations in East Timor after the August 1999 elections and the withdrawal of the Indonesians from East Timor. In January 2000, Matt was contracted to go to East Timor to assist MAT. Since then TG has provided services for clients such as Department For International Development, the East Timor Transitional Administration – Road Services Department, Asian Development Bank – Project Management Unit, United Nations Development Program, Australian Army, ETTA Health Services and AusAID. Further details on the main projects can be found at www.matchplayausurv.com.

Guide to Getting Started in Business
Email
connect@apesma.asn.au
for a hard copy of the Guide

New titles for Small Business Monograph Series

New monographs called "Employing Someone for the First Time", "The Law of Contract", "Alienation of PSI" (Graham Candy, Rigby Cooke) and "Pro-forma Confidentiality Agreement" have been added to the Connect website. Soon to be added: "Business Valuation and Standard Best Practice Statements for use in Tenders".



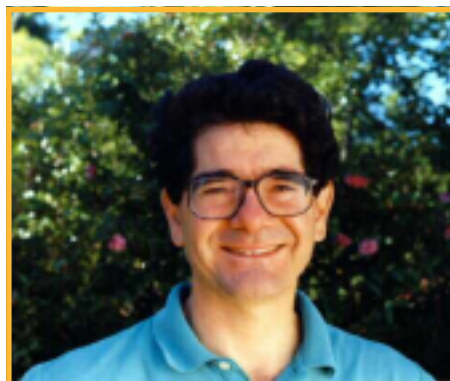
Inaugural Partnership 2002 Scholarship awarded

APESMA's inaugural Partnership 2002 Scholarship has been awarded to Dr. Stephen Schuck.

The Scholarship is aimed at assisting independent contractors and consultants develop a portfolio of transferable and up-to-date skills in the absence of a sponsoring employer. It entitles the recipient to undertake an APESMA Management Education Program online short course which can be counted towards a Graduate Certificate of Management or an MBA, and demonstrates APESMA's commitment to encouraging professionals to develop business skills alongside their technical skills.

A 2000 report authored jointly by Dr John Buchanan, Richard Hall and Tanya Bretherton called "It's Not my Problem" looked at a range of issues surrounding self-managing work arrangements. It identified a trend toward the transfer of responsibility for training from employers back to individuals who are in non-standard work and called for institutional mechanisms to facilitate the development of skills and investment in training. The Partnership 2002 program aims to provide such a mechanism.

ACIRRT's John Buchanan has enthusiastically endorsed the Scholarship. He said at the program's recent launch: "I have been involved in researching the changing nature of work in society for over a decade, and more recently the impact of the growth of non-standard work on training and professional development. I fully



Dr. Stephen Schuck
Winner of the inaugural Partnership 2002 scholarship

support APESMA Connect's Partnership 2002 initiative – the Scholarship program offers a flexible and relevant development opportunity for professionals involved in self-managing work arrangements. Connect members are fortunate to belong to a professional association which understands that professional development is a key issue for independent contractors and consultants, and is prepared to commit to investing in building on their foundation skills.

Dr. Stephen Schuck is a home based consultant from New South Wales who joined APESMA in 1982. His area of expertise is in new and alternative energy sources, specialising in Bioenergy. He began consulting in 1997 and has worked as a contractor since then. He has



PARTNERSHIP 2002

recently completed APESMA's MBA and was keen to take up this opportunity to complete an online short course as he has a strong commitment to lifelong learning and keeping his skills up to date. He has chosen to undertake the Winning Bids short course.

On how he expected his business operation to benefit from doing the Winning Bids course, he said: "An essential part of the process of business planning and ensuring ongoing commercial viability is identifying and winning new business. This course is a chance to make sure the time I invest in putting forward proposals is put to best effect. As a home-based consultant with the advantage of agility and responsiveness, I need to ensure that my proposals emphasise these advantages in a well rounded context. Getting some expert advice on how to do this is time well spent. I appreciate Connect's investment in my continuing professional development."

Thank-you to all those who applied for the scholarship. As the Scholarship will be awarded annually, all Connect members are invited to apply for Partnership 2003.

Congratulations Dr. Schuck.

Benchmarking from University of Melbourne survey

Over 230 Connect members opted to receive benchmarking information from the University of Melbourne on the key areas of:

- comparative expenditure on marketing
- comparative expenditure on repeat business
- comparative level of market research prior to business startup
- post-graduate education compared with the collective
- comparative level of business management skills
- comparative expenditure on IT costs

The information will be provided to members once the data entry, collation process and statistical analysis has taken place.

Connect hopes to bring an Executive Summary of the surveys findings to members in the next newsletter.



PSI Update

ATO publications available

IT Industry Conference paper on APSI now available

The Conference Paper on the Alienation of Personal Services Income delivered by Graham Candy from Rigby Cooke at the APESMA IT industry conference in December 2001 is now available from the Connect website under the

Business Taxation and Advice page of the Small Business Monograph Series (www.apesma.asn.au/connect). It is an excellent summary of the legislation as it stands and details how the law is currently being applied.

Updated versions of five Alienation of Personal Services Income publications are available from the ATO website at:

<http://www.taxreform.ato.gov.au>

- *Important information for Contractors and Consultants*
- *Important information for Contractors and Consultants – Summary*
- *Personal Services Business – Self-assessment guide and checklist*
- *Application for determination – Personal Services Business, and*
- *Personal Services Income – Instructions for completing the application for personal services business determination*

Connect addresses PSI concerns to new Assistant Treasurer and Minister for Revenue, Helen Coonan

PSI continues to be a major issue for independent contractors and consultants and Connect will continue its lobbying campaign in 2002. On behalf of members, Connect sent a letter to Helen Coonan – appointed to the Front Bench in November 2001 and given responsibility for liaising with the small business community on tax and other issues by Prime Minister Howard – to convey concerns regarding the changes to Personal Services Income Rules. The letter and Senator Coonan's response are set out below. Senator Coonan is expected to deliver a major policy statement later this month.

Senator Helen Coonan

Minister for Revenue and Assistant Treasurer, Parliament House, Canberra ACT 2600

Dear Senator Coonan,

The Association of Professional Engineers, Scientists and Managers Australia (APESMA) is a not-for-profit industry association with over 23,000 members from a range of professions including engineering, science, IT, veterinary science, architecture and pharmaceutical science.

I write firstly to congratulate you on being appointed Assistant Treasurer and Minister for Revenue with the 39th Parliament of Australia.

Secondly, I note that the Prime Minister has charged you with responsibility for working with the small business community, specifically in relation to taxation matters, and it is with regard to this area of responsibility that I introduce myself as Executive Officer of Connect – a special interest group of Professional Contractors and Consultants within APESMA. The Association has over 23,000 members and of these around 1,600 are in self-managing work arrangements.

Connect has been actively engaged in informing members on how the changes to the Personal Services Income Rules may impact upon them, and has lobbied government to address the unintended consequences of the PSI legislation. We have particular concerns for our IT and engineer contractor members in that while they are operating legitimate personal services businesses, they are in many cases unlikely to be in a position to satisfy the results test or the 80/20 Rule and may therefore be unable to claim legitimate business tax deductions. In a recent survey of our Connect members, 67.7 per cent of respondents were found to use an interposed entity such as a company or trust as part of their business structure, 38.5 per cent obtained over 80 per cent of their income from the one source and 56 per cent of respondents operated their business from home. Clearly all these members are potentially affected by changes to the Personal Services Income Rules.

I have attached Media Releases which outline our views on the issue, and would be pleased if you would respond at your earliest convenience to our concerns.

Further information

Further information about about the APSI tests can be obtained by:

- phoning the ATO's Infoline on 1300 139 529 (alienation and non-commercial losses enquiries only);
- writing to the ATO at Locked Bag 9000 Albury NSW 2640; or
- sending an e-mail to:

BTRAdvice@ato.gov.au

Contact Details

Kim Rickard, Executive Officer
CONNECT – APESMA's Professional Contractors Group
ph 03 9695 8842 fax 03 9696 0826
email connect@apesma.asn.au



PSI Update

Status of Workcover, Professional indemnity & other payments of Contractors and Consultants deemed to not be running a personal services business by the ATO

Connect sought the opinion of APESMA's National Legal Officer Malcolm Harding (B.Bus LLB (Hons)) on the question of the status of workers comp and PI payments made by a contractor if they fail to satisfy the tests to establish contractor status and are deemed to be employees by the ATO. Our suspicion that contractors were unlikely to redeem workers compensation payments, superannuation or professional indemnity insurance premiums was unfortunately confirmed by Malcolm's advice:

Personal Services Income

The *New Business Tax System (Alienation of Personal Services Income) Act 2000* ("the Act") introduced amendments to the *Income Tax Assessment Act 1997* with significant tax consequences for individual contractors and those who utilise company arrangements in the course of generating their income. The amendments introduce what is known as the alienation measure, which in turn applies to income termed by the Act as "personal services income". The alienation measure disentitles an individual to tax deductions available to a business if the individual's income is earned through the provision of their personal labour. This is so whether the individual is paid directly by an income source or indirectly through a legal entity, where the work the legal entity has agreed to do for the income source requires the individual's personal services.

Personal Services Income v Personal Services Business

The Act introduces two mutually exclusive concepts into tax law: personal services income and a personal services business. The difference is best expressed in terms of allowable tax deductions. Income that is personal services income cannot be set off against tax deductions available to a business; income earned by a personal services business can.

The Act distinguishes between the two by applying a number of legal tests. If the income earner is able to bring their circumstances within one or more of the statutory tests, s/he will be conducting a personal services business. If none of the tests apply, the income is personal services income and subject to the alienation measure. In other words, if a contractor earns their income through the provision of their personal labour s/he must prove that he or she is operating a personal services business or the alienation measure will apply to all the income earned from their personal labour. The tests are:

- The *unrelated clients test*
- The *employment test*
- The *business premises test*

Alternatively, if an individual, or employing legal entity providing the individual's personal services, earns more than 80% of their income from one income source, the individual must satisfy the Commissioner through an application for a "personal services business determination" that:

- (a) they meet the *employment or business premises test* or both; or
- (b) demonstrate that the personal services were provided (and income earned from those services) towards achieving a specific result ("*the results test*").

The legislative assumption apparent from the way in which Act operates is that a person or entity earning more than 80% of their income from one source has a relationship of an ongoing

nature with the income source indicative of a retainer or salary (which is personal services income) unless they can satisfy the Commissioner that a different conclusion is warranted.

Does this mean contractors are now employees?

The short answer is no. The Act explicitly states that the introduction of the alienation measure into Australian tax law does not convert contractors into employees. While the alienation measure treats the income of those to whom it applies in a similar manner to the income of an employee, the Act does not change the legal status of the underlying relationship between the income earner and income source.

The Act focuses for taxation purposes on the individual taxpayer and the way in which s/he earns income, rather than the form in which the income earner and income source choose to characterise their relationship. Thus while a contractor may earn income in a manner that attracts the operation of the alienation measure, he or she is not relieved from any right or obligation that flows from his or her status as a contractor.

(This article is not legal advice and should not be relied upon to determine the applicability or otherwise of any part of the Act to an individual's taxation circumstances.)

Malcolm Harding (B.Bus LLB (Hons))
APESMA National Legal Officer



Hindsight

Hindsight will be an occasional feature of the Connect newsletter where members contribute their knowledge and experience hopefully to the benefit of other Connect members.

In answer to the question “What do you wish someone had told you before you began working as an independent contractor or consultant?” Connect members gave the following answers:

It is very difficult to narrow it down to one thing, however, my business partner and I both feel that it is important to get advice before starting your business and then to take on board all that advice – don’t think that it doesn’t apply to your situation. We also found it difficult to get advice. We had got into a bit of trouble in the operation of the business, incorporation and with a business partner, and we tried talking to the Small Business Association to no avail. The advice given was that we certainly were in a mess and should have gone to them at the start – not terribly useful. In addition the conversation was a difficult exercise in that the person was very rude and when asked about legal advice for small business, replied “any solicitor will do” and hung up on me. In the end we got some good advice and support from family members, not involved in small business, but the advice on general business practices was still relevant, and referral to a good solicitor invaluable.

GC, 29 October 2001

I was fortunate in that a friend of mine had been through the process of establishing his own company and I sought his help. The best advice he gave me was to purchase MYOB accounting with Payroll to keep track of my accounts. The other important thing to do is to find a good accountant. I also received good advice from APESMA and also the Institution of Engineers’ SA Branch.

MF, 31 October 2001

Don’t sell yourself short.
RS, 1 November 2001

And from Sally Garratt’s “Going it Alone: How to Survive as an Independent Consultant” (available on two-week loan from Connect)

- Don’t panic when you don’t have any work
- Keep your face and name in people’s minds
- There is no such thing as failure – only feedback
- If people criticise you, always listen, don’t defend – it will usually give you some insight
- Don’t take everything that floats past – I ignored that piece of advice for twelve months and nearly died of exhaustion
- Don’t overtrade
- Maintain a balance between work and home
- Stick your neck out a bit further – have more confidence in yourself – sell yourself a bit more
- Don’t go out on your own too early. I would have liked to become independent ten years ago but I know I wouldn’t have had the experience or skill.
- You are happy while the telephone keeps ringing. The first time it doesn’t, you panic. There is a pattern and you have to learn to take the quiet times and use them. The pendulum will swing back. Quiet moments are for making contacts, reading, sitting back and developing new ideas.

BAS Alert

The following BAS alert relates to lodgement of Business Activity Statements and is from Michael Forbes.

“When I sent my BAS payment to the Tax Office, they took out an extra \$5000 from my business bank account because the cheque and the BAS amount payable was read by their scanners as \$9000 instead of \$4000. When I spoke to the Tax Office, they advised that it would take them three days to reimburse the overdrawn amount. A Tax Officer rang me back about my complaint to advise that (1) when handwriting amounts, you should write “4” as an open four, (2) that when a coding error is made, the Tax Office is supposed to reimburse the client’s account within 24 hours, and (3) the scanning process scans the figures only on the BAS and the cheque – if they match, payment is processed. In future, I plan to make my BAS payments at the Post Office where I can check them on the spot!”

Bonus Professional Indemnity Insurance and Insurances Review by APESMA Insurance Services

Over 140 members took up the opportunity to undertake an obligation-free review of their insurances by APESMA Insurance and a number have taken advantage of the 3 months free PI insurance offer which closed on the 31st January. Tim will be in contact with you shortly if he hasn’t already contacted you.

Please contact APESMA Insurance Services if you are interested in reviewing or discussing your insurances.

Telephone 1300 365 152.



Labor develops small business dismissal proposals

Small businesses could be given further special consideration in unfair dismissal proceedings, under a federal Opposition response to the Government's unfair dismissal bill.

The Opposition set up a committee in December – comprising shadow IR Minister Rob McClelland, Shadow Small Business Minister Stephen Conroy and Shadow Industry Minister Craig Emerson – to develop its approach to the Government's revived bill to exempt small businesses from unfair dismissal claims.

McClelland said proposals that might be put forward by Labor include:

- excusing small businesses from strictly complying with procedural fairness requirements, if they have acted with equity and good conscience and their case has substantial merit (this would operate alongside this year's amendment that gives the IRC discretion to take into account a small business's relative lack of HR expertise);
- increasing the IRC's discretion to accept late unfair dismissal claims if a small business and a dismissed employee have been actively trying to achieve a settlement;
- establishing an informal, simple procedure for processing small business dismissal claims that is akin to that used by the small claims tribunals around the country; and
- enabling unfair dismissal conferences to be conducted by phone rather than requiring parties to appear in the Commission.

Labor recognised, said McClelland, that unfair dismissal provisions for small business could be improved. However, Labor also wanted proper standards to ensure employees of small business were not treated unfairly and wouldn't countenance a blanket exemption for employees of small businesses. The committee will consult with small business groups and unions and will report back to Shadow Cabinet at the end of January, ahead of Parliament resuming in February 2002.

Source: Workplace Express, 7 December, 2001

ETM Placements

ETM Placements is the employment and recruitment arm of APESMA. It was established to assist members with their search for permanent and contract employment.



If you're a Connect member, it would be a good investment of time and effort to register with ETM. You can register online by going to the APESMA website at www.apesma.asn.au and then going to Jobs/Candidates/Register with ETM Placements.

The Registration form is in Excel format and if you have any difficulties completing it, phone John Donaldson on 03 9695 8891.

When you register with ETM, you should indicate that you give permission for your details to be loaded to Nexus – Connect's online networking facility. If you do this, you will have permanent access to Nexus. Registering with ETM also allows you to:

- Utilise the network – the more ETM knows about you, the better placed they are to keep you informed of career opportunities as they arise. With the average length of a position with a single employer currently 3-5 years for technology management professionals, registering can play a part in planning your future career;
- Contribute to the network – if ETM is looking for a good candidate to fill a role similar to the one you are currently in, they would like to talk with you about who you know. It may be the best candidate for the position turns out to be you.

So even if you're not currently looking for permanent or contract work, Connect encourages you to register with ETM.

Contact **Christine Fry** on **03 9695 8888** if you have any questions about ETM.

New offices available at Business Matrix in Melbourne

Thinking of moving your small business out of home and into premises?

Business Matrix has renovated and refurbished, and now has a number of brand new offices available at reasonable rates, as well as new conference and meeting facilities. Located in **Brunswick Street, Fitzroy**, Business Matrix offers serviced office accommodation in a supportive environment, with opportunities for networking, professional development and business mentoring.

If you would like more information, or to see the new spaces available, please contact Anne Lewis on telephone 03 9411 4000, fax: 03 9411 4001, by mail at 288 Brunswick Street Fitzroy VIC 3065 or email at anne@businessmatrix.org.au.

Business Matrix is the only women focussed business incubator in Australia, and is an initiative of The Victorian Women's Trust.





Complimentary Registration for a Connect member at IIR’s Competition and Regulation in the Energy Industry seminar and workshop — value \$3,173.50

IIR has kindly agreed to sponsor the registration of a Connect member at a two day Energy Industry seminar and interactive workshops to be held in Melbourne on 11 and 12 March (*expenses beyond the Registration Fee will be covered by the attendee*). All you need to do is email connect@apesma.asn.au by COB 14th February detailing how you would benefit from attending the seminar and workshop and the winner will be notified by email on the 15th February (*Members’ statements/answers will remain confidential*).

The seminar will take place on the 11th March and will focus on the following questions:

1. How effective is the Code and how effective are the regulators?
2. Where is everyone up to with FRC for gas & electricity and what are the developments to capitalise on?
3. How do you negotiate with the government to achieve favourable outcomes?
 4. What are the impediments to competitive energy trading?
 5. What are the competitive implications of current projects?
 6. On what basis are gas market rules developed and why?

The two workshops – The Duke Energy Appeal, and the Gas & Electricity Full Retail Contestability: Tackling the Issues – will take place on the 12th March.

Companies participating include: *Envestra, The Australian Institute of Public Affairs, Dept of NRE Victoria, VENCORP, Duke Energy, Epic Energy, Network Economics Consulting Group, DB Capital Partners, SEAGas, Office of the Regulator General and Allens Consulting.*

Further information is available from Kathryn Granheim on 02 9923 5084 or from the website at <http://www.iir.com.au> (*conference agenda available from website*).

When: Mon 11th Mar 2002 - Tue 12th Mar 2002

Where: Eden on the Park - Melbourne, Australia

Normal cost: See website for cost of various permutations of seminars and workshops at http://www.iir.com.au/conferences/registration.html?conf_code=l0079

Cost to Connect members: 10 per cent discount on final cost

