

## NEWSLETTER

### Legal Up-Date

July 2004

#### **CHANGES TO REDUNDANCY LAWS – WHAT ARE THE IMPLICATIONS FOR YOUR BUSINESS?**

A decision by the Australian Industrial Relations Commission (AIRC) (“Redundancy Case”) handed down on 26 March 2004 has a number of significant implications for State and Federal awards dealing with the issue of redundancy. Although the decision primarily affects Federal awards, it will also influence enterprise bargaining negotiations relating to State awards.

Some of the changes to redundancy rules for Federal awards which flow from the Redundancy Case are:

- an increased scale of severance payments;
- removal of the small business exemption from severance payments;
- provision of counselling services to employees displaced as a result of job redundancy; and
- implementation of formal grievance dispute resolution procedures for employees who have been made redundant.

In short, the Redundancy Case recognised the emotional and psychological costs to employees who have been made redundant, as well as the financial costs of periods of unemployment and the loss of transferable credits such as sick leave. The decision sought to redress these deficiencies by increasing the entitlements an employee may receive.

The following table sets out the minimum severance payments an employee is entitled to, under the old and new scales:

Period of Continuous Service	Old Scale	New Scale
Less than 1 year	0 (weeks’ pay)	0 (weeks’ pay)
1 to less than 2 years	4	4
2 to less than 3 years	6	6
3 to less than 4 years	7	7
4 to less than 5 years	8	8
5 to less than 6 years	8	10

6 to less than 7 years	8	11
7 to less than 8 years	8	13
8 to less than 9 years	8	14
9 to less than 10 years	8	16
10 years and over	8	12

Severance payments to employees who have been employed for 10 years or more is reduced because those employees are also entitled to long service leave on termination of employment.

Employers who are bound by Federal awards should be aware of when the changes to the scale take effect in the relevant awards.

Employers who are not bound by any Federal awards should also be mindful of the severance payments an employee would be entitled to receive under the scale. This is because even where the scale does not apply, the relevant Industrial Relations Commission may have regard to the scale and determine that an employer has unfairly dismissed an employee on the basis that the severance pay offered to the employee is, in the Commission’s view, inadequate.

We would be happy to discuss with you how the new scale may impact on your business.

#### **NEW STAMP DUTY LAWS IN NEW SOUTH WALES**

On 6 April 2004, the New South Wales government made history with the introduction of a vendor’s stamp duty on many property transactions. Purchasers generally pay stamp duty on all purchases of real property in NSW. In addition, vendors will now be liable for duty at the flat rate of 2.25% on certain sales.

The duty is not payable on the profit but on the whole of the sale price. However, the duty is only triggered if the sale proceeds exceed the original purchase price of the property by more than 12%. A sliding scale applies when the difference is between 12% and 15%.

The new stamp duty on vendors is generally only payable on contracts for the sale of investment properties executed on or after 1 June 2004. Further, vendor stamp duty will not be payable on the disposal of a person's principal place of residence.

### **What qualifies as "a principal place of residence"?**

The new legislation provides that a vendor is exempt from stamp duty if the following conditions relating to the property are satisfied:

- (i) the property is either a parcel of residential land, strata lot or is assessed as a strata lot; and
- (ii) the property is used and occupied as the vendor's principal place of residence.

Also under the new law, generally a property is used and occupied as the principal place of residence of a person if either:

- (a) the property, and no other property (emphasis added), has been continuously used and occupied by the person for residential purposes for at least a period of 2 years before the transaction in question; or
- (b) the property has been used and occupied by the person for residential purposes for a total period of 3 years in the 5 years before the transaction in question; or
- (c) if the vendor had only owned the property for less than 2 years, then the vendor must show that the property was used and occupied as the vendor's principal place of residence since the vendor became the owner of the property.

The exemption will not apply if the property is owned by a person's corporate vehicle as the exemption is restricted to property owned by natural persons.

Other noteworthy changes brought in by the new legislation are:

- the top marginal rate of stamp duty payable by purchasers (where the purchase price is more than \$3 million) is increased from 5.5% to 7%; and
- there is an exemption from stamp duty for first home buyers where the purchase price of the property is \$500,000.00 or less.

## **TAXATION TREATMENT OF COMPANIES**

In the April 2004 edition of Legal Up-Date, we examined the taxation treatment of partnerships. In this edition, we will look at the taxation treatment of companies.

Companies enjoy various advantages, not to mention the advantage of limited liability for their shareholders.

In terms of income tax, the company tax rate is a flat 30%; much lower than the highest marginal tax rate imposed on individuals. Also, the company tax imputation system ensures that the profits distributed by companies to their shareholders in the form of franked dividends are not subject to double taxation. To a limited extent, companies also offer a mechanism for income to be split among family members. This may be done through the employment of family members by the company or the issue of different classes of shares to family members.

Companies also allow for capital gains tax liability to be rolled-over in certain circumstances.

A new consolidation regime for taxation of group companies allows such companies to be taxed as a single entity, but this is only available if the company in question is a 100% owned subsidiary.

Inevitably, there are also tax disadvantages with a company structure. For example, a company is not entitled to claim the 50% general discount on capital gains tax. Some companies may be entitled to the small business capital gains tax concession, but only if there are no more than two shareholders.

If you have any questions about what is the most appropriate structure to adopt for your business, we would be happy to discuss your particular situation with you.

### **YOUR FEEDBACK**

If you have any comments about this newsletter, suggestions for improvement or would like to see any particular areas of law which interests you covered, please drop us a line at:

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