



Changes to Bankruptcy Laws

A number of changes have recently been made to bankruptcy laws in Australia. The changes will take effect over about 6 months. The main changes are:

Increase in the bankruptcy threshold

As from 11 August 2010, the minimum debt for which bankruptcy proceedings can be commenced has been increased from \$2,000.00 to \$5,000.00. The previous threshold of \$2,000.00 had been in place since 1996.

Extended time for defaulters to present debtor's petition

There has also been an increase in the time a debtor who has defaulted on payment of a debt or debts has to settle the debt before they can present a debtor's petition to declare themselves bankrupt.

As from 1 October 2010, if a debtor files a "Declaration of Intention to Present a Debtor's Petition" then the debtor will be allowed 21 days (up from 7 days) in which to obtain advice and assess their options including negotiating with their creditors before being allowed to file a debtor's petition. Moreover, creditors cannot take any action to collect their debts during this period.

Offence provisions

A number of amendments to the offence provisions in the Bankruptcy Act 1966 (Cth) (the "Act") have also been made, including:

1. enhanced powers for the Inspector-General in Bankruptcy to investigate possible offences under the Act. This will enable the Inspector-General to make such inquiries and investigations as he or she thinks fit with respect to whether a person has committed an offence under the Act;
2. extended power for the Inspector-General to issue notices to persons who are believed to have information relevant to an inquiry or investigation concerning possible offences. Failure to comply with such a notice is an offence punishable by up to 12 months imprisonment; and
3. increased penalties for some offences such as those involving fraud.

The offence provision amendments will most likely commence on 15 January 2011.



Ordinary and Customary Turnover of Labour

Entitlement to redundancy pay

The National Employment Standards ("NES") have replaced the non-pay rate provisions of the Australian Fair Pay and Conditions Standard since 1 January 2010. The rules relating to redundancy and redundancy payments have also been modified by the NES.

Redundancy under the NES generally occurs when an employer either:

- decides that a particular job should no longer be performed by anyone and terminates the employment of the person who previously performed the job; or
- becomes insolvent or bankrupt.

In either of these events, redundancy pay will apply. However, if the termination is part of the employer's "ordinary and customary turnover of labour", it will not involve redundancy and redundancy pay will not be payable.

What constitutes ordinary and customary turnover of labour will depend on the relevant circumstances.

Ordinary and customary turnover of labour

If an employer's ability to retain labour is dependent on the continuation of a contract with clients and the contract is lost then redundancy entitlements may not be due to employees whose employment is terminated as a result. This is because the termination may be based on the employer's ordinary and customary turnover of labour.

In a recent decision of the Queensland Industrial Relations Commission ("QIRC"), the QIRC confirmed that an important factor in determining whether an employer may rightfully terminate an employee without redundancy payment is if the employee was dependent on the continuation of the employer's client/customer contracts.

The Case

The employer, AFS Catering ("AFS") had a contract to supply catering services to the Queensland Police Service. When AFS lost its bid to renew the contract, it subsequently dismissed some of its employees. The employees argued that they had been made redundant and were accordingly entitled to redundancy pay.

However, the QIRC found that the employees had been informed of the insecurity of their positions when AFS announced that the catering contract for the Queensland Police Service was up for re-tender. Accordingly, under the NES, the employees' dismissal in the circumstances was not due to redundancy because it involved the ordinary and customary turnover of labour of the employer.

What this may mean for you

Employers in industries that rely on periodically rotating contracts may be entitled to avoid redundancy payments if they lose one or more of those contracts. In these situations, the employer's legal position, so far as avoiding liability for redundancy pay is concerned, is likely to improve if their employees have been made aware of the contingent nature of their employment. This, of course, is apart from any workplace morale issues that may arise from such notice.



Introducing Jacob Bozdas

Jacob Bozdas joined the firm as a solicitor in August 2010, specialising in corporate and commercial law. He has been practising as a solicitor since 2009 in a broad range of corporate and commercial law matters.

Jacob graduated with combined Law and Business degrees in 2006 from the University of Western Sydney. Prior to joining the firm, he worked as a taxation consultant advising in business structuring and planning in a mid-tier chartered accounting firm and then as a lawyer, practising in corporate and commercial law area.

Jacob's work at Schweizer Kobras principally concerns corporate and commercial matter, business structures, leasing of commercial and retail property, employment law and intellectual property.



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