Better protection for retrenched employees' entitlements

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Increasingly, ALIA members are worrying about the safety of leave and other entitlements if their employer's business collapses. With the recent demise of former icons like HIH and Ansett this is hardly surprising. I have advised those members seeking help about a number of recent developments. Major initiatives have been taken in three areas: improvement of government support schemes, amendments to Corporations Law and greater application of the *Workplace Relations Act 1996*.

Late last year the federal government beefed up its formerly limited worker protection with a new General Employees Entitlements Scheme [GEERS]. It applies to all workers who lose their jobs because their employer becomes insolvent after 12 September 2001, except former staff of Ansett, who are covered by a separate system. GEERS covers all unpaid wages, all accrued annual and long service leave, all accrued pay in lieu of notice and up to eight weeks redundancy pay. These entitlements are calculated on the basis of a maximum annual salary of $75 200. There is no limit on the amount that can be claimed. This system is a great improvement on its predecessor, which restricted applications to a maximum of $20 000 and capped the annual salary for calculation of entitlements at $44 000.

The *Corporations Law Amendment [Employee Entitlements] Bill 2000* has brought into play two new elements of protection. Firstly, the duty of directors to prevent insolvent trading has been greatly strengthened. Failure to do so will render directors personally vulnerable to prosecution and liable for payment of civil and/or criminal penalties to anybody (including an employee) who has suffered loss as a result of such trading. Secondly, a new provision now protects entitlements from any agreement or transaction entered into with an intention to defeat recovery of entitlements or reducing the amount to be recovered. The objective here is to prevent misuse of company structures in ways that have become distressingly familiar in recent years. Breach of this provision allows an aggrieved employee to sue for compensation. The government is considering further changes to Corporations Law, including giving employee entitlements priority over secured creditors in any company wind-up.

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The third area of focus concerns provisions in the *Workplace Relations Act 1996* [WRA] and in particular its section 170FA. This empowers the Australian Industrial Relations Commission [AIRC] to make formal orders giving effect to Articles 12 and 13 of the International Labour Organisation's Termination of Employment Convention. The convention provides for service-based severance payments at termination and requires employers contemplating redundancies to advise staff representatives of the numbers and categories of workers under threat. Employers are required to consult on measures to avoid or minimise the adverse effects of redundancies. There is some doubt about how useful these provisions will be in many cases, since the Act requires the AIRC to refrain from considering or determining an application if an alternative remedy exists. The changes discussed above could, in theory, mean that WRA plays little practical part. However, the decision late last year by the AIRC to find that a formal industrial dispute existed between unions, Ansett and Air New Zealand about redundancy entitlements, does not support that view. It remains to be seen just how active the AIRC will be in this area but, based on its long history, it is probably likely to deal itself into this particular game to the maximum extent possible.

In any event, the simplest course for ALIA members who lose their job because their employer is insolvent or bankrupt is to make immediate application under GEERS. This requires completion of a claim form [available at http://www.workplace.gov.au/WP/CDA/files/WP/WR/claimForm.pdf, or by telephoning 1300 135 040]. Often, claim forms will have already been distributed through the administrator or liquidator handling the company collapse. In all cases, claims cannot be processed unless the administrator or liquidator verifies them. If members in this unfortunate situation wish to discuss their options first, they should contact the liquidator, speak with the federal Department of Workplace Relations and Small Business, or contact me at ALIA's National Office for initial advice.

The developments discussed above represent useful improvements. But, of course, the ordinary employee remains hugely vulnerable to corporate collapses and restructuring of private and public sector organisations. Average employment tenure continues to decline, with Australia demonstrating the characteristics of one of the world's most insecure labour markets. In this environment, there will clearly be more and more people experiencing redundancy — perhaps more than once — in their working lives. They should be able to feel confident that monies owed to them by their employer will be paid promptly and accurately. Enhanced protection now at least improves the likelihood of that occurring. ■