

THE LAW

Safety net guaranteed

Entitlements protected if bosses go bankrupt.

Employee rights to redundancy and other benefits if their employer goes bankrupt or insolvent will be confirmed by legislation passed by the federal parliament.

The Fair Entitlements Guarantee Bill 2012 guarantees payment for entitlements including redundancy, annual leave, long service leave, wages and payment in lieu of notice in cases where an employer is unable to pay these entitlements to their staff.

In such cases the government would provide an advance to the worker equal to their unpaid entitlements, and then take the employee's place as creditor to the company to seek recovery of the advance through winding up or bankruptcy proceedings.

Introducing the bill into parliament, Employment and Workplace Relations Minister Bill Shorten said this process would allow workers to promptly receive their full entitlements, rather than facing long delays and the risk of receiving far less than what they are owed.

"The bill will provide certainty for Australian employees who find themselves without a job and left out of pocket when their employer becomes

insolvent or bankrupt and cannot pay them the employment entitlements they are owed," Mr Shorten said.

The bill largely mirrors existing arrangements available to workers under the General Employee Entitlements and Redundancy Scheme (GEERS) currently administered by the Department of Employment, Education and Workplace Relations.

This process would allow workers to promptly receive their full entitlements

The bill seeks to enshrine these protections in legislation, rather than as an administrative arrangement, as well as make some minor changes to eligibility requirements to make it easier for workers to apply for payments.

Member for Mayo (SA) Jamie Briggs said the opposition largely supports placing the arrangements into law, given the GEERS was established in 2001 by the previous government.

Mr Briggs said there are a number of examples where companies have collapsed suddenly, often without the ability to pay their employees' wages or entitlements.

"Equally, there are times when employers and directors make bad decisions or deliberately make decisions which seek to unfairly treat their workers," Mr Briggs said.

"That is why we need protections in law in this country: to ensure that people are not unfairly treated. We do need a safety net, and we have always supported – I have always supported – the need for a strong safety net of entitlements for people in the workplace."

However the opposition has raised concerns about increases to the maximum payments that were available under the original GEERS, particularly relating to potential redundancy payouts for long-serving workers.

Shadow Minister for Employment Participation Sussan Ley moved an amendment to cap redundancy payments at a maximum of 16 weeks' pay, saying it is important to keep payouts at a limit in line with community expectations.

"As noted by the minister, the bill actually enshrines in legislation a redundancy package, calculated at four weeks per year of service, which would, we believe, set a new high bar that union bosses could use as a new high bar in enterprise bargaining," Ms Ley said.

"The Coalition maintains its fiscal prudence – its cautious approach – and we will keep the redundancy package as it is under GEERS now, in line with community expectations and capped at 16 weeks."

However Mr Shorten said workers would only receive payments equal to what they would be otherwise entitled to under their workplace agreement or other industrial instrument, with redundancy set at a maximum of four weeks per year of service.

Mr Shorten said the amendments put forward by the opposition may unfairly penalise long-serving workers who could otherwise be entitled to much larger redundancy payouts.

"Under the opposition's proposal, once you have basically done four

"The bill will provide certainty for Australian employees who find themselves without a job and left out of pocket"

THE LAW

FAILSAFE: Support for workers caught out by corporate collapses



years in a company, you get nothing more,” Mr Shorten said. “What the opposition will be doing with their amendments is enshrining a short-term view of people’s loyalty, saying that, at four years, that’s it.

“If you have worked as a machinist in an automotive components company for 20 years,

they are saying, ‘You might as well have only worked there for four years, because that is all we are giving you’.”

“We do need a safety net”

The opposition amendments were defeated and the bill passed the House and the Senate with the support of crossbench MPs. •



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STATUTE LAW

Legal spring clean

Tidy up for legislation.

Australia’s laws were recently scheduled for spring cleaning, with the passage of a bill to fix typos, punctuation errors and cross-referencing mistakes in about 150 pieces of Commonwealth legislation.

Obsolete laws such as the Treaty of Peace (Germany) Act 1919 will also be scrapped in a bid to tidy up the law book.

Attorney-General Nicola Roxon introduced the clean-up bill into the House of Representatives, stating that the aim of the Statute Law Revision Bill 2012 was to make the Commonwealth statute book simpler, clearer and easier to understand.

“Statute law revision bills have been used for the last 30 years to improve the quality of Commonwealth legislation,” she said.

“The bills do not make substantive changes to the law but still perform the important function of repairing minor errors ... which accumulated across successive government amendments.”

The Office of Parliamentary Counsel had the job of going through the acts, finding the errors and out-dated references to be fixed.

Proposed amendments include:

- inserting or deleting full stops and capital letters;
- replacing terms that no longer exist with the ones that replaced them;
- fixing incorrect cross-references;
- fixing incorrect punctuation;
- fixing typographical/spelling errors such as himself→himself; originally→originally;
- getting rid of redundant sections of acts;
- adding conjunctions at the end of the subparagraphs to make the acts consistent with current drafting practice;
- replacing specific references and definitions of certain aircraft with more generic references;
- removing specific references to ministers and departments with generic terms that will still be relevant even if the portfolio name changes; and
- repealing obsolete acts entirely. •

THE LAW

STATUTORY AUTHORITIES

National Portrait Gallery becomes independent

New laws recognise gallery's significance.

The National Portrait Gallery has now taken its place alongside other Commonwealth institutions as an independent statutory authority.

Bills to make the gallery a stand-alone institution have passed through federal parliament.

The National Portrait Gallery was previously part of a branch within the Department of Regional Australia, Local Government, Arts and Sport.

Its independent status will begin from 1 July 2013 and will allow it to have its own board of governance and director.

Member for Canberra (ACT), Gai Brodtmann said the new laws give the National Portrait Gallery proper acknowledgement of its success and significance.

"The functions of the gallery as established by the bill are to develop, preserve, maintain, promote and provide access to a national collection of portraits, other works of art and related material, including portraits that reflect the identity, history, diversity and culture of Australia," she said.

"It will also develop and engage a national audience in relation to that collection and other works of art and related material that will be in the possession of the gallery including through exhibitions, education, research, publications and public and online programs."

The laws set out the powers that enable the National Portrait Gallery to perform those functions and handle its own budget and accounts.

"For the first time, as a result of this legislation, the functions of the Portrait Gallery will be enshrined, giving it a clear and coherent purpose reflecting its cultural role and its cultural importance," Ms Brodtmann said.

"As a result of this particular bill, the National Portrait Gallery will continue its role as a source of great pride to all Australians and to all those who visit the national capital. This bill represents a fitting tribute to Canberra and a very important change to one of my electorate's most significant cultural institutions." ●



OUT OF THE CROWD: Portrait gallery to stand alone

CUSTOMS

Butting out illegal tobacco

Jail terms and large fines for smugglers.

Tobacco smugglers face up to 10 years in jail and large fines under new laws passed by federal parliament.

The Customs Amendment (Smuggled Tobacco) Bill 2012 creates specific offences for smuggling tobacco products and for conveying or processing smuggled tobacco products.

Previously people who illegally imported tobacco products could only be prosecuted under general anti-smuggling provisions, which only carry financial penalties between two and five times the customs duty that would have been payable on the tobacco if it had been declared.

Attorney-General Nicola Roxon said while tobacco smuggling has not been a major problem in Australia in recent years, the government was keen to ensure appropriate penalties are in place to deter potential smugglers and to deal with those who do try to circumvent Australia's high tobacco duties.

"A term of imprisonment is not currently available as a penalty for tobacco smuggling under the Customs Act and these new penalties will send a clear message to smugglers that they risk spending significant time in jail by bringing illegal tobacco into this country," she said.

However the opposition accused the government of underplaying the prevalence of tobacco smuggling and illegal tobacco products in Australia.

Shadow Customs Minister Michael Keenan pointed to a report from industry research giant Deloitte which estimated the illicit tobacco market in Australia to be 2.26 million kilograms in 2011, equivalent to 13.4 per cent of the legal tobacco market.

"While figures on the illegal tobacco market will vary and, clearly, it is difficult to find the appropriate methodology to assess how large this

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CRACKDOWN: New penalties to hit tobacco smugglers

market is, we do have very strong indications that this is a problem and that illegal tobacco is smuggled through our borders,” Mr Keenan said.

“This is clearly an issue the government is in denial on and it is refusing to address with any real conviction or action.”

But Ms Roxon said the government is clearly committed to reducing the harm caused by tobacco and stamping out illegal operators.

“Tobacco, of all types, can kill its users,” she said. “Australia has regulated this dangerous product very tightly – and these steps strengthen our arm if smugglers try to get around those regulations and try to avoid the payment of taxes.”

The Customs Amendment (Smuggled Tobacco) Bill received Royal Assent on 6 November 2012 and will come into effect in the coming months. •

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PRIVACY

Update for privacy laws

Bill aims for simpler system of protections.

A new set of privacy principles for both public and private sectors in Australia is one step closer after the bill to create them passed through federal parliament.

The Privacy Amendment (Enhancing Privacy Protection) Bill 2012 was drafted following recommendations from the Australian Law Reform Commission to simplify, consolidate and enhance privacy protection laws in Australia.

The bill amends the Privacy Act 1988 to replace the current privacy principles for the public and private sectors with a single set of privacy principles – the Australian Privacy Principles or APPs – and an APP code of practice.

The APPs will set out how public organisations such as government departments and private organisations such as banks or retailers can collect, use and distribute people’s personal information.

Government agencies that are involved in law enforcement would be able to collect and share information with each other, without seeking permission from the person whose details are being viewed.

Agencies and companies will also have an obligation to proactively ensure that any personal information they collect will be handled properly and protected from misuse.

The bill would also implement a comprehensive credit reporting system and code of practice; give further powers to the Privacy Commissioner; and clarify the functions, powers and role of the Information Commissioner.

However a House of Representatives Social Policy and Legal Affairs Committee inquiry into the bill heard there are some concerns about the structure and scope of the new principles.

The Law Council of Australia told the committee it was concerned the bills did not achieve their aim of making privacy laws simpler and easier to understand.

“The simple language and structure contained in the current National Privacy Principles (NPPs) has been replaced with a more verbose and complex set of principles,” the Law Council said in its submission.

“The structure and drafting of the APPs should be reviewed with the aim of reverting to the simpler drafting style of the NPPs.”

The council also had concerns that principle eight, which seeks to protect personal information from being misused if it is sent overseas, would place an unfair burden on organisations such as banks that have branches or customer service operators overseas.

The council warned consular activities and defence might also be impacted, as could internet companies that store information in ‘clouds’ offshore.

“In an era of global trade and other interactions, the council believes that APP 8 errs too much on the side of cross-border compliance at the cost of the convenient flow of information,” the Law Council said.

“APP 8 may deter the growing use of cloud computing. The council submits that this may impede access for Australian businesses and other entities to the economic and other benefits that cloud computing has to offer, putting Australian businesses and other entities at a competitive disadvantage with their international counterparts. [It] should be redrafted to impose less onerous, but still effective requirements.”

In its submission to the inquiry, the Office of the Australian Information Commissioner (OAIC) raised concerns about the range of government departments that would receive special provisions for law enforcement activities under the APPs.

“The Immigration Department would appear to be of a different character to the other agencies included within the definition of an ‘enforcement body’, in the sense that its usual activities are not of an enforcement related nature... The OAIC recommends that the Immigration Department be removed from the definition of ‘enforcement body’,” the OAIC said.

The committee said while it was aware there were a number of outstanding concerns from industry and consumers about the APPs, it supported the House passing the bill.

It recommended the Attorney-General conduct a review of the legislation one year after it becomes law. Issues to be reviewed include any conflicting overseas laws and direct marketing and opt out provisions for direct marketing. •