Reducing Redundancy Payments

The Accommodation Association will continue to advocate for relief measures to assist businesses recover from the devastating effects of the pandemic. However, of necessity, many properties are contemplating restructures and redundancies.

It is generally understood that eligible workers are likely to win an unfair dismissal claim if dismissed because of redundancy for reasons other than the persons job is no longer needed to be done by anyone.

Frequently neglected however are the procedural processes which, by themselves, could result in unfair dismissal claims succeeding. Procedural processes require employers to:

- comply with obligation in a modern award or enterprise agreement to consult with affected employees (see Clause 38 of HIGA), and
- make every reasonable endeavour to redeploy affected employees.

Redundancy payments

Some employees, including casual employees and all employees of small businesses (with fewer than 15 employees) are excluded from the obligation to make redundancy payments. Other workers are entitled to redundancy payments on completion of at least one year's service.

Redeployment and reducing redundancy payments

Commonly misunderstood is the fact that eligible employees are entitled to redundancy payments even if the employer finds alternative work for the employee.

It is incumbent on the employer to apply to Fair Work Commission (FWC) to have redundancy payments reduced or waived if:

- the employer cannot afford the full redundancy amount, or
- the employer finds other acceptable employment for the employee.

The FWC is likely to waive the payment if the alternative position is "acceptable". An acceptable position is usually one which has the same rate of pay, similar levels of responsibility and seniority with similar employment conditions.

The FWC may reduce the redundancy payment if the employer has provided a position with lower levels of pay, status or conditions.

When an employee refuses redeployment

Should an employee refuse other "acceptable" employment, the employer is still required to apply to the FWC to have redundancy payments reduced. If satisfied that the alternate employment is acceptable, the redundancy payment will be reduced to nil.

Accommodation Association Members

Members are reminded they have unlimited access to the Accommodation Association's advice line and are welcome to contact the Association discuss their obligations and the risks before considering redundancies.

Noel Teskey

Phone 02 8666 9015 www.aaoa.com.au mail@aaoa.com.au