



Corporations Law Amendment (Employee Entitlements) Act 2000

No. 78, 2000



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**An Act to amend the Corporations Law, and for
related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
	Schedule 1—Employee entitlements	3
	<i>Corporations Law</i>	3



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An Act to amend the Corporations Law, and for related purposes

[Assented to 30 June 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations Law Amendment
(Employee Entitlements) Act 2000*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

The Corporations Law set out in section 82 of the *Corporations Act 1989* is amended as set out in Schedule 1, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Employee entitlements

Corporations Law

1 Section 9

Insert:

entitlements of an employee of a company has the meaning given by subsections 596AA(2) and (3).

2 Section 9

Insert:

linked: the incurring of a debt and a contravention of section 596AB are *linked* if they are linked under subsection 596AB(4).

3 Subsection 588G(1A) (after table item 6)

Insert:

- 7 entering into an uncommercial transaction (within the meaning of section 588FB) other than one that a court orders, or a prescribed agency directs, the company to enter into when the transaction is entered into

4 Section 588N

Repeal the section, substitute:

588N Avoiding double recovery

An amount recovered in proceedings under section 588M in relation to the incurring of a debt by a company is to be taken into account in working out the amount (if any) recoverable in:

- (a) any other proceedings under that section in relation to the incurring of the debt; and
- (b) proceedings under section 596AC in relation to a contravention of section 596AB that is linked to the incurring of the debt.

5 After Part 5.8

Insert:

Part 5.8A—Employee entitlements

596AA Object and coverage of Part

Object

- (1) The object of this Part is to protect the entitlements of a company's employees from agreements and transactions that are entered into with the intention of defeating the recovery of those entitlements.

Employee entitlements

- (2) The *entitlements* of an employee of a company that are protected under this Part are:
 - (a) wages payable by the company for services rendered to the company by the employee; and
 - (b) superannuation contributions (that is, contributions by the company to a fund for the purposes of making provision for, or obtaining, superannuation benefits for the employee, or for dependants of the employee) payable by the company in respect of services rendered to the company by the employee; and
 - (c) amounts due in respect of injury compensation in relation to the employee; and
 - (d) amounts due under an industrial instrument in respect of the employee's leave of absence; and
 - (e) retrenchment payments for the employee (that is, amounts payable by the company to the employee, under an industrial instrument, in respect of the termination of the employee's employment by the company).

An entitlement of an employee need not be owed to the employee. It might, for example, be an amount owed to the employee's dependants or a superannuation contribution payable to a fund in respect of services rendered by the employee.

- (3) The entitlements of an excluded employee (within the meaning of section 556) are protected under this Part only to the extent to which they have priority under paragraph 556(1)(e), (f), (g) or (h).

Employees

- (4) For the purposes of this Part, a person is an **employee** of a company if the person is, or has been, an employee of the company (whether remunerated by salary, wages, commission or otherwise).
- (5) If an entitlement of an employee of a company is owed to a person other than the employee, this Part applies to the entitlement as if a reference to the **employee** included a reference to the person to whom the entitlement is owed.

596AB Entering into agreements or transactions to avoid employee entitlements

- (1) A person must not enter into a relevant agreement or a transaction with the intention of, or with intentions that include the intention of:
- (a) preventing the recovery of the entitlements of employees of a company; or
 - (b) significantly reducing the amount of the entitlements of employees of a company that can be recovered.
- (2) Subsection (1) applies even if:
- (a) the company is not a party to the agreement or transaction; or
 - (b) the agreement or transaction is approved by a court.
- (3) A reference in this section to a **relevant agreement or a transaction** includes a reference to:
- (a) a relevant agreement and a transaction; and
 - (b) a series or combination of:
 - (i) relevant agreements or transactions; or
 - (ii) relevant agreements; or
 - (iii) transactions.
- (4) If a person contravenes this section by incurring a debt (within the meaning of section 588G), the incurring of the debt and the contravention are **linked** for the purposes of this Law.

596AC Person who contravenes section 596AB liable to compensate for loss

- (1) A person is liable to pay compensation under subsection (2) or (3) if:
- (a) the person contravenes section 596AB in relation to the entitlements of employees of a company; and
 - (b) the company is being wound up; and
 - (c) the employees suffer loss or damage because of:
 - (i) the contravention; or
 - (ii) action taken to give effect to an agreement or transaction involved in the contravention.

The person is liable whether or not the person has been convicted of an offence in relation to the contravention.

- (2) The company's liquidator may recover from the person an amount equal to the loss or damage as a debt due to the company.

Note: Because employee entitlements are priority payments under paragraphs 556(1)(e) to (h), employees have priority to any compensation recovered by the liquidator in proceedings brought under this section.

- (3) If an employee of the company has suffered loss or damage because of:
- (a) the contravention; or
 - (b) action taken to give effect to an agreement or transaction involved in the contravention;

the employee may, as provided in section 596AF to 596AI (but not otherwise), recover from the person, as a debt due to the employee, an amount equal to the amount of the loss or damage. Any amount recovered by the employee under this subsection is to be taken into account in working out the amount for which the employee may prove in the liquidation of the company.

- (4) Proceedings under this section may only be begun within 6 years after the beginning of the winding up.

596AD Avoiding double recovery

An amount recovered in proceedings under section 596AC in relation to a contravention of section 596AB is to be taken into account in working out the amount (if any) recoverable in:

- (a) any other proceedings under that section in relation to the contravention; and
- (b) proceedings under section 588M in relation to the incurring of a debt that is linked to the contravention.

596AE Effect of section 596AC

Section 596AC:

- (a) has effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person's office or employment in relation to a company; and
- (b) does not prevent proceedings from being instituted in respect of a breach of such a duty or in respect of such a liability.

596AF Employee may sue for compensation with liquidator's consent

- (1) If a company is being wound up, an employee of the company may, with the written consent of the company's liquidator, begin proceedings under section 596AC in relation to a contravention of section 596AB in relation to an entitlement of the employee.
- (2) Subsection (1) has effect despite section 596AH, but subject to section 596AI.

596AG Employee may give liquidator notice of intention to sue for compensation

An employee of a company that is being wound up may give the company's liquidator a written notice:

- (a) stating that the employee intends to begin proceedings under section 596AC in relation to a contravention of section 596AB in relation to an entitlement of the employee; and
- (b) specifying the contravention of section 596AB and the entitlement to which the proposed proceedings relate; and
- (c) asking the liquidator to give the employee, within 3 months after receiving the notice:
 - (i) a written consent to the employee beginning the proceedings; or

- (ii) a written statement of the reasons why the liquidator thinks that proceedings under section 596AC in relation to the contravention should not be begun.

The notice may be given only after the end of 6 months beginning when the company begins to be wound up.

596AH When employee may sue for compensation without liquidator's consent

- (1) This section applies if an employee of a company gives a notice under section 596AG in relation to a contravention of section 569AB and to an entitlement.
- (2) The employee may begin proceedings in a court under section 596AC in relation to the contravention and the entitlement if:
 - (a) as at the end of 3 months after the liquidator receives the notice, he or she has not consented to the employee beginning such proceedings; and
 - (b) on an application made after those 3 months, the court has given leave for the proceedings to begin.
- (3) If:
 - (a) during those 3 months, the liquidator gives to the employee a written statement of the reasons why the liquidator thinks that such proceedings should not be begun; and
 - (b) the employee applies for leave under paragraph (2)(b);then:
 - (c) the employee must file the statement with the court when so applying; and
 - (d) in determining the application, the court is to have regard to the reasons set out in the statement.

596AI Events preventing employee from suing

- (1) An employee of a company that is being wound up cannot begin proceedings under section 596AC in relation to a contravention in relation to an entitlement of the employee if:
 - (a) the company's liquidator has applied under section 588FF in relation to a transaction that constituted, or was part of, the contravention; or

- (b) the company's liquidator has begun proceedings under section 596AC in relation to the contravention; or
- (c) the company's liquidator has begun proceedings under section 588M in relation to the incurring of the debt that is linked to the contravention; or
- (d) the company's liquidator has intervened in an application for a civil penalty order against a person in relation to a contravention of section 588G in relation to the incurring of the debt that is linked to the contravention.

(2) Subsection (1) has effect despite sections 596AF and 596AH.

6 Schedule 3

Insert the following item in its appropriate place according to the order in which it occurs in the Corporations Law:

Subsection 596AB(1)

Penalty: 1,000 penalty units or imprisonment for 10 years, or both.

*[Minister's second reading speech made in—
House of Representatives on 17 February 2000
Senate on 16 March 2000]*

(1/00)
