Submission

by

BusinessNZ

to the

Commerce Select Committee

on the

Status of Redundancy Payments Bill

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1. Introduction

1.1. Encompassing five regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, Canterbury Manufacturers' Association, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 50-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

1.2. In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

1.3. Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

1.4. To achieve sustainable growth, the Government should promote policies that take into account New Zealand's unique business demographic structure. As of February 2002, 92.5% of New Zealand businesses employed fewer than 10 full-time equivalent (FTE) workers, and 86% employed fewer than 6 FTEs. Any Government policy that has the potential to affect business needs to consider the consequences affecting New Zealand's largest group of similar sized enterprises.

1.5. Companies, by their very nature, are entrepreneurial risk taking ventures. Any operating business carries an element of risk, and the possibility of closure is always an economic reality. However, the closure of one business can adversely affect another, highlighting the need to minimise the possibility of one or more businesses closing due to the insolvency of another.

1.6. The Status of Redundancy Payments Bill is a Private Member's Bill, with the rationale for the Bill coming from the collapse of the Weddel meatworks, and the workers who subsequently became unsecured creditors for their redundancy payments. The Bill proposes three significant changes to current legislation. Firstly, the removal of the current $6,000 limit on the amount of wages/salaries and holiday pay employees can receive after a company goes into receivership or liquidation. Secondly, the removal of the $1,500 limit on the amount that an employee can recover for wages/salaries and holiday pay owed from individuals who are employers. Thirdly, the Bill intends to include redundancy payments as a preferential claim with the same status as wages/salaries and holiday pay.

1.7. The consequence of these proposed changes tips the balance too far in favour of employees over other unsecured creditors. Businesses that become unsecured creditors will be moved down the priority list and would exacerbate the problem of further business closures, particularly for small businesses. Furthermore, the Bill goes against the recommendations of the discussion document released by the Government in 2001 entitled *Insolvency Law Review: Tier One Discussion Document*. After wide consultation, the review did not recommend any increase in the $6,000 or $1,500 limits for entitlements, nor did it recommend that redundancy payments should be afforded priority over other unsecured creditors. Therefore, Business New Zealand submits that the Status of Redundancy Payments Bill should not proceed.

Recommendation: *Business New Zealand recommends that the Status of Redundancy Payments Bill not proceed.*

2. Removal of the $6,000 Limit

2.1. Currently, employees of a company that goes into receivership or liquidation are entitled to priority on any wages and salaries and related earnings (excluding redundancy payments) accrued over the previous four months, up to a limit of $6,000 per employee. The Bill intends to remove any upper monetary limit, to which Business New Zealand is strongly opposed.

2.2. Based on average hourly earnings from the latest Quarterly Employment Survey[1], a $6,000 limit for an employee working 40 hours per week represents almost 2 months' pay. It would be highly unlikely for most employees to work for that period of time (or more) without receiving remuneration for work carried out. If payments of wages/salaries are not forthcoming, employees should be automatically alerted to the fact that the enterprise may be in financial difficulty, and that it might be prudent to look for employment elsewhere or at the very least to raise the issue with their employer.

2.3. Employers can and should urge holiday entitlements to be used by employees, so that employees are able to have regular breaks from work to ensure their health and well-being, as well as making sure that a large amount of time owed does not become a large liability for a business that may go into insolvency.

2.4. Furthermore, business suppliers need to know that there is some limitation on liability for wages and salaries accrued, which could otherwise jeopardise their status as an unsecured creditor receiving any money owed. While the dollar amount of the current $6,000 limit might be reviewed from time to time to better reflect appropriate levels, some upper limit on the amount owed should always be maintained.

Recommendation: *Business New Zealand recommends that a monetary limit of $6,000 on all amounts due to employees is maintained for the Companies Act 1955 & 1993 and the Receiverships Act 1993.*

3. Removal of the $1,500 Limit

3.1. The Bill also intends to remove the current $1,500 limit on the amount an employee can recover for wages/salaries and holiday pay owed from employers who are individuals. Business New Zealand is deeply concerned that as with the removal of the $6,000 limit, the removal of any type of monetary cap tips the balance too far in favour of employees over other unsecured creditors. Removal of neither of these monetary limits was recommended in the *Insolvency Law Review: Tier One Discussion Document*.

3.2. Although not all businesses are limited liability companies, just as companies have limits on liability, so too should individuals who are employers. Again, some limit on entitlements should be required so that business suppliers are not jeopardizing their chance to receive any money owed if they become an unsecured creditor.

3.3. As the initial idea for the Bill was based on what occurred with the Weddel meatworks, under the proposed Bill, the farmers who supplied stock for the company would become unsecured creditors, and likely to lose everything that was owed. In contrast, employees would have no limit to the amount they are owed and would receive priority over other creditors. This solution would not be conducive to minimising the closure of further businesses.

Recommendation: *Business New Zealand recommends that a monetary limit of $1,500 on all amounts due to employees be maintained for the Insolvency Act 1967.*

4. Redundancy Payments Receiving Priority

4.1. When a business goes into insolvency, there are usually some groups that experience a loss of income, whether they are employees or other businesses providing good or services. With all affected parties wanting to

[1] Statistics New Zealand, November 2002.

make sure they receive their amount owed, any issue of prioritisation towards one group over another will enviably lead to disagreement.

4.2. The Bill amends the schedules for preferential claims in the Companies Act (1955 and 1993) to include redundancy payments as a preferential claim, with the same status as wages/salaries and holiday pay.

4.3. There is no statutory requirement to pay redundancy compensation to employees. Any redundancy payment that employees receive is as might be stated in the employment agreement between the employer and employee. It is Business New Zealand's submission that when a business goes into insolvency or liquidation, money should be received for goods or services ***actually*** provided. Redundancy pay does not equate to any time employees have contributed towards goods and services produced for the business.

4.4. When comparing employees with other unsecured creditors, employees generally experience a lower risk to their financial position than other unsecured creditors when employed in a business that goes into liquidation or insolvency. When their employment ceases, employees can receive monetary assistance from the Government through various benefits and schemes during their transition period between jobs. In contrast, once a business becomes an unsecured creditor, all forms of payments are unsecured, and there is no type of assistance on which to fall back.

4.5. In many cases, employees are probably in a better position than other unsecured creditors to establish how the firm is performing, and whether the employer's financial position is deteriorating. Businesses or individuals that become unsecured creditors often do not have the ability to ascertain what financial position the other enterprise is in. Businesses or individuals that have provided goods or services to another may not even be aware that the other is suffering financial hardship and the good faith element that exists with dealings between businesses could be seriously undermined if they are moved down any priority listing.

4.6. In many cases, small businesses such as independent contractors and tradesmen work on small margins, with any loss of income leading to reduced business opportunities. This can often result in a closure or insolvency for their business as well.

4.7. Whilst it is possible that an employee may miss out receiving any redundancy payments, any gain that they obtain from affording priority to redundancy payments should not be at the expense of other small businesses that could fall into closure or liquidation themselves. In many cases, giving employees priority could create a "domino" effect, where other businesses collapse because they are further down the list in terms of receiving monies owing.

4.8. To reduce the risk of losing future income, businesses may decide to take up a range of costly measures to protect any goods or services provided to another enterprise. This could include complex contracts to be drawn up, or insurance taken out against products supplied. Also, resources could be put towards monitoring the financial position of businesses they are supplying to. All these activities result in further costs for businesses, which invariably are passed on to the consumer.

4.9. The availability of credit could also be hampered, as businesses experience an increase in the costs of borrowing, given that the level of security any lending agency has over their investment has decreased. Alternatively, the lending time may be shortened, placing increased pressure on a business to meet regular loan repayments.

4.10. The cumulative effects of these increasing costs is likely to mean fewer employment opportunities as fewer individuals are able to contemplate the risk taking involved in developing a new business. Clearly, the good intention of further protecting the employees' position therefore could turn out in practice to be a penalty for small business and even employees. The recommendation of the *Insolvency Law Review: Tier One Discussion Document* was that redundancy payments should not be afforded priority.

Business New Zealand agrees with this stance, and submits that redundancy payments not be afforded priority.

Recommendation: *Business New Zealand recommends that redundancy payments not be afforded priority.*

5. Government as a Priority Creditor

5.1. Business New Zealand questions the appropriateness of the New Zealand Customs Service and the Inland Revenue Department (IRD) remaining as priority creditors when a business goes into insolvency. By doing this, the Government is holding to itself the ability to claim priority ahead of all others with just as good if not better claims. The IRD already has a privileged status not only because it is in an early position to know the true financial state of a business before any other creditors, but also because it has the power to take funds from business accounts.

5.2. The Government has previously stated that these government agencies are given priority based on the need to maintain the revenue base for the Government to further other objectives. However, Business New Zealand submits that it would be more beneficial to the economy if unsecured creditors were given higher priority over the Government, which could prevent further business closures and an increase in business costs. Therefore, Business New Zealand submits that the Government not remain a priority creditor.

Recommendation: *Business New Zealand recommends that the Government's status as a priority creditor be removed.*