# Redundancies: The Money and the Box

STUART WOOD

Current redundancy law means that people can have their cake and eat it too.

MOST readers will be aware of the bizarre efforts to which some employees will go to 'get a package'. People with a job no longer resign; instead they manipulate their tasks in order to make their jobs redundant and to get a package. Poor performers may not know how to do their jobs but they certainly know the value of their packages and they know not to perform properly until they get one. 'Injured' employees often recover soon after exposure to the healing power of the 'package'.

Australia's senior executives have been just as determined to get their fill. In 1998, John Prescott received a $11.1 million 'golden handshake', despite BHP's near $1.5 billion loss last year. Soon after, Mr Prescott purchased a $2 million getaway in Noosa. Similarly, Brierley Investments shed millions from its market capitalization before Paul Collins collected a $3.4 million package. And now Norb Cole has claimed over $40 million from Coca-Cola Amatil despite overseeing a similar fall in the price of Coke's shares. These three CEOs were recently listed by BRW amongst the worst performers of 1997-98, and yet they have walked away with millions.

Shareholders are entitled to be upset. Multi-million-dollar rewards commensurate with increases in shareholder value (for example, Joss at Westpac, Wilson at Tabcorp and Trumbull at AMP) are one thing but multi-million-dollar 'packages' for CEOs who have destroyed shareholder value are extraordinary.

As a consequence, redundancy packages have corrupted workplace culture at all levels. Nearly all employers are affected by this culture: old ones such as Telstra and new ones such as Crown; from blue-collar workers such as wharfies, right through to white collar whiz kids in financial services. Public and private sectors are equally affected. Only small businesses are immune from the excesses.

In some sectors, redundancy payments have become so high that employees regard redundancy as a reward. Consequently, there is nearly always a rush of employees seeking to be made redundant. For example, when Premier Kennett advertised redundancies in the Victorian Public Service in 1993, 24,000 employees applied for 7,000 packages. In 1995, CBA employees took the Bank to the Human Rights and Equal Opportunity Commission ('HREOC') and convinced HREOC that being retrenched and offered a redundancy package was a benefit. The packages were so good that the CBA employees celebrated their sackings.

Employees are manipulating their tasks to make their jobs redundant, clamouring by their thousands to cash in their jobs and taking their employers to court to get a package. Why? The reason is simple: redundancy packages are too large, they are taxed too beneficially and there is no requirement that redundant employees who obtain a new job repay redundancy monies.

***'Injured' employees often recover soon after exposure to the healing power of the 'package'***

## COMPENSATION FOR WHAT?

The ABS recently confirmed that more than two-thirds of retrenched workers who become unemployed after they are retrenched obtain new employment within 3 months. That is, the majority of all redundant employees get the money *and* the box.

Moreover, it is common for employees to line up a new job before being made redundant: they get the package and a new job. Indeed, outsourced maintenance employees often find themselves retrenched on Friday, tens of thousands of dollars richer, and back on Monday, employed by a maintenance contractor at their old work-site, with only their employer and their bank balance having changed. A side-effect of having no rules requiring repayment is that, the best employees take voluntary packages, get a new job and leave their employer with the dregs.

Rules requiring repayment are critical now that redundancy packages have become obscenely high. For example, oil industry employees are entitled to packages of up to 100 weeks' pay, Telstra employees are not far behind on 84 weeks and Jeff's public servants of 1993 were entitled to $5000 and 44 weeks. No wonder 24,000 public servants applied for 7,000 packages! No wonder Telstra has been able to reduce its staff by 25,000-odd during the last couple of years with relatively little resistance. These packages, however, come at a massive cost for employers, shareholders and the community.

The cost of redundancy has become a seemingly immovable obstacle for employers seeking to ensure that their businesses are competitive in increasingly global markets. In 1989, wharfies received $300 million in redundancy packages but this did nothing to improve productivity on the waterfront (despite former PM Hawke's pronouncements at the time). In 1998, Crown boss Lloyd Williams blamed the cost of redundancies as a factor in the poor financial performance of the casino. And in February 1999, it has been reported that Deutsche Bank cannot rationalize its Australian operations, for fear of having to pay $150 million in redundancy pay.

The cost of redundancy is also borne by consumers, in the form of higher prices, and, in some cases, by the community more generally. Prime Minister Howard promised $1 billion of the proceeds from the one-third sale of Telstra would be set aside for the Environment Fund. What the Prime Minister didn't say (probably because he did not know) was that Telstra had set aside another $1 billion (or roughly $40,000 for each retrenched employee) to pay out its retrenched employees. Employees, who would be likely to obtain new employment in the fast-growing, highly-paid communications industry, and who would not have to repay their $40,000 when they did. Surely, this money would have been more appropriately spent on the environment, health or education or returned to taxpayers in the form of tax cuts.

**ORIGINS**

Redundancy packages have grown exponentially since 1983 when the ACTU convinced the Australian Conciliation and Arbitration Commission to grant a standard 13-week redundancy entitlement, binding employers with more than 15 employees. In deciding to establish the 13-week standard, the Commission relied upon statements by the ACTU that this standard would prevent industrial disputes. Of course this has proven to be another big lie: over the last 15 years the unions have taken industrial action to gain entitlements to over 100 weeks, 84 weeks etc. The 13-week standard has become a base from which to 'bargain'. The unions' latest efforts forced BHP, under the threat of industrial action, to agree to a $140 million deal for its Newcastle steelworkers. Now the ACTU wants the 13-week standard increased to meet 'community standards'. A community standard only achieved because the unions refused to apply the 13-week standard. With every redundancy, the unions have ignored the standard, and taken the opportunity to pressure employers with the threat of industrial action to increase the benchmark. And now, under the guise of 'community standards', they want the benchmark that they artificially created recognized in awards.

The ACTU wants 3 weeks per year of service (uncapped) and an extension of the redundancy entitlements to small businesses as well. Incredibly, the ACTU claims its proposed standard will reduce industrial disputes: it made the same claim in 1983.

Moreover, the rules governing redundancy are apparently not the concern of the Government and have been formulated without the scrutiny of the Parliament.

**A NEW APPROACH**

It is time to develop new principles regarding redundancy packages openly. Too often, senior executives have entered into redundancy deals to keep the unions happy or to feather their own nests. Telstra's current redundancy pay arrangements were agreed to as part of a deal done with the unions to ensure a smooth merger between Telecom and OTC, rather than as a result of arm's-length commercial negotiations. In the private sector, directors often seek to ensure redundancy deals maintain the 'executive' standard.

***Redundancy packages are money for nothing***

Victorian Premier Jeff Kennett has begun to break this destructive cycle. Kennett has ensured that many Victorian Government employees are employed on relatively large salaries (up to many hundreds of thousands of dollars) with performance requirements and small (up to four-week) notice periods. Redundancy pay is not allowed and the redundancy deals with unions entered into by former Labor governments have largely run their course and have not been replaced.

The theoretical justification for an award base should also be re-examined. Three points may be made about the award 'safety net'. First, the costs should not be borne by business, especially small business. The arbitration of award redundancy entitlements to protect employees stalls the implementation of workplace change, which, by undermining the viability of Australian businesses, ultimately puts at risk the jobs of a broader group of workers. It is unlikely, however, that the Commission would adopt this reasoning to reduce the present 13-week entitlement.

Second, if any amounts are to be required to be paid (by the Commission-mandated award 'safety net'), they should not be determined simply by the combination of union demands and the Commission applying vague notions of community standards and accepting promises from unions that they will avoid industrial disputes. Redundancy pay is set by the Commission, while other employee entitlements such as annual leave, long service leave, etc, are (generally) set by parliaments. Perhaps the Commission's role in these matters needs reconsideration. Third, if redundancy pay is to remain part of the 'safety net', repayment rules must be introduced and the favourable tax treatment of these payments should be removed.

Whether or not the rationale of the 'safety net' is re-examined, Australian employers should take heed of the principles implemented in Victoria. Implementation of these principles would prevent the multi-million-dollar payouts that Australia's most senior executives enjoy. It is, however, difficult to imagine a large number of directors deciding to reduce their own (or their colleagues') packages. Therefore, shareholders, led by institutional investors, must put an end to this nonsense: redundancy packages are money for nothing. Shareholders must insist on adopting a Kennett-type approach to executive remuneration. Governments can help with rules regarding disclosure, but ultimately the pressure must come from the shareholders. That way, by tying remuneration packages to performance, shareholders will reward directors interested in results, not resorts.

*Stuart Wood is a Melbourne industrial relations barrister who acts for a number of Australia's largest employers. The views expressed in this article are his own.*

IPA