2008-2009

The Parliament of the
Commonwealth of Australia

THE SENATE

Fair Work Bill 2008

(Amendments to be moved by the Leader of the Australian Greens, Senator Bob Brown, in committee of the whole)

(1) Clause 389, page 324 (after line 24), at the end of the clause, add:

(3) A person’s dismissal was not a case of genuine redundancy if:
(a) the employer; or
(b) the employer’s enterprise; or
(c) the enterprise of an associated entity of the employer;
pays excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

[excessive remuneration provisions]

(2) Page 324 (after line 24), at the end of Division 3, add:

389A Dealing with excessive remuneration

(1) An employer must not terminate an employee’s employment because of, or for reasons including, redundancy if:
(a) the employer; or
(b) the employer’s enterprise; or
(c) the enterprise of an associated entity of the employer;
pays excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

(2) Despite any other provision in this Part, if an employee’s employment is terminated contrary to subsection (1), the employee is taken:
(a) to have been unfairly dismissed; and
(b) to meet the requirements of subsection 390(1); and
(c) to be entitled to apply for a remedy under section 394.

[excessive remuneration provisions]

(3) Clause 524, page 417 (after line 25), after subclause (2), insert:
(2A) An employer must not stand down an employee under subsection (1) if:
(a) the employer; or
(b) the employer’s enterprise; or
(c) the enterprise of an associated entity of the employer;
    pays excessive remuneration to any other person.

Note: Excessive remuneration is dealt with in section 536A.

(2B) Despite any other provision in this Part, if an employer purports to stand down an employee contrary to subsection (2A), the employee:
(a) is entitled to continue to receive payments from the employer for that period; and
(b) is taken to be entitled to apply to FWA to deal with the dispute under subsection 526(3); and
(c) is taken, for the purposes of subsection 526(4), to have been dealt with unfairly.

[excessive remuneration provisions]

(4) Page 426 (after line 24), at the end of Part 3-6, add:

Division 4—Reducing excessive executive salaries

536A Meaning of excessive remuneration

(1) An employer pays excessive remuneration to a person if the amount (or value, as appropriate) of the remuneration paid to the person by the employer exceeds $500,000 per annum, unless the employer has an executive high pay authorisation operating in relation to that person.

(2) FWA may make an order (an executive high pay authorisation) applying to an employer in relation to a person if FWA is satisfied that the remuneration paid to the person by the employer is not excessive.

(3) In determining whether the remuneration paid to a person is excessive, FWA must have regard to:
(a) community standards of reasonableness of remuneration;
(b) the extent to which the remuneration paid to the person by the employer could be, or has been, reduced so that the employer could avoid:
   (i) terminating the employment of any person because of, or for reasons including, redundancy; or
   (ii) standing down any person under subsection 524(1);
(c) the need to encourage the ongoing employment of the maximum number of people;
(d) the ratio of the remuneration to the average weekly wage;
(e) any other matter FWA considers relevant.

(4) FWA may make an executive high pay authorisation, or may decide not to make an executive high pay authorisation, pursuant to an application from:
(a) an employer; or
(b) an employee who reasonably suspects that the employer intends to terminate their employment on the grounds of redundancy; or
(c) an organisation of employees entitled to represent a person referred to in paragraph (b).
(5) FWA may make an executive high pay authorisation applying to an employer in relation to more than one person.

(6) To avoid doubt, FWA may make an executive high pay authorisation at any time, including prior to the termination of any person’s employment.

536B Interpretation

In this Division:

employer includes:

(a) the employer’s enterprise;
(b) the enterprise of an associated entity of the employer.

giving a financial benefit has the same meaning it has in the Corporations Act 2001, and is to be interpreted in the manner specified in section 229 of that Act.

remuneration includes paying a salary or giving a financial benefit to a person, and includes any amount paid, promised or guaranteed in any form, including though consultancy agreements and grants of shares or other interests, and including any payment made upon resignation or retirement, however described.

[excessive remuneration provisions]