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SOLICITORS & NOTARIES

SNAPSHOT: CHANGES AND ISSUES DUE TO COVID-19

COVID-19 UPDATES

This newsletter provides a brief overview of certain government initiatives that have been introduced, the ways in which some industries have been impacted and the potential legal issues that could arise due to the current pandemic.

GOVERNMENT PAYMENTS AND INCENTIVES:

STIMULUS PAYMENTS

New stimulus payments in the form of a tax refund are being provided by the federal government to businesses with payments of between \$2,000-\$25,000 (“Boosting Cash Flow for Employers”). Small and medium businesses with annual turnover of less than \$50 million and which employ workers are eligible. The payment will be made by the ATO as a credit to the business when activity statements are lodged.

Support is also being provided for the hiring of apprentices or trainees. A wage subsidy is available for eligible employers equal to 50% of the apprentice’s or trainee’s wage paid during the nine-month period from 1 January 2020 to 30 September 2020. Eligible employers are those small businesses with less than 20 full-time employees training an apprentice or trainee as at 1 March 2020. A maximum of \$21,000 per eligible apprentice or trainee will be reimbursed.



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EMPLOYMENT

Employment issues have necessarily arisen due to the impact the pandemic has had on businesses. Some employers have considered asking employees to take forced annual or unpaid leave and some are terminating employees. However, the federal government has announced its \$130 Billion Jobs Package, “JobKeeper”, providing fortnightly \$1,500 wage subsidies to employers to keep workers in their jobs. Payments will be made from 1 May 2020 to be backdated to 30 March 2020. For businesses to be eligible for wage subsidies, they must prove a drop of at least 30% in turnover due to COVID-19. The subsidies apply to full time and part-time workers, as well as casuals, as long as they have been employed by that employer for at least 12 months and had been stood down since 1 March 2020.

INSTANT ASSET WRITE-OFF

Until 30 June 2020, the instant asset write-off threshold has increased from \$30,000 to \$150,000, and access has expanded, now including all businesses with aggregated annual turnover less than \$500 million. Businesses can deduct purchases of certain assets each costing less than \$150,000.

BACKING BUSINESS INVESTMENT

The federal government has introduced a 15-month investment incentive by accelerating depreciation deductions. The incentive includes a deduction of 50% of the cost of an eligible asset on installation (existing depreciation rules apply to the balance of asset’s cost). The incentive applies to businesses with aggregated turnover less than \$500 million and applies only to purchases of certain eligible assets purchased after announcement and first used or installed by 30 June 2021.

TEMPORARY RELIEF FOR FINANCIALLY DISTRESSED BUSINESS

There will be a temporary higher threshold at which creditors can issue statutory demands on companies and temporary increase in the time companies have to respond. In relation to bankruptcy, there will be a temporary increase in the threshold for a creditor to commence bankruptcy proceedings, increased time for debtors to respond to a bankruptcy notice and an extension of the period of protection for debtors after declaring an intention to present a debtor's petition. For directors, there will be temporary relief from any personal liabilities for trading while insolvent and some flexibility in the provisions of the *Corporations Act 2001* (Cth) to provide relief for companies dealing with unforeseen events arising due to COVID-19.

EMPLOYERS – ISSUES TO LOOK OUT FOR:

DUTY OF CARE TO EMPLOYEES, VISITORS AND CUSTOMERS

In the future there is the possibility of issues arising for employers relating to breaches of potential duties of care to prevent the spread of coronavirus. This is amplified by the fact that employees are now increasingly working from home, which becomes the employee's new workplace. This means that it is crucial that employers act cautiously and take any necessary measures to reduce the risk to employees.

WORKERS' COMPENSATION CLAIMS

NSW workers can claim compensation for diseases contracted by a worker in the course of employment where the employment was the *main contributing factor* to the disease. In the case of death by COVID-19, there is a possibility that there could be workers' compensation claims in this regard. This is why it is necessary for employers to take precautions, including sending employees home, if a worker is sick or someone in a worker's household is sick.

LOAN DEFERRALS:

DEFERRAL OF COMMERCIAL LANDLORDS' MORTGAGE PAYMENTS

Banks have agreed that commercial landlords with loans up to \$10,000,000 are able to defer loan repayments for 6 months, as long as they do not terminate leases or evict tenants unable to pay rent due to COVID-19. This development must be a consideration when rent is negotiated, in accordance with principle 7 of the National Cabinet's Code of Conduct for commercial leases.

LOAN REPAYMENT DEFERRALS FOR SMALL BUSINESS

Banks have also agreed that they will provide 6-month loan repayment deferrals for small businesses with loans up to \$10,000,000. This does not relate to residential property investment loans.

CONTRACTS:

FORCE MAJEURE

Force majeure refers to provisions in a contract that may relieve performance obligations for events beyond the reasonable control of contracting parties. If such a provision appears in one of your contracts, it is important to consider the wording of the provision to see whether the intent is to excuse the parties from contractual obligations and liabilities while they are prevented from performance due to a certain event.

BUSINESS AND CORPORATE INSURANCE POLICIES

Now that business and corporate insurance policies are being called upon, it is clear that some people have had a false sense of protection. Some people may find themselves significantly underinsured, for example in relation to tenants being unable to pay rent, business interruption insurance and building insurance. PTW is currently providing advice on clients' current position under their policies and whether or not they are able to amend or satisfy the terms of the policy before needing to ever invoke it.

AGED CARE

As the aged population is more vulnerable to COVID-19, the risk in aged care facilities is unprecedented. Some people will want to move their elderly loved ones out of aged care homes. In order to do this, it is essential to consider the terms and conditions of the respite or permanent aged care agreement as it will outline how you can withdraw and any applicable procedures for emergency events.

MISCELLANEOUS:

INDUSTRIAL, COMMERCIAL AND RETAIL LEASES

Due to the impact that COVID-19 is having on businesses, it is very likely that tenants will seek to negotiate rent reductions with their landlords. Please see our subsequent newsletter detailing the National Cabinet's Code of Conduct for commercial leases which deals further with this issue. We are able to provide advice on mitigating loss relating to rental payments and ensuring the proper drafting and execution of such documents.

WILLS

We strongly recommend that everyone takes the time to create a will. We can arrange for our wills and estates lawyer, Lisa Monaco, to meet with you via teleconference and then in person for signing. PTW can provide a simple interim will for free.

CONSTRUCTION, DEVELOPMENT AND IMPORTS

COVID-19 has caused many disruptions in this field, especially for those importing materials from China. There is the potential for owners, builders and developers to threaten or commence legal action against contractors and suppliers for failure to complete works or failure to deliver materials. PTW Law is very willing to provide advice in relation to any such disputes.



Pryor Tzannes & Wallis is available to quickly review documents including leases, contracts, agreements, mortgage documents and insurance policies, as well as to provide advice in any area that may be of concern during this time.

