Like a Sitting Duck...or not – New Laws aimed at Closing Loopholes

Date : October 10, 2024

By Valentina Campos Villarreal and Keely Wunsch, Law Clerks at Matthews Folbigg in the Insolvency, Restructuring and Debt Recovery Group

Recent law reform within the *Fair Work Act 2009* (Cth) has sought to protect worker's rights while simultaneously closing the loopholes previously accessible to employers. This protection seeks to address the power imbalance inherently underlying every working relationship and ensures that workers are no longer 'sitting ducks'. Two significant changes are of particular importance to insolvency practitioners, these are as follows:

1. Firstly, the reforms cement a legislated definition of an 'employee' which requires courts to look beyond the parameters of the employment contract, to consider the 'real substance, practical reality and true nature of the [working] relationship' and
2. Secondly, the reforms close a loophole arising from the small business redundancy exemption, ensuring redundancy entitlements are not lost to employees of what was once a larger business, but has become a small business (less than 15 employees) because of insolvency.

While these legislative reforms are a welcome change in response to recent case law, it begs

the question whether they will provide clarity or if they will further exacerbate uncertainty for employees and employers. For a further in-depth discussion of this topic, please read our recent publication in the September edition of the national ARITA Journal titled 'Ducking Loopholes- New Laws on Contractors and Employees' authored by Stephen Mullette, Principal and Keely Wunsch, Law Clerk of Matthews Folbigg Lawyers.

A link to this article can be accessed here: ducking-loopholes-new-laws-on-contractors-and-employees

Matthews Folbigg Lawyers has a specialist team dedicated to Insolvency, Restructuring and Debt Recovery. If you would like more information or advice in relation to Insolvency, Restructuring or Debt Recovery practice and procedure, please contact Stephen Mullette or Jeffrey Brown on (02) 9806 7459 or (02) 9806 7446,or email stephenm@matthewsfolbigg.com.au or jeffreyb@matthewsfolbigg.com.au