



**Extracted from:**

## **ANSETT GROUP OF COMPANIES**

### **First Report by Administrators Pursuant to Section 439A of the Corporations Act**

**16 January 2002**

#### *The Redundancy Process and Payment of Employee Entitlements*

*(As Directed by Damien Pound)*

Following the collapse of Ansett, the Prime Minister announced at a press conference that the Commonwealth Government intended to protect employees of Ansett who were denied their entitlements. The commitment was that the entitlements of Ansett employees would be met by the Commonwealth Government to the extent that they were not able to be paid from the assets of Ansett. The entitlements to be paid by the Commonwealth Government were:

- Wages.
- Annual leave and long service leave.
- Payment in lieu of notice.
- Redundancy up to the community standard of eight weeks.

The mechanism under which this 'safety net' was to be established for employees was SEESA. Payments under SEESA were to be funded by the \$10 ticket levy imposed on all future ticket sales under the specially introduced Ticket Levy Act.

Asset realisations may take two to three years to complete, particularly given the impact on aviation assets of the terrorist attacks in the United States of America on 11 September 2001. Any delay in the realisation as a precondition to safety net payments by SEESA would create hardship for employees, most of whom have been stood down since 14 September 2001.

Between 7 October 2001 and 12 October 2001, numerous discussions were held with the Commonwealth Government and its advisors to discuss a special arrangement for Ansett employees to ensure that they received their entitlements as soon as possible.

On 12 October 2001, a draft proposal was sent to the Commonwealth Government. It was requested that the SEESA payments (estimated to be about \$195m) for the estimated 8,600 redundant employees be advanced to us with the payment in lieu of notice (estimated to be about \$35m) being made from asset realisations.

After further discussions with the Prime Minister and the Commonwealth Government, it was agreed in principle to proceed with the payment of employee entitlements on the following basis:

- Employees would be requested by letter to advise within seven days whether they wished to apply for redundancy.
- The applications for redundancy would be reviewed and considered based on the role and skills of employees.
- The four-week payment in lieu of notice payment would be calculated and paid from 29 October 2001 to employees whose applications were accepted.

- The balance of employee entitlements would be calculated by 19 November 2001 to enable the Commonwealth Government to source funding for the SEESA payments by then.
- Payments for the remaining entitlements owing to redundant employees and covered under the scheme would be made after the SEESA funds become available.

The Commonwealth Government's position significantly reduced the hardship being experienced by employees made redundant.

A substantial amount of work has been undertaken in separately calculating and verifying the entitlements of each employee. This took a team of up to 40 people a number of months to complete. Once calculated, notification of the entitlements was forwarded to each employee to confirm the calculation was correct.

About 6,000 employees have been made redundant to date. About 90 per cent of the payment in lieu of notice and SEESA payments have been made as a result of approval of the Court of the agreement with the Commonwealth Government for the advancement of the SEESA funds.

Section 556 of the Corporations Act states that employee entitlements are paid in priority to ordinary unsecured creditors in the liquidation of a company. Ordinarily, the same priority is afforded to employees in a DOCA. Throughout discussions, the Commonwealth Government indicated that they intended the SEESA funds advanced to be repaid in the same order of priority as if they were employee entitlements.

To enhance the potential dividend to be paid to ordinary unsecured creditors, a proposal was sent to the Commonwealth Government on 31 October 2001. The proposal requested the Commonwealth Government consider two options to subordinate in whole or in part the repayment of the SEESA payments.

Between 31 October 2001 and 9 November 2001, many further submissions were made to the Commonwealth Government in support of the Ansett Solution submission.

Throughout that period, the Commonwealth Government maintained that it expected repayments of advances made under SEESA to rank to an equal priority with all other employee entitlements.

A number of creditors enquired whether the repayment of SEESA payments could be subordinated in a DOCA approved by a majority of the Ansett Creditors. In theory, this was the case. However, there are safeguards in the Act to ensure that a DOCA can be terminated by the Court if it is oppressive or unfairly prejudicial to, or unfairly discriminatory against a creditor. The issue of subordination by a full meeting of creditors was therefore raised with the Commonwealth Government.

On 13 November 2001, a meeting was held with the Deputy Prime Minister concerning the proposal. While the Deputy Prime Minister was sympathetic to the position of ordinary unsecured creditors, he maintained that SEESA had not been established for the benefit of ordinary unsecured creditors of the Ansett Group.

Further meetings were held shortly afterwards with other Commonwealth Government officials. We were informed that:

- SEESA was established for the benefit of employees and not ordinary unsecured creditors.
- SEESA should be viewed as a safety net for employees.
- As a matter of policy, the Commonwealth Government has never made payments for the benefit of ordinary unsecured creditors as we requested.
- The Ticket Levy is separate from and distinct to the repayment of SEESA payments.

Again, the Commonwealth Government maintained its position that it expected to be repaid the SEESA payments with an equal priority to that of other employee entitlements.

The Commonwealth Government advised that, among other things it would not accept a subordinated position. The Commonwealth Government also indicated that it required SEESA payments to rank as a priority equal to all other employee entitlements and the arrangements must ensure that priority cannot be disturbed.

On 28 November 2001, a further meeting of the Committee of Creditors was held. At that meeting, the Committee of Creditors was informed that despite considerable effort, the Commonwealth Government was not prepared to subordinate its SEESA payments.

In order to ensure its entitlement to be repaid the SEESA funds were "set in stone", the Commonwealth Government requested (the Administrators) execute a loan agreement that ensured this position. In order to enable the timely payment of entitlements to employees under SEESA, (the Administrators) wished to execute the agreement.

However, given the terms of the agreement, it was necessary to apply to the Court for a direction that (the Administrators) may properly and justifiably do so and, further, if the Court makes a direction to the effect that (the Administrators) will not be personally liable to repay the SEESA payments other than from the assets available to (the Administrators) and on the basis that such repayments will have a priority equal to all other employee entitlements.