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LEGAL ALERT

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Termination for Genuine Operational Reasons

The recent decision of the Australian Industrial Relations Commission (the "**Commission**") in *Village Cinemas Australia Pty Ltd v Carter* (the "**Village Case**") has received quite a lot of press, and has confirmed the broad scope of the "genuine operational reasons" exemption from unfair dismissal in the Workplace Relations Act 1996 (Cth) (the "**Act**").

You may be aware that an employee is not entitled to bring an unfair dismissal claim under the Act if their employment was terminated "for genuine operational reasons or for reasons that include genuine operational reasons". The Act defines "operational reasons" as being "reasons of an economic, technological, structural or similar nature relating to the employer's undertaking, establishment, service or business".

Given the potential far-reaching effect of this exemption, some commentators were of the view that the Commission would attempt to read the exemption down in the favour of employees. This appears not to have happened.

The facts of the Village Case are relatively straightforward. Mr Carter's employment of 19 years was terminated by Village Cinemas Australia Pty Ltd ("**Village**") after the cinema which he managed was scheduled to be demolished. Mr Carter brought a claim for unfair dismissal and Village argued that the Commission had no jurisdiction because Mr Carter's employment had been terminated for "genuine operational reasons".

Mr Carter was initially successful in his claim, but on appeal the Commission agreed with Village and held that no claim for unfair dismissal could be brought because Mr Carter's employment had in fact been terminated for "genuine operational reasons". The Commission stated that:

- a reason can be genuine (in the sense that it is real, true or authentic) even if it is not valid (in the sense of being sound, defensible, well founded or logical); and
- the operational reason need only be one ground



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or cause for termination, and need not be something that unavoidably demands or brings about an obligation to terminate (and it is generally irrelevant whether the employer had alternatives to termination).

Accordingly, if an employee is terminated for reasons that include "operational" ones, they may not be able to bring a claim for unfair dismissal even if the decision to dismiss is not particularly well considered or there were alternatives. In the Village Case the Commission held that it was irrelevant that alternatives to termination included placing Mr Carter in another position or allowing him to go on long service leave to see if another managerial position would arise.

While the Village Case will provide little comfort for employees, the Commission was at pains to stress that the employer continues to bear the onus of proving that one of the reasons for termination was a genuine operational one - and there has been a series of cases already where the employer has been unable to do so.

If you would like more information on the Village Case, the "genuine operational reasons" exemption or if you have any other employment law concerns, please contact the solicitor with whom you normally deal or, failing that, David Heidtman, Alan McMurrin, Gavin Stuart or Mark Batistich.

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