

## **The truth about “unlimited damages for unfair dismissal through the Supreme Court”**

### **(legal opinion)**

As discussed, unfair dismissal claims are a creation of statute. There is no unfair dismissal remedy at common law in respect of the termination of an SMO Contract. The Courts will not order reinstatement for termination at common law. Courts will not order the specific performance of a contract of employment in this respect.

The two claims which are usually brought at common law in respect of a breach of an employment contract, aside from claims to recover monies owed under the contract, are as follows:

1. wrongful termination. This is a claim in the Courts which can be brought in respect of the termination of a contract of employment. It is a claim brought where the contract does not specify the notice the parties must give to terminate. The Court will imply a term of "reasonable notice" into the contract. If the contract does have a clause which provides for how much notice the employer must give to terminate the contract, you cannot bring this claim. The SMO Contract has a defined notice clause, therefore SMOs cannot access this claim.

2. breach of the implied term of mutual trust and confidence. This cause of action requires the employer to engage in egregious conduct which is calculated or likely to seriously damage or destroy the trust and confidence in the employment relationship. Employees can seek damages for a breach of the term. However, employees can not claim damages for loss sustained arising from the act of termination, or events forming part of the termination. This is called the Johnson exclusion area after the English case which held this.

Other remedies may be available, for example discrimination claims, but these require the SMO to be terminated as part of an unlawful act of discrimination. This would be an exceptionally rare case.

Sometimes claims can be brought for a breach of an employer's policy, however the SMO contract provides that policies do not form part of the contract of employment (see cl 22 of the contract) so this remedy is not available.

To be trite, there is no "unlimited damages claim in the Supreme Court" which an SMO can bring if they are terminated. This is nonsense.

There is no remedy available to SMOs under the contract by which they could be reinstated to their position.

Also, in respect of the breach of the implied term of mutual trust and confidence, this was only recognised by superior appellate court in Australia in August 2013 and is presently on appeal to the High Court - so it may not survive much longer.