



REMEMBER THE OTHER LAW

Novated leasing has opened up the 'company car' to a much wider range of employees, but beware of the legal pitfalls. **MATT HONAN** takes a closer look.

With the appropriate approval from the Australian Taxation Office, novated leases are increasingly accepted as the way of providing the 'company car' to employees.

In fact, because of the reduced exposure to financial risk for employers, company cars are now offered to a greater number of staff than what would have been offered under previous company car arrangements, namely, the employer providing the car fully maintained.

However, although company car arrangements have approval from the ATO, they have had relatively minimal testing in an industrial law environment.

Under voluntary termination of employment - that is, resignation or retirement - there is little grounds for an employee to claim that the employer should continue with the financial responsibilities of a car.

However, in the more emotionally charged environment of involuntary termination of employment (dismissal or redundancy), the employer can be exposed to the risk that the employee makes a claim against the employer regarding the future financial commitments of the car.

For example, let us examine the scenario that senior management has decided, for genuine reasons, a round of redundancies need to occur and they have come up with a list of employees, for appropriate reasons, who will be made redundant. It is decided that the redundancies will occur at the end of the month.

During the interim period, one of the employees on the list enters into a novated lease. Soon after taking delivery of the car, the employee is made redundant.

The employee could possibly take legal action against the company because despite knowing that the termination of employ-



ment was imminent, the employer allowed the employee to enter into a financial arrangement where its affordability was significantly influenced by the salary packaging arrangement being in place and the employee being gainfully employed.

It must be stressed that each set of circumstances is different and that should any claims go through the industrial system, the findings will most likely vary from case to case.

To reduce the risk of claims, it is important to have a clear policy outlining the responsibilities of each party entering into the arrangement and a process for counseling employees on the associated financial risks.

This will certainly mitigate the risk to the employer, however it always pays to have

insurance in place to act as the safety net.

Some time ago, Remunerator developed an insurance policy that protects the employee (and employer) from many of the financial risks associated with a novated lease should there be an illness, death, disability, or an involuntary termination of employment. It is often referred to as a 'residual risk' policy.

The cost of the policy is marginal and is added to each lease payment, covering the difference between the market value of the car and the lease payout figure and/or up to three months of lease payments whilst the employee finds new employment.

Having this policy as a mandatory component of a novated lease gives the employer the maximum protection available when providing such leases as part of a remuneration program. *bvm*