

12 April, 2012

Mr Tim Bryant  
Committee Secretary  
Senate Economics Legislation Committee  
Parliament House  
Canberra ACT 2600

Email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Mr Bryant

Re: Inquiry into the Corporations Amendment (Phoenixing and Other Measures)  
Bill 2012.

This Bill is a step in the right direction. It is a Bill that may be characterised as more ameliorative and practical than punitive; it will enable employees of abandoned companies to access their unpaid entitlements more quickly through the General Employee Entitlements and Redundancy Scheme (GEERS). It does not seek to hold rogue employers and their directors accountable for their unconscionable actions in respect of their employees' entitlements.

Whilst recognising this Bill is a positive step in advancing the protection of workers entitlements, the AMWU directs the Committee to the ACTU's comments in an earlier submission<sup>1</sup> on the Bill particularly in respect of the need for proper funding and resourcing of ASIC if all the legislation in this area is going to be effective, and the probable limitations of the Bill in respect of the role and payment of liquidators.

In our submission to the *Action Against Fraudulent Phoenix Activity November 2009* proposals paper,<sup>2</sup> the AMWU made a number of suggestions which we feel would also greatly assist in combating phoenix activity and the protection of workers' entitlements. In that submission the third of our suggestions concerned a very practical solution to combating the problems that befall employees when a corporation becomes insolvent, namely the establishment of entitlement security trust funds. As noted in our 2009 submission, 'the trust fund option if instigated Australia wide will guarantee payment of entitlements in the event of insolvency, providing a comprehensive solution to this issue.' Employers will be forced to meet their legal obligations and responsibilities and the taxpayer will not ultimately be left to make good the loss to the employees' entitlements.

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<sup>1</sup> <http://www.treasury.gov.au/documents/2336/PDF/ACTU.pdf>

<sup>2</sup> [http://www.treasury.gov.au/documents/1892/PDF/Australian\\_Manufacturing\\_Workers\\_Union.pdf](http://www.treasury.gov.au/documents/1892/PDF/Australian_Manufacturing_Workers_Union.pdf)  
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Extracted below is a paragraph from page 11 of our submission that we hope illustrates to the Committee the practicalities of the trust fund proposal:

A good example of the trust fund option is with the already functional National Entitlement Security Trust (NEST). NEST is an independent not for profit trust facility established to receive employer contributions towards employee entitlements such as annual leave, long service leave, redundancy, severance pay, and other entitlements following agreement between the parties or an industrial award governing their relationship. The trustees consist equally of employer and employee representatives with an independent Chairman. Under its trust deed, NEST is empowered to invest contributed funds at interest in approved securities but is unable to reduce the capital base of the trust. The trust's income funds administration and is then distributed to either employers, employees or, at the employer's direction, applied to future obligations to contribute. By this means, an element of self-funding of employee entitlements is provided. This solution effectively deals with the issue of employee entitlement in insolvency while providing benefits to all related stakeholders.

The AMWU urges the Committee to give consideration to the wider solutions available for tackling issues surrounding corporate failure and the role, and ultimately the accountability, of rogue directors in that failure.

Yours sincerely

PAUL BASTIAN  
ACTING NATIONAL SECRETARY