



10^h March 2023

Mr Sean Turner
Committee Secretary
Inquiry into Corporate Insolvency in Australia
Parliamentary Joint Committee on Corporations and Financial Services

By email: Corporations.Joint.aph.gov.au

Dear Mr Turner,

Re: Question on Notice – Public Hearing Sydney, 21st February 2023

The Australian Manufacturing Workers Union (AMWU) appeared before the Committee on 21st February and took a question on notice from Senator Paul Scarr.

The AMWU, in its written submission, referred to a Scheme of Arrangement (the Scheme) application made by Ovato in November 2020 in the New South Wales Supreme Court, which Ovato sought leave from the court to enter. One of the effects of the Scheme was to liquidate four of the Ovato companies and transfer employees from “surviving” Ovato companies into those companies to be liquidated so that the redundancy would be paid by the government’s Fair Entitlement Guarantee (FEG) scheme. This was despite Ovato having obligations under an enterprise agreement to pay redundant employees a redundancy entitlement.

The Senator’s question was whether the AMWU appeared or intervened in the New South Wales court case. The AMWU sought advice at the time as to our ability to intervene. We were advised that as the Scheme was an arrangement by a company with Shareholders and specific nominated Creditors. The employees to be transferred to the liquidated companies and were not classified as creditors as their redundancy was to be paid out of federal government funds. As such they, and the AMWU as their representative, had no standing to appear.

At the time the AMWU’s National Secretary, Steve Murphy, wrote to the Attorney General (letter attached) seeking he intervene in the case so that it would not set a precedent for employers wishing to utilise insolvency and FEG to discharge their liabilities in respect of redundancy entitlements. This request was declined by the then Attorney General. Had there been an intervention by the Attorney General it may well have given rise to the AMWU being able to intervene in the case to represent our members’ interests.

The AMWU thanks the Committee for the opportunity to contribute to the Inquiry.

Yours sincerely,

Lorraine Cassin
National Assistant Secretary

Australian Manufacturing Workers’ Union



19 November, 2020

Christian Porter
Attorney-General and Minister for Industrial Relations
PO Box 6022
Parliament House
Canberra ACT 2600

Email: attorney@ag.gov.au

Dear Mr Porter,

I am writing to draw your attention to a shocking case currently before the NSW Supreme Court. A major employer, Ovato, has applied to the court to undertake a corporate restructure which would leave no money available in the newly restructured companies to pay their entitlements and 300 of our members made redundant.

These plans will leave 300 families without any money right before Christmas. They will be forced to wait months to receive what they are owed, despite making every effort in this challenging year to assist Ovato through the challenges of the health and economic pandemic.

On behalf of our members I am asking you to intervene in this case.

This case will likely determine that our members entitlements be paid by the Fair Entitlements Guarantee (FEG), but this is not a case of corporate collapse.

This company is solvent now and will continue to be solvent after their restructure. They can afford to pay their workers what they are owed, they are just choosing not to do it.

The precedent that this will set is alarming.

If a company can be allowed to restructure in this way and force workers to rely on the FEG, this will become a template for all other companies to follow. Reliance of the FEG will skyrocket and workers will be left waiting as employers quite literally socialise their losses while continuing to profit from their businesses.

The AMWU has made many submissions to the various inquiries over the years to reduce abuse of the FEG. Time and again we have warned the government that unscrupulous employers are gaming the system to get out of paying workers what they owe.

Here is your chance to put a stop to at least one example of this behaviour.

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Once this matter is settled, we look forward to working with the government to prevent future abuses of the important safety net to protect workers entitlements through implementation of secure entitlement trusts.

Yours sincerely,

STEVE MURPHY
NATIONAL SECRETARY