ACTU Ref: D08 2023

Joint Parliamentary Committee on Corporations and Financial Services

Inquiry into Corporate Insolvency in Australia

Question 1

Question on notice Senator SCARR: I think we've had a submission on the FEG, but I'm interested in any figures you, the ACTU, and the broader trade union movement have regarding the extent to which employees aren't recovering their entitlements because of the existing FEG scheme. Is there any data that can give us a better appreciation of this sort of issue?...

Senator SCARR: One of the things that I think would be useful, in terms of our consideration as a committee, is if we could even have some case studies. Let's have an example of, say, a truck driver who's been working in the same company for 25 years, who's only taken one week of leave for 20 of those years and has accrued long service leave, just to get a feel for the quantum we're talking about and the real-world impact this would have on that employee, especially as they're coming to the end of their working life.

ACTU Response: We thank Senator Scarr for his question. In response there is some evidence already on the public record which highlights the significant gap between what the FEG covers and the total quantum of lost entitlements. We wish to highlight the Ovato Pty Ltd case outlined in detail in the AMWUs submission to the Joint Committee (Sub 69). In the Ovato case long-term employees lost substantial amounts of redundancy pay that exceeded the FEG caps. In the AMWUs submission former Ovato employee Mark Rosetto explained:

Probably the most disappointing part is that most of us worked there for 25-30 years. Ultimately in the end we ended up with a redundancy paid by FEG. I got 52 weeks when I was entitled to 108. I was grateful to the Union for getting involved and we got redundancy from about 13 weeks up to 52. But don't get me wrong, the Hannan family would've been licking their lips at 52 weeks.

The ETUs submission (Sub 49) notes that every single year workers in the building and construction sector alone loose $100million in FEG gap entitlements because of insolvencies. The ETU outlined the problem of unpaid superannuation which falls outside the FEG. In this regard the ETU noted that eternal reports submitted to ASIC identified in the 5 years from 2013/14 to 2018/19 over 4,000 instances of unpaid superannuation entitlements to workers from insolvent companies. In addition, we draw the Joint Committees attention to the Industry Super Australia report on unpaid super cited in our submission.

However the ACTU notes evidence given to the Joint Committee by Fair Entitlements Guarantee Branch, Department of Employment and Workplace Relations that it doesn't collect data on gap losses workers experience as a result insolvencies. In our view the FEG branch should, as a matter of course, together with ASIC, other agencies and external administrators, work to collect and publish such statistics to get closer to real-world losses workers experience in insolvencies (noting that other cohorts of workers such dependent contractors often experience total loss because they are unsecured creditors) . In this regard the Scott's Integrated Logistics insolvency presents a live opportunity for the Joint Committee to ask Korda Mentha, ASIC, the ATO, FWO and the FEG branch to work together to provide a calculation of lost worker entitlements that are not wholly or only partly covered by the FEG along with losses experienced by dependent contractors (owner drivers).

ENDS