



26 October, 2011

David Monk
Inquiry Committee Secretary
House of Representatives Standing Committee on Economics
PO Box 6021
Parliament House
Canberra ACT 2600

By email: economics.reps@aph.gov.au

Dear Committee Secretary,

RE: Companies' non-compliance with PAYG withholding and superannuation guarantee obligations

The AMWU strongly supports the items in Schedule 3 of the Bill aimed at reducing the scope for companies to engage in fraudulent phoenix activities and avoiding their obligations in respect of employee entitlements. It is the AMWU's considered view that the proposed amendments will attain the stated desired objectives of reducing the incentives for company directors to allow their companies to engage in fraudulent phoenix activity and to better protect workers' entitlements to superannuation.

The AMWU, in its submission to the *Action Against Fraudulent Phoenix Activity* November 2009 proposals paper,¹ supported the options in the proposals paper and which are now the subject of this Bill.

The Government has announced that it will restrict the use of similar names by successor companies. The AMWU supported and encouraged the Government to do this in our submission and would repeat the observation that the UK and New Zealand legislation could serve as a guide.

The Government has also stated that it will further examine extending the promoter penalty regime to include tax avoidance schemes and indirect taxes. The AMWU urges the Government to act on these issues, as their adoption will certainly assist in the battle against fraudulent phoenix activity.

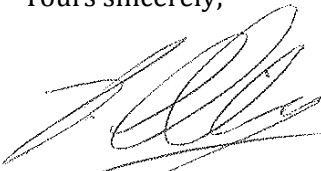
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¹ http://www.treasury.gov.au/documents/1892/PDF/Australian_Manufacturing_Workers_Union.pdf

The AMWU notes that in addition to the 14 questions dealing with the various options being canvassed in the proposals paper there was an additional one seeking suggestions on other actions to deter entities from engaging in fraudulent phoenix activity. Extending the director penalty regime to the superannuation guarantee was one of the suggestions that the AMWU made in its submission, however we also made a number of other suggestions which we feel would also greatly assist in combating phoenix activity, not the least of which is the trust fund option. As stated in our 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 obligation, without the taxpayer bailing out them of their responsibilities or decreasing the lending capacity of business.

The AMWU is heartened that the Government is implementing legislation to combat these rogue directors, but encourages the Government to also further examine the other suggestions in addition to the promoter penalty regime and taxation issues.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Oliver', with a stylized flourish at the end.

DAVE OLIVER
NATIONAL SECRETARY