



393 Swanston St  
Melbourne  
Victoria 3000 Australia

TELEPHONE  
ISD (613) 9663 5266  
STD (03) 9663 5266

FACSIMILE  
(03) 9663 4051  
(03) 9663 8220

WEB  
[www.actu.asn.au](http://www.actu.asn.au)

PRESIDENT  
Sharan Burrow

SECRETARY  
Greg Combet

1 March 2007

Committee Secretary  
Parliamentary Joint Committee on Corporations and Financial Services  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Mr Sullivan,

**Re: Inquiry into the Exposure Draft of the Corporations Amendment  
(Insolvency) Bill 2007**

Attached please find the submission of the ACTU to the inquiry into the abovementioned inquiry. Please contact me if you have any questions regarding this submission at **email:** [cbowtell@actu.asn.au](mailto:cbowtell@actu.asn.au), or **telephone:** 03 9664 7348.

Yours sincerely,

Cath Bowtell  
**Industrial Officer**



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**PARLIAMENTARY JOINT COMMITTEE ON CORPORATIONS AND  
FINANCIAL SERVICES INQUIRY INTO EXPOSURE DRAFT OF THE  
CORPORATIONS AMENDMENT (INSOLVENCY) BILL 2007**

**ACTU SUBMISSION**

**INTRODUCTION**

1. The ACTU is disappointed that the draft Bill does not include more of the recommendations of the 2004 Stocktake report which would have gone a considerable way towards assuring better protection for employees.
2. The ACTU has separately responded to the Treasury invitation to comment on the draft Bill, generally welcoming the amendments and confirming the ACTU's previously-expressed insolvency policy.
3. This submission will focus on the issues raised by the Committee's terms of reference which particularly affect the position of employees of insolvent businesses.

**THE RIGHTS OF CREDITORS, INCLUDING THE TREATMENT OF  
EMPLOYEES' ENTITLEMENTS**

**Company restructuring**

4. The ACTU remains concerned about the difficulties in prosecuting those involved in corporate structuring arrangements designed to segregate assets from employees whose entitlements would otherwise be charged against those assets.
5. The ACTU submits that the efficacy of Part 5.8A of the Act should be reviewed and consideration given to additional measures to deter this type of corporate behaviour.

**Protection of entitlements**

6. The ACTU remains of the view that employees' entitlements are best protected through entitlement trust funds or through secured backing, such as insurance bonds, fixed charges or bank guarantees. The ACTU would like to see the Government seriously explore measures such as these, as foreshadowed in its response to recommendation 44.

**Superannuation**

7. The ACTU remains concerned about superannuation compliance issues in general, and will be keen to see the outcome of the ATO review referred to in the

Government's response to recommendation 45. Superannuation funds have experienced growing numbers of employers shifting from monthly to quarterly payments, a trend which sharply increases risk for employees in case of insolvency.

8. The ACTU shares the Government's view about the priority for superannuation payments made after the commencement of administration, but notes that the successful appeal in the *Ansett* case, referred to in the response to recommendation 47, was decided on jurisdictional grounds and did not deal with the substance of this issue.

### **GEERS and superannuation**

9. The most important issue relating to superannuation entitlements in cases of insolvency is the failure of GEERS to cover superannuation payments. The Government's response to recommendation 48 is to the effect that the introduction of quarterly SG payments is the answer to the problem. Clearly, that is not the case. If it was, GEERS would not need to include wages, as these are generally required to be paid fortnightly.
10. The ACTU's position is that GEERS should cover employees' superannuation entitlements as provided for by legislation, agreement or superannuation scheme.
11. At the very least, however, GEERS should include the SGC, which is substantially less than many employees' full superannuation entitlements.
12. An additional issue is that because superannuation entitlements are not included in GEERS, their priority also falls behind the right of the Government to recover any payments it has made under GEERS before employees receive any further entitlements.

### **CONCLUSION**

13. While not dealing with other issues individually, the ACTU submits that further consideration should be given by the Government and by ASIC to full implementation of the recommendations of the 2004 Stocktake report.