SDA SUBMISSION

Addressing Corporate Misuse of the Fair Entitlements Guarantee

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National Secretary-Treasurer

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About the SDA

The Shop, Distributive and Allied Employees' Association (SDA) is one of Australia's largest trade unions, representing over 200,000 members nationwide. Our members work in retail, warehousing, fast food, hairdressing, beauty, pharmacy, online retailing, and modelling.

The majority of SDA members are women (60%), under 35 years (57%), and low-income.
Retail and food services are two of the three lowest industries for median weekly earnings.

The SDA has a proud history of advocating for the rights and interests of workers in these sectors, many of whom are young, part-time, or casual employees. We do this through enterprise bargaining, making submissions regarding Awards and the National Employment Standards (NES) to provide a relevant safety net, and through numerous submissions made to parliamentary and government inquiries and other important reviews.

A significant proportion of our membership comprises women and individuals with caregiving responsibilities, making the issue of flexible working arrangements particularly relevant.
The SDA has 10 policy principles that guide our engagement in these reviews.
A list of these principles is attached to this submission at Appendix A.

Contents

Executive Summary

The SDA welcomes the opportunity to contribute to the Department of Employment and Workplace Relations' consultation on "Addressing Corporate Misuse of the Fair Entitlements Guarantee (FEG)". Strengthening FEG is vital to our members in the retail, fast food and distribution industries, who as predominately low wage earners, stand to lose the most in the event of corporate collapse.

We commend the Government for highlighting the need to counter corporate misuse of the FEG scheme, particularly where sharp corporate practices enable employers to shirk their obligations. It is also timely to assess how effectively the Fair Entitlements Guarantee Act 2012 ("the Act") and the Corporations Act 2001 (Corporations Act) are operating in tandem—especially in light of changes introduced by the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019.

The Discussion Paper also presents a timely opportunity to consider how the scheme can be adapted to enable earlier applications to FEG, and to including superannuation guarantee contributions and other related payments as part of the Act's definition of "employee entitlements".

History and Purpose of FEG

The Employee Entitlements Support Scheme (EESS) was established in January 2000 as an emergency response to the collapse of National Textiles, where a deliberate corporate restructuring left employees with no avenue to recover their wages. EESS provided immediate relief by covering certain unpaid entitlements, but it was limited and predominantly reliant on administrative processes rather than a strong legislative framework. The subsequent failure of Ansett, which left a large workforce suddenly unpaid, revealed the need for a more comprehensive system.

In 2001, the General Employee Entitlements and Redundancy Scheme (GEERS) replaced EESS. GEERS signalled government acceptance that the taxpayer would 'insure' employees for their unpaid entitlements (including redundancy pay) in the event of their employer's insolvency.

Recognising the necessity for a statutory foundation, the Fair Entitlements Guarantee (FEG) was established under the Fair Entitlements Guarantee Act 2012. However, corporate collapses involving deliberate and unethical practices—often referred to as "sharp corporate practices"—continue to undermine FEG's effectiveness. Such practices include deliberate asset transfers, strategic corporate restructuring to isolate liabilities, and abandoning businesses without entering formal liquidation, all designed to evade the payment of employee entitlements. These behaviours not only shift the burden onto taxpayers but also leave employees uncompensated and financially vulnerable.

Finally, while the FEG scheme covers most employee entitlements, it notably does not include superannuation guarantee contributions. Given the increasing reliance on superannuation to secure Australian's retirement incomes, especially for low paid, vulnerable workers, any review of the scheme should strongly consider extending coverage to include all categories of unpaid superannuation.

Broadening Access to FEG

The current scheme

Under section 10 of the FEG Act, a person is only eligible to receive an advance if an insolvency event has occurred. In practice, this requires the appointment of a liquidator (provisionally or otherwise) to the employer under the Corporations Act.

Under section 49 of the FEG Act, the Minister holds discretionary power to extend the FEG scheme to employees of companies that are in administration but have not yet been placed into liquidation. To exercise this discretion, the Minister must be satisfied that (i) the company is under administration, and (ii) that it is likely that the company will proceed into liquidation or bankruptcy in the foreseeable future.

This discretionary power is intended to address exceptional circumstances where delays in formal waiting for liquidation would significantly disadvantage employees, allowing early access to entitlements and preventing undue financial hardship. The recent collapse of Mosaic Brands is a recent example where Ministerial discretion has been granted. However, in the absence of Ministerial discretion, employees must wait for the appointment of a liquidator before they can make a FEG application. Where a liquidator is not appointed, employees are at risk of losing their unpaid employee entitlements.

Case Studies

The SDA is aware of examples of where employees have been terminated from their employment, not been paid their entitlements and yet have been unable to make a FEG application because an insolvency practitioner is never appointed. As illustrated by the following examples, this could be because the company is abandoned and never put into administration, or the company is put into administration but never liquidated. A company may never have an insolvency practitioner appointed because it is assessed as financially unviable to cover the costs of an insolvency practitioner.

Case Study One

Carreone Global Pty Ltd in Western Australia operated at a continual loss until its owner decided to sell off remaining stock and equipment below commercial value, and then walked away from the business. No insolvency practitioner was appointed to wind up the company, as there were no assets left to fund the cost of any formal process. Instead, the business underwent voluntary deregistration with ASIC.

When the SDA attempted to have the company re-registered to enable employees to pursue their unpaid wages, ASIC declined on the basis that the outstanding liabilities remained unproven and there was no acknowledged debt upon deregistration.

While the affected employees could have sought to place the company into liquidation themselves, the costs involved were prohibitive. It was judged that any liquidation would simply cover administrative fees with no remaining funds for employees' claims (ie the throwing of good money after bad).

Ultimately, the SDA reached a modest settlement for one claimant in the Western Australia Industrial Magistrate's Court, which equated to about a third of her lost entitlements. Further, the director then disappeared, leaving other workers without any further recovery options or eligibility to lodge a claim through FEG.

Case Study Two

Maitai Pty Ltd operated a supermarket in Western Sydney. When it ceased trading in 2016, the business was not formally liquidated. Workers were left without their jobs and without their accrued entitlements.

The SDA represented seven members at the store who were owed amounts for annual leave, long service leave, payment in lieu of notice, redundancy pay and superannuation, totalling $60,000.

The SDA was able to obtain court orders under the *Fair Work Act 2009* for the company to pay the entitlements, but the orders were not complied with. The SDA sought further court orders against the sole director of the company and was successful in obtaining civil penalty orders against him, however, the orders were also not complied with.

The company was deregistered by ASIC in 2019. As the company was never formally liquidated, employees were not able to access FEG.

These examples highlight how, in the absence of the appointment of an insolvency practitioner or a formal liquidation event, employees face an insurmountable barrier to recovering their unpaid employee entitlements under the current FEG scheme.

Broadening Access

To address this serious deficiency, the SDA proposes amending the Fair Entitlements Guarantee Act ("the Act") to allow employees to lodge claims for their unpaid employment entitlements in the following scenarios:

i. where an administrator is appointed, the employee has been terminated and the employee has not been paid their employment entitlements;

ii. where an administrator is appointed, the liquidation of the company has been announced, and it is clear that the employee's employment will be terminated; and

iii. where the company ceases trading, an employee has been terminated, their employment entitlements have not been paid and an insolvency practitioner is never appointed.

Currently, scenarios (i) and (ii) rely solely on rarely exercised Ministerial discretion under section 49 of the FEG Act. The Act should be amended to remove this discretionary element and provide automatic eligibility.

Scenario (iii) addresses the specific issue of "ghost" companies by ensuring employees remain protected even if formal insolvency procedures never commence. In this scenario, a trigger for the payment of an employee's unpaid employee entitlements could include a company being deregistered by ASIC.

Under this proposal, in each of these scenarios, employees' unpaid employment entitlements would be advanced promptly by the Government, consistent with its existing role as a subrogated creditor under the current FEG scheme. The Government would then continue its established practice of pursuing recovery from the company's assets, cooperating closely with regulatory authorities such as the ATO to hold businesses accountable, enforce obligations, and prosecute corporate misconduct as appropriate. This expanded approach would ensure employees receive their entitlements promptly, minimising loss, uncertainty, delays, and financial hardship.

Ensuring early access to FEG will reduce corporate misuse and protect taxpayers

Currently, the inability of employees to access FEG assistance merely transfers financial responsibility onto taxpayers, increasing reliance on other forms of government assistance such as Centrelink. When employees cannot obtain timely FEG payments, the financial burden simply shifts from one taxpayer-funded scheme to another.

The Discussion Paper rightly proposes amendments to the Corporations Act and other regulatory reforms intended to limit the capacity of businesses to manipulate insolvency processes and avoid paying employee entitlements. These proposed measures would significantly increase the Government's ability to recover the amounts advanced to employees from insolvent companies. However, alongside strengthening this regulatory framework, the Government should also consider broadening eligibility criteria for early FEG claims, as outlined above, to provide employees with immediate financial certainty.

Allowing employees to lodge early claims in the scenarios proposed would considerably enhance the effectiveness of the FEG scheme and more fully achieve its core purpose: safeguarding employees against the loss of employment entitlements. This change would ensure that the Government intervenes promptly, reducing the likelihood of sharp corporate practices designed to evade responsibilities to workers.

Objects of the Act

These examples also raise the question about the objects of the FEG Act and their relative priority.

Section 3 of the Act states:

> ***Objects of this Act***
>
> *The main objects of this Act are:*
>
> a. *to provide for the Commonwealth to pay advances on account of unpaid employment entitlements of former employees of employers in cases where:*
>   i. *the employers are insolvent or bankrupt; and*
>   ii. *the end of the employment of the former employees was connected with that insolvency or bankruptcy; and*
>   iii. *the former employees cannot get payment of the entitlements from other sources; and*
> b. *to allow the Commonwealth to recover the advances through the winding up or bankruptcy of the employers and from other payments the former employees receive for the entitlements.*

Section 3 of the FEG Act identifies two key objectives: advancing unpaid employee entitlements and recovering these entitlements from the assets of insolvent employers.

The SDA strongly supports the principle that, as a matter of public policy, the primary obligation to pay employee entitlements rests with the employer. Amendments to the FEG Act and Corporations Act proposed by the Discussion Paper to reduce sharp corporate practices are important because they reinforce this expectation and increase the likelihood that employers will fulfil their obligations.

However, where businesses fail to meet their responsibility, the Government should step in promptly to advance unpaid employee entitlements, even where the recovery of these advances may be uncertain.

While recovery of funds is important to the financial sustainability of the FEG scheme, the SDA emphasises that its primary intent should always be protecting vulnerable employees impacted by corporate insolvency. This approach aligns with the historical context of the FEG's predecessor, the Employee Entitlements Support Scheme (EESS), established in direct response to the collapse of National Textiles, where deliberate corporate restructuring was used to evade employer obligations, leaving workers without recourse to recover their entitlements.

Role of other Government agencies

The SDA submits that the Government should explore ways to engage the resources and expertise of additional regulatory agencies, such as the Australian Taxation Office (ATO), to strengthen enforcement of the Corporations Act in cases of corporate insolvency.

Companies that are unable to pay employee entitlements may not appoint an administrator or proceed to liquidation, meaning it employees are precluded from accessing FEG. In such scenarios, leveraging government agencies with significant enforcement capabilities—such as the ATO, which already pursues employers for unpaid superannuation guarantee charges, including through statutory demands and winding-up proceedings—should be seriously considered.

Including all superannuation-related amounts in the definition of "Employee Entitlements" (Question 7)

Until the mid-1980's, superannuation entitlements were generally limited to public servants and white-collar employees of large corporations and often not portable or fully vested. As part of the second round of the Prices and Incomes Accord in 1985, the union movement sought a claim for 3% superannuation, which was endorsed by the Australian Industrial Relations Commission in the *National Wage Case 1986* and inserted into industry awards. This substantially increased the coverage of superannuation to almost universality.
The *Superannuation Guarantee (Administration) Act 1992* cemented superannuation as a universal, portable and fully vested industrial entitlement. Superannuation today remains an industrial entitlement for employees under awards and enterprise agreements, which is enforceable under the *Fair Work Act 2009*.

Superannuation is an industrial entitlement, akin to wages, leave, notice and redundancy payments owed to employees. However, the definition of "employee entitlements" in the FEG Act does not include superannuation guarantee contributions or other related superannuation payments.

The Discussion Paper rightly proposes amending the definition of employee entitlements in section 596AA of the Corporations Act to incorporate the Superannuation Guarantee Charge. Currently, although unpaid SGC is pursued by the Australian Taxation Office (ATO), it is excluded from protection under Part 5.8A and the contribution order regime outlined in Part 5.7B, Division 8. The SDA supports this proposal as it will align the protection of Superannuation Guarantee Charges with other priority employee entitlements, ensuring greater consistency and improving employees' ability to recover owed retirement savings.

However, the SDA submits that the reforms should be expanded further, covering not only unpaid statutory Superannuation Guarantee **Contributions** (SGC), but all forms of superannuation payments owed to employees, regardless of whether they trigger an SGC liability with the ATO. These would include employer contributions required under workplace law that are above statutory minimums, such as superannuation payable during periods of parental leave or other special leave arrangements, additional contractual or award-based contributions, and amounts salary-sacrificed by employees. These are a liability of the employer to the employee but may not yet have been transferred to their nominated superannuation fund. Extending coverage to these broader categories of unpaid superannuation would ensure employees receive the full benefit of their earned entitlements and protect their retirement savings from loss in cases of employer insolvency.

The SDA is aware of many examples of employees who have lost substantial superannuation guarantee contributions because their employers were made insolvent, including the following examples:

Case Study Three

Arora International Markets Pty Ltd and its related entities operated a chain of 20 IGA supermarkets across Sydney. In 2014 the company entered administration with over $650,000 in unpaid superannuation over a period of more than two years.

There was not enough money in the business to cover the entitlements and employees were not able to claim this through FEG. The ATO and the SDA both ran cases against the company director. After receiving orders against the director, he declared bankruptcy and none of the superannuation was paid.

Case Study Four

Thendro Pty Ltd operated retail stores Off Ya Tree and Lazer Erazer, but entered liquidation in April 2024. Prior to this, all of its stores were transferred to Thasos Pty Ltd, a newly created entity controlled by close associates of Thendro Pty Ltd's directors, for a nominal price. This transaction significantly reduced the assets available in liquidation, directly impacting employees' ability to recover their entitlements.

As a result, workers were left without their owed entitlements and had to make an application through the Fair Entitlements Guarantee for unpaid wages and entitlements. The burden of paying these amounts fell on taxpayers, rather than being recovered from the liquidation of business assets, which had already been transferred before insolvency.

Furthermore, employees were unable to recover unpaid superannuation, as FEG does not cover superannuation entitlements. Had the business assets remained in the company, at least some of these superannuation contributions could have been recovered through liquidation proceeds.

Amending the FEG Act to include superannuation entitlements in the definition of employee entitlements would help to ensure the protection of employees' unpaid superannuation entitlements in the event of an insolvency event, and is the fair thing to do.

Should the director disqualification provisions at sections 206EAB and 206GAA of the Corporations Act be refined? If so, how? (Question 10)

The SDA is strongly of the view that directors who have been found to have avoided their obligations of paying employee entitlements be banned as directors.

To this end, we support strengthening sections 206EAB and 206GAA to allow the disqualification of directors with a track record of multiple failed companies that have relied heavily on FEG, even where a clear contravention of the Corporations Act has not been established. Removing the requirement for a contravention in each instance would make it more practical for ASIC or a court to address repeat conduct that costs the Commonwealth (and ultimately taxpayers) when employee entitlements go unpaid.

In our view, this approach would encourage greater diligence among directors who might otherwise accept or even orchestrate collapses under multiple entities without facing meaningful consequences.

Do existing arrangements that impose personal liability on directors provide adequate incentives for directors to ensure companies meet their employee entitlement obligations? If not, why not? Please note adjustments to the director penalty notice regime are outside of the scope of this consultation. (Question 11)

The SDA believes that the current frameworks imposing personal liability on directors, while valuable, do not go far enough in deterring directors who knowingly allow companies to enter insolvency without paying employee entitlements. Provisions such as section 550 of the Fair Work Act 2009 and section 596AC(3) of the Corporations Act have limited deterrent effect if proving personal involvement remains overly burdensome.

We note that the director penalty regime under the *Taxation Administration Act 1953* has demonstrated a more immediate and structured approach by making directors automatically liable for unpaid superannuation guarantee amounts. Adapting a similar model for broader employee entitlements, where liability is triggered unless directors address shortfalls promptly, would create clearer, firmer incentives to ensure all obligations are met.

However, any expansion of liability should include appropriate safeguards for genuine commercial failures and circumstances beyond a director's control. Provided those safeguards are in place, the SDA supports strengthening personal liability rules so that directors facing insolvency cannot simply avoid their workforce's entitlements and expect taxpayers to pick up the cost.

Additional matters canvassed by the Discussion Paper

In relation to the other proposed reforms canvassed in the Discussion Paper, the SDA supports the ideas proposed to counter sharp corporate practice. We support the submission of the ACTU and make some additional submissions below.

Addressing the use of corporate group structures to avoid or minimise the payment of employee entitlements. (Questions 1 and 2)

Refine the existing contribution order regime

Part 5.7B of the Corporations Act, introduced by the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019, enables courts to issue contribution orders where an insolvent company owes unpaid employee entitlements, and related entities in the same corporate group have unfairly benefited. Despite this mechanism, no court has yet made a contribution order, suggesting that evidentiary burdens and procedural barriers may discourage applications.

Sections 588ZA(1)(d)–(e) require applicants to prove both that a contributing entity benefited from employees' work and that this benefit exceeded what would have arisen at arm's length. Because relevant information typically resides within the corporate group, these evidentiary burdens may discourage applications. Introducing *rebuttable* presumptions, so that the benefit and the excess are presumed unless the contributing entity can prove otherwise, would substantially ease this burden and better ensure that entities cannot shift assets or isolate obligations to evade liability.

Courts must also find it "just and equitable" to make a contribution order under section 588ZA(1)(f), considering factors such as the size of the benefit and the likely impact on the contributing entity's own solvency. While this balancing test guards against unjust outcomes, there is concern it could dilute employee protections if courts give undue weight to corporate interests. The *New Zealand Companies Act 1993* model (sections 271 and 272) similarly hinges on a "just and equitable" test, but it directs courts to consider specific factors, like how a related entity managed or contributed to the liquidation potentially strengthening employees' position. If Australia were to align more closely with this New Zealand approach, it could simplify the test while still allowing courts to pierce the corporate veil when fairness requires.

A further refinement would be to confirm that, for any amount payable under a contribution order, courts can treat it *as though it were an employee entitlement owed by the contributing entity itself*. This ensures the debt has the same priority as employee entitlements in a winding up (including priority over certain secured interests under section 561). Although section 588ZA(5) already grants courts some flexibility, reinforcing that priority in legislation would better protect employees when a contributing entity itself enters external administration.

Clarifying that an entity in external administration can be a "contributing entity" would also help.

Even if such an entity has limited assets, including it within the regime would close loopholes and reinforce the principle that responsibility should lie wherever benefits were unfairly gained.

Sections 271(1)(a) and 272 give courts broad discretion to order related companies to pay the debts of an insolvent entity, but *all* creditors (including employees) share in any recovery. Without a dedicated scheme like Australia's Fair Entitlements Guarantee, employees in New Zealand can struggle to recover the full value of entitlements, particularly when corporate failures involve significant secured debts. While the broader, simpler approach in New Zealand is appealing, caution is warranted to ensure employees maintain (or improve) their current priority and are not subsumed into the general pool of unsecured creditors.

Joint and Several Liability across corporate groups

The Discussion Paper notes that some state and territory laws (for example, Victoria's *Payroll Tax Act 2007* and *Workplace Injury Rehabilitation and Compensation Act 2013*) already impose joint and several liability on corporate groups. Under these models, "groups" can be defined by shared ownership or control, the use of common employees, or even contractual arrangements tying multiple entities together. While these laws permit exclusions for truly independent businesses, they provide an approach to group liability that could be adapted so that corporate groups become jointly and severally liable for employee entitlements when an employing entity is liquidated.

The SDA support the Discussion Paper's proposal to adapt these models to capture employee entitlements in insolvency, with the effect that other group entities would be jointly and severally liable for those entitlements when the employing entity is placed into liquidation.

Requirements that deeds of company arrangement provide for employee entitlements of related entities in liquidation

Under section 444DA of the Corporations Act, a deed of company arrangement (DOCA) formed after voluntary administration must generally preserve the priority of employee entitlements under sections 556, 560, and 561, unless a court-approved agreement by eligible employee creditors decides otherwise.

The Discussion Paper notes multiple cases where an employing entity within a corporate group was liquidated while related, asset-holding entities continued operating under a DOCA. In those scenarios, employees had to rely on FEG, while shareholders and creditors of the DOCA entities avoided paying entitlements.

To address this, a proposed reform would require any DOCA to cover the entire corporate group's employee entitlements, permitting use of the wider group's assets if the employing entity is placed into liquidation. This measure would help to avoid scenarios where the employing entity is stripped of assets, leaving employees unpaid.

The SDA supports this recommendation. It is both fair and practical, as it strengthens employees' priority rights, ensures the broader corporate group cannot shield itself from entitlements by isolating liabilities, and prevents undue reliance on public funds through FEG.

Are the fault elements at section 596AC fit-for-purpose or should a rebuttable presumption that the fault elements have been met be adopted? (Question 3)

Part 5.8A of the Corporations Act sets out a civil penalty regime to address agreements or transactions that prevent or reduce the recovery of employee entitlements in insolvency, supplemented by compensation provisions where those entitlements are lost. Introduced in 2019 but yet to be tested in court, these provisions are meant to deter "entitlement-defeating" activities, particularly in phoenix-type arrangements. A person contravenes section 596AC(1) if they enter, or cause a company to enter, an agreement that they know—or a reasonable person in their position would know—would likely avoid or significantly diminish the recovery of employee entitlements.

The scope of "employee entitlements" includes wages, superannuation contributions (including SGC), injury compensation, leave under industrial instruments, and retrenchment benefits. Compensation may be recovered through section 596ACA if employees have suffered loss and a liquidator has been appointed. Regulatory bodies, registered organisations, and the Secretary of the department administering the FEG Act may also seek recovery, provided they obtain consent from the liquidator or leave of the court.

According to the Discussion Paper, despite the "reasonable person" objective test, a recent analysis shows that in 2023–24, nearly 40% of large FEG cases involved suspected entitlement-defeating transactions, with over $52 million advanced and substantial unpaid superannuation. These figures suggest a continuing need to strengthen enforcement.

Accordingly, the Discussion Paper proposes a rebuttable presumption that the fault elements in sections 596AC(1)(b) and (3)(c) are met. This presumption would shift the onus of proof away from liquidators, employees, unions, or regulators, making it easier to pursue redress.

The SDA endorses this reform. Placing the evidentiary burden on those responsible for questionable transactions is both fair and practical. It will better protect workers whose entitlements are at risk, promote stronger compliance among company officers, and reduce the reliance on the taxpayer when businesses seek to avoid their obligations.

Are the compensation provisions adequate to ensure that employees are appropriately compensated for loss or damage suffered? (Question 4)

Under Part 5.8A, employees face significant hurdles in securing timely compensation: funds recovered often revert to the insolvent company's estate rather than reaching affected workers, and the need for liquidator consent or a court order can delay or obstruct valid claims.

The Discussion Paper's direct approach of treating recovered amounts as a debt owed specifically to employees, removing or easing consent requirements, and giving compensation the same priority as wages, would help to ensure entitlements are received more quickly by employees.

The SDA supports this reform, so that all recovered funds, even when secured by a liquidator or another party with standing, automatically become payable to employees.

Reforms to Creditor-Defeating Disposition Provisions (Question 6)

The *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* introduced the concept of *creditor-defeating dispositions* in Part 5.7B, Division 2 of the Corporations Act, aiming to prevent or undo the transfer of assets at below-market value that hinders creditors' ability to recover debts in a winding up. While this legislation expanded existing voidable transaction provisions, the Discussion Paper highlights potential gaps that remain.

Adjusting section 588FDB(1) so that a disposition below *market value* (if ascertainable) or below the *best price reasonably obtainable* automatically qualifies as creditor-defeating would simplify the test and make enforcement more straightforward. We support removing the current wording that requires comparing the disposition price to “the lesser” of these two measures. Ensuring the concept is easier to prove would help liquidators and regulators challenge undervalued asset transfers.

Lengthening the time frame in section 588FE(6B) would capture more instances of phoenix activity and other forms of asset shifting that currently fall outside the 12-month window. Given that sophisticated operators often plan these disposals well in advance of formal insolvency, the SDA views a 24-month period as better suited to identifying and recovering improperly transferred assets. We also note case study four above in this regard.

Should priority unsecured creditors have the right to request information from controllers? Should there be any exceptions?
If so, what should they be? (Question 8)

The Discussion Paper highlights that priority unsecured creditors, including employees, currently have no right to request information from a company’s controller (such as a receiver or mortgagee in possession), in contrast to the Insolvency Practice Schedule (Corporations) (IPSC), which allows creditors to obtain information from external administrators. The proposed reform would extend similar information rights to priority unsecured creditors in order to improve transparency and encourage compliance among controllers.

The SDA believes that employees, as priority unsecured creditors, should hold comparable rights to request and receive information from controllers, akin to those under the IPSC. Under the current IPSC framework, creditors can pass a resolution asking the liquidator for information, a report, or documentation (IPSC, s 70-40), and individual creditors can make a similar request (IPSC, s 70-45). The Commonwealth has a separate authority to request details regarding FEG payments (IPSC, s 70-55), and the court can grant orders for further information or production of documents (IPSC, s 90-15).

These rights come with provisions allowing external administrators to refuse requests if, for example, the information sought is irrelevant, or if fulfilling the request would unreasonably harm the interests of other creditors or third parties. Adopting a similar model for controllers would maintain a balanced approach, giving employees and other priority unsecured creditors the means to monitor compliance while recognising that, in certain circumstances, withholding information may be justified.

Who should bear the cost of complying with a request for information? (Question 9)

The cost of fulfilling requests by priority unsecured employee creditors should first be met by the relevant controller, drawing on any remaining corporate assets. If those assets are insufficient, the Commonwealth should cover any shortfall.

Additional matters

The SDA views the exclusion of migrant workers on temporary visas to access the FEG scheme as grossly unfair. Recent reports by the Migrant Workers Centre and Unions NSW underscore both the inequity of denying these workers access to unpaid entitlements and the broader risks of allowing such gaps in protection. Implementing Recommendation 13 of the 2019 Migrant Workers' Taskforce by extending FEG eligibility to migrant workers, would address this unfairness and discourage the phoenixing and corporate manipulation identified in the Discussion Paper.

The SDA also proposes that interest should be paid to employees on employee entitlements advanced by FEG, which could then be recovered against the employer.

Appendix A: Principles underpinning SDA policy positions

SDA policy is driven by providing value to our members whose work is regulated by an industrial system that has been reformed but had failed them for decades.

Australians need to be supported by an economic system that has working people at its centre. Our predecessors built an industrial system which provided the foundations for shared prosperity. It is now our responsibility to utilise the reformed industrial framework for the current and future generations. Decades of concerted attacks on our industrial relations system saw inequality grow, and economic and political power has further concentrated in the hands of a few.

The world of work has changed and will keep changing. There is an unprecedented intersection between work and care. Income and gender inequality have combined to increase disadvantage. Predictable, secure hours of work that provide a living wage are at the centre of decent work. But there has been growth in insecure work, digitalisation is now a matter of course, safety concerns have persisted, and automated, digital and generative technologies must be shaped to enhance, not undermine, decent work.

We believe that fundamental not incremental change is needed. In contributing to policy, we seek to drive a new system that acknowledges the change that has occurred and will be fit for purpose in the emerging world of work.

The SDA engages in topics that help drive this agenda and we are guided by ten principles that we believe will create value for our members.

Those principles are:

1. **Address Inequality & Enshrine Fairness**
   Minimum expectations must be set and adhered to.

2. **Equity & Empowerment**
   All workers must be supported to progress so that no-one is left behind.

3. **Mobility & Security**
   A socially successful economy must provide opportunity for all, regardless of their background.
   Systems must be built in a way that support success and adaptation in a rapidly changing world of work.

4. **Delivering Prosperity & Growth For All**
   A foundation for prosperity and economic growth must be achieved.

5. **Protection in Work & Beyond**
   Workplaces and the community must be healthy and safe for all workers and their families during and beyond their working lives.

6. **Workers' Capital & Superannuation**
   Workers' capital and superannuation must be an industrial right for all workers and treated as deferred earnings designed for dignity and justice in retirement.

7. **A Strong Independent Umpire**
   A strong, independent, cost effective and accessible industrial umpire and regulator must be central to the future system of work in Australia.

8. **Protection & Support for Our Future**
   Protecting and supporting our future requires a strong and vibrant retail industry and supply chain providing decent work and jobs with fair and just remuneration and contributing to the economy including through skilled workers.

9. **Work & Community**
   Work is a fundamental human activity that provides for personal, social and economic development. Work as it operates in community must build and protect a balance between life at work and life so that workers can contribute to society through the wider community.

10. **Institutional Support for Collective Agents**
    Institutional support must provide for collective agents (registered organisations) in all industries so that they are recognised, enshrined and explicitly supported as central to the effective functioning of the system.

Details of specific policy positions can be discussed by contacting the SDA National Office.

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