

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No.EW0673_11

Senator Heffernan asked on 24/02/2011, Hansard page 18.

Question

LIQUIDATION OF SHELF COMPANIES

Senator HEFFERNAN—If the company is a shelf company with no assets but it actually administers that side of the affairs, how do you get around that? It has happened three times in the past.

Ms Paul—The issue for GEERS is liquidation. If you like, given that we do not have the WR people here, I am happy to take it on notice, particularly if you might give me—not necessarily on the record—some details; we can look into it for you from that perspective. Our advice will not go to the child support matters.

Senator HEFFERNAN—My advice from people who are in a position to know is that, in terms of the superannuation, superannuation that is owed to the Transport Workers Union super fund is up to date but a whole range of other super funds do not get paid. I will give you the details.

Ms Paul—That would be good.

Senator HEFFERNAN—Thank you for the indulgence, Mr Chairman. I will deal with the child support. These people are beside themselves with worry.

Ms Paul—Sure. If you can give us the company name and so on, I will take it on.

Answer

As at 9 March 2011, the Department of Education, Employment and Workplace Relations (the department) has not received any claims for assistance under the General Employee Entitlement and Redundancy Scheme (GEERS) in relation to the list of companies provided to the department.

In the event that a company (including shelf companies) enters liquidation and employee entitlements remain outstanding, employees may be eligible for GEERS assistance of:

- unpaid wages in the three month period prior to the appointment of an insolvency practitioner (including amounts deducted from wages, such as personal superannuation contributions or child support payments but not passed on to the relevant fund or child support agency)
- annual leave
- long service leave
- up to a maximum of 5 weeks payment in lieu of notice
- up to a maximum of 4 weeks per year of service in redundancy pay.

Unremitted employer obligations under the Superannuation Guarantee are not an eligible entitlement under GEERS and are covered by separate legislative requirements. The Australian Taxation Office has in place a rigorous compliance program which aims to ensure employers meet their Superannuation Guarantee obligations and can investigate claims of unpaid superannuation.

If the businesses are not insolvent, the Fair Work Ombudsman can investigate complaints made by employees to ensure they are receiving their correct entitlements and may be able to assist employees recover their entitlements.

Where directors of companies fail to conduct their businesses responsibly, breach their responsibilities or engage in phoenix activity using shelf companies, the directors may be subject to criminal or civil penalties. ASIC is the agency which enforces and regulates company and financial services laws to protect consumers, investors and creditors and can investigate complaints in relation to the conduct of insolvency practitioners, company directors and instances of phoenix activity.