



SENATOR THE HON. ERIC ABETZ
LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR EMPLOYMENT
MINISTER ASSISTING THE PRIME MINISTER FOR THE PUBLIC SERVICE
LIBERAL SENATOR FOR TASMANIA

21 NOV 2014

Dr Dennis Jensen MP
Member for Tangney
Parliament House
CANBERRA ACT 2600

Dear Dr Jensen,

Thank you for your letter of 2 October 2014 seeking a response to a petition from former Bruck Textile Technologies employees, families and residents in and near the Rural City of Wangaratta. The petition requests that the Government fund all unpaid entitlements for former employees of Bruck Textile Technologies, and requests that the Government consider legislative change relating to the Fair Entitlements Guarantee.

In relation to the first request, it is important to note the background to taxpayer-funded employee entitlement schemes. The Howard Government first established a taxpayer-funded employee entitlement scheme in 2000. Since that time, subsequent governments have supported similar schemes. The current scheme, the Fair Entitlements Guarantee, was established in 2012. A key consideration of the support for employee entitlement schemes has always been whether it is reasonable for taxpayers to guarantee all of an employee's lost entitlements in the event of employer's liquidation.

The Government considers that taxpayer-funded employee entitlement schemes should act as a safety net only, and that it is the employer, not that taxpayer, who should be responsible for employee entitlements. The Government considers that the taxpayer should help out their fellow Australians where appropriate, but that it is unreasonable to expect that the taxpayer should be responsible for all entitlements in the event of an employer's liquidation. This is the responsibility of the employer, and this has remained a core underlying principle of government support for employee entitlement schemes over the past 14 years.

If the taxpayer were to be held responsible for all employee entitlements in the event of liquidation, the Government has serious concerns about the potential for the creation of a moral hazard. That is, a more generous scheme could encourage employers and company directors to adopt generous employment entitlements that were not sustainable to the business. Employers and company directors could deliberately rely on the Australian taxpayer in order to meet obligations for all employee entitlements.

There is evidence that the risk of moral hazard in the scheme is real. The previous Labor government increased the level of redundancy pay that taxpayers would fund from a maximum of 16 weeks to 4 weeks pay for every year of employee service. Since that change claims have soared:

- The proportion of insolvent companies relying on the scheme to meet employment entitlements rose from 16.8 per cent in 2006–07 to 20.5 per cent in 2012–13.

- The proportion of workplace agreements that provided a total maximum redundancy payment of more than 16 weeks rose from 22.3 per cent in Quarter 1, 2011 to 28.3 per cent in Quarter 2, 2014.
- The value of entitlements paid under the scheme for redundancy pay has increased disproportionately compared to other entitlements, accounting for 29.5 per cent of total scheme costs in 2006-07 to 39.6 per cent of total scheme costs in 2012-13.
- Demand in the scheme increased from 8,626 claimants being paid \$72.97 million in 2006-07 to 16,019 claimants being paid \$261.65 million in 2012-13 (an increase of 259 per cent).

Former employees of Bruck Textile Technologies have now received legislated levels of assistance under the Fair Entitlements Guarantee. The Government does not believe that it is appropriate for taxpayers to provide payments beyond this.

The Fair Entitlements Guarantee is designed to act as a safety net, and a scheme of last resort. Whilst the scheme does not cover all entitlements, there are other avenues for impacted employees to recover these entitlements, and former employees of Bruck Textile Technologies are encouraged to pursue these avenues.

In relation to the second request, the Government also has concerns about companies which do not protect employees' entitlements, and which trade while insolvent. Legislation already exists to prevent such activities.

The Australian Securities and Investments Commission administers the *Corporations Act 2001* to ensure company directors comply with their duties to act with due care and diligence (sections 180 to 184), that companies do not trade while insolvent (section 588G) and that directors do not enter into transactions to avoid employee entitlements (section 596AB). Potential consequences include de-registration, criminal prosecution and, in the case of taxation and superannuation matters, directors can be held personally liable for payments.

Despite this legislation, it is important to emphasise that most company liquidations do not involve corporate misconduct and do not result in employees being left with unpaid entitlements. In 2012-13 there were 10,746 companies entering external administration with 7,690 being wound up through liquidation. In the same year 1,753 new cases were received under the Fair Entitlements Guarantee and its predecessor scheme (less than a quarter of all liquidated companies). Insolvency statistics show that the issue of unpaid employment entitlements only exists in 25 per cent or less of all external administrations.

The corporate conduct of the former directors of Bruck Textile Technologies is currently being investigated and it would be premature to conclude that there has been a breach of corporate duty until such a case has been established under the law.

The Government has a range of programmes to help employees who have been made redundant, including job search activities and support, training to gain further skills, relocation assistance to move to another location for a job and incentives that encourage employers to employ mature age job seekers. Further detail is available on the Department of Employment's website at www.employment.gov.au.

Thank you for bringing this petition to my attention.

Yours sincerely

ERIC ABETZ ~