

Future of Work
Employee Entitlements
Policy
ACTU CONGRESS 2003

1. Congress views with great concern the continuing failure of the Federal Government to properly address the scandal of employee loss of accrued and contingent entitlements in cases of corporate insolvency.
2. Congress notes that the Federal Government has been forced to respond to public outrage by establishing the GEERS scheme, and making some commitments in relation to priority for employee entitlements under the *Corporations Act*.
3. Congress condemns the Federal Government for the inadequacy of its responses, which have failed to guarantee workers 100% of their entitlements and which do not place sufficient responsibility on employers to meet their obligations.
4. Congress congratulates affiliates for their continuing efforts to promote the cause of better protection of employee entitlements and, in particular, its industrial campaigning for employer action in this area.
5. Congress calls for action in a number of areas to ensure that proper standards of employee protection are met, including renewed effort to secure the support of State Governments for improved protection of employee entitlements. The ACTU will co-ordinate affiliates and state Trades and Labour Councils to pursue and support ongoing workplace campaigns, and various legal and industrial commission claims for improved employee entitlement protection.

Industrial Campaigning

6. Unions will continue to campaign for employers to:
 - (a) contribute employee entitlements to a trust fund to ensure that they are available to employees in case of insolvency, and are not used by employers as a source of operating capital;

- (b) make provision for security over employee entitlements through measures including insurance bonds, bank guarantees and charges over fixed assets;
- (c) include contingent, as well as accrued entitlements, such as redundancy pay and long service leave, in the definition of entitlements, and to ensure that these are provided for in cases of transfer of business or change of contract; and
- (d) give employees and unions the right to receive, on request, comprehensive information, in the form of audited reports, about the financial position of the company and, in particular, its ability to meet its obligations in relation to employee entitlements.

Corporations Law and Other Legislation

7. Congress will campaign for the following priority changes to the *Corporations Act*:
 - (a) related companies being treated as single entities for the purpose of protecting employee entitlements;
 - (b) directors being accountable to employees and other major stakeholders to the same degree as their current obligations to shareholders;
 - (c) directors being obliged to act once they have reasonable grounds to believe that the company is *likely* to become insolvent;
 - (d) all employee entitlements being ranked above secured creditors in insolvencies;
 - (e) all entitlements provided for in an industrial instrument being treated as a priority;
 - (f) employee entitlements being included in the definition of "debt" for the purposes of insolvency;
 - (g) directors being personally liable for payment of employee entitlements;
 - (h) directors carrying the onus of proof in defending actions for avoiding obligations to pay entitlements or trading while insolvent;
 - (i) provision being made for earlier appointment of administrators where this could assist in avoiding insolvency or maximising assets;

- (j) provisions which reverse the onus of proof on directors barring directors from continuing to act as a director where a corporation for which they were a director went into liquidation unless they can demonstrate to an appropriate authority that they have exercised their duties in accordance with the law; and
 - (k) provisions strengthening the powers of ASIC in banning directors from holding office particularly in circumstances involving the collapse of a corporation which results in employees losing all or part of their entitlements.
8. Congress calls for further changes to other relevant legislation to ensure that:
- (a) SG contributions are required to be paid monthly; and
 - (b) the Commission is empowered to vary awards to provide for payment of employee entitlements into trust funds.

Payment of Entitlements

9. Unions will continue to campaign for a payment guarantee scheme which covers all entitlements.
10. Congress does not believe that the GEERS scheme addresses the principles of being employer-funded and guaranteeing 100% of entitlements. The GEERS scheme suffers from a number of major deficiencies, including that:
- (a) many employees are unable to claim although their employer has closed down operations, because a liquidator or administrator has not been appointed;
 - (b) it does not include superannuation;
 - (c) it does not cover the total of employees' redundancy entitlements and, in the case of NSW, does not cover the entirety of employees' redundancy entitlements under state awards;
 - (d) it does not cover entitlements such as untaken RDOs, untaken accrued sick leave or unremitted employee deductions such as union fees and health fund fees;
 - (e) there are long delays in processing claims; and
 - (f) as an administrative scheme, GEERS is subject to limited scrutiny or review of its operations, administration and decisions.
11. Congress rejects the Federal Government's intention that employee entitlements rank above secured creditors in insolvencies only to the

extent of GEERS entitlements, as the practical effect of this will be for the Commonwealth to recover its expenditure with no additional benefit to employees.

12. Congress calls on the Federal Government to give priority to 100% of employee entitlements above secured creditors, and only to recover its own expenditure once employees' claims have been satisfied in full.