AUSTRALIAN GOVERNMENT: THE TREASURY

Action against fraudulent phoenix activity

Proposals Paper November 2009

Comments by the
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union known as the Australian Manufacturing Workers' Union (AMWU)

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The AMWU thanks the Treasury and Senator Nick Sherry, Assistant Treasurer, for this opportunity to respond to this paper and is grateful for the extension of time in which to lodge.

The AMWU represents approximately 120,000 members working across major sectors of the Australian economy. AMWU members are primarily based in the manufacturing division in the sub-divisions of metal manufacturing, printing and graphic arts, food and vehicle building, repair and service. The AMWU also has significant membership in the mining, building and construction, aircraft and airline operations, laboratory, technical, supervisory and public sector employment. Our members work in unskilled, semi skilled, trade and professional occupations within these industries and source their workplace entitlements and responsibilities from a variety of industrial instruments including award, over award certified agreements and common law arrangements.

The AMWU welcomes the release of this discussion paper on the proposals to take action against fraudulent phoenix activity and agrees wholeheartedly with Senator Sherry's opening remarks in the Foreword of the paper, that

> Fraudulent phoenix activity is an abuse of the corporate form and the privilege of limited liability. At a time of greater uncertainty for workers, the avoidance of employee entitlements such as superannuation and long service leave is particularly unacceptable.

It is of course in such economic times as we are currently in when the incidence of failing companies rises and the threat to employee entitlements is greatest. According to Australian Securities and Investment Commission (ASIC) figures[1] corporate collapses increased 4 per cent in 2009 and are at historically high levels; up 25 per cent compared with the average for the previous five years.

The AMWU has been in the unenviable position on a number of occasions in the past 12 months of having to provide advice and support for its members who have lost their entitlements as a result of the avoidance practises of certain company directors. The AMWU knows all too well the devastating impact these avoidance practises has on employees and their dependents. To then see phoenix activity after experiencing these losses further compounds the devastating affect and leaves the affected employees and the Union bemused and outraged that such nefarious directors appear to be unscathed by the procedure and untouched by the law. At the end of this submission is Appendix 'A' which provides some examples of phoenix activity which has affected members of the AMWU.

The AMWU broadly welcomes and endorses most of the options that the Government is exploring in this paper, as when looked at together they demonstrate that the Government is taking seriously the phoenix phenomenon and is recognising the impact that it has on Australian workers and their families as well as the economy and business competition.

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[1] http://www.asic.gov.au/asic/asic.nsf/byheadline/2009+insolvency+statistics?openDocument

In commenting on this paper the AMWU answers each distinct question in turn. Some of these responses are more involved and fully argued than others, but this is not to be taken as indicative of the weight that the Union gives to any particular issue raised. In addition to providing a response to the questions the AMWU will also take the opportunity to provide further suggestions as invited to do so under consultation question 15.

1. If amendments were made to the director penalty regime to effectively 'automate' director penalties, what period of time would it be reasonable for a director to avoid liability to ensure that legitimate directors who may be facing adverse economic conditions o rbusiness cycles are not unduly affected? Is three months a reasonable period?

Response to question 1

The AMWU has an appreciation of the inadequacies that currently frustrate the Australian Tax Officer (ATO) and its Commissioner in respect of collecting PAYG(W) amounts. The proposed amendment to the director penalty regime to effectively 'automate' director penalties should help relieve the frustration and ultimately see fewer instances of directors appointing administrators or winding up companies. The AMWU believes that this should strike a reasonable balance between tackling the issue of rogue directors and overly burdening honest directors.

The suggested three month period is reasonable. There would be much less incentive for rogue directors not to remit PAYG(W) amounts if the time period for them to do so was restricted to three months.

2. If this 'automated' approach were taken with the director penalty regime, would there be a continuing role for the director penalty notice?

Response to question 2.

Whilst recognising the administrative limitations the AMWU believes that maintaining the role of the director penalty notice should allow the ATO the ability to better track recurrent and frequent offenders and to take action earlier than otherwise would be the case if the practise was removed.

Before a final decision is taken on whether to cease the practice altogether it may be prudent to observe how effective its continuance is for a number of years (or other reasonable time frame).

3. If the law were amended to 'automate' director liabilities, should any additional limitations on

the operation of the regime be imposed? Notably:
a) Does the period of time in which a director is not held liable for a penalty (three months is suggested), along with the existing defences, ensure the right balance between providing an incentive for directors to cause their company to comply with their obligations and not imposing penalties in inappropriate circumstances?
b) Is there a need for additional defences to the regime, modelled on those in the Corporations Law relating to insolvent trading? What undesirable consequence would such a defence seek to avoid?
c) Should the period of time in which the ATO has to recover the penalty be limited, for instance, to four years (consistent with usual the amendment period for companies)?

Response to question 3.

The position of the AMWU is that there does not need to be additional limitations on the operation of the regime if the law were amended to 'automate' director liabilities.

There is already an effective balance at present. It is too soon to be considering creating additional defences for directors before the regime has even been introduced. The AMWU acknowledges that some parties may have concerns, but these could be addressed by the use of a review mechanism, allowing for an objective assessment at some near future point.

The AMWU is neutral in respect of the period of time in which the ATO may have to recover the penalty. We note four years is suggested, but also observe that six years is the civil limitation in most jurisdictions for which a debt is recoverable.

4. Should the director penalty notice regime be expanded to include an additional range of payments, taxes and duties? For instance, should it be expanded to include Superannuation Guarantee amounts, the company's own income tax and/or indirect taxes such as GST and excise?

Response to question 4.

The AMWU strongly supports the expansion of the director penalty notice regime to include an additional range of payments, taxes and duties such as Superannuation Guarantee amounts. This would help in protecting workers SG entitlements. Also including the company's own income tax and/or indirect taxes such as GST and excise should certainly act as a major disincentive for directors to engage in fraudulent phoenix activity. An honest director would have nothing to fear and no administrative burden to bear.

5. If the director penalty notice regime were expanded to cover a range of liabilities, should the estimation regime in Division 8 of Part VI of the ITAA 1936 be similarly amended?

Response to question 5.

The AMWU notes the logic of amending the estimation regime in Division 8 of Part VI of the ITAA 1936 if the director penalty notice regime were expanded to cover such a range of liabilities and supports the requisite amendments. Making the amendments would assist in maintaining consistency in the collection mechanisms of the expanded range of liabilities.

6. Should the promotion of fraudulent phoenix behaviour be made subject to the promoter penalty regime?

Response to question 6.

Without doubt, the answer to whether the promotion of fraudulent phoenix behaviour should be made subject to the promoter penalty regime must be yes. Amending the penalty regime to include schemes that avoid SG payments and tax liabilities is bound to deter people promoting the misuse of the corporate form and its concomitant privileges and as such the AMWU fully endorses this approach.

7. Should the taxation law include anti-avoidance provisions that give the Commissioner the ability to trace the benefit derived from fraudulent phoenix activity to individuals and entities other than the liquidated company?

Response to question 7.

The AMWU believes that it is crucial that assets of directors are able to be traced and notes the role that the *Proceeds of Crime Act 2002* may play in assisting with this.

8. Would it be appropriate to remove the requirement that a director has managed two or more failed corporations before ASIC can disqualify a director?

Response to question 8.

The AMWU notes that ASIC's power of disqualification is contained in s206F of the Corporations Act (the Act). This power allows ASIC to disqualify a person from managing corporations for up to 5 years provided a number of conditions have been met. The AMWU submits that when one looks at s206F and the sections that are referenced within that section the threshold requirement that there be two corporate failures within 7 years in which the director has been involved in is unnecessary. The AMWU supports its removal.

Currently, in addition to the person being an officer of two or more corporations that were wound up within that period a liquidator must have lodged a report under s 533(1) about the corporation's inability to pay its debts. Under s 533 a liquidator is required to report to ASIC if it appears that an officer of the company may have been guilty of an offence under an Australian law in relation to the company; or if a person who has taken part in the formation, promotion, administration or winding up of the company has misapplied, retained or become liable for any money or property of the company; or may have been guilty of any negligence, default, breach of duty or trust in relation to the company; or if the company may be unable to pay its unsecured creditors more than 50 cents in the dollar.

ASIC must then give to the officer a notice that requires them to demonstrate why they should not be disqualified. ASIC has to consider a number of factors in then determining whether disqualification is justified including having regard to whether any of the corporations mentioned in s 206F(1) were related to one another; the person's conduct in relation to the management, business or property of any corporation and any other matter that ASIC considers appropriate.

The AMWU submits that removal of the requirement of two corporate failures in the past 7 years will not detract from the object of s 206F, which was held in *Nicholas v CAC* (Vic) [1988] VR 289 as being 'to facilitate and improve the performance of companies, and in the interests of commercial certainty to protect the interests of the public dealing with companies by preventing people who, by reason of past conduct, are unfit from directing, promoting or managing the affairs of corporations' from acting as directors.

The AMWU further submits that it should be open for a creditor to apply to the Court for an order disqualifying a person from being a director of a corporation if the elements contained in s 533 to which a liquidator has to have regard are present.

9. Should an offence for the non-remittance of PAYG(W) amounts be reintroduced into the taxation law?

Response to question 9.

The AMWU is firmly of the belief that the reintroduction of the offence for the non-remittance of PAYG(W) amounts into the taxation law will be of significant assistance in curbing phoenix activities. It would plainly act as a disincentive for directors planning not to remit withheld amounts, especially when coupled with the threat of disqualification from the involvement of managing corporations under Part 2D.6 of the Act.

There are adequate defences incorporated into the TAA 1953 for innocent directors to feel secure.

The AMWU notes that limited resources of the Commonwealth Director of Public Prosecutions might negatively impact on the effectiveness of the pursuing offenders, and suggests that the set level of penalties for other agencies be reviewed to enable greater agency participation. Of course an increase in the direct funding amount of the Commonwealth Director of Public Prosecutions would also assist.

In relation to funding more generally the AMWU notes that the Howard government had via GEERS, an insolvency litigation fund where administrators had the option of applying for funding to sue suspected rogue directors to recover employee entitlements. This is how the AMWU got its members at Coghlan & Russel 100% of what they were owed. The Liberal Government funded the administrator to attack the directors' assets and won. The scheme has been suspended; it should be restored and broadened.

10. Should a similar offence provision be created in relation to non-compliance with SG obligations?

Response to question 10.

The AMWU is without doubt that a similar offence should be created in relation to SG obligations.

The AMWU looks forward to the publication of the Commonwealth Government's audit of Commonwealth laws reform of personal criminal liability for corporate fault.

11. Is the denial of PAYG withholding credits to directors by the ATO an appropriate mechanism to deal with fraudulent phoenix behaviour? Should it extend to all directors and close relatives of the director (provided that the Commissioner is given a discretion to allow PAYG(W) credits where it is appropriate to do so)?

Response to question 11.

Whilst acknowledging some of the practicalities involved in administering the provision, the AMWU believes that denying PAYG withholding credits in circumstances where amounts have not been withheld to directors would clearly assist. Extending it to all directors and close relatives of the director would likewise assist in circumstances where the Commissioner thinks it appropriate.

12. Would a restriction on the use of a similar name or trading style be an effective mechanism in curbing fraudulent phoenix activity?

Response to question 12.

The AMWU notes that in the UK Insolvency Act 1986, s 216 prevents the use of a name of a company which has recently been wound up being given to a company with the same people concerned in the management of the company. The AMWU is of the opinion that restrictions on the use of a similar name or trading style will be of assistance in combating phoenix activity. Making the director of a liquidated company liable for the new company's debts would act as a deterrence. The AMWU submits that enacting similar provisions to the New Zealand legislation making it an offence for a director of a failed company to be involved in a phoenix company punishable by 5 years imprisonment or a $200,000 would also greatly assist in deterring such actions.

13. Should it be an offence for directors to claim non-remitted PAYG(W) when the company has not remitted PAYG(W)? As this approach would target both fraudulent phoenix directors as well as legitimate directors, would it achieve the right balance between protecting revenue and protecting the interests of legitimate directors?

Response to question 13.

The AMWU supports making it an offence for directors to claim non-remitted PAYG(W) when the company has not remitted PAYG(W). Making it an offence would act as an additional disincentive for directors to claim those credits.

Although this approach may target both fraudulent phoenix directors as well as legitimate directors the AMWU submits that only the fraudulent phoenix directors are the ones who would be pursued.

14. Is it appropriate for the ATO to require a bond to be paid in relation to an expanded range of liabilities if fraudulent phoenix activity is suspected or expected? What would be an appropriate amount? Should it be referable to three months of anticipated tax liabilities? Six months?

Response to question 14.

The AMWU believes that there may well be circumstances where it is appropriate for the ATO to require a bond to be paid in relation to an expanded range of liabilities if fraudulent phoenix activity is suspected or expected. The amount that would be appropriate would depend on the size of the corporations operations and an assessment of the risk involved, which itself would be referable to the scale of fraud suspected. Three months anticipated tax liabilities might suffice in some occasions, in others a higher threshold might be deemed more appropriate.

It should be borne in mind that simply because the ATO has been granted such a power does not necessarily means that it will be exercised, but an additional tool in the arsenal in combating phoenix activities would be welcomed as a means of allowing a flexible response.

15. Do you have any other suggestions that would assist to deter entities from engaging in fraudulent phoenix activity?

Responses to question 15.

AMWU additional suggestions:

First suggestion.

At the beginning of the Paper under the 'Options in the taxation law table' the option to adopt the doctrine of inadequate capitalisation was mooted. However, this did not appear as an individual question to be addressed. The AMWU would support its adoption as it would assist in piercing the corporate veil where a director establishes another company with insufficient capital to meet the debts that could reasonably be expected to arise and would thereby act as a strong disincentive for directors to engage in phoenix activity.

Second suggestion.

Whilst acknowledging the difficulties in defining what phoenix activity actually is, the AMWU strongly presses for the insertion of a definition of the activity into the Act. Having a definition of the practises and a provision dealing with appropriate penalties if an act is proved to be phoenix in nature helps provide certainty and guidance to the courts, the business community, employees and stakeholders more widely.

The ATO defines phoenix activity to be 'the evasion of tax through the deliberate, systematic and sometimes cyclic liquidation of related corporate trading entities.'

The AMWU submits that the ATO definition is a good starting point and can be added to so that it encompasses not just situations of tax fraud or evasion but creditors more generally.

ASIC defined a phoenix company as an incorporated entity that either:

- fails and is unable to pay its debts; and/or
- acts in a manner which intentionally denies unsecured creditors equal access to the entity's assets in order to meet unpaid debts; and
- within 12 months another business commences which may use some or all of the assets of the former business, and is controlled by parties related to either the management or directors of the previous entity. company.[2]

Treasury succinctly defined the phoenix company phenomenon as being:

> where business operations are transferred from one company to another to avoid having to meet liabilities to unsecured creditors (particularly revenue authorities
>
> and employees).[3]

The AMWU submits that it would not be too onerous a task to define a phoenix company or phoenix activity in the Act and the benefits in doing so would soon become apparent. The definition when settled needs to be broad enough to capture the activities that have occurred in the Forgecast example which follows below. The AMWU further submits that because of the inherent difficulties in tracing the movement of assets between companies and even individuals a reverse onus of proof should apply. Legitimate directors would have nothing to fear.

Third suggestion.

The Trust Fund Option

The AMWU continues to press for this option. As we have previously argued[4]:

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[2] ASC Research Paper 95/01.
[3] Corporate Insolvency Reform Report 2005.
[4] AMWU submission into the Inquiry into Australia's Insolvency Laws, 31 July 2003.

Setting aside employee entitlement will ensure [that] all employers function within Accounting Standards, regardless [of whether or not] they are exempt from complying with Accounting Standards. This will ensure across the board protection for all employees.

The trust fund option if instigated Australia wide will guarantee payment of entitlements in the event of insolvency, providing a comprehensive solution to this issue. We propose this to be implemented with no exemptions to ensure the protection of all employees. The trust fund option 'overcomes the need to rely on specific legislation to provide a legal remedy to protect employee entitlements, and would also remove the need for a union or group of employees to take court action to obtain a remedy.'[5] Employers will be forced to meet their legal obligation, without the taxpayer bailing out them of their responsibilities or decreasing the lending capacity of business.

…

A good example of the trust fund option is with the already functional National Entitlement Security Trust (NEST). NEST is an independent not for profit trust facility established to receive employer contributions towards employee entitlements such as annual leave, long service leave, redundancy, severance pay, and other entitlements following agreement between the parties or an industrial award governing their relationship. The trustees consist equally of employer and employee representatives with an independent Chairman. Under its trust deed, NEST is empowered to invest contributed funds at interest in approved securities but is unable to reduce the capital base of the trust. The trust's income funds administration and is then distributed to either employers, employees or, at the employer's direction, applied to future obligations to contribute. By this means, an element of self-funding of employee entitlements is provided. This solution effectively deals with the issue of employee entitlement in insolvency while providing benefits to all related stakeholders.

Fourth Suggestion.[6]

The AMWU continues to assert the need for the reverse onus to apply in cases of company collapse where creditors, including employees have not been paid. The onus should be on company directors to prove to an ASIC Inquiry that they have fulfilled all of their fiduciary duties before they are permitted to hold any positions as a company director or officer. A range of other penalties should also apply. If they are found not to have fulfilled their fiduciary duties they should be held individually liable.

[5] The Australian, 9 August 2001.
[6] This suggestion is based on propositions contained in Schedule A of the AMWU submission into the Inquiry into Australia's Insolvency Laws, 31 July 2003.

ASIC must be adequately funded and resourced to allow it to properly investigate blatant breaches of corporations laws, particularly those that lead to loss of employee entitlements.

Fifth suggestion.

The AMWU has also previously argued[7] that directors of a company should be personally liable for any penalty imposed against a company for non payment of superannuation contributions. Courts should be empowered to make an order for underpayment of entitlements directly against the relevant executive officers. Unions should be empowered to bring actions against companies and their directors for unpaid SG contributions.

While company directors cannot insure against the imposition of a penalty, it is possible to insure against the possibility of compensation being awarded against them in respect of their duties as directors. Insurers would no doubt scrutinise corporate accounting systems to ensure that employee entitlements were protected

Imposing ultimate responsibility for superannuation entitlements on directors would help ensure that directors comply with their superannuation requirements and thereby safeguard employees' entitlements.

Sixth suggestion.

A practical additional tool, in relation to companies coming out of Deeds of Company Arrangements under Part 5.3A of the Act (which although are not strictly speaking phoenix companies) would be for the restructured companies to be required to remit SG contributions, including salary sacrifice, at the same time as weekly or fortnightly payroll for a specified period, for example two years. Pay as you go means that a large liability will accrue and is as likely to be as effective, if not more, than pay up front in some cases.

In closing the AMWU would like to take this opportunity to highlight a couple of examples of situations where the existing laws are proving to be inadequate in protecting workers' entitlements and where individuals continue to act as directors of corporations.

[7] Ibid.

Example A

Carlton Sheet Metal Pty Ltd is a Sydney based company working in the construction industry. Primarily, Carlton is involved in the installation and maintenance of air conditioning systems and the manufacture and installation of sheet metal on large-scale commercial construction projects. Such work is performed from a factory located in the Sydney suburb of Carlton and is also performed on-site. Up until two years ago, Carlton employed approximately 100 employees.

The directors of Carlton Sheet Metal Pty Ltd consist of Simon Usalj, Dominic Usalj, Filomena Usalj and Joseph Usalj. Simon Usalj and Dominic Usalj are brothers. Their parents are Filomena Usalj and Joseph Usalj. The shareholder in Carlton Sheet Metal Pty Ltd is Filomena Usalj. On a day-to-day basis, Carlton Sheet Metal Pty Ltd was operated by Simon Usalj.

On 16 June 2009, Carlton Sheet Metal Pty Ltd went into liquidation. It is estimated that at the time of going into liquidation, Carlton Sheet Metal Pty Ltd owed in excess of $300,000 in unpaid employee entitlements. The most significant unpaid employee entitlement was superannuation. However, other entitlements, such as wages, annual leave, notice in lieu of termination and redundancy pay were also outstanding. To date the workers have not received any of their unpaid entitlements.

In the weeks leading up to Carlton Sheet Metal Pty Ltd going into liquidation, the company retrenched a large number of workers. Many of these workers were long serving employees. On being retrenched, the workers were not paid out their entitlements - redundancy, annual leave, notice in lieu of termination and, in some cases, wages.

Only days after going into liquidation, two new companies emerged. The first company is CSM Australia Pty Ltd and the second company is Industry Access & Hire Pty Ltd. Dominic Usalj is the director of CSM Australia Pty Ltd. Antoinette Frankland is the shareholder of CSM Australia Pty Ltd. Antoinette Frankland is the sister of Simon and Dominic Usalj and the daughter of Joseph and Filomena Usalj. Craig Frankland is the director and shareholder of Industry Access & Hire Pty Ltd. Craig Frankland is married to Antoinette Frankland. On a day-to-day basis, both CSM Australia Pty Ltd and Industry Access & Hire Pty Ltd are operated by Simon Usalj.

The three companies are associated entities within the meaning of the Corporations Act 2001.

Industry Access & Hire Pty Ltd employs many of the same employees that were employed by Carlton Sheet Metal Pty Ltd and works out of the same factory. CSM Australia Pty Ltd employs the many of the same employees that were employed by Carlton Sheet Metal Pty Ltd and carries out the same on-site work that was performed by Carlton Sheet Metal Pty Ltd. Indeed, jobs that were being performed by Carlton Sheet Metal Pty Ltd have simply been performed by the two new entities. In reality, the only change has been a formal name change. At the present time, both companies employ a total of approximately 20 employees.

Over the course of the past few years, the Usalj family sought to expand into Canberra and Perth. They did so by establishing new companies. In both Canberra and Perth, such entities have now been put into liquidation and workers entitlements have not been met.

The AMWU wrote to both the ATO and the ASIC raising our concerns with respect to the Carlton group of companies. To the best of our knowledge, the ATO or ASIC have taken no steps to remedy the above issues or prosecute any contraventions of the relevant legislation.

Example B

Another example is the plight of workers at Forgecast where Ian Beynon proclaims that, 'I don't owe [the workers] any money, the company owes the money.'[8]: By way of background Ian Beynon has twice placed his business into insolvency within 5 years. He proposes to restart the business again under a new entity and yet again not pay debts arising from previous insolvency events. All he then has to do is buy the assets (not the company) at a fair price (which is next to nothing because it excludes the land etc) and it is said he has not Phoenixed. The workers will not be paid their entitlements again. The ATO will not be paid its debt again. As the law currently stands he will be able to do this indefinitely, whatever changes are made need to be able to prevent this reoccurring.

1. http://news.theage.com.au/breaking-news-national/axed-workers-fear-loss-of-entitlements-20091127-jwnl.html

2. http://www.amwu.org.au/read-article/news-detail/390/57-workers-could-lose-all-their-entitlements-as-Forgecast-appoints-receivers/

3. http://www.smartcompany.com.au/manufacturing/20091127-melbourne-manufacturing-company-forecast-collapses.html

4. The article below is not available on line, so is reproduced here on the following page.

Dave Oliver
National Secretary
Australian Manufacturing Workers' Union

[8] Herald Sun, 31 January 2010.

heraldsun.com.au Sunday, 31 January 2010

Staff lose in buyouts

SAMANTHA AMJADALI

A MILLIONAIRE businessman whose factory workers are allegedly owed $4.4 million in redundancy entitlements has been allowed to buy back the failed company — for a third time — but refuses to make payouts to workers.

Employees at Forgecast in Mitcham claim owner Ian Beynon, is being allowed to "cheat" workers "again and again". Some have worked for the company for more than 40 years.

They and union officials are demanding the Government investigate the businessman, who has twice put the company into receivership, then bought it back three times in five years.

But Mr Beynon, referring to the concept of a phoenix company, under which owners of a failed company can buy back under another company's name, said he had followed all the correct legal processes.

"I just deal with what the law is and many people do this," he said.

John Hugget, who has worked as a polisher at Forgecast for 22 years and is owed $94,000, said it was "a huge betrayal".

"Fifty-seven of us went back after the first receivership to give Ian a chance. We even took reduced hours, but he's done it to us again," he said.

Dozens of former workers have maintained a 24-hour picket outside Forgecast's Cook Rd premises for two months.

"We haven't had a wage for two months and most of us are struggling with bills and mortgages," Mr Huggett said.

"He won't pay us, but he's managed to find the money to buy the company a third time."

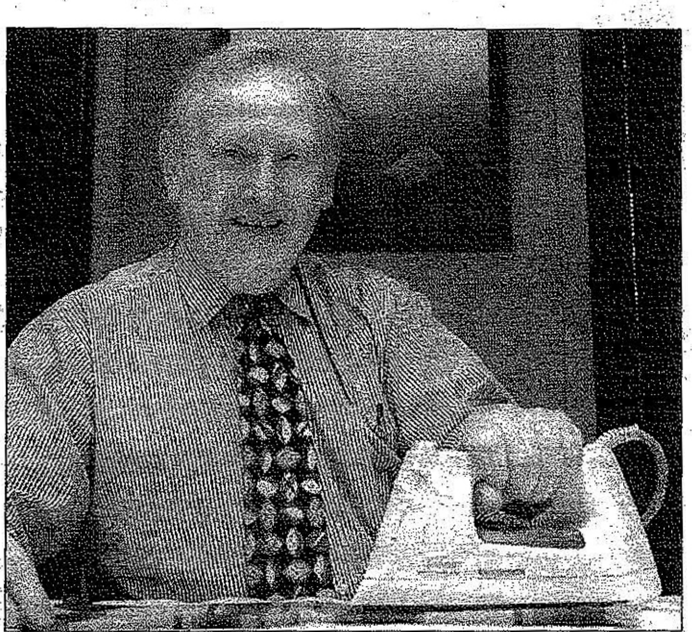
Mr Beynon first bought Forgecast, which makes metal fittings for cars and furniture, in 2003 and put it into receivership in 2004. He bought it back using one of his other companies, laid off 57 staff then rehired the remaining staff on the condition they worked fewer hours.

Mr Beynon then laid off the workers again in November 2009, liquidating the company soon after.

Last week the Mordialloc businessman again bought Forgecast and intends to reopen it and potentially rehire the picketing workers once the industrial action is over.

"I don't owe them any money, the company owes them money," said Mr Beynon, refusing to divulge the price he paid to buy Forgecast back.

"Australian corporation law should be changed if it lets a company director get away with what Ian Beynon is getting away with today," said Cesar Melhem, Victorian Branch secretary for the Australian Workers Union.



Serial buyer: Forgecast boss Ian Beynon irons out business problems by selling failed companies to himself under another name.