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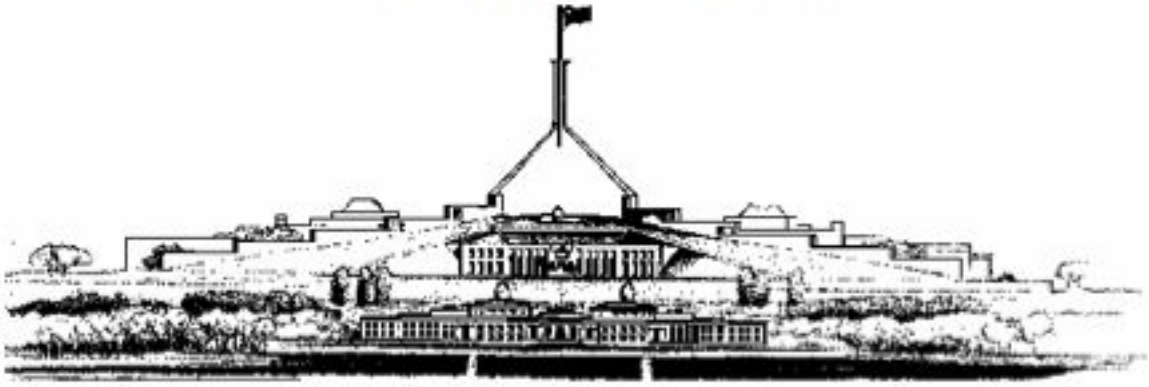

HOUSE OF REPRESENTATIVES

BILLS

Corporations Amendment (Phoenixing and Other Measures) Bill 2012

Second Reading

SPEECH

Thursday, 1 March 2012

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner		**Responder**	
Speaker	Billson, Bruce, MP	**Question No.**	

Mr BILLSON (Dunkley) (11:03): It was interesting to hear the member for Wills wind up his speech on the Corporations Amendment (Phoenixing and Other Measures) Bill 2012. It was a good wind-up, because he was quite accurate in summarising what this legislation is really about. He ended by saying that the message to rogue directors and others is—blah, blah, blah, blah. That was the message, but the actual content of this bill bears very little resemblance to that message. It is an effort to verbal the Australian public into thinking that this has something to do with phoenix arrangements when it has nothing to do with phoenix arrangements. In fact, if we applied some of the corporations disciplines—and even the ACCC had a look at this—the branding of this bill as something to do with phoenixing would be false and misleading item of conduct, because it is not about phoenixing.

The disappointing thing about the Labor member's contribution to this bill is that it has failed to address the fundamental misrepresentation that sits at the heart of this legislation. What it is about is something the member touched on—and, to his credit, he was quite open about it. This bill is about access to the GEERS. That in itself may well be a very virtuous policy objective. But call this what it is: call it facilitated access to GEERS arrangements—a scheme introduced by the Howard government to protect employee entitlements—and acknowledge that there is some obstacle in accessing GEERS benefits because of the way the scheme is designed and operates. Call it what it is. Be honest and true to the task of law-making in this nation. Be frank and upfront about the policy objectives of legislation and this government might see some people in the community actually finding out what it is about and might actually start to build some credibility.

Mr Bradbury interjecting—

Mr BILLSON: I am being heckled by the member opposite, because he knows that I have belled the cat on what is going on here. This is a false and misleading legislative process whereby the policy objective is not at all related to the title that has been given to this bill. The bill purports to be about phoenixing and other measures—amendments to the Corporations Act—but what it is really about is access to the GEERS. It is interesting that we do not target the particular public policy area in which the problem, as the government describes it, arises and then talk about the way in which the GEERS is activated. Instead we go about creating a new range or a new avenue to instigate insolvency procedure, without any consideration about what that actually means for the corporations law, the state of the economy, the nature of entrepreneurship in Australia and the protection of a range of economic rights, including employee entitlements, that should be at the heart of a sensible public policy debate about amendments to the corporations law. We do not have that discussion. We are not having that discussion here, because that is not what this bill is about. This bill is not about any of the, say, tax-related measures that Senator Sherry, one of the four small business ministers opposite that I have faced in two years, has proposed. This bill is not about that. It is not about any of the 11 tax measures that are in this proposal.

Mr Bradbury interjecting—

Mr BILLSON: Admiral Bradbury across the table is getting a little bit cranky, but he will know about his ministerial ambitions shortly—he might get to ride on a ship with some legitimacy. Senator Sherry's paper canvassed 11 tax measures that could address fraudulent phoenixing activity. Are any of those 11 tax measures the subject of this bill? No. The paper identified 11 other options for tackling fraudulent phoenix activity. It is not a bad body of work—there are some useful ideas and some worthwhile public policy proposals that would legitimately tackle fraudulent phoenix activity. Are any of those measures the subject of this piece of legislation? No.

We need a useful examination, carried out in a sober way, of the growing concern about phoenix activity—a phenomenon that has expanded under the Rudd and Gillard Labor governments. We need to be able to say this is getting away from us, it is a cancer on our economy, it is undermining confidence in entrepreneurship, it is impacting on employees, it is impacting on contractors and it is impacting on small business. These are

very important issues. Is any of this canvassed at all in this legislation masquerading as a phoenixing bill? No—that is not what this bill is about. The government should attempt to establish with the Australian public some credibility and some trustworthiness by being frank about what this bill actually targets, and that is access to the GEER Scheme.

For those members opposite who seem unclear about what phoenixing activity is and what its impacts are, phoenixing is estimated to cost the economy $2.4 billion a year. It is a harmful, fraudulent practice that is hurtful to suppliers, to contractors and to customers who might undertake certain acquisitions or transactions only to have their money taken and the services or goods not provided. It damages prosperity and it undermines economic confidence. If you happen to be an employee in the small business that is done over by a phoenix company, where are your interests in this conversation about curtailing the growth in phoenix activity? They are not in here at all, because that is not what the bill is about. It is not about the Senate inquiry, and it is not about the repeated assurances from the tax office and ASIC that they have a tool kit that is not being fully utilised—but they will crack down, we are assured through Senate committees. We are still to see that crackdown. I have seen firsthand how underwhelming some of the ASIC investigations have been when I have raised issues with them and have got back a glib letter of a couple of paragraphs saying, 'There is no problem here. Thanks very much. We have had a look at it. All the best to your family.' That is not what we are looking for. We are looking for these assurances to be followed through.

Not so long ago the then Minister for Financial Services and Superannuation was talking about actions to ensure superannuation guarantees were being paid, and there was reference to deterring fraudulent phoenix company activities. The government is dragging in everything that might be wildly related to an insolvent business—but it is not tackling the issue of phoenixing activities even though the subject has been rolled out with all the rhetoric on a number of occasions. Dun and Bradstreet reveal that 29 per cent of companies that became insolvent in 2009-10 had one or more directors previously involved in the winding up of an entity, compared to just 10 per cent in 2004-05. We have seen a growth in the number of directors with some history being involved in companies that have subsequently become insolvent.

You would have thought there would be an alertness, a situational awareness, about this risk. With security deposits legislation the tax office is worried about PAYG contributions and suspect businesses being required to make those deposits. Despite all this, the illegal practice is reportedly continuing to flourish—and the reason for that is that the Labor government talks a great game on phoenixing, as we have heard in this chamber today, but it is not actually doing anything about it. That would be a worthwhile thing for the government to turn its mind to. There is no defining of phoenixing in this bill. There is a lack of any evidence about how these additional powers will better enable ASIC to tackle phoenixing. There are ongoing concerns that regulators have a tool kit available to them, an arsenal of weapons, and we are adding Exocet missiles to the list without contemplating what should be happening with the weapons available now. Every report we see shows there is an expansion in this activity.

Actions taken supposedly in the name of wiping out phoenix activity have made no difference whatsoever, from the available evidence, and then the government seeks to hide from scrutiny of what it is doing or not doing by hijacking a House of Representatives inquiry. But it gets even worse. The explanatory memorandum to the bill does not even attempt to do a regulatory impact statement—it says it is not required for these amendments. What is going on here? This is phoenix policymaking about the phoenixing industry. The government is just not serious. Why would it evade scrutiny? Why would it not prepare a considered response to Senator Sherry's work? Why does it keep prattling on about this bill somehow relating to phoenix activity when it does not—it is about access to the GEER Scheme. Let us have that conversation. There might be meaningful things we could do about accessing the GEER Scheme, like looking at the preconditions. If you are worried that people should be able to access the GEER Scheme, a scheme introduced by the Howard government, because there are some obstacles—and insolvency declarations are an obstacle—why not look at other entry criteria? Why not do that? That would be a sensible public policy debate. No—they just say that, despite all the powers ASIC has now, which are so underdeployed at the present time, they will put more tools on the table that can just sit there. This is the government's response to phoenixing. Well, this bill is not about phoenixing, and the government should be clear and frank about what it is actually about.

In the area of GEERS, what a good scheme the Howard government introduced. But, as I said, if there are concerns about accessing GEERS then deal with them as the public policy challenge—do not go around and masquerade that it is something to do with phoenixing when it is patently not. The explanatory memorandum—and I encourage the parliamentary secretary to have a look at it—actually says that this bill is about accessing

entitlements under GEERS. So why not call it that? Why not do a bit of genius branding, like calling a show about footy *The Footy Show*? Why not call this legislation, ingeniously, the 'Accessing the General Employment Entitlements and Redundancy Scheme Bill'? Then everyone would know what this was all about and the government could not go around masquerading that this was something to do with phoenixing, which it patently is not.

I have touched on the GEERS issues because it is important. To the credit of the member for Wills, he is quite right —the ACTU has been quite clear about priority for access to whatever assets might be available in an insolvent company. The ACTU have been consistent and they have been upfront. They believe employee creditors have a priority over other unsecured creditors. They are looking at how, in the event of liquidation, the priority with which funds are made available changed. Let us have that debate. But do not come in here under the Trojan horse with a brand on it called 'phoenixing' to try to achieve that kind of outcome.

Why am I saying that you are achieving a kind of outcome that may reposition people's entitlement to access payments for an insolvent business? If you follow the work through, where there is an administrator overseeing an insolvency, GEERS requires that in bankruptcy cases the department will require claimants to sign a deed of undertaking. That deed of undertaking is designed to attract a priority repayment pursuant to section 560 of the Corporations Act. If it is about triggering that reprioritisation, have that as the public policy discussion. But, instead, we are coming in here under some other branding called 'phoenixing' to deal with issues that have an enormous impact on small businesses, which, the parliamentary secretary might realise, actually have employees, too. If they are displaced, by some backdoor reprioritisation of the distribution of available assets, from being paid for the goods and services they have received, they have an interest in that. You have heard that in submissions time and time again, but still you come to this bizarre and completely unfounded conclusion that there is no regulatory impact worth examining, when there is, and it should have been properly examined.

The honourable thing to do would be to name this bill what it actually is—that is, the 'Access to GEERS Bill,' and not the phoenixing bill—and have a proper inquiry about the impacts and implications of what it purports to do and what it will actually do. This government, by its numbers, has corrupted the parliamentary committee process in the House of Representatives. I hope the Senate gets a chance to have a look at this legislation, because the Senate hopefully will do a proper examination of what is happening in this space.

In the minute and a half remaining I will go to another part of the bill. This part of the bill seeks to ensure that an employer who is receiving payments under the government's Paid Parental Leave Scheme is actually held to account where it is not in a position to pass those payments on. Do you know what the solution is? It is the coalition's policy: pay it direct. Why doesn't the Commonwealth pay it directly to eligible employees? Why do you not do that? Why do you not embrace the amendments that we have on the table for a bill that has now gone into the Bermuda triangle? It was supposed to have been debated some weeks ago, but now no-one can find it. It has just disappeared. Why not find that bill again and embrace the amendments I have put forward.

The issue is one of imposing the burden of being the pay clerk for the Commonwealth. To transfer Commonwealth determined benefits paid for by the taxpayer straight to the employee should be the idea. But, no, you want to fit up employers with that. And we know what that is about, because another union document said that this is about elevating the employer contribution to ramp up the benefits because the government's scheme is deficient. Why do you not just pay it direct and then you would not need all of this legislative gymnastics to deal with a problem that is not of your making? It is in the second part of the bill. You should turn your mind to that and not to trying to get promoted in the reshuffle. Read it in the second part of the bill. *(Time expired)*

Mr Bradbury: I rise on a point of order, Deputy Speaker Vamvakinou. The member opposite has been making repeated imputations and allegations in relation to your conduct. I think none of them are warranted. I think he should withdraw.

Mr BILLSON: Classy, mate. My time has expired.

The DEPUTY SPEAKER (Ms Vamvakinou): The member's time has expired.