



Protecting Workers' Entitlements Package

Julia Gillard and Labor
Let's move Australia forward



OVERVIEW

The Gillard Labor Government's *Protecting Workers' Entitlements* package will provide the strongest protection of employee entitlements Australian workers have ever had.

The package protects employees' entitlements through three strong measures:

- The Fair Entitlements Guarantee.
- Securing Super.
- Strengthening Corporate and Taxation Law.

1. The Fair Entitlements Guarantee will protect workers' entitlements including: redundancy pay (up to a maximum of four weeks for each year of service), all annual leave, all long service leave and up to three months of unpaid wages. The *Fair Entitlements Guarantee* will be enshrined in legislation.

2. Securing Super will strengthen compliance measures to ensure employees receive their superannuation entitlements.

3. Strengthening Corporate and Taxation Law will give the Australian Securities and Investments Commission (ASIC) increased powers and strengthen penalties to take action against companies that do the wrong thing. Reforms will be introduced that target 'phoenix' company arrangements.

This package stands in contrast to the Coalition, who will rip workers' entitlements away. Australian employees work hard and deserve to know that their wages, superannuation and other entitlements are safe. The biggest risk to these entitlements is Tony Abbott.

THE FAIR ENTITLEMENTS GUARANTEE

Every year, thousands of Australians are made redundant when the company they work for goes into liquidation – only to find out that the company had not set aside enough money to pay their entitlements.

Workers who lose their job in these circumstances have enough to worry about. They should not have to worry about being paid what they have already earned.

That is why the Gillard Labor Government will introduce a legislated Fair Entitlements Guarantee to ensure that workers' entitlements are protected even if the company they work for enters liquidation and cannot pay them what they are owed.

The Fair Entitlements Guarantee will protect redundancy pay, up to a maximum of four weeks for each year of service. This will mean that almost all workers will receive all of the redundancy entitlements they are owed. This will give Australian workers the strongest protection of their entitlements they have ever had.

The Fair Entitlements Guarantee will replace the existing General Employee Entitlements and Redundancy Scheme (GEERS). Currently only 16 weeks of redundancy pay is covered by GEERS, even if employees have worked for the same company for decades.

How the Fair Entitlements Guarantee will work

Trevor has worked at the same factory for 20 years; his annual income is \$65,000. His award says that if he is made redundant he is entitled to three weeks of redundancy pay for each year of service, a total redundancy benefit of \$75,000.

Trevor is made redundant when his company enters liquidation. The directors of the company announce that there are no funds available to pay employee entitlements.

Under the former Coalition Government's GEERS policy Trevor would only be guaranteed a maximum of 16 weeks, or \$20,000 of the \$75,000 redundancy pay owed to him.

Under the Gillard Labor Government's Fair Entitlements Guarantee, Trevor would receive his entire redundancy payment of \$75,000.

The Fair Entitlements Guarantee will apply to all Australian workers other than company directors and their close associates.

The Fair Entitlements Guarantee will deliver two key improvements for Australian workers – new certainty that they will receive the redundancy entitlements they are owed and added protection because the Fair Entitlements Guarantee will be enshrined in legislation.

The Fair Entitlements Guarantee will cost an additional \$60.8 million over four years.

The following entitlements currently covered by GEERS will continue to be protected by the Fair Entitlements Guarantee:

- Up to three months unpaid wages.
- Amounts deducted from wages (like employee superannuation contributions that are not passed on to a superannuation fund), up to three months prior to insolvency.
- All unpaid annual leave.
- All long service leave.
- Up to a maximum of five weeks unpaid payment in lieu of notice.

The Fair Entitlements Guarantee will not apply to:

- The portion of income earned above the annually indexed rate of \$108,300.
- Directors or ‘excluded employees’ of the employing company as defined by Section 556 of the Corporations Act.

Payments under the Fair Entitlements Guarantee will only be made once an employee’s company enters liquidation.

The Australian Government will continue to seek to recover these payments through the liquidation process. The Australian Government currently recovers approximately \$15 million per year through this process. It is anticipated that a similar level of recovery would continue under the Fair Entitlements Guarantee.

SECURING SUPER

Unfortunately some employers fail to pay their employees’ superannuation entitlements. That is why the Gillard Labor Government will take strong action to make sure that these employers do the right thing.

Employees worst affected by businesses failing to pay superannuation tend to be low-income, casual or part-time workers. The Securing Super package will provide greater protection for these vulnerable workers.

This policy will help ensure that superannuation entitlements are paid in a timely manner, and that employers and employees are given more information about their superannuation payments (including Superannuation Guarantee payments and salary sacrificed payments).

Through the Securing Super reforms employees will receive:

- Information on their payslips about the amount of superannuation actually paid into their account.
- Quarterly notification from their superannuation fund if regular payments cease.

These reforms follow from the recommendations of the Cooper Review of Superannuation that called for more timely payment and disclosure of all superannuation payments (Recommendation 9.16 of the Cooper Review).

Employers will receive additional information from superannuation funds to assist them with managing their superannuation payments. Specifically, superannuation funds will be required to provide employers and employees with electronic notification if regular superannuation payments are not being made.

The Government will consult with the superannuation industry, employer representatives and unions about the implementation of these measures.

The enforcement powers of the Australian Taxation Office (ATO) and the Fair Work Ombudsman (FWO) will also be enhanced. The ATO and the FWO will be given stronger powers to ensure businesses pay their employees' Superannuation Guarantee through:

- An extension of the directors' penalty regime to cover unpaid superannuation entitlements.
- Improving the capacity of the ATO to conduct proactive compliance activity and investigate workers' complaints.

STRENGTHENING CORPORATE AND TAXATION LAW

Australia's corporate and taxation law will be strengthened to better protect workers' entitlements.

ASIC Powers

ASIC will be given stronger powers to place companies into liquidation when they have been abandoned by their directors to ensure employees can get swifter access to their unpaid entitlements.

Employees working for unincorporated businesses

The ranking of employee creditors working for unincorporated companies will be improved to bring their ranking into line with the priority given to employee creditors of incorporated companies. This will be done by aligning the priority of employee entitlements under the Bankruptcy Act with the Section 556 protections of the Corporations Act.

Phoenix Company Arrangements

The Gillard Labor Government will crack down on companies that undertake 'phoenix' company behaviour where a business closes down one day and opens up the next day with a different name to avoid paying its obligations.

Directors will be made personally liable for the debts of companies that have deceptively similar names to failed businesses previously run by the same directors. The final model of this proposed law will be determined through public consultation, drawing on existing legislation in New Zealand and the United Kingdom.

The Government's response to the Action Against Fraudulent Phoenix Activity proposals paper will examine:

- An extension of the promoter penalty regime to include schemes to avoid payment of a tax.
- An extension of the director penalty regime to include PAYG(W), the Superannuation Guarantee and indirect taxes.

Financial Implications (underlying cash balance, \$m):

2010-11	2011-12	2012-13	2013-14	Total
-11.6	-15.1	-16.9	-17.2	-60.8

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