Shop Distributive and Allied Employees' Association

THE UNION FOR WORKERS IN
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SUBMISSION

Inquiry into the causes and consequences of the collapse of listed retailers in Australia

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INQUIRY INTO THE CAUSES AND CONSEQUENCES OF THE COLLAPSE OF LISTED RETAILERS IN AUSTRALIA

The SDA has over 200,000 members. These members work in the retail, fast food, hairdressing, beauty, modelling, community, pharmacy and warehousing industries.

A significant number work or worked for Dick Smith Electronics

In February Dick Smith Electronics closed its doors. Almost 2,500 workers lost their jobs and their livlihoods. Thousands of customers were adversely affected. This is something which need not have happened.

Changes need to be made to ensure such a development does not occur again.

In 2012 Anchorage Capital purchased Dick Smith from Woolworths for $20 million, but with provisos that ultimately took the value to $115 million.

A year after purchasing the business Anchorage floated the company on the stock exchange for $520 million. The share price was $2.20. An amazing turnaround!

Two years after that listing and only five months after reporting a profit of $37.9 million this company, apparently with a sales base of $1.3 billion and net debt of just over $40 million placed itself into voluntary administration.

Anchorage appears to have used its time to strip the group of cash by writing down its inventory and other assets such as plant and equipment and by then liquidating much of the inventory, thus creating conditions leading to the inflating of future profitability.

The sole desire seems to have been to make as much money as quickly as possible.

The closure of Dick Smith is directly attributable to the consequences of the actions of Anchorage Capital.

A fundamental problem facing Australia is that private equity companies such as Anchorage Capital operate largely in a policy and regulatory vacuum. To the extent that regulation applies to the conduct of private equity companies it is clear that there is inadequate control over them. They effectively retain their capacity to strip companies of assets in order to obtain quick profits. This is what appears to have happened here.

There is a serious lack of transparency in regard to the operations of most private equity. In particular the corporate governance arrangements which are applied by private equity companies are often opaque at best.

Given the current government seems to have a fixation with corporate governance standards as witnessed by its continued attacks on industry superannuation funds and industry skills councils perhaps it could turn its attention to the operations of private equity funds.

Fundamental issues relating to matters such as conflict of interest are generally present in private equity. What is in the best interest of the corporation and its employees does not always coincide with what is in the best interests of the private equity operation. It would appear that this has been the case here.

The absence of effective regulations requiring transparency of actions by private equity companies should be addressed.

Appropriate corporate governance regulations for private equity firms also needs to be addressed.

It is time private equity played by the same rules as everyone else.

Aggressive tax planning is generally seen to be at the heart of the private equity model. Did Anchorage pay the appropriate level of tax on their Dick Smith venture ? At a time when tax reform is front and centre of the political debate this question should be asked.

Rules must be put in place to ensure that multinationals including multi-national private equity firms meet their full tax obligations.

Private equity as a concept and by nature is hostile to the legitimate needs and rights of workers, yet it is workers who ultimately bear the main risk from the actions of private equity companies, in that their jobs and livlihoods are put at risk.

The impact of the actions of Anchorage has put the long term financial security of Dick Smith workers in jeopardy.

The external administrator has issued advice regarding the entitlements of Dick Smith workers. The entitlements of Australian employees rank as priority unsecured claims ahead of secured creditors and at this time are expected to be paid in full. The receiver has indicated that superannuation, annual leave, long service leave, unpaid commissions and bonuses, redundancy and any payments in lieu of notice are expected to be paid.

In the event that there are insufficient funds available to meet outstanding employee entitlements, and if the company is placed in liquidation an employee will be entitled to make a claim through the Fair Entitlements Guarantee Fund.

It is likely however that the large number of casual employees at Dick Smith will be left high and dry.

It is important to note that the FEG does not provide funds in respect of superannuation.

The FEG should be amended to secure the superannuation entitlements of workers.

Any union fees deducted and not remitted prior to January 4 2016 are unsecured claims. This is notwithstanding the fact that workers have signed union deduction authorities with the full expectation that the company will remit their deductions in a prompt manner. The non-remittance of such deductions is due solely to the negligence of the company.

This is another example of the company paying inadequate attention to the rights of its employees.

Union fees deducted and not transmitted should be treated as secured claims or as priority unsecured claims and treated in the same way as other due employee entitlements.

The General Retail Industry Award provides for consultation between the employer or the representative thereof and the union.

The SDA has indicated its grave disappointment around the lack of consultation on this entire matter. This disappointment applies to both the company and the receiver.

When the first meeting of creditors was called by the external administrator the SDA sought to attend the meeting as an unsecured creditor on the basis that the union fees of a number of workers had been deducted by the company from wages pursuant to a legal deductions authority but had not been remitted to the union. The external administrator refused to allow the union to attend on this basis although another union official was permitted to attend as a representative of a Dick Smith employee. This decision denied the union and its members their legitimate rights.

The refusal of the external administrator and the company to consult fully with the SDA, despite repeated attempts by the SDA to have this matter addressed led the union to file a notice of dispute with the Fair Work Commission. Again the legitimate rights of the union and its members were ignored. Subsequently the administrator and the company acknowledged the point and the SDA did not proceed with the dispute matter.

It is clear however that this is an area which requires tightening up.

The rules regarding external administrators need to be strengthened to make it clear that the industrial entitlements of workers such as the right to proper consultation involving themselves and their union must be followed.

The administrator has made it clear that gift cards, lay buys and other cash back promises including some warranties may not be honoured.

It should be noted that there are a significant number of Dick Smith employees affected by these decisions.

Consumers enter into arrangements such as these in good faith and are entitled to expect they will be honoured.

The SDA would support a proposal whereby external administrators were obligated to honour gift cards, lay by payments and warranties.