

Senate Education and Employment Legislation Committee Inquiry

into the

Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019 [provisions]

CFMMEU Answers to Questions Taken on Notice

At the Senate Committee hearing held on 20th September 2019 the CFMMEU took a number of questions on notice. The questions asked and the CFMMEU responses are set out below.

BERT Fund

Senator O'Sullivan asked Mr Noonan the following questions (emphasis and underlining added):

Senator O'SULLIVAN: I'll just take you to the royal commission. No. 136 says:

Another feature of the BERT scheme is that the monies held by BERT and described as the 'Welfare Fund' are applied to certain welfare programs that are available only to members of the CFMEU, BLF and CEPU and their families.

Can you please tell us what measures you've taken since the royal commission to address that issue?

Mr Noonan: I'm not across the fine detail of every single fund, first of all, but it's my understanding that that's not correct—or it's not currently correct.

Senator O'SULLIVAN: The royal commission finding was not correct?

Mr Noonan: Well, that is not currently the situation with BERT.

Senator O'SULLIVAN: So, you've taken steps to remedy that issue?

Mr Noonan: Perhaps it would be better for me to take that question on notice.

.....

Mr Noonan: If further information is required, it can be elicited from the fund directly, or we'd be prepared to elicit the information. It's at your discretion as to how that happens.

Senator O'SULLIVAN: Yes, because the royal commission was critical that these benefits were being confined to financial union members. Do you know whether this is the same practice? Are you aware whether this is still going on? Or is it available to all members, not just those who are financial members of the union?

Mr Noonan: We're happy to respond to that on notice and suggest also that BERT may be able to assist you with that.

CFMMEU Response

As Mr Noonan is not a director of the BERT fund he is not in a position to make a decision affecting the operation of the fund. His suggestion that the information could be elicited from the fund directly was taken up by the Committee members and the same line of questioning was asked of the BERT fund at the hearing in Sydney. The CFMMEU defers to the direct response of the BERT fund contained in the following exchange:

Senator DAVEY: A concern raised in the royal commission was that union members get extra benefits compared to non-union members, despite the fact that the two parties make the same contributions.

Mr Shenfield: I don't know, as I said to you earlier, but I would estimate that the great bulk—a huge amount—of those workers who are members of BERT are also union members. But I can't clarify that, because we don't pursue that sort of information from members.

Senator DAVEY: So BERT hasn't taken any steps to address the concerns of the trade union royal commission since those findings and those recommendations were handed down?

Mr Shenfield : No, it hasn't.

Employer Contributions to Funds and Money Paid to the CFMMEU

Mr Noonan was asked the following questions (emphasis and underlining added):

Senator DAVEY: *In your submission you pointed out that worker entitlement funds in the building and construction industry have paid out \$2.5 billion in entitlements to workers since their establishment, which is a good thing. **But do you know how much money was paid into the funds by employers?***

Mr Noonan: *Again, I'll take that on notice, but it would be a substantial amount more. Money is obviously being held in trust, and not everybody gets made redundant at the same time. I am aware of course that there are circumstances in which you have a big downturn in the industry, a big correction in the economy, and of course the building and construction industry is one of the most exposed areas there. And you do see large amounts of payouts, sometimes exceeding the pay-ins in those periods of time, and the funds are obviously obliged under their trust deeds to ensure that their actuarial projections mean that they can easily meet liabilities and that their funds are liquid enough that they can be drawn as they're required.*

Senator DAVEY: ***I appreciate that. But, over the same period, do you know how much money, if any, was paid from those funds to the CFMMEU or its predecessor?***

Mr Noonan: *We have included in the submission a number of examples where there are distributions. The answer is, yes, there have been occasions where moneys have been paid to the union. They are paid for particular purposes, such as training and occupational health and safety. In all of those cases, they are accounted for and there is a requirement for the union to be accountable about how those moneys are being spent. An example would be the CFMEU training centre in Victoria. I think the plumbing trade union also have one and indeed the Master Builders have training centres. These are state-of-the-art training centres as well. The redundancy funding has assisted in that. Thousands and thousands of workers are undergoing vocational education and training through those bodies. In addition to the amounts that redundancy funds have contributed, unions have actually put their own capital into those centres as well. I think, if the committee has the time, it would be well worth looking at the CFMEU training centre at Fishermans Bend. It is a first-class training centre that mainly deals with high-risk work like cranes, docking, rigging, asbestos removal and so on. I know the plumbers union have a very innovative training centre that deals particularly with the requirements of green plumbing. They could talk about that some more. The Master Builders have a very sophisticated training centre, with computerised facilities as well. I haven't seen that one, but I understand it's impressive.*

Senator O'SULLIVAN: ***Do you know the amount, though, that Senator Davey was just asking about? You can take it on notice.***

Mr Noonan: *We would have to take it on notice.*

CFMMEU Response

The CFMMEU has asked the funds, referred to in its submission, the above questions. The responses received to date are the following (NB the figures do not include directors fees):

ACIRT Fund

Total employer contributions received since its establishment: \$2.2 billion (and the fund has paid out \$1.7 billion in benefits).

Since 1st July 2012, ACIRT has paid \$17,827 to advertise in union journals and \$22,400 for sponsorship of conferences, etc.

BERT Fund

Total employer contributions received since its establishment (i.e. 1998 -2019): \$798.8 million (and the fund has paid out \$649.4 million to members).

Between 2007 and 2019 the Bert fund paid the following amounts on welfare outlays (NB in regard to the payments made to the CFMMEU the funding of the Health and Safety Officer and the Drug and Alcohol/Impairment Program are by way of grants, **the funeral payments are for claims made by CFMMEU members i.e. the CFMMEU acts as a conduit between the fund and the member**):

Welfare Outlays 2007 to 2019

Total Paid: \$123.1M (NB This is for all welfare related payments not just money paid to the CFMMEU.)

| | |
|-------------------------------------|-----------------------|
| <u>CFMMEU payments</u> | |
| Funeral Benefits | \$6.0 million |
| Health & Safety Officer | \$3.4 million |
| Drug and Alcohol/Impairment Program | \$812,000 |
| Total: | \$10.2 million |

(NB the Health and Safety Officer and Drug and Alcohol/Impairment Program service the whole industry and not just CFMMEU members.)

| | |
|---------------------------------|----------------|
| <u>Employer Payments</u> | |
| Work Injury Management Service | \$11.9M |

The BERT Fund has also contributed in excess of \$64 million to the BERT Training Fund (a separate legal entity) which provides assistance to the industry for training (see paragraphs 25 to 27 of the CFMMEU written submission).

BIRST Fund

Total employer contributions received since its establishment: \$207 million

Distributions made from the surplus funds:

| Year (financial year ending in June) | Organisation | Amount | Purpose of distribution |
|---|---------------------|---------------|---------------------------------|
| 2003 | MBA | \$705,546.16 | MBA |
| | PIA | \$ 54,150.00 | PIA Courses |
| | MPA | \$ 61,000.00 | MPA training Liaison Officer |
| | CEPU | \$ 69,321.00 | CEPU Enterprise Bargaining |
| | CFMEU | \$ 73,431.69 | CFMEU |
| | Insurance | \$146,050.10 | |
| | COIDAP | \$ 22,500.00 | |
| 2004 | CEPU | \$ 59,900.00 | CEPU Enterprise Bargaining |
| | Insurance | \$170,738.60 | |
| 2005 | CEPU | \$ 43,875.00 | CEPU Enterprise Bargaining |
| | Insurance | \$ 99,912.00 | |
| | COIDAP | \$ 10,000.00 | |
| 2006 | MBA | \$ 61,840.00 | MBA Workchoices Education grant |

| | | | |
|------|-----------|----------------|-----------------------------------|
| | CFMEU | \$102,948.00 | CFMEU Workchoices education |
| | Insurance | \$329,255.18 | |
| | | | |
| 2007 | MBA | \$950,000.00 | MBA Training foundation |
| | COIDAP | \$ 24,000.00 | |
| | | | |
| 2008 | CEPU | \$100,722.00 | CEPU Workchoices Education |
| | Insurance | \$190,000.00 | |
| | | | |
| 2009 | MBA | \$1,000,000.00 | MBA Training Foundation |
| | COIDAP | \$ 20,000.00 | |
| | Insurance | \$200,894.68 | |
| | | | |
| 2010 | PIA | \$ 21,670.00 | Skills Tracker and Business Admin |
| | COIDAP | \$ 35,000.00 | |
| | Insurance | \$214,871.11 | |
| | | | |
| 2011 | PIA | \$ 56,040.00 | Skills Tracker and Business Admin |
| | CEPU | \$143,625.00 | CEPU FWA Education |
| | CFMEU | \$130,000.00 | CFMEU FWA Education |
| | | | |
| 2012 | PIA | \$ 30,720.00 | Skills Tracker and Business Admin |
| | CEPU | \$148,955.00 | CEPU OH&S Education |
| | | | |
| 2013 | PIA | \$ 30,720.00 | Skills Tracker and Business Admin |
| | | | |
| 2014 | MBA | \$800,000.00 | MBA Group Training |
| | PIA | \$ 22,000.00 | Master Plumbers – Business Mate |
| | CEPU | \$140,000.00 | CEPU OH&S Education |
| | | | |
| 2015 | PIA | \$ 22,000.00 | Master Plumbers – Business Mate |
| | CFMEU | \$364,800.00 | |
| | | | |
| 2016 | MBA | \$367,946.00 | MBA Distribution |
| | PIA | \$ 22,000.00 | Master Plumbers – Business Mate |
| 2017 | PIA | \$ 22,000.00 | Master Plumbers – Business Mate |
| | CFMEU | \$250,000.00 | CITC |
| | | | |
| 2018 | CEPU | \$ 95,500.00 | CEPU Apprentice Support |
| | CFMEU | \$470,838.00 | CFMEU Improve Health and Safety |
| | | | |
| 2019 | CFMEU | \$300,045.00 | CFMEU Silica Education |
| | | | |
| | | | |

(PIA – Plumbing Industry Association, COIDAP – Construction Industry Drug and Alcohol Program, CITC – Construction Industry Training Centre)

Incolink Fund

Total employer contributions received since its establishment: Approximately \$2.6 billion.

The only funding Incolink provide to employer and employee representative organisations such as the MBAV and CFMMEU are via industry skills training and OH&S training and awareness projects and via periodic sponsorship and donations which the Incolink Board considers and assess against its specific Sponsorship and Donations Policy. The annual grant funding provided to these organisations are reported in the annual reports. For the past 5 years they amount to:

| Incolink Skills Training & OH&S Training and Awareness Projects Grants | | | |
|--|----------------|----------------|-----------------|
| FY | Training | OH&S | Total |
| 2011 | | | \$12.4m |
| 2012 | | | \$12.9m |
| 2013 | | | \$20.8m |
| 2014 | | | \$21.4m |
| 2015 | \$16.5m | \$5.5m | \$22.0m |
| 2016 | \$17.1m | \$5.4m | \$22.5m |
| 2017 | \$16.3m | \$4.8m | \$21.1m |
| 2018 | \$16.2m | \$4.8m | \$21.0m |
| 2019 | \$18.0m | \$4.8m | \$22.8m |
| Totals | \$84.1m | \$25.3m | \$176.9m |

Out of these amounts the total Training & OH&S grants for the CFMMEU for the last 5 years are:

Training = \$31.9m (37.9% of the total paid to employer and employee representative organisations)

OH&S = \$7.9m (31.2% of the total paid to employer and employee representative organisations)

In relation to sponsorship and donations to the CFMMEU specifically, since 2009 Incolink have provided circa \$180,000 in total.

REDDIFUND

Total employer contributions received since its establishment:

| | |
|----------------------------|----------------------|
| WACIRF (Old fund – closed) | \$ 90,030,713 |
| ReddiFund | \$143,416,437 |
| Total | \$233,447,150 |

Grants have only been provided by WACIRF (Old Fund) via their Beneficiary Accounts between 1989 and 2009.

Grants made from BTA beneficiary account:

| | | |
|------------------------------|-----------|---|
| CFMEUWA / BTA | \$894,664 | |
| CEPU | \$ 5,000 | |
| Fire Contractors Assoc of WA | \$ 15,000 | (These funds were paid directly to Payee) |
| Mater Foundation | \$ 10,000 | (These funds were paid directly to Payee) |

Grants made from MBA beneficiary account:

| | |
|---|---|
| Master Builders Assoc WA | \$451,373.00 |
| Master Plumbers & Gas Fitters Assoc WA | \$ 14,545.45 |
| Construction Contractors Assoc WA | \$ 14,545.45 |
| Master Painters & Decorators Assoc WA | \$ 15,000.00 |
| MPA Skills | \$100,248.50 |
| Plumbers Painters Industry Skills Training Centre | \$162,920.09 |
| Fire Contractors Assoc of WA | \$ 15,000.00 (funds paid direct to Payee) |
| Mater Foundation | \$ 10,000.00 (funds paid direct to Payee) |

NOTE: No grants have been provided by ReddiFund.

Compliance Fees

Mr Noonan was asked the following question (emphasis and underlining added):

Senator O'SULLIVAN: Compliance fees received by the CFMMEU from BERT and other funds in the past three years—do you have those figures to hand?

Mr Noonan: I will take it on notice. I understand there is some arrangement and that the union has provided some assistance in ensuring that the funds are paid and that there is recovery where there are late payments and so on. But I don't have those figures. I am certainly happy to provide them on notice.

CFMMEU Response

The CFMMEU has asked the funds referred to in its submission the above question. The responses received to date are the following:

ACIRT

ACIRT does not pay compliance fees to organisations.

BERT

The following amounts were paid to the CFMMEU for assisting with compliance and promotion of the fund over the period 2017 to 2019:

From BERT Entities \$414,000

BIRST

Over the past three years there has been no fees paid to the CFMMEU by the Fund, for compliance.

Incolink

Incolink has not and does not pay the CFMMEU any compliance fees. Incolink stakeholders (MBAV and the Union Parties on its Board) rightly assist it whenever necessary to ensure proper compliance with the trust deed in respect of the required contributions pursuant to an Industrial Instrument. There is no fee arrangement for this expected assistance.

REDIFUND

Nil. There has been no payments made at all.

Costing of Training

Mr Noonan was asked the following questions (emphasis and underlining added):

Senator DAVEY: I have one final question. You provide the training and OH&S services to these funds. Are those services provided at comparable market rates? How are they costed out?

Mr Noonan: As I understand it in relation to Incolink—and I should probably follow this up on notice—applications are made for a grant, so it's taken in that form.

CFMMEU Response

The CFMMEU has asked the funds referred to in its submission the questions referred to above. The responses received to date are the following:

ACIRT

ACIRT does not pay for training and OH&S services.

BERT

The CFMMEU does not provide training and/or OH&S services to the fund. It provides services to BERT members and the industry. The CFMMEU receives financial assistance to provide apprentice mentoring services by way of grants from BERT Training Fund. Each application for a grant is assessed in accordance with the funds policy requirements (which are similar to standards applied to government grants) and expenditure of the grant must be fully audited each year.

BIRST

The CFMMEU does not provide training and/or OH&S services to the fund.

Incolink

The CFMMEU does not provide training and/or OH&S services to the fund. It provides it to Incolink members and the industry. Incolink provides grants to employer and employee representative organisations such as the MBAV and CFMMEU who then use the grant moneys to provide industry skills training and OH&S training and awareness projects. Each year Incolink receives annual grant funding applications from prospective grantees (employer and employee representative organisations such as the MBAV and CFMMEU), which the Incolink Board and via its charitable subsidiary, Incolink Foundation Ltd (in consultation with the Victorian Government) assess the applications based on the funds specific principles and criteria for training and OH&S grants.

REDIFUND

Nil. There has been no payments made for any training or OH&S services.

Three things That Should be Taken Out of the Bill

Mr Noonan was asked the following questions (emphasis and underlining added):

Senator PATRICK: I am seeking help. I'm going to meet with the Attorney and look at the things. If you were walking along the road and you kicked a bottle over and a genie popped out and said, 'I am going to give you three things you can take out to this bill,' what would the three things be? What is the worst thing? I am seeking your help in where I should direct my attention.

.....

Mr Noonan: I think we would be in a position to provide you with those parts of the bill that we find to be the most oppressive and difficult on notice rather than having me try to go through that.

CFMMEU Response

The CFMMEU has considered the question and finds it impossible to limit to three the provisions we find objectionable. The specific provisions in the Bill we find objectionable are the following:

- The interference in collective bargaining and prohibition on agreements requiring contributions to be paid to only one specific fund (see proposed additions to s.194 of *the Fair Work Act 2009* in Schedule 2)
- Use of the ROC rather than ASIC to register and regulate worker entitlement funds (see proposed Part 3 in Chapter 11 of the *Fair Work (Registered Organisations) Act 2009* in Schedule 2)
- The requirement for independent directors with veto powers over decisions on payments for training and welfare services (see proposed s.329LA and s.329LD(d) and (e) of the *Fair Work (Registered Organisations) Act 2009* in Schedule 2)
- The powers given to the Minister to intervene in the internal administration of funds and make rules for the funds (see proposed s.329NJ of the *Fair Work (Registered Organisations) Act 2009* in Schedule 2)
- The intrusion into the legitimate decision making processes of the funds and imposition of imprecise restrictions on donations to charities, and training and welfare payments (see proposed s.329LB and s.329LD of the *Fair Work (Registered Organisations) Act 2009* in Schedule 2)
- The overly prescriptive conditions for registration of worker entitlement funds and the overly excessive reporting requirements for training and welfare payments (see proposed s.329LA of the *Fair Work (Registered Organisations) Act 2009* in Schedule 2)
- The recognition given to unregistered and unregulated single-employer funds (see proposed s.329HC(4) and s.329HD of the *Fair Work (Registered Organisations) Act 2009* in Schedule 2)
- The unnecessary detailed and prescriptive obligations (over and above existing rule requirements) for financial management policies of unions (see proposed changes to the *Fair Work (Registered Organisations) Act 2009* in Schedule 1)
- The unnecessary interference in the award making powers of the Fair Work Commission as to what can be included in terms in an award (see proposed s. 151A of the *Fair Work Act 2009* in Schedule 2)
- The interference in collective bargaining and the making unlawful of terms requiring payments in relation to training and welfare unless the funds are of a certain type (see proposed changes to s.194 of the *Fair Work Act 2009* in Schedule 2)
- The excessive and cumbersome additional disclosable arrangement provisions for registered organisations which not only add more complexity to existing disclosure requirements but which are discriminatory as they only apply to unions and not employers (see proposed Part 3D of Chapter 11 of the *Fair Work (Registered Organisations) Act 2009* in Schedule 5)
