



**Submissions of the CPSU (SPSF) to the Senate Education and Employment Committee
inquiry into the Fair Work Laws Amendment (Proper Use of Workers Benefits) Bill 2019
[provisions]**

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Federal Secretary
CPSU (SPSF)
Submitted on her behalf by:
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A. INTRODUCTION

1. The SPSF Group of the CPSU, the Community and Public Sector Union predominantly represents State Government employees in New South Wales, Victoria, Western Australia, South Australia and Tasmania.
2. These submissions will principally deal with the proposed new Part 3C of the *Fair Work Laws Amendment (Proper Use of Employer Benefits) Bill 2019* concerning worker entitlement funds.

B. GENERAL ANALYSIS

3. This Bill seeks to increase the power of the Registered Organisations Commission (“ROC”) to an unprecedented level. It seeks to add bureaucratic complexity to an already heavily regulated and robust system of governance. In some instances, the reporting and governance standards are higher than those that apply to banks and other corporations.
4. The Bill establishes a harsh new regulatory and registration regime for worker entitlement funds which will impact on the effectiveness of funds which provide redundancy and insurance payments. The Bill will effectively shut down worker-run funds while allowing employers to set up and run their own funds.
5. It is difficult to avoid the conclusion the purpose of this Bill is ideological: to create one set of rules for working people and another for corporations.

C. REGULATION OF WORKER ENTITLEMENT FUNDS UNDER THE PROPOSED PART 3C

Current operation of the funds

6. Accounting and governance standards already apply to the operation of funds that would be caught by the new Part 3C.
7. The proposed new provisions will place a heavy and unnecessary compliance burden on union operated funds overseen by the Registered Organisations Commission.
8. Worker entitlement funds commonly provide cover for redundancy and other employment entitlements that are accessed on termination of employment. These funds principally operate in industries with a high incidence of phoenix companies who desert their workers and have unfunded entitlements. The currently operating funds save the Commonwealth millions of dollars that would otherwise be claimed against the *Fair Entitlement Guarantee Scheme*. The benefits provided by these funds are an unequivocal social good.

The proposed regulation

9. The “worker entitlements” covered by the Bill include payments in lieu of or, in respect of, leave, any payments in relation to termination of employment, and any payment which a fair work instrument or contract of employment provides that an employer must make in relation to an employee.
10. The Bill requires “worker entitlement funds” to be registered with the ROC. These are funds that provide “worker entitlements” and are for the purpose (or purposes including): paying

worker entitlements to any or all of its members, to death benefit dependants of those members, to the legal personal representative of those members, or any fund prescribed by the Rules of the Act.

11. The Bill places heavy restrictions on the operation of registered funds including:
 - 11.1. They cannot be run by a union;
 - 11.2. They must have at least one independent director;
 - 11.3. External transfers are limited to training and welfare payments that meet rigid criteria and are individually disclosed; and
 - 11.4. The fund cannot distribute income to anyone except a member of the fund (or their beneficiary) or a contributor to the fund.
 - 11.5. Any disbursement from a fund to a training organisation needs to be approved by the independent director, and no disbursements can go to the fund or organisation that is operated exclusively for union members.
12. These provisions are not found in the regulation of commercial offerings and are a substantial and unjustified interference in the governance of these entities. There is simply no justification for this discriminatory treatment.
13. The Bill also prohibits certain terms being negotiated in enterprise agreements including:
 - 13.1. Terms that require or permit payments to be made for insurance cover, unless each employee can choose the individual product cover;
 - 13.2. The payment of funds into training or welfare funds, unless those programs are registered workers entitlement funds.
14. This effectively takes away the ability of workers to bargain for the kinds of training programs that unions currently run with great success.
15. A number of these funds are set up under a trust and a company is created to administer the trust. The bill proposes for the funds to be regulated under the *Fair Work (Registered Organisations) Act 2009*. Presently, worker entitlement funds are not regulated by the ROC.
16. In some instances, regulated funds will need to submit reports to ASIC, the ATO and the ROC. The requirement to report to a series of agencies creates the risk that compliance costs will impact on the provision of benefits through these funds.
17. If this Bill becomes law, it will have another troubling side effect. The ROC will gain a capacity to investigate people not otherwise covered by the *Fair Work (Registered Organisations) Act 2009* including people who administer the funds.

D. CONCLUSION

18. The provision of worker benefits by the funds sought to be covered by this Bill allow working people to insure and hedge against the risk that their benefits may not be provided by the employer. This is an unassailable social good.
19. The prescriptive regulation in this Bill will only add to compliance costs of funds that are already strictly regulated. The prescriptions that would determine the manner in which these funds are administered will lead to costly and unnecessary restructuring.
20. If this Bill was seeking to address governance issues, then the focus of regulation would extend to any funds seeking to provide these benefits. The fact this Bill targets union run funds suggests the purpose of the Bill is not about addressing governance concerns.
21. The existence of these funds can be seen to be an active self-help mechanism by working people. It is ironic the current Federal Government is seeking to over regulate the capacity of citizens to provide for themselves through these funds. These funds are “having a go” and deserve to “get a go” without being crushed by regulation.
22. The Committee should recommend this Bill be withdrawn.

END