SENATE

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

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

(Public)

FRIDAY, 20 SEPTEMBER 2019

MELBOURNE

Senator PATRICK: Can you give me another sector where there are independent operations with money that is not taxpayers' money where a minister could intervene?

Mr Mathias: I'll take that on notice.

RESPONSE

Under section 1211 of the Corporations Act 2001 The Minister may, by legislative instrument, make rules that provide for matters relating to passport funds, or entities connected with passport funds.

Senator PATRICK: But you've not given a submission to the committee that would evidence that what you say is—

Mr Mathias: I will table the research.

RESPONSE

See attached

1. The corporate union business model: monetising workplace relations

Key points:

- Between 2003 and 2016/17, Australia's 15 largest trade unions increased their combined yearly revenue from approximately $394.4 million to $748.4 million. This equates to an increase of 89 per cent or an average of $26.27 million per union each year
- Over the same period, the total asset wealth of these 15 major unions has nearly trebled, growing from $572.57 million to a staggering $1.55 billion. This equates to an increase of 170 per cent, or $65 million per union.
- The asset wealth of 9 of Australia's 15 largest unions has outpaced the growth of the ASX All Ords Price Index since 2003, some by a significant margin
- The CFMEU's 2017 income (prior to merging with the MUA) was greater than Greyhound Australia and Fuji Xerox Asia Pacific
- The combined assets of Australia's 15 largest trade unions is nearly equal with the market capitalisation of Pilbara Mine Limited, and greater than the market capitalisation of Bega Cheese Limited and Seven West Media Limited

1.1 Growth in union income

Falling rates of trade union membership belie the fact that in financial terms, virtually all trade unions have seen their incomes rise considerably in the last fifteen years. The chart below examines the financial performance of the 15 largest trade unions based on membership size.

Table 3 Major trade unions ranked according to growth in income[59]

Trade union	2002/3 income	2016/17 income	Per cent increase income
CEPU	19,483,100	72,364,000	271
ANMF	18,961,200	68,358,000	262
MUA	6,794,500	19,385,000	185
AEU	24,002,900	52,053,500	117
ARBTIU	10,987,900	22,929,000	109
NUW*	12,853,000	24,759,000	93
HSU	10,445,000	20,093,800	92
CFMEU	75,193,900	138,887,000	85
United Voice	35,222,300	62,589,800	77
ASU	22,468,200	39,308,500	75
SDAEA	34,701,400	59,512,400	72
CPSU	28,460,700	43,730,700	54.
AWU	32,315,800	45,412,800	41
AMWU	41,829,200	54,340,300	37
TWU	20,317,300	24,656,100	21
Total	**394,036,400**	**748,379,900**	**89**

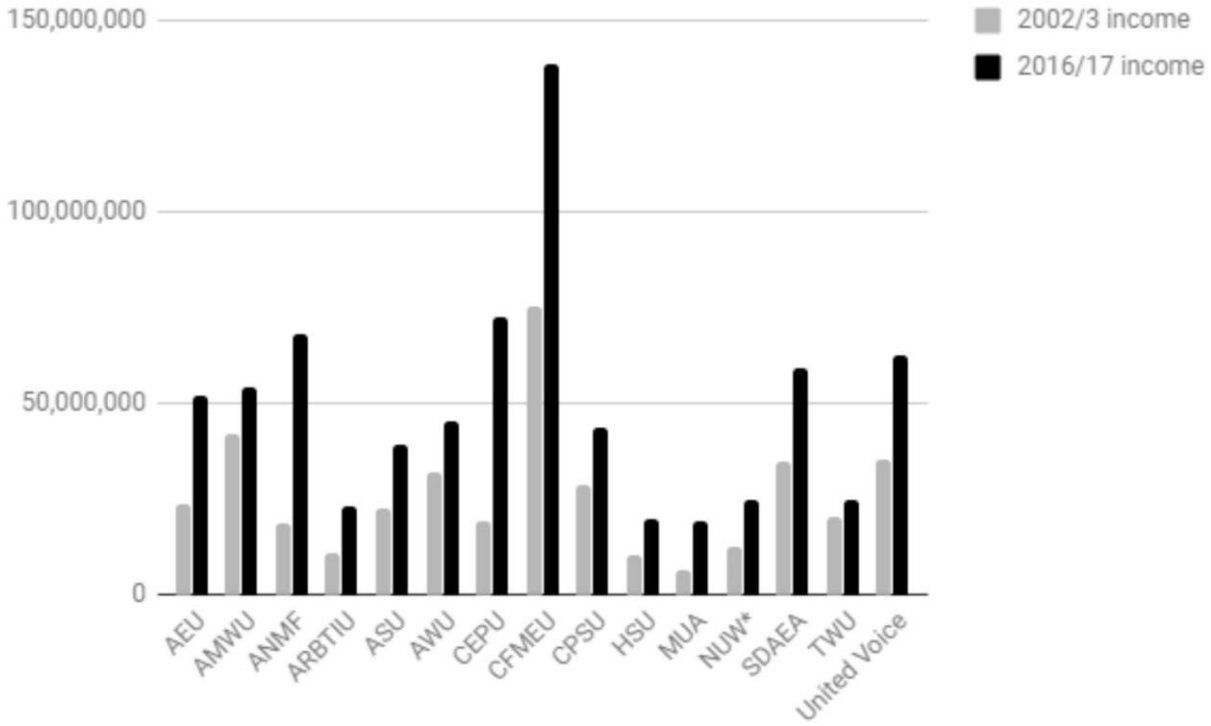
*earliest available comprehensive data for NUW is 2008

19 Registerd Organisations Commission, various (2018) < http://www.roc.gov.au/find-a-registered-organisation>

Methodology

This data has been compiled by combining the revenue of individual branches contained in financial disclosures to the Registered Organisations Commission. The figures have been rounded down and should be taken as estimates based publicly available information, not the findings of an audit. Note that some the reporting periods of some trade unions differ from the standard financial year (ie. 1 October – 30 September, 1 January to 30 December). The above figures therefore reflect the available reporting periods that most closely coincided with the 2002/3 and 20016/17 financial years.

Figure 11 Growth in union income from 2002/3 to 2016/17



1.2 Growth in union asset wealth

The rise in union asset wealth has outpaced income growth. Of the 15 trade unions examined, the asset growth of nine significantly exceeded the growth of the ASX All Ords Price Index, which roughly doubled between 2003 and 2017.

Table 4. Major trade unions ranked according to growth in asset wealth[60]

	2002/3	2016/17	% increase in asset wealth
ANMF	12,170,700	140,082,000	1050
CEPU	28,932,100	152,094,000	426
AEU	23,235,700	43,211,000	302
SDAEA	48,542,200	176,955,000	265
AWU	38,390,800	139,140,000	262
CPSU	19,453,800	57,069,000	193
NUW*	17,789,200	51,015,000	187
ARBTIU	22,736,600	54,356,000	139
HSU	6,471,300	15,371,000	138
AMWU	62,587,000	129,404,000	106
CFMEU	137,543,000	278,242,000	102
United Voice	79,037,000	147,914,000	87
MUA	25,471,000	45,509,000	79
ASU	24,306,000	37,234,000	53
TWU	26,505,000	33,048,000	24

*earliest available data for NUW is 2008

Methodology

This data has been compiled by combining the total revenue of union's individual branches from financial disclosures made available through the Registered Organisations Commission website. The figures have been rounded down and should be taken as an estimate, not a definitive number.

20 Registerd Organisations Commission, various (2018) < http://www.roc.gov.au/find-a-registered-organisation>

Figure 12 Growth in union asset wealth from 2002/3 to 2016/17

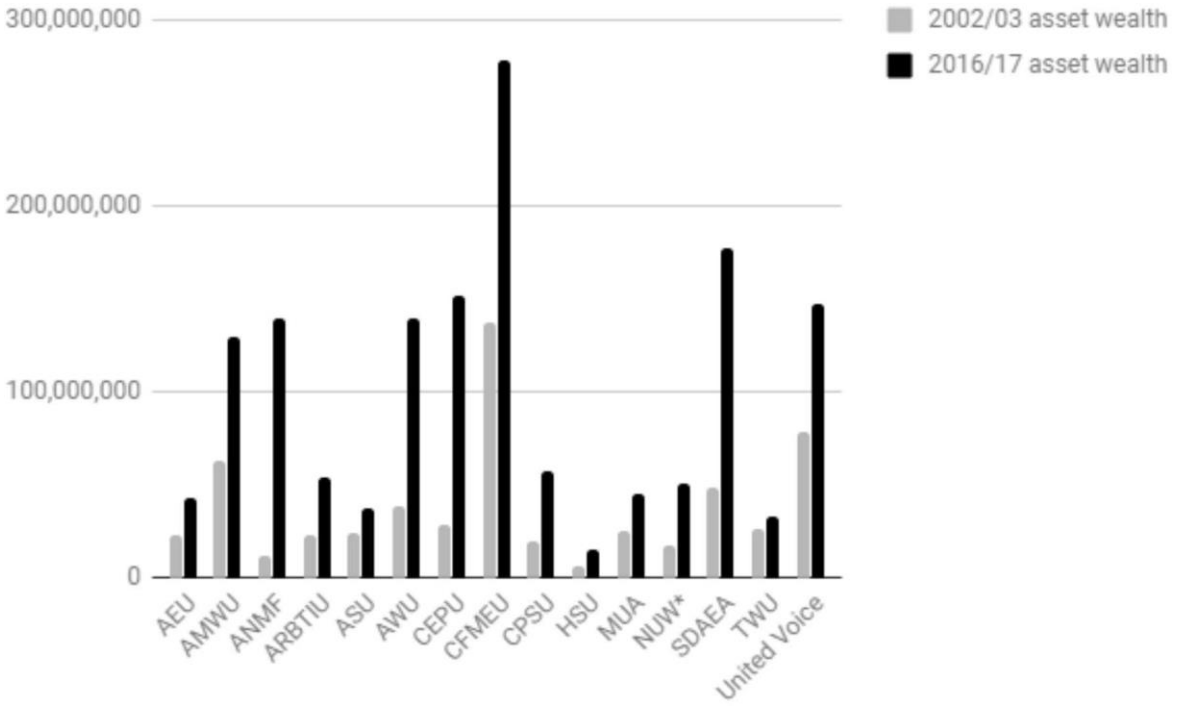
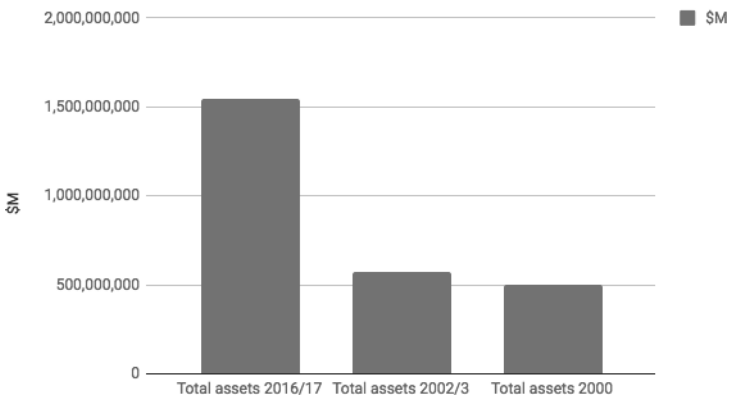


Figure 13 Unions ranked according to growth in asset wealth from 2002/3 to 2016/17

Figure 14 Growth in asset wealth of 15 largest trade unions between 2000 and 2016/17



(sources: Registerd Organisations Commission, various (2018) < http://www.roc.gov.au/find-a-registered-organisation>)

1.3 No members? No worries!

It seems intuitive that as a voluntary organisation, the size of a union's membership would bear heavily on its financial performance. Yet as the table below illustrates, the correlation between a trade union's membership numbers and its financial performance is weak, at best.

Neither is declining membership necessarily associated with a deteriorating financial position. Several of the unions which experienced a marked downturn in membership numbers such as the CEPU, CFMEU and NUW, financially outperformed other unions like the SDAEA and ASU which suffered far smaller reductions in their membership.

Table 5. Growth in union income compared to change in membership size between 2003 – 2016/17

Trade union	Per cent increase income between 2003 - 2016	Per cent change in membership between 2003 - 2016
CEPU	271	19.2 decrease
ANMF	262	84.05 increase
MUA	185	38 increase
AEU	117	18 increase
ARBTIU	109	6.3 decrease
NUW*	93	*18.1 decrease
HSU	92	19.7 increase
CFMEU	85	22.6 increase
United Voice	77	22.6 decrease
ASU	75	1.4 decrease
SDAEA	72	1.8 decrease
CPSU	54	23.7 decrease
AWU	41	39.4 decrease
AMWU	37	52 decrease
TWU	21	15.4 decrease

*earliest available data for NUW is 2008

1.4 Mimicking the big end of town

The financial performance of some of the largest trade unions now surpasses a host of major national companies and the Australian operations of large multinational corporations.

Table 6. Combined income of 15 largest trade unions compared to selected companies

Company	Revenue ($M)
15 largest trade unions	748.38
Ray White Group	713.65
J.J. Richards & Sons	678.44
Brisbane Airport	679.76
Ray White Group	713.65
Credit union Australia	693.11
LJ Hooker	566.1

(source: Registered Organisations Commission, various (2018) < http://www.roc.gov.au/find-a-registered-organisation>)

Table 7. CFMEU 2016/17 income compared to selected private companies

Company	Revenue ($M)
Bond University	$180.37
Victoria Racing Club	$160
Dyson Group	$139.6
CFMEU	$138.88
K&L Gates	$134.5
Greyhound Australia	$129
Fuji Xerox Asia Pacific	$113

Table 8. Combined assets of 15 largest trade unions compared to market cap of selected public companies

Company	Amount ($B)
Fairfax Medialimited	1.86
Pilbara Mine Limited	1.53
Assets of 15 largest unions	1.5
Bega Cheese Limited	1.352
Seven West Media Limited	1.251

2. Case studies in corporate unions

A closer inspection of the financial affairs of individual unions provide an insight into how unions have monetised their role in workplace relations. As these case studies illustrate, the union movement's transition to a corporate business model has relied on two major policy initiatives introduced by the Keating Government - compulsory superannuation and enterprise bargaining.

2.1 Australian Manufacturing Workers' Union (AMWU)

The Australian Manufacturing Workers' Union represents manufacturing workers employed in food and confectionery; metal and engineering; printing, design and packaging; technical, laboratory, supervisory and administrative; vehicle building service and repair.

In summary, the AMWU has:

- Experienced a severe drop off in membership from 141,544 in 2003 to 68,008 by 2017 - a decline of 52 per cent
- Despite this, the AMWU's asset wealth has increased by 187 percent, placing it among the most asset-rich unions.
- Over the same period, the AMWU's income has continued to rise. The AMWU's central office branch receives all membership dues and accounts for the vast majority of revenue received across branches nationwide. The financial reports of the AMWU's central branch reveal that income from membership dues has grown by $5m, while income derived from other sources has increased by nearly $11m.
- Income itemised as 'sundry income,' which includes dividends, income from the AMWU's income protection scheme, training course fees, promotional income, board fees and miscellaneous income has grown from $2,586 in 2003, to $4,001,347 in 2017[61]

Table 9. AMWU central office selected financial disclosures

	Total Income	Assets	Sundry Income*	Board Fees	Rent Received
2017	47,912,158	129,201,677	4,001,347	418,971	1,123,547
2016	52,076,486	134,967,897	5,119,900	338,136	2,540,157
2015	53,616,888	127,081,868	5,372,499	395,790	2,467,035
2014	55,256,010	122,406,494	4,665,711	373,426	2,590,560
2013	53,947,014	117,000,556	3,647,665	318,040	2,469,503
2012	54,350,676	111,315,911	4,064,862	260,405	2,359,367
2011	50,715,252	102,028,280	1,618,515		2,416,837
2003**	37,196,706	68,811,088	2,586		2,576,387
			29,493,085	2,104,768	

*includes board fees

** incomplete data available for 2004 - 2010

21 Registerd Organisations Commission, AMWU, financial reports - various (2018) < http://www.roc.gov.au/find-a-registered-organisation/amwu/amwu>

2.2 CEPU electrical, energy and services division Victoria (ETU)

The Victorian electrical, energy and services division of the CEPU, publicly branded as the ETU, has among the highest revenues of any union branch in Australia. The division represents members working in the electrical and communications contracting industry, power, manufacturing, education, hospitality, aerospace, food and other industries.

In summary, the Victorian branch of the ETU has:

- Grown its membership by 343 since 2003 to a total of 17,485 members in 2016
- Increased its annual revenue by $6,394,751, or 71.2 per cent
- A significant proportion of its income growth is attributable to trust distributions ($5.9 million), $26.9 million in management fees (26.9 million), directors fees ($3 million) and administration income ($16.6 million) received between 2003 and 2016[62]

Table 10. ETU Victoria selected financial disclosures

	Total Income	Administration Income	Directors Fees	Trust Distributions	Management Fees	Profit Distributions
2016	15,366,583	4,371,766	210,430	975,000		
2015	15,423,029	4,105,943	203,100	1,574,998		
2014	16,380,383	4,057,517	197,895	971,250	2,870,624	
2013	16,312,584	4,125,849	229,770	217,500	2,821,987	
2012	12,104,391		314,592	149,995	3,029,269	
2011	11,743,516		300,195	1,325,925	2,676,693	
2010	15,280,929		297,998	0	2,627,525	
2009	12,275,139		110,417	0	3,392,096	
2008	11,465,507		279,491	0	3,367,119	411,892
2007	8,949,892		293,645	0	1,274,671	4,860,605
2006	12,456,879		233,703	283,939	1,836,941	1,472,134
2005	12,400,779		334,406	401,963	1,695,673	2,067,010
2004	9,544,310			23,662	1,368,509	59,728
2003	8,971,832			0	0	
Total	178,675,753	16,661,075	3,005,642	5,924,232	26,961,107	8,871,369

Monetising enterprise bargaining

The management fees and other income sources set out above relate to arrangements connected to the ETU's role in enterprise bargaining. For example, Protect is a redundancy and income protection scheme for workers, paid for by weekly contributions made by employers pursuant to enterprise agreements negotiated by the ETU. The Royal Commission into Trade Union Corruption identified that through a "complex series of arrangements" the ETU is paid a management fee of 20 per cent of the cost of coverage provided by Protect. In other words, the ETU derived commissions worth millions of dollars by negotiating pay agreements that required employers to purchase an insurance product in which the ETU held a direct interest.

22 Registerd Organisations Commission, CEPU, financial reports - various (2018) <http://www.roc.gov.au/find-a-registered-organisation/cepu/communications-electrical-electronic-energy-information-postal-plumbing-and-allied-services-union>

The lack of itemised income sources in the ETU's financial statements makes it difficult to calculate the proportion of the distributions, management fees and similar payments attributable to arrangements like the Protect deal. This alarming lack of transparency should be addressed in future reforms.

The pattern agreement negotiated between the ETU and the Victorian Chapter of the National Electrical and Communications Association shows that the cost of purchasing coverage from Protect is substantial.

For the period of 2010 to 2014, the agreement required that employers make the following contributions to Protect:

- $65.00 per week per employee up to 30 September 2011;
- $70.00 per week per employee from 1 October 2011;
- $75.00 per week per employee from 1 October 2013
- $80.00 per week per employee from 1 October 2014.[63]

For a worker earning the median income, the mandatory contributions to Protect by 1 October 2014 would amount to more than half their weekly superannuation contributions.

Additionally, income itemised as directors fees reflects the fees paid to the ETU for its office-bearers holding directorships in ventures such as industry superannuation funds.

2.3 National Union of Workers (NUW) Victorian branch

The National Union of Workers represents workers connected to a range of industries including warehousing, distribution, storing and packing.

Between 2008 and 2017, the Victorian branch of the NUW has:

— More than doubled its asset wealth

- Made over $4m from investments and commercial ventures in which it holds an interest and received $9 million in dividends and distributions[64]

23 ETU Enterprise Agreement 2010 – 2014 < https://www.etuvic.com.au/Documents/Apprentices/2010-2014_ETU_Contracting_EBA.pdf>

24 Registerd Organisations Commission, NUW, financial reports - various (2018) < http://www.roc.gov.au/find-a-registered-organisation/nuw/national-union-of-workers>

Table 11. National Union of Workers (NUW) Victorian Branch selected financial disclosures

Year	Total Income	Assets	Dividends & Distributions Received	Other Investment Income
2017	14,627,039	36,186,025	1,413,976	857,150
2016	13,354,240	30,282,812	1,387,120	16,853
2015	13,648,119	30,962,416	1,493,679	511,575
2014	13,488,878	29,101,938	963,417	136,420
2013	14,140,300	25,274,550	1,003,753	878,075
2012	11,877,399	21,024,399	992,936	
2011	12,239,194	19,899,172	640,419	986,291
2010	11,423,706	17,797,307	706,035	691,864
2009	11,097,727	16,520,797	375,248	
2008	10,116,236	16,882,767	222,049	
Total	126,012,838		9,198,632	4,078,228

*share of net gain of investments in associates (an associate is an entity over which the NUW has significant influence ie. the power to participate in financial and operating policy decisions of the investee

2.4 CFMEU Vic and Tas Construction and General Division

In summary, between 2007 and 2016, the CFMEU's Victorian and Tasmanian Construction and General Division has:

- Received over $70 million in grant income; and
- Accrued over $2 million in EBA processing fees[65]

Table 12. CFMEU Vic and Tas Construction and General Division selected financial disclosures

Year	Total Income	Assets	Grant Income	EBA Processing Fee
2016	30,958,899	43,434,849	8,150,393	448,561
2015	29,313,851	42,399,489	7,979,968	87,335
2014	27,331,818	44,484,099	7,582,393	84,544
2013	31,372,413	43,716,361	7,505,207	181,361
2012	28,120,696	32,220,920	7,100,218	434,449
2011	25,132,995	23,771,633	7,229,357	259,178
2010*	22,268,003	48,725,354	7,586,801	172,761
2009*	20,210,327	47,904,239	6,610,521	383,675
2008*	20,560,778	45,697,737	5,826,830	90,226
2007*	18,143,933	45,543,367	4,639,670	80,640
Total	253,413,713		70,211,358	2,222,730

25 Registerd Organisations Commission, CFMEU, financial reports - various (2018) < http://www.roc.gov.au/find-a-registered-organisation/cfmmeu/construction-forestry-maritime-mining-and-energy-union>

Monetising enterprise bargaining

The grant income listed above is predominantly derived from a redundancy, income protection and portable sick leave scheme called Incolink. Incolink is a joint venture between the Master Builders Association in Victoria, the CFMEU, CEPU, Australian Workers Union and Australian Manufacturing Workers Union.

Similar to the ETU's arrangement with Protect Scheme set out above, Incolink receives income from employer contributions mandated under enterprise agreements negotiated by unions which hold a financial interest in the insurance scheme. A "complex and convoluted" set of arrangements delivers a share of Incolink's profits back to the CFMEU in what are labelled as "grants" above. In this regard, the $70 million received by the CFMEU are effectively profits derived from the pay and conditions of workers whom they represented in enterprise bargaining.

2.5 AWU Victoria

The AWU represents workers in manufacturing, steel, aluminium, glass, oil & gas, aviation, agriculture state services, local government, health plastics, hospitality and food among other industries. In summary, the AWU has:

- Suffered a decline in membership from 22,805 in 2004 to 16,396 in 2016
- Enjoyed a rise in asset wealth of just over 340 per cent
- Experienced a modest rise in income of 1,581,699
- Of the branches income growth, just under half was attributable to growth in membership income, with the remainder almost entirely attributable to insurance brokerage fees & commissions and grants
- Since 2006, $5.49 million of the branches revenue has been derived from insurance brokerage fees & commissions
- Since 2013, $2.69 million of the branches revenue has been derived from grants[66]

Table 13. AWU Victoria selected financial disclosures

Year	Total Income	Membership Income	Assets	Insurance Brokerage Fees & Commissions	Grants
2016	7,681,225	5,835,132	8,088,778	751,990	681,803
2015	8,222,254	6,074,837	8,560,490	773,959	649,336
2014	8,590,537	6,559,052	8,735,857	856,948	618,415
2013	8,956,110	6,533,682	8,243,293	945,007	748,954
2012	7,061,051	7,061,051	9,358,213	880,915	0
2011	9,358,213	6,444,342	8,624,952	701,903	0
2010	8,074,310	5,995,104	6,673,833	0	0
2009	8,023,241	6,068,992	6,104,517	0	0
2008	7,589,713	5,948,235	5,173,723	241,187	0
2007	7,158,354	5,654,045	4,552,259	247,063	0
2006	7,172,164	6,002,350	3,853,842	89,269	0
2005	6,101,835	5,126,009	2,902,745	0	0
2004	6,099,526	5,070,067	2,650,082	0	0
2003	5,307,815	4,418,078	2,348,598	0	0
2002	4,821,602	4,347,400	2,372,896	0	0
Total				5,488,241	2,698,508

26 Registerd Organisations Commission, AWU, financial reports - various (2018) http://www.roc.gov.au/find-a-registered-organisation/awu/the-australian-workers-union

Monetising enterprise bargaining

The insurance brokerage fees and commissions set out above are derived from redundancy and income protection insurance entity Incolink described in case study 4 above and Coverforce, another income-protection insurance group. The arrangements follow broadly the same pattern described in case studies 2 and 4: employers are required to purchase redundancy and income protection coverage for their workforces under the terms of union-negotiated enterprise agreements. In return, the AWU receives a commission for every worker under the scheme.

2.6 Cleaning up corporate unions

The union movement's success in monetising workplace relations will be investigated in future MRC research briefs. These preliminary case studies demonstrate that further scrutiny of these arrangements, particularly revenue earned by unions as a consequence of conditions they have negotiated in the context of enterprise bargaining, deserve further scrutiny.

The practice of trade unions negotiating collective agreements from which unions also financially benefit poses a clear conflict of interest. It means that in performing its role as a bargaining agent, a trade union is effectively caught between its own financial interests and carrying out its duty to negotiate in the best interests of workers. These arrangements are also an affront to the freedom of association of the workers covered by these enterprise agreements, having regard to the union movement's sizeable donations to the Australian Labor Party.

These case studies also highlight the need for significantly enhanced transparency and oversight of the financial interests of trade unions. The financial statements lodged with the Registered Organisations Commission do not clearly identify which streams of union revenue are attributable to members, commercial interests, government grants, employers and enterprise agreements.

Achieving greater transparency in the source of trade union revenue is a worthy objective in its own right. However, the case for improved disclosure is sharpened by the ongoing debate about workplace relations reform. Given that several of the ACTU's proposals for workplace reform would increase its ability to monetise the workplace relations system, there is a clear public interest in identifying the proportion of the trade union movement's revenue that is attributable solely to its legally privileged status in workplace relations.

These problems were recognised in volume 5 of the final report of the Royal Commission into Trade Union Corruption by Commissioner Dyson Heydon:

> "The income that flows to unions from the operation of these terms has several potential consequences.
>
> First, it may induce a union, and its officials and employees, to engage in coercive conduct to compel employers to contribute to a fund from which the union derives a benefit, or to agree to terms in an enterprise agreement requiring such contribution.
>
> Secondly, the income creates an actual or potential conflict of interest, and can lead to breaches of fiduciary duty by union officials.
>
> Thirdly, the predominance of clauses that benefit particular unions is likely to diminish competition. Coercive conduct taken by employee organisations to secure such clauses in enterprise agreements is akin to the types of conduct prohibited by the exclusive dealing provisions in the Competition and Consumer Act 2010 (Cth)."[67]

27 Royal Commission into Trade Union Corruption, Final Report, Volume 5 page 330

3. Implications for workplace relations reform

3.1 Revising false assumptions about unions in workplace relations

The key message of this brief is that many of the assumptions which underpin public debate about the role of trade unions in workplace relations are false and misleading.

Today's trade union movement has no legitimate claim to represent low-paid, disadvantaged workers or indeed the mainstream of the Australian workforce. Unions represent a minority of workers who are predominantly well educated, well-paid workers in professional or managerial employment supported by public spending.

Second, union decline is not a consequence of workplace relations policies hostile to trade unionism. The primary reason unions have declined is the preferences of workers. Trade unions are increasingly irrelevant to Australia's contemporary skills and services-based workforce.

Third, unions have leveraged their privileged status in workplace relations to monetise workers' representation. This has enabled unions to transition to a corporate business model, financially future-proofing themselves against further declines in membership. This is evidenced by the fact that union financial performance has almost no correlation with membership size.

3.2 Increasing union power a smokescreen for self-interest

The findings of this brief have several implications for workplace relations policy debate:

Increasing union power would enhance their already disproportionate influence

Foremost, any proposal that increases union power and influence in workplace relations on the grounds of redressing a perceived imbalance of power between workers and employers should be viewed sceptically. The mainstream of Australia's workforce are not represented by trade unions. Accordingly, public debate about workplace relations must carefully differentiate between the interests of trade unions and the workforce at large.

Union members have less to lose from re-regulating the labour market

Second, today's union membership is predominantly employed in areas of the workforce sheltered from market forces and supported by government spending. As such, most of the union movement would be largely shielded from diminished competitiveness and other adverse consequences that would result from the ACTU and Labor's plan for a more rigid, centralised labour market. On the other hand, the low-paid workers in insecure work who form the rhetorical focus of the ACTU's Change the Rules campaign would be more vulnerable to drawbacks of a more regulated labour market. This is because job losses resulting from higher wages and restrictive work conditions disproportionately affect workers At the margins of the workforce.

The ACTU's workplace relations rule changes would be a cash cow for unions

Third, the ACTU's proposals to increase union influence over collective bargaining should be carefully scrutinised against the background of the union movement's financial dependence on revenue derived from enterprise bargaining and superannuation. Major ACTU policies, such as industry-wide bargaining and allowing employers to be compelled to collectively bargain will enable unions to further monetise their privileged role in workplace relations.

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