

Clubs Australia Industrial Submission

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

Clubs Australia Industrial (CAI) welcomes the opportunity to comment on the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019 (the Bill).

CAI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009*, representing licensed clubs throughout Australia.

There are 6,400 licensed clubs in Australia which employ 130,000 people.

To ensure the Bill is tailored to the activities uncovered by the Royal Commission into Trade Union Governance and Corruption, this submission recommends:

- amending proposed s 194(j) of the *Fair Work Act 2009* and s 329PD of the *Fair Work (Registered Organisations) Act 2009* so they are narrowly tailored to the employee insurance schemes uncovered by the Royal Commission; and
- removing employer organisations from the scope of the Bill.

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

CAI notes that the Bill “gives effect to recommendations made by the Royal Commission into Trade Union Governance and Corruption” (the Royal Commission).¹

CAI does not object to the Royal Commission’s recommendations on which provisions of the Bill are based.

CAI is concerned that certain provisions of the Bill are drafted in a manner that would regulate a far broader range of activities than those uncovered by the Royal Commission.

Particularly, Schedule 2, item 4 of the Bill inserts s 194(j) into the *Fair Work Act 2009*, which would prohibit terms in enterprise bargaining agreements that require or permit payments for insurance cover, unless the employee can choose the insurance product. The Explanatory Memorandum for the Bill states that this provision would give effect to recommendation 49 of the Royal Commission.²

As it relates to insurance, recommendation 49 responds to specific instances of employers or employees being required to pay for income protection or workers compensation insurance to union-linked entities that provide group insurance policies.

¹ Explanatory Memorandum, Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019.

² *Ibid.*, [62].

In response to the elaborate insurance schemes uncovered by the Royal Commission, Schedule 5 of the Bill also gives effect to recommendation 47. Among other things, Schedule 5 inserts proposed s 329PD into the *Fair Work (Registered Organisations) Act 2009*, which would create a disclosure framework for registered organisations connected to employee insurance.

Licensed clubs and their employees benefit from a range of insurance products. Some of these products are specifically tailored to the licensed club industry, and provided by entities associated with CAI. The nature of these associations does not at all resemble the activities and arrangements uncovered by the Royal Commission. However, due to the broad scope of the abovementioned items of the Bill, CAI may be captured by the proposed laws.

Due to the broad application of the items above, it is also unclear whether insurance cover provided by superannuation funds will be captured. For instance, suppose an enterprise agreement stipulates a default superannuation fund,³ which includes automatic life insurance cover. We query whether the default superannuation term would be captured by proposed s 194(j) of the *Fair Work Act 2009*, because it does not propose life insurance cover provided by a different entity.

CAI has attempted to engage with the Registered Organisations Commission (ROC) to receive clarity or guidance on provisions in the Bill. However, the ROC notified CAI that it is unable to provide any information before the Bill becomes law. CAI would appreciate clarification on these matters prior to being an affected party once the Bill is legislated.

In addition to the Bill's broad application to insurance products, CAI questions why the Bill applies to employer organisations. The Royal Commission investigated trade unions. CAI does not believe there are sufficient grounds to generalise the Royal Commission's findings to employer organisations. CAI also notes that there is no evidence to suggest employer organisations systemically engage in the problematic activities and arrangements uncovered by the Royal Commission. Accordingly, CAI does not believe it, or other employer organisations, should be captured by the obligations in the Bill.

CAI Recommendations

To ensure that the provisions in the Bill are appropriately tailored to the deficiencies they are intended to solve, CAI recommends:

- amending proposed s 194(j) of the *Fair Work Act 2009* and s 329PD of the *Fair Work (Registered Organisations) Act 2009* so they are narrowly tailored to the employee insurance schemes uncovered by the Royal Commission; and
- removing employer organisations from the scope of the Bill.

CAI would welcome the opportunity to provide further feedback to the Education and Employment Legislation Committee. Should you wish to discuss this submission further, please contact Josh Landis, Executive Manager of Public Affairs on _____ or by email at _____.

³ Stipulating a default fund in an enterprise agreement is permitted under s 32C of the *Superannuation Guarantee (Administration) Act 1992*.