

**SENATE STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT LEGISLATION
INQUIRY INTO THE PROVISIONS OF THE FAIR WORK LAWS AMENDMENT
(PROPER USE OF WORKER BENEFITS) BILL 2019**

**SUBMISSION OF THE GOVERNMENT OF WESTERN AUSTRALIA
AUGUST 2019**

1. The Western Australian Government welcomes the opportunity to make a written submission to the Senate Standing Committee on Education and Employment Legislation (the Committee) inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019 (the 2019 Bill).
2. The Western Australian Government submission addresses the consequences of the proposed regulation of worker entitlement funds such as ReddiFund¹ for MATES in Construction (MIC) and its suicide prevention work.

Proposed section 329LD

3. Proposed s 329LD of the 2019 Bill limits the purposes for which the income of a registered worker entitlement fund can be used. Section 329LD(1)(d) specifies that one of these purposes is payments for training or welfare purposes.
4. Payments for training or welfare purposes must satisfy the requirements set out in proposed s 329LD(2):
 - a) training or welfare services are to be provided only to participants/former participants and their spouses or dependents in the industry in which fund members participate (in the case of Reddifund this would be the building and construction industry);
 - b) if training or welfare services are not provided by the fund operator, the services must be provided at market value, on commercial terms and negotiated from arm's length from any director with a material personal interest in the provider of the training or welfare service; and
 - c) irrespective of who provides the training or welfare services, the services must not unfairly discriminate between members of the fund; and
 - d) a training or welfare payment must be approved by the voting directors of the operator including by at least one voting director who is independent of, and has no material relationship with, the operator of the fund or with any associate of the operator of the fund.
5. These provisions are the same as those that were in proposed s 329LD of the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017 (the 2017 Bill).

¹ A WA based redundancy worker entitlement fund.

Implications for MATES in Construction

6. The Western Australian Government notes the submission made by MIC to the Senate Standing Committee on Education and Employment Legislation Committee inquiry into the 2017 Bill regarding the detrimental consequences of s 329LD(2) on MIC's funding.²
7. MIC is a registered charity established to reduce suicide among Australian construction workers. In addition to donations and payments from State based redundancy funds for workers in the construction industry, MIC receives funding from the Western Australian Government³ and the Commonwealth Government.⁴
8. The MIC 2017 submission noted that proposed s 329LD(2) would operate to:
 - a) prohibit redundancy funds operating in the construction industry from distributing income to MIC as they do currently, including by making tax-deductible donations. As a substantial amount of MIC's funding is received from redundancy funds by way of gift, this proposal would significantly reduce its overall funding and so require cuts to mainly front line staff and services. In WA, this was estimated to be a 15-20% cut; and
 - b) limit redundancy funds supporting MIC's activities if MIC is required to provide its services at market value and on commercial terms. MIC considered that the effectiveness of its 'multi-modal' program would be jeopardised by complying with proposed s 329LD(2).
9. The Committee inquiry report into the 2017 Bill noted these concerns and supported steps being taken to clarify the issue. Specifically, the Committee recommended that the Government review the wording of proposed s 329LD in light of the concerns raised that it would not allow for a gift or donation to be made to charities operating in this sector.⁵

Suicide prevention

10. The Western Australian Government committed \$25.9 million over four years (2015-16 to 2018-19) to implement initiatives and programs set out in its suicide prevention strategy 'Suicide Prevention 2020: Together we can save lives' (Suicide Prevention 2020).⁶ Shared responsibility across government, private and non-government sectors to build mentally healthy workplaces is one the key action areas: this includes Government support of MIC and its workplace programs.⁷ The original funding term for Suicide Prevention 2020 was due to conclude on 30 June 2019, however, as part of the 2019-20 WA State budget process, a further \$8.1 million was awarded to

² MATES in Construction submission to the 2017 Committee, accessed at https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/UseofWorkerBenefits/Submissions (Submission 9).

³ <https://www.mediastatements.wa.gov.au/Pages/McGowan/2017/09/Giving-our-construction-workers-the-tools-to-be-OK.aspx>.

⁴ <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/36-million-for-national-suicide-prevention-projects>.

⁵ The Senate Education and Employment Legislation Committee, 'Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017 [provisions]', November 2017, Recommendation 1, 13.

⁶ <https://www.mhc.wa.gov.au/about-us/strategic-direction/suicide-prevention-2020-together-we-can-save-lives/>

⁷ *Suicide Prevention 2020*, priorities 4.42 and 4.5.2, 39.

extend the strategy to 31 December 2020. MIC was awarded an additional 18 months' funding as part of this extension.

11. On 14 May 2018, the Hon Bill Johnston MLA, Minister for Industrial Relations wrote to the then Federal Minister for Small and Family Business, the Workplace and Deregulation, the Hon Craig Laundy MP, expressing concern with the provisions in the 2017 Bill that would prevent redundancy worker entitlement funds from distributing funds to MIC. The Minister was particularly concerned with flow on consequences that would damage the work being done to address suicide rates in the construction industry.

Recommendation

12. It is the Western Australian Government's submission that proposed s 329LD be amended to ensure that it does not prevent a worker entitlement fund from making a donation to a charity operating in the same industry. This submission is made on the following grounds:
 - a) it reflects the recommendation of the 2017 Committee;
 - b) it will ensure that organisations such as MIC can continue to provide the same level of important suicide prevention services to the construction industry;
 - c) it aligns with the Western Australian Government's broader suicide prevention strategy; and
 - d) it will prevent a potential flow on to the WA State budget to make up for funding shortfalls arising out of a loss of funding from worker entitlement funds.