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25 October 2017

Committee Secretary
Senate Education and Employment Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Via Email: eec.sen@aph.gov.au

Dear Committee Secretary

Re: Fair Work Laws Amendment (Proper Use of Benefits) Bill 2017

Please accept the attached submission to the Senate Education and Employment Legislation Committee Inquiry into the Fair Work Laws Amendment (Proper Use of Benefits) Bill 2017.

The submission is made on behalf of the Australian Plumbing and Fire Protection Industries (the Industry) as represented by the **Plumbing and Pipe Trades Employees Union**, one of the fastest growing and most progressive trade unions in Australia; the **Master Plumbers' and Mechanical Services Association of Australia**, the peak industry body representing plumbing contractors throughout Australia; the **National Fire Industry Association** which represents Fire Sprinkler contractors, Fire Alarm, Extinguisher and Passive Fire companies, suppliers and consultants; the **Air Conditioning and Mechanical Contractors' Association**, a national association involved in the design, installation and maintenance of commercial industrial air conditioning and mechanical services; and the **Plumbing Industry Climate Action Centre (PICAC)** the Industry partnership responsible for the facilitation of industry specific training.

The Industry supports the need for organisations to be responsible for the allocation of employee funds and being transparent in their decision making and accountable for funding allocation decisions.

However, **the Industry does not support the proposed Bill. The primary concern for the Industry is that we believe the Bill** has the potential to be very disruptive and destabilising of an industry that, as is outlined further in this submission, is currently delivering optimal results in terms of Return on Investment from contributions to Employee Benefits Funds (for students, for employers, for employees, for the community, for the economy).



There is no identified need within the Industry to change the existing arrangements. We would however support any initiative the Government proposed aimed at working collaboratively with the industry and the Employee Benefit Funds with a view to identifying ways in which the accountability objectives of the proposed Bill can be achieved without stifling the industry development and progress.

Should you wish to discuss this submission further, please do not hesitate to contact Shayne La Combre, Chief Executive Officer, PICAC

Yours sincerely

John Glasson
Chair



KEY POINTS

- The Industry does not support the proposed Bill as the means to achieve the necessary and desired level of transparency and accountability.
- **The Industry's view is that the proposed Bill has the potential to undermine a collaborative industry model which is valued highly by all elements of the Industry; is serving all members of the Industry; and is a demonstrably successful way of meeting the training demands of students and industry, and keeping the industry and the community safe.**
- The proposed Bill could potentially impact the ability of the Industry to equip the economy and the community to:
 - accommodate forecast population growth in terms of housing, schools, hospitals etc;
 - adapt to the changing economy, take advantage of energy and cost-efficient systems and techniques;
 - to respond to the challenges of water scarcity and climate change; and
 - to keep the industry and community safe.
- **The process for consideration of the proposed Bill is unreasonable and unlikely to deliver first best outcomes for industry and by extension, the economy and community.**

1. The Proposed Bill

1.1 Potential to undermine a model of success

The Australian Plumbing and Fire Protection Industry (the Industry) does not support the proposed Bill. Industry is alarmed at the potential of the proposed Bill to undermine the excellent work the Industry has executed over the past 25 years, and the past decade particularly, in building a strong, skilled industry.

The Industry has developed a system of aligning training with industry requirements that is delivering very high quality, integrated training in vital skills which are in high demand and highly specialised. The Industry has developed a successful training model, supported by nationally developed industry resources, that facilitates the delivery of training that otherwise would not be available to students or industry. The collaborative funding model enables the real cost of training – to students and employers – to be completely absorbed or reduced across the entire sector.

The Industry approach is to raise the quality of skills across the industry, growing the skills base of the employer selection pool. The operating model means the Industry can facilitate both low volume high skill training in remote areas and higher volume training in more densely populated areas. The model allows for training volumes to be scaled up or down particularly in disciplines or skills to accommodate structural changes in the economy, such as the transition away from manufacturing and the associated need to retrain a regional workforce on a large scale.

The centrepiece of the highly successful industry integrated model is the creation and operation of the Plumbing Industry Climate Action Centre (PICAC).

1.2 PICAC – Quality Training by Industry for Industry

Recognised as Australia’s best small training provider in 2015, PICAC is an industry partnership supported by the Plumbing Trades Employees Union (PTEU), Master Plumbers’ and Mechanical Services Association of Australia (MPMSAA), National Fire Industry Association (NFIA), Air Conditioning and Mechanical Contractors’ Association (AMCA), United Association of Plumbers and Gasfitters (UA) and Plumbing Joint Training Fund (PJTF).

As a creation of the Plumbing and Fire Protection Industry, PICAC is uniquely placed to anticipate and respond to the changing training needs and requirements of industry. Since its creation in 2008, PICAC has consistently added to the scope of its training offerings, informed by industry requirements. The Certificate III in Plumbing, the pre-apprenticeship “boot camp” training, and specialized training in programs like medical gasses, Type B Advanced Gas Training, welding and a range of comprehensive courses have been added to scope specifically in response to industry requirements.

1.3 Connecting the Australian Industry with the World

PICAC has extensive and unparalleled international industry connectedness. Through PICAC's relationship with the World Plumbing Council (PICAC Chief Executive Officer, Shayne La Combre is also Chair of the World Plumbing Council), students and stakeholders have unique access to industry and sector leaders and policy and product developments here and overseas. PICAC is closely linked to, and partners with, international skills and standards bodies like **WorldSkills** and **IAPMO**. This international access enables PICAC to be at the leading edge of industry developments both internationally and locally. These developments can be translated quickly into training content and improved training outcomes for students.

Through PICAC, Australia's Industry, which generates upwards of \$15B in annual economic activity and employs about 50,000 Australians, also has direct links to the \$100B Industry in the US, Canada and Ireland through the PPTU's Affiliation with the UA.

Over the past few years there have been several great examples of the relationship between the PPTU and the UA delivering benefits to both parties. Australian apprentices, (in both Plumbing and Sprinkler Fitting) compete locally and then as part of the UA competition, which offers Australian apprentices a unique opportunity to compete against the world's best. There have now been three Australian Industry representatives who have completed the UA Instructor Training Course, bringing back techniques and skills from their North American and Canadian counterparts.

The Australian Industry provided the US Industry with the benefit of our experience in managing drought, harvesting rainwater and in water recycling technology. In turn, the US Industry provided the Australian Industry with their experience and know-how when developing and fitting-out our Centres of Excellence in Fire Protection and Welding.

1.4 Contemporary Training in Regions of High Need/Demand

PICAC's capacity to achieve its purpose (of being **an industry-driven technology and training hub that drives excellence and delivers skills and learning training**), requires its students to have access to **first-class, contemporary, training facilities**. It is key to the Australian economy's success now, and will be vital in the medium and long term.

The Industry, through PICAC, is establishing and growing its physical training presence in regions where - for reasons of rapid growth, economic structural change or both - demand for industry led skills based training is high and growing. Underpinning the Industry's approach to training facilities development is the understanding that for the Australian Industry to take best advantage of the rapidly evolving range of new products, systems, and materials entering the global market, it is vital that industry professionals, both new and existing, are trained to use them.

The ability to plan confidently for, and develop and deliver, such facilities requires a solid and sustainable resource base. The Industry's prudent investments made in recent years; its sound financial management; robust governance structures; and efficient corporate processes; have provided PICAC the opportunity to invest for its future, both in terms of people and equipment.

In November 2016, the Victorian Premier, the Hon Daniel Andrews, officially opened the new PICAC facility in Geelong. Geelong is Victoria's most populous centre outside of Melbourne and in a region which is growing rapidly.

Through this new facility, which has commenced delivery of post trade plumbing and safety related training, PICAC has the capability to re-train hundreds of retrenched or displaced workers. For existing qualified tradespeople including welders, metal fabricators, machinists, fitters and turners, PICAC can customise training to provide these workers with a real opportunity to re-enter the workforce with promising job prospects.

In FY 2016-17, planning was also significantly progressed for the development of PICAC Narre Warren, in the heart of Melbourne's south-eastern growth corridor. Adding the Geelong and Narre Warren campuses will allow PICAC to re-train up to 500 workers each year as well as up to 300 new Apprentices in Plumbing and Fire Protection year on year. Making these training opportunities available will be very important as the **economy transforms away from areas like car manufacturing and coal fired electricity generation.**

The Industry, through PICAC has also acquired an ideal site on which to locate its **new facility in Beenleigh**, which sits about halfway between Brisbane and the Gold Coast. The new facility will offer students the opportunity to utilise state of the art facilities, which are currently not available to Queensland students

1.5 Delivering Nationally Consistent Training, for Nationally Consistent, High-Quality Outcomes

The Industry intends to develop a **series of networked industry owned and operated training facilities** delivering the nationally consistent training outcomes industry requires.

Agreement between Victorian and Queensland Industries

In 2015, PICAC established a presence in Queensland, when an agreement was struck between the Queensland and Victorian plumbing industries. The agreement brought together the Services Trades College (STC) in Queensland and PICAC's operations in Victoria under a shared governance structure and management framework.

The STC operation has effectively outgrown its premises at Salisbury and its satellite operation at Brendale and plans to relocate all the services and facilities currently provided at these rented premises, to the new fully industry owned facility at Beenleigh (see 2.4).

Bringing industry training availability together in one place, will drive efficiency, quality and consistency in training delivery and outcomes. It will help ensure students are not exposed to unsuitable or low-quality courses or providers and help strengthen the linkages between the industry training sector, and the industry itself. Information, knowledge and expertise can be acquired, stored, shared and utilised by more industry participants, more often making the industry safer and stronger, with skills that are current and in demand.



Only provider of Industry endorsed Fire Protection Apprenticeship Training

A key tenet of the PICAC training model is to develop nationally consistent training, delivered to a very high standard by established industry partners which comprise PICAC. Fire Industry Training, or FiT, is one such partner delivering nationally consistent high-quality training in all aspects of fire protection, including full Fire Protection Apprenticeship training.

In the late 2012, the Fire Protection Industry in Victoria suffered a blow when RMIT announced it could no longer deliver the apprenticeship in Sprinkler Fitting, stranding around 150 apprentices. The Industry commenced discussions and agreed it was not acceptable that this training would no longer be available in Victoria. The Industry rose to the challenge and built a Fire Training Centre of Excellence at PICAC. The Industry brought in expert guidance from the UA on best global practice training delivery and facilitation and in just four short months, the Centre was opened and training had begun.

Delivering the skills the Australian economy needs – **employability & sustainability**

In FY 2016-17 PICAC delivered training to more than 5,000 students, consisting of over 700 units of training competency and more than 200,000 hours of industry led Plumbing, Fire Protection and related industry training. When the new facilities in Victoria and Queensland are completed and operating, PICAC's training delivery capacity will be further enhanced.

In many instances, this is training that is not delivered anywhere else. It is often low volume highly specialised technical training that, were it not for PICAC, would not be delivered in Australia. The economy would not have access to those skills, limiting its ability to take advantage of new products and techniques, putting a handbrake on growth and increasing construction and other costs; and leaving the economy reliant on importing skills from overseas, which would be an appalling outcome given the current lack of opportunities for Australian young people.

PICAC delivers **sophisticated skills based training** in areas like welding, Type A and Type B gas appliance servicing, and the use of CAD software for architectural drawing. Courses focussed on sustainability are also available, in skills that will be key to **employability** in the new economy, in, for example, new energy and **sustainability**, solar hot water, water conservation, energy efficient plumbing and waste water treatment.

A broad **range of industry development** or non-trade specific courses are also delivered at PICAC, such as OH&S related courses, the use of appliances like scissor lifts and forklifts and working safely on roofs. The personal and economic benefits of these types of courses, in terms of less injuries, compensation and lost time costs avoided, is very significant.

2. The Proposed Bill Puts Those Benefits at Risk - *Unnecessarily*

2.1 Potential to Weaken Industry's Aggregate Resource and Investment Capability

Key to the success of the Industry's collaborative training model, has been the capacity of the industry to jointly allocate its combined training resources (including the component derived from Employee Benefit Fund monies - Incolink) in a planned and strategic way. The aggregate capacity of the Industry can be utilised to make strategic long-term investments in training facilities, course development and research that are so important to our economy going forward. Investments in new Centres of Excellence in Fire Protection (highly relevant in the context of the challenges of modern fire protection relating to the use of combustible building materials); in the new Geelong facility; in the Beenleigh project; have been made possible through PICAC's ability to utilise discretion regarding the allocation of all its training resources, including Incolink funds.

2.2 The Industry is Already Achieving Best Practice, Award Winning, World Standard Outcomes

Through the PICAC model of partnership, of collaboration, between employers and employees, the Industry is already delivering what the Government has stated it wants to encourage in the sector by enacting this and related legislation. **The sector is operating under a model that the whole of industry supports and is serving all their various requirements:**

- Students are receiving access to the best quality plumbing and related training available in Australia, funded through Incolink by the Industry;
- High quality training is being delivered at a consistent standard in multiple jurisdictions and in more contemporary ways than ever before;
- Through utilising mobile training facilities, interactive learning and by investing in IT systems the Industry is delivering to students of all ages in regional, remote and very remote communities – opportunities unrivalled in Australia.
- Training is being provided in state of the art facilities, like the brand-new purpose-built facility in Geelong, providing a regional boost of enormous economic significance, bringing job opportunities, re-skilling opportunities for displaced car workers, and many more benefits. Similarly, with the proposed new facility in Beenleigh in the City of Logan, one of the fastest growing regions in the country, a region where PICAC quality training is invaluable.

We are very focused on making our first-class industry training available to as many students from a broad range of backgrounds as possible. We are also a provider of training opportunities for students who by their socio economic or personal circumstances, are experiencing a level of disadvantage and who may otherwise be effectively locked out of training opportunities.



For example, to provide opportunities to Indigenous students, PICAC partners with RAW Recruitment (RAW). RAW operates a Group Training and Labour Hire model and is focussed on reducing Indigenous disadvantage by engaging men and women through training, sport and community and assisting them into sustainable employment. Through its partnership with RAW and the connections with employers and the Indigenous community that brings, PICAC has brought opportunity to dozens of Indigenous students since the partnership was established in 2013. PICAC also regularly provides training opportunities to students from refugee backgrounds and seeks to contribute wherever possible to improving opportunity for young Australians.

The proposed facility in Beenleigh would bring that same opportunity to Indigenous students from the immediate Logan area and its surrounding Brisbane regions. And, by utilising its mobile training facilities, the Beenleigh campus could also serve as a base from which training could be made available to Indigenous students in remote locations and communities.

2.3 The Industry is Open and Transparent, and Allocates Training Funds Efficiently

The **Australian Industry is open and transparent** and most importantly, already allocating all the revenues from funds subject to this Bill towards the training and/or welfare of the employees of the contributing employers.

PICAC is a not-for-profit entity. Currently the Industry allocates employee benefit funds, along with training resources from other funds and partner bodies, to areas of the highest training demand, and according to an agreed and robust resource allocation and risk management process. This occurs through the Plumbing Joint Training Fund.

The Plumbing Joint Training Fund (PJTF) is a collaboration of key industry participants, each an active player in furthering the standards of training excellence in plumbing, and each represented at Board level - HVAC, fire protection and water and sanitation sectors of the industry. The PJTF has applied the extensive knowledge of its constituents to create a Training Fund that facilitates pre-vocational, vocational, and post – trade industry led education and training.

It is through the PJTF that the Industry, in a collaborative manner, and with a focus on the best interests of the industry in the immediate and longer term, allocates training funding to the areas of most need. The principal activities of PJTF are to disburse training levy money to Industry parties (AMCA, MPMSAA, NFIA, CEPUTEC, PICAC, PPTU (VIC)) for the delivery of training to their members. **In practice, the PJTF provides the mechanism through which training delivery can be matched to industry demand with surgical precision, and is proving to be very efficient and effective.**

This whole-of-industry representation model of the PJTF drives accountability because each of the separate organisations represented on the PJTF are independent and accountable to their own membership; and also accountable to one another, ensuring that funds are directed to the best interests of the industry.

As discussed further in this submission, the extent to which the proposed Bill will lead to a better means of allocating the Industry's training resources than that adopted by the PJTF model, would be relevant consideration in a Regulatory Impact Statement process.

2.4 Quality Training Takes Time, Collaboration, Resource Sharing and Planning

Quality Plumbing and Fire Protection training is key to community safety. If training fails, and then systems fail, tragedies occur. People contract diseases through faulty cross connections. Legionella bacteria can easily be spread through a hospital or a shopping centre or a school where the service technician was not adequately trained.

Quality training in our industry is high cost when compared to other sectors. The nature of the facilities required to train the modern plumbing and fire protection professional are such that large capital outlays are required. Smaller providers and public TAFEs cannot afford to develop and maintain the latest training equipment. PICAC can, due to aggregated resource capacity invested in the most current equipment, giving Australian students the opportunity they otherwise would not have, to train in a fully fitted out medical gas training room, or a fully functioning demonstration house with a 6 star energy rating.

2.5 Keeping the Industry and Community Safe

Plumbing and fire professionals in our industry work in areas of very high risk, with hazardous materials, complex and expensive plant and equipment and on our major existing and developing public infrastructure developments. Often, they work with hazardous materials, on facilities that may have been built two generations ago and with materials and in ways now considered toxic and dangerous. They work with asbestos, gas and other combustible materials and in often dangerous, confined spaces or otherwise difficult to access areas.

The Industry presents unique safety risks to workers and is characterised by high levels of worker vulnerability. Construction workers face the highest risk of injury and death, have the highest level of suicide of any worker group, experience high levels of labour mobility and insecure work, long periods of unemployment and high levels of redundancy.

Incolink provides a safety net which protects vulnerable construction workers by investing in workers' training, health, wellbeing and safety to tackle these issues. It is a unique fund bringing workers and employers together to solve industry problems.

This Bill may have significant impacts on Incolink's 40,000+ worker members. In particular, it may prevent us investing in key Occupational Health and Safety initiatives and providing workers' insurances, such as funeral, dental and ambulance cover that Incolink funds directly.

2.6 Industry Wide Safety and Well-Being Requires Industry Wide, Industry Led Action.

Keeping people safe at work is the essence of employee welfare, and so to the extent that the proposed Bill places limits or reduces industry's capacity to do that (in terms of what the industry can determine to be important to the welfare of its members, and to directing funds accordingly), industry does not support it.

The Bill also creates significant uncertainty about whether Incolink can continue to provide safety training and wellbeing services such as suicide prevention support, mental health, drug and alcohol counselling.

Industry needs to be free to allocate its safety and well-being focussed resources to the areas it has identified as being the most important. A good example of the need for flexibility (around well-being/OH&S/welfare resource allocation flexibility) can be found in the work the industry does around prevention and early intervention in the mental health space. The Industry, because it has the resource flexibility to do so, has been able to run several programs, information and education sessions, on a range of aspects of mental health. Hundreds of construction industry workers commit suicide every year, at a rate of about three per week, imposing a terrible emotional toll on individuals and families and a huge economic cost to the community.

As an Industry we regularly, and strategically, consider these complex issues and invest in prevention and early intervention programs around mental health, suicide prevention, substance abuse and the like, targeting our programs and activities at the areas of most need. Our Industry, and construction in general has, for example, an identified and very real problem with very high rates of mental illness relating to “Ice” use, and so we are investing in prevention and early intervention strategies to support the excellent professional client support services available at no cost to workers as part of their employer’s Incolink contributions.

To address these complex community wide issues on an industry level, which is the best approach, requires the ability to both direct funding quickly to address a particular problem area, but also to run campaigns over time. To drive incremental improvements in very challenging areas of community life requires the ability to plan strategically, and that requires the maintenance of the existing level of allocation flexibility.

3. Process

3.1 Inadequate Consultation and Impact Analysis

On 19 October 2017 the Senate referred an inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017 [provisions] to the Senate Education and Employment Legislation Committee for inquiry. The closing date for submissions is 25 October 2017.

We submit that **6 days is an inadequate timeframe** in which to allow stakeholders to develop and contribute well considered submissions. This is especially so given the proposed Bill could:

- have significant implications for the operations and cost structures of our industry;
- potentially impact our capacity to keep our industry professionals safe at work;
- impact the ability of students to access quality industry training;

- drive up the costs of training and undermine the very successful integrated industry training model developed over the past decade by the Australian Plumbing Industry; and
- negatively impact workers financially over the long term, by limiting the capacity of organisations to manage members' funds strategically, in the members' best interests, while ensuring redundancy funds are available when needed.

3.2 No Regulatory Impact Statement Process

We also note that rather than subject the proposed Bill to the scrutiny of the usual Regulatory Impact Statement (RIS) process, the Department of Employment has deemed that the Interim and Final reports of the Royal Commission into Trade Union Governance and Corruption have been certified as being informed by a process and analysis equivalent to a Regulation Impact Statement.

We submit that this approach – of a compressed consultation timeline coupled with the absence of RIS scrutiny - is not appropriate in the case of the Bill under consideration. There are several reasons for this.

The Explanatory Memorandum accompanying the proposed Bill states that the Bill is “to ensure appropriate governance and transparency requirements are applied to related entities of registered organisations, in particular, worker entitlement funds and other similar funds”. The Bill proposes to introduce a new regulation - the costs, benefits and impacts of which are not clearly understood - to achieve this purpose.

For example, the Bill will require registered organisations to adopt, and periodically review, financial management policies; to keep credit card records and to report certain loans, grants and donations; to take additional measures regarding the financial benefits obtained by them and persons linked to them in connection with employee insurance products; welfare fund arrangements and training fund arrangements; and introduces a range of new penalties to ensure compliance with financial management, disclosure and reporting requirements.

The Industry is supportive of steps to improve efficiency and accountability in the sector generally, however is concerned that the extent to which the proposed additional requirements will divert resources away from service delivery to the industry has not been thoroughly considered. The Industry believes a RIS process would assist in determining whether the changes create a net benefit for employees and employers and industry.

We submit that these are further fundamental questions that need to be addressed before the Bill is further progressed. Questions such as the extent to which these proposed measures will achieve the Bill's purpose; the extent to which the compliance and administrative costs and financial restrictions outlined in the Bill are necessary to achieve that purpose; and the extent to which other, less onerous means exist by which the purpose could be achieved.

On this point we also submit that this process is also not appropriate given many of the recommendations of the Royal Commission – several which this Bill sets out to implement – are contested in the first instance and not appropriately responded to by this Bill. Further, the Royal Commission was inquiring into corruption, and did not hear evidence or consider examples of where the industry was working collaboratively to ensure that funds raised through employee benefits funds were being used to deliver exceptional outcomes.

As discussed throughout this submission, the Australian Industry is one such example, where the industry is working collaboratively and delivering outstanding outcomes for students, for industry and for the economy and community. **The proposed Bill potentially undermines the outstanding success achieved by the Australian Plumbing and Fire Protection Industry, which would be to the detriment of the economy and reduce community safety.**

3.3 Need to Clarify Terms

We also submit that the scope and definitions within the draft Bill require clarification, which is a further reason consideration of the Bill in its current form by the Senate is premature. For example, it is not clear to us exactly how interpretations and definitions of key terms in the draft Bill could impact the Industry, which **could lead to confusion in the sector and make compliance challenging for organisations.**

For example, the Bill proposes to amend section 194 of the *Fair Work Act 2009 (Cth)* to make unlawful any term of an enterprise agreement requiring or permitting contributions for the benefit of an employee to be made to any fund (other than a superannuation fund) providing for, or for the payment of, employee entitlements, **training or welfare.**"

The scope of what constitutes training (does it include direct delivery, training infrastructure, training development etc?) and what is captured within the definition of welfare (does it include OH&S Officers, OH&S related training, campaigns focussed on harm prevention like mental health awareness programs, drug and alcohol policy education, bullying and harassment prevention training, responsible gambling?).

In Summary

Given the success the Industry has achieved in the absence of the new proposed regulatory overlays, the Industry's view is that the proposed restrictions on the treatment of Employee Benefit Funds and the onerous compliance and reporting overlays will only serve to stifle industry development.

We would support any initiative the Government proposed aimed at **working with industry and the Employee Benefit Funds with a view to identifying ways in which the accountability objectives of the proposed Bill can be achieved without stifling industry development** and progress.