



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

eec.sen@aph.gov.au

25th October 2017

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 Incolink.

Yours sincerely

Dan O'Brien
CEO
Incolink
1 Pelham St Carlton 3053



To: Senate Education and Employment Legislation Committee

Re: Inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017

Date: 25/10/2017

About this submission

This submission has been prepared by Dan O'Brien, CEO of Incolink, 1 Pelham St Carlton, 3053.

About us

Incolink is a joint enterprise of employer associations and industry unions in the commercial building, construction and civil allied industries in Victoria and Tasmania and was established in 1988. It was set up to solve a key problem of protecting worker entitlements. In many respects Incolink is an example of how industry parties can work together to solve industry problems.

Incolink administers redundancy, portable sick leave and income protection insurance schemes for the commercial construction sector. Incolink's core responsibility is to preserve and invest these funds and make severance payments on behalf of its worker members. To achieve this, Incolink manages a number of worker entitlement funds, including four approved worker entitlement funds. They are:

- Redundancy Payment Approved Worker Entitlement Fund 1
– for Building Construction/Contracting industry workers
- Redundancy Payment Approved Worker Entitlement Fund 2
– for Metal Construction/Contracting, Engineering Construction/Contracting and Labour Hire Industries
- Construction Industry Complying Portable Sick Leave Pay Scheme
- Redundancy Payment Central Fund 2 Portable Sick Scheme

Incolink does not charge a fee for its services. The net income that the Fund generates on its investment portfolio is used to pay for the following:

- Scheme administration costs
- Subsidisation of worker insurances (see below)
- Wellbeing and support services
- Provision of Construction industry training
- Financial support for OHS officers across the industry

Range of benefits funded by Incolink

Out of investment returns, Incolink pays and provides for a range of worker specific insurance covers:

- Accidental dental cover
- Ambulance cover
- Funeral cover

Employers & Incolink co-contribute to a range of worker specific insurance covers:

- Leisure time accident
 - Weekly Benefit
 - Broken Bones
 - Capital Benefits
 - Journey Cover and Capital Benefits
- Leisure Time Illness providing weekly benefits
- TAC Top-Up
- Workers' Compensation Top-Up
- Workplace Death and Capital Benefits
- Portable sick leave insurance scheme

Investment returns are also utilised to provide a range of wellbeing and support services, occupational health & safety grants (OH&S) and training grants to the building and construction industry. These are summarised as follows:

- Support for workers with mental health and drug & alcohol problems
- Support on worksites during critical incidents
- Suicide prevention programs
- Counselling for over 3,000 workers annually
- Physical health checks for 4,000 workers annually
- Funding for training for over 16,000 workers annually
- Funding for 21 OH&S officers

These services are a joint industry-worker response to issues in our industry. A full summary of our activity can be found in the latest annual report [here](#).

Incolink - an industry fund

The construction industry presents unique safety risks to workers and is characterised by high levels of worker vulnerability. For example, construction workers face one of the highest risks of injury and death of any industry; the highest level of suicide of any worker group; 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 ongoing issues. It is important that the Funds' continue to have the ability to provide these services.

Incolink has clearly operated in the best interests of industry and largely without regulation for over 28 years. It should be noted that any additional regulation will come at a cost and this cost will be borne via a reduction in services to worker members and/or higher financial contributions from employers.

Incolink governance framework

Incolink takes its fiduciary obligations very seriously. We already have comprehensive governance framework in place to ensure accountability and that we are acting in the best interest of our members at all times.

Major activities and initiatives funded by Incolink are regularly monitored and reviewed to ensure value for money.

A comprehensive review of governance has delivered the following outcomes:

- Internal Auditor (PwC)
- External Auditor (EY)
- Financial delegations policies
- Risk Management Framework and Risk Register
- Incolink Code of Conduct
- Directors Code of Conduct
- Board Governance Training
- Up to date board committee structure and charters
- Comprehensive Fraud and Corruption Control Plan and Policy
- Credit card policies
- Privacy training and policy updated and communicated to all Members
- Independent remuneration review
- Actuarial review of insurance schemes
- Conflict of Interest Declarations/Register and Policy
- Gifts, Benefits & Hospitality Register and Policy
- Privacy Act, Spam Act and Confidentiality Review
- Privacy and Complaints Officer and accompanying policies and procedures
- Whistleblowing Policy
- Regular and targeted staff training

Incolink's concerns

There are a number of risks and uncertainties to the continued provision of services currently provided by Incolink as a result of this Bill. These are:

1. Can we continue to fund Occupational Health & Safety Experts across the industry?
2. Can we continue to pay for Ambulance, Accidental Dental & Funeral cover for worker members?

There are also additional services currently provided that in our interpretation will continue to be permitted but this legislation has a potential negative impact. These can be summarised as:

3. Restricting our current investment in industry Training
4. Restricting the Wellbeing & Support Services that can be provided
5. Uncertainty about Incolink's ability to continue to fund IPT & Accident & Portable Sick Leave insurance (co-funded by employers)

1. Occupational Health & Safety Experts

Incolink worked alongside industry associations to establish a program of industry OH&S grants when WorkSafe removed funding for these roles in 2002. Funding these roles helps ensure good OH&S practice across the commercial building and construction industry. We invested \$4.8 million on 21 roles in 2016-17 to fund our OH&S program.

This Bill, as currently drafted, prevents Incolink from investing in this critical work and puts worker safety at significant risk on Victorian construction sites.

2. Ambulance, Accidental Dental & Funeral cover for worker members

Incolink invests back into the industry to generate a range of benefits beyond simply being a safety net of funds for members at the end of a job.

In addition to working with employers to fund income protection, accident & illness & portable sick leave insurance, Incolink provides a number of covers directly. This includes benefits such as ambulance, funeral and accidental dental covers.

These three benefits are not listed individually within EBA's and so may not be defined as a worker entitlement. If we are unable to provide these covers, it would penalise worker members and/or generate additional costs for employers. If this legislation is passed, EBAs would either have to be re-negotiated or, alternatively, the employer would pay more.

3. Training

Incolink's first priority is to ensure that it has the funds to meet its worker entitlement liabilities. Today Incolink is 120 per cent funded (*investment portfolio as a proportion of member balances*). This strong capital adequacy buffer is embedded in our investment policy objectives. It is only after there is clearly available funding does the Incolink Board make decisions about investing in individual organisations training grant initiatives. All training grants are independently reviewed, monitored and must be acquitted in accordance with Incolink's funding guidelines.

Incolink is the largest investor in Construction Industry training in Victoria. There is very little (if any) State Government investment in the construction training that is funded by Incolink. Last year, Incolink's funds were used to support training for over 16,000 workers. The majority of these training sessions were provided at no cost.

The Bill does allow training, however the governance and regulation of the provision of training increases significantly. In particular, the inclusion of the term 'at market value' and 'at commercial terms' does not in itself assure a comparison of equal quality between training providers. We have concerns that the quality of industry training may reduce to the lowest cost provider as a result. These criteria overlook the fact that with respect to occupational health and safety training the objective is to save lives and it is the quality of the training that is the most important aspect that needs to be considered.

4. Welfare – Wellbeing & Support Services

Incolink also utilises funds generated from investment returns to fund a range of wellbeing and support programs as previously outlined.

Similar to the concerns raised on training under point 3, we are concerned that the requirements to 'Market Test' wellbeing & support service providers will not be governed in the context of equal quality.

5. IPT & Accident & Portable Sick Leave Insurance (co-funded by employers)

The provision of IPT Illness & Accident insurance is a core part of our service offering and protects worker members financially as a result of illness or leisure time accident. In addition, portable sick leave insurance supplements existing employer provided sick leave allowances with a transferable sick leave insurance scheme to support workers across different employers, particularly in their time of need.

These benefits appear to be protected within the Bill however there is some doubt as to whether Incolink can 'top up' these insurance premiums from fund income.

If Incolink is unable to contribute to these insurance schemes then the impact will be similar to that identified under point 2. Worker members will be penalised and/or additional costs will apply for employers.

Conclusion

This Bill, in its current form, would have significant impacts on Incolink's 40,000+ worker members. It would prevent us investing in key OH&S initiatives. It is also unclear whether Incolink could continue to subsidise members' insurances, such as funeral cover, accident, dental, ambulance, portable sick leave and income protection.

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

The risk that a current or future Minister could unilaterally create new rules to prevent us providing key health and wellbeing services is also unnecessary.

The Parliament should not legislate to put at risk a model that is an example of how industry parties can work together to solve industry problems.

A summary of the key impacts and proposed mitigation is outlined in the table below:

Benefit Provided by Incolink	Allowed	Uncertainty created	Impact	What is required
1. Industry Occupational Health and Safety experts	No		The removal of an industry funded approach to educate workers and employers and develop new approaches to improve safety.	A recognition of the need to continue to support industry efforts to improve safety.
2. Accidental Dental insurance	No because it is not in an EBA may not be considered a “worker entitlement”	Yes – does this mean that Incolink has to discontinue this benefit.	This worker benefit has not been protected.	A specific inclusion that universal worker member benefits can be protected
2. Ambulance cover	No because it is not in an EBA may not be considered a “worker entitlement”	Yes – does this mean that Incolink has to discontinue this benefit.	This worker benefit has not been protected.	A specific inclusion that universal worker member benefits can be protected
2. Funeral insurance	No because it is not in an EBA may not be considered a “worker entitlement”	Yes – does this mean that Incolink has to discontinue this benefit.	This worker benefit has not been protected.	A specific inclusion that universal worker member benefits can be protected.
3. Training	Yes		Use of term “market value” and “at commercial terms puts at risk quality.	An assurance that free worker training at the current high quality can continue to be provided.
4. Welfare – wellbeing and support services	Yes	What is allowed?	There are a range of services that will now need to be market tested.	An assurance that wellbeing & support at the current high quality can continue to be provided.
5. IPT + Accident insurance (co-funded by employer and Incolink)	Yes can collect insurances and <u>if</u> they are deemed a worker entitlement then could use income to co-fund	There is some doubt about the ability to top up these insurances using income.	If can’t be funded rates in EBA will need to be revisited or worker benefits will be lost	Need clarification that Incolink can use income to fund this activity
5. Portable Sick Leave Insurance (co-funded by employer and Incolink)	Yes can collect insurances and <u>if</u> they are deemed a worker entitlement then could use income to co-fund	There is some doubt about the ability to top up these insurances using income.	If can’t be funded rates in EBA will need to be revisited or worker benefits will be lost	Need clarification that Incolink can use income to fund this activity