Australian
Chamber of Commerce
and Industry
ABN 85 008 391 795

www.australianchamber.com.au

Working for business.
Working for Australia

4 October 2019

By email: eec.sen@aph.gov.au

Dear Committee Secretariat

Please see below the Australian Chamber of Commerce and Industry's (ACCI) response to questions on notice arising from our appearance in Melbourne on 20 September 2019 in relation to the Fair Work Laws Amendment (Proper use of Worker Benefits) Bill 2019.

Question

Senator PRATT: I understand that. So why shouldn't single-employer funds be regulated in that same way?
…
Mr Barklamb: Senator, can we come back to you on that? Can we address you in writing on the intended operation of the single-employer arrangements? I think we understand the question, but I'd like to look at it a little bit further and confirm our facts.

Response from ACCI:

Single-employer funds are set up to only protect the entitlements of an employer's own employees before those entitlements have crystallised, while larger multi-employer funds are set up to protect the entitlement of thousands of employees, accepting contributions from hundreds of employers, holding millions of dollars' worth of entitlements across an industry.

The Bill provides for specific treatment of single-employers funds, in that it allows 'single-employer funds' to elect to be registered and regulated by the scheme if they choose. However smaller-funds are substantially incentivised to register, as they will only be eligible for a fringe benefit tax (FBT) exemption for contributions to registered worker entitlement funds (which they current receive) if they choose to register. Noting that FBT is currently 47%, being equal to the highest marginal income tax rate. In addition, the Bill requires single-employer funds to be registered if they are to be a term of a modern award or enterprise agreement, as the Bill prevents any term in a modern award or enterprise agreement from requiring payment into an unregistered fund.

Single-employer funds that choose not to register, will simply reflect an employer going above and beyond what every other employer is already required and legal obliged to pay in terms of employee entitlements under the Fair Work Act through the process of the employer putting aside employee's entitlements (typically into a trust) before they have crystallised.

Commissioner Heydon in his final report in Trade Union Governance and Corruption recommended that smaller worker entitlement funds not be subject to the same regulation

Canberra
Commerce House
Level 3
24 Brisbane Avenue
Barton ACT 2600
PO Box 6005
Kingston ACT 2604

Melbourne
Level 2
150 Collins Street
Melbourne VIC 3000
PO Box 18008
Collins Street East
Melbourne VIC 8003

Sydney
Level 15
140 Arthur Street
North Sydney NSW 2060
Locked Bag 938
North Sydney NSW 2059

as larger worker entitlement funds because they are not vulnerable to same issues as larger funds.

The Heydon Royal Commission, identified a number of issues related to conflicts of interest and breaches of fiduciary duties, which arose as a result of independent worker entitlement fund board members resolving to transfer worker entitlement funds into the bank accounts of the same organisations that had appointed them to the board. One of the purposes of the Bill is to address this issue going forward. As single-employer funds do not shift worker entitlement contributions to a separate organisation with an independent board they are not at risk of these type of conflicts of interest and breaches of fiduciary duties that can arise for large worker entitlement funds.

In addition, placing the same regulatory requirements on single-employer funds may deter employers from establishing such funds entirely which could result in workers' entitlements being more vulnerable to non-payment, particularly in the case of a business winding up.

For the record, ACCI is only aware of two single-employer funds that are currently approved under the FBT legislation and neither operate in the building and construction industry where worker entitlement funds typically operate.

Sincerely

Scott Barklamb
Director, Workplace Relations