



To: Senate Education and Employment Legislation Committee

Re: Inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019

Date: 29/08/2019

About this submission

This submission has been prepared by 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 to its worker members on behalf of its employer members who have made contributions via an industrial instrument for those 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 skills training
- Provision (jointly with the Victorian State Government) of OH&S training and awareness programs across the industry

Range of benefits funded by Incolink

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

- Accidental dental cover
- Emergency transport (road and air) cover
- Funeral cover

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

- Leisure time accident
 - Weekly Benefits
 - Spouse assistance to care for worker
 - Broken Bones
 - Capital Benefits
- Journey Cover
 - Weekly Benefits
 - Capital Benefits
- Leisure Time Illness
 - Weekly Benefits
 - Spouse assistance to care for worker
- TAC Top-Up
- Workers' Compensation Top-Up and Capital Benefits
- Workplace Death and Capital Benefits
- Portable sick leave insurance scheme

Incolink has also been able to secure for employer members who contribute to some of these insurance programs, once qualified, the provision of free work injury management services to assist injured workers in their return to work.

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

- Support for workers experiencing mental health, financial and drug & alcohol issues
- Support on worksites during critical incidents
- Industry leading suicide prevention programs
- Providing over 3,000 counselling sessions annually
- Job search support
- Provision of custom-built mobile clinic (Incolink GP Health bus) delivering physical health and skin checks for 4,000 workers annually
- Funding for skills training for over 240 training courses delivering vital skills training for over 16,000 workers annually. Incolink is the largest single funder of industry skills training in Australia.
- Funding for 11 industry participants led OH&S training and awareness projects reaching in excess of 100,000 OH&S awareness contacts (including vital training sessions)

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](#).

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 demonstrably operated in the best interests of industry and largely with limited regulation for over 30 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 a 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 including by our auditors, particularly in respect of our industry skills training and OH&S training and awareness grant funding to ensure value for money.

The following processes/checking mechanisms have been utilised to verify our procedures and auditing scrutiny:

- 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 training and awareness across the industry?
2. Can we continue to pay for Emergency transport, 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)

The overly restrictive and onerous governance requirements via the voting Independent director will adversely affect our ability to efficiently deliver those services, let alone our ability to attract the required individual to fulfil that role. Put simply, a director that signs every cheque will be besieged with the number of payments we make in a given month. It will dumb down the systems we have put in place to quickly and efficiently process payments. The chosen methodology is more akin to the 19th century and outside of normal commercial practice. Internal audit processes would never advocate such a methodology. We reject this as being a way to cure alleged illegal or improper payments.

1. Occupational Health & Safety Experts

Incolink worked alongside industry associations to establish a program of industry OH&S grants when WorkSafe (Vic) removed funding for these industry critical roles in 2002. Funding these projects helps ensure good OH&S practice across the commercial building and construction industry. We:

- solely invested \$4.8 million on 21 OH&S officers in 2017-18
- solely invested \$2.5 million and secured an additional \$2m from the Victorian State Government to jointly fund 11 OH&S training and awareness projects being delivered by industry stakeholders, in 2018-19.

This Bill, prevents Incolink from investing in this critical work and puts worker safety at significant risk on Victorian construction sites. The industry has one of the highest rates of injury and death of any in the country. Constant reinforcement of safety procedures is crucial. Diminishing efforts and resources aimed at helping reduce injuries and deaths is dangerous and misguided. Further endorsing our approach, the Victorian state government has partnered with Incolink to ensure that our resourcing in this area is maintained. The people engaged in this work carry qualifications and expertise that actively help find the best safest way for work to be conducted.

2. Emergency Transport, 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 jointly fund income protection, accident & illness & portable sick leave insurance, Incolink provides a number of covers directly. This includes benefits such as emergency transport, 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, the employer would pay more or, alternatively important benefits to members would regrettably be discontinued.

3. Skills Training

Incolink's first priority is to ensure that it has the funds to meet its worker entitlement liabilities. Today Incolink is 122 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' skills training grant initiatives. All skills training grants are independently reviewed, monitored and must be acquitted in accordance with Incolink's funding guidelines. Our grant funding recipients operate world class training centres and are registered RTOs and subject to their auditing and external strict regulatory compliance regime.

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 fund over 240 training courses delivered by complying RTOs providing much needed skills training for over 16,000 workers. The majority of these training sessions were provided at no cost to the worker or employer.

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 and awareness, 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. It must be noted that, the unique nature of some of these training centres is not provided elsewhere.

It must also be stressed that the training is provided by registered and complying RTOs utilising world class training centres, namely the Plumbing Industry Climate Action Centre, Building Leadership Simulation Centre and CFMEU Education and Training Unit. These organisations are subject to a strict regulatory auditing and compliance regime and our funding of them is subject to strict reporting requirements that ensures value for money and required deliverables are met. In addition, their performance is independently reviewed and audited by our internal auditors, PWC. Given these existing robust governance requirements, the overly restrictive and onerous governance requirements via the voting Independent director appears an excessive and unnecessary administrative burden, negatively affecting our ability to continue to efficiently deliver those services, let alone our ability to attract the required individual to fulfil that role.

4. Supporting the future workforce

Ensuring that the industry continues to have regeneration of a relevantly skilled workforce is critical to its ongoing success. Incolink is a strong supporter of the current and future workforce, particularly apprentices. Together with our members we manage a successful Apprentice Scheme that ensures the safety net afforded to worker members is also equitably made available to apprentices. During FY19 Incolink contributed \$2.1m to the scheme.

Incolink is greatly concerned that the Bill has the potential to jeopardise future financial support provided to apprentices, which we fear will reduce the retention rate of this desperately needed resource to the industry. We urge you to consider the ramifications of the Bill in this regard. We strongly advocate the excision of this component of the legislation or change its tenor so as not to jeopardise the interests of thousands of young Australians.

5. 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.

6. 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, would have significant and negative impacts on Incolink's 79,000+ hard working members and their families. It would prevent us investing in key OH&S initiatives. It would also make things more difficult and more expensive for employers while stifling innovation and collaboration between workers, unions and employers to create a vibrant construction sector meeting the needs of workers, a workforce critical to our much-needed pipeline of infrastructure projects and the overall financial health of the economy

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. Put simply, this Bill hinders if not prevents industry participants from both sides from pooling resources and working cooperatively to solve industry problems.

We respect Parliament's intention but implementing a regime upon an industry without a deep understanding of the enormous industry focussed betterment initiatives and how they will be adversely affected is fundamentally flawed. The onerous compliance obligations imposed on Funds by the proposed Bill is impractical and unnecessary. The significant associated costs that Funds such as Incolink would incur in order to comply with these provisions would ultimately be borne by construction workers in the form of a reduction in the breadth and quality of services outlined above. Incolink has

operated for over 30 years with a very effective representative governance model, a model that is widely used within the Financial Services sector. There is no valid or justifiable reason for this to change.

The principal people who should be able to direct member-based organisations how to spend their resources are members themselves and our Fund has operated for over 30 years at the direction of our members.

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 and concentrates too much power in the hands of the Minister.

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; and has done so successfully for the last 30 years.

