

Mr Stephen Palenthorpe
Secretary
Senate Standing Committee on Education & Employment
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3 November 2017

Legislation Committee Inquiry into provisions of the *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017*

I refer to the above and to your e-mail message received on 31 October 2017, which requested a response by 3 November 2017.

Transcript corrections

Corrections of the relevant pages are attached and marked as requested.

Corrections to evidence

In response to a question from Senator Ketter, I made the following Statement:

There's a provision in the Fair Work (Registered Organisations) Act—it's 329FB—that allows the minister, not even in writing, to direct the Registered Organisations Commissioner to give specified reports. So I ring them up and say, 'Look, if you ever get a warrant about this, can you ring me, because I want to leak it to the media and get the press out the front.'

Section 329FB of the *Fair Work (Registered Organisations) Act* does not require the Registered Organisations Commissioner's report to the Minister to be in writing, however the Minister's request for such a report must be in writing. My statement was therefore inaccurate and I take this opportunity to correct it, with the leave of the Committee.

In response to a question from Senator Paterson, I made the following Statement:

There are reasonably broad definitions in the ASIC Act of what might constitute a managed investment scheme—and that is probably the reason you have this class order exempting these funds and putting them in the tax act to begin with.

The definitions referred to are in fact contained in the *Corporations Act*, not the *Australian Securities and Investments Commission Act*. My statement was therefore inaccurate and I take this opportunity to correct it, with the leave of the Committee.

Answers to questions on notice

ACTING CHAIR: Mr Clarke, according to AEC disclosures, member organisations of the ACTU receive about \$25 million a year from worker entitlement funds. Is that correct in your understanding?

Mr Clarke: I wouldn't know.

ACTING CHAIR: Would you mind taking that on notice and getting back to us?

Mr Clarke: Sure. Are you able to tell me what the organisations are?

ACTING CHAIR: Your union member organisations in aggregate—about \$25 million a year.

Mr Clarke: These are entities operated by the ACTU, or the affiliate unions?

ACTING CHAIR: The affiliate unions of the ACTU receive about \$25 million a year from worker entitlement funds.

Mr Clarke: I will see if I can advance that.

I have unable to verify the estimate of \$25 million in the time provided. That figure appears to have its origins in article that appeared in the Australian on 12 September of this year, “Fund crackdown could cost unions \$25 million in revenue a year”.

Whilst the methodology adopted to arrive at that estimate is not disclosed in the article, we assume from the information provided in the article that it is based on examining the Disclosure Returns of unions that are Associated Entities (for the purposes of the *Commonwealth Electoral Act*). We note that not all unions will, at a given time, meet the definition of Associated Entity, which may mean the scope of the data is too narrow. On the other hand, it is apparent from the article that the income from “funds” which was included in the analysis included income from “redundancy funds, income protection and other insurance funds, charity and welfare funds and others”. Even without speculating as to what the reference to “others” might include, it is apparent that the article’s collation of income from “funds” is somewhat wider than the entities covered by proposed sections 329HB and 329HC as contained in the Bill (subject to any expansion by *worker entitlement fund rules* at a later stage). For example, one of our affiliates has informed us that an amount attributed to them as income from such a fund was in fact an insurance payment which was paid to the union’s own employees through the union’s payroll on account of injuries travelling between home and work. On the basis of the above, the estimate of \$25million per year should be regarded with great skepticism and ought not be relied on or accepted by the Committee.

ACTING CHAIR: Indeed. Anyway, does the ACTU itself receive any direct funds from the worker entitlement funds?

Mr Clarke: Not to my knowledge.

ACTING CHAIR: You can take that on notice if you would like to check.

Mr Clarke: Yes, I can check if you like.

I can confirm that the ACTU does not receive income from worker entitlement funds as defined in the Bill.

Yours faithfully,

Trevor Clarke
Director – Legal & Industrial

