Electrical Trades Union

Submission to the Senate Education and Employment Legislation Committee Inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017

19 October 2017

Contents

1 PRELIMINARY SUMMARY

1. The ETU does not support the *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017 (the Bill).*

2. The ETU supports the Australian Council of Trade Unions (ACTU) submission to this inquiry and supports all arguments reasoned in that submission.

3. The Bill is simply an ideological attack on Unions that goes further than the recommendations made by the Trade Union Royal Commission. What is being proposed goes well beyond any equivalence to the regulation of corporations in Australia.

4. Further, the Bill is seeking to allow the Government to interfere with workers benefits.

5. The Bill should be rejected.

2 INTRODUCTION

The Electrical Trades Union of Australia (ETU) is the Electrical, energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 electrical and electronic workers around the country and the CEPU as a whole represents approximately 100,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make a submission on the Government's proposed *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017*.

Regrettably, the Government has provided very little time for stakeholders to evaluate the full impacts of the proposed bill or to provide a sufficient opportunity for a comprehensive and detailed submission.

The Abbott / Turnbull Governments' ideological hatred of Unions is all-consuming for the 45th Parliament and shows the internal far right wing of their party is clouding the current Government's capacity to effectively govern in the interests of the country.

This latest Bill proposal continues the Governments trend of deregulation for Corporations, many of whom don't pay tax in this country, while imposing vast amounts of unnecessary and bureaucratic overregulation on workers Unions.

Notwithstanding, the ETU provides the following submission which begins to articulate the many deficiencies and dangers within the proposed bill.

3 INCONSISTENT WITH TURC RECOMMENDATIONS

The TURC final report made recommendations 45 and 46 to deal with the regulatory oversight of worker benefit funds.

Recommendation 45 Legislation, either standalone or amending the Corporations Act 2001 (Cth), be enacted dealing comprehensively with the governance, financial reporting and financial disclosures required by worker entitlement funds. The legislation should provide for registration of worker entitlement funds with the Australian Securities and Investments Commission, and contain a prohibition on any person carrying on or operating an unregistered worker entitlement fund above a certain minimum number of persons. Key recommended features of the legislative scheme are explained at paragraphs 93 and 95 of Volume 5, Chapter 5 of the Report.

Recommendation 46 In consequence of the enactment of the legislation recommended by Recommendation 45, Class Order [CO 02/314] not be extended. In further consequence, s58PB of the Fringe Benefits Tax Assessment Act 1986 (Cth) be repealed and the fringe benefits tax exemption in s 58PA(a) be amended to refer to registered worker entitlement funds.

At no point did the recommendations suggest that worker entitlement funds be moved under the jurisdiction of the industrial regulator. Further, the industrial regulator is subject to appointment by the Commonwealth Government and therefore prone to influence of the ideological bent of the Government of the day.

The recommendation advised of changes to the Corporations Act to remove inconsistencies with those laws to provide for the appropriate reporting, auditing and disclosure requirements necessary for good Governance. This is the appropriate place for these changes to be made.

Other worker benefit funds, such as Superannuation and Long Service Leave are regulated by Australia's taxation and corporations laws, there is no reason for a cohort of worker benefit funds to be treated differently.

4 INCONSISTENT WITH RED TAPE REDUCTION AGENDA

The 45th Parliament is at every turn introducing more and more regulation targeted specifically at Trade Unions. In doing so, the Parliament is acting contrary to its election commitments to reduce regulatory burden in Australia and is ignoring its own guide to regulation.

Regulation is in every case the default option for Government for matters pertaining to Trade Unions.

Regulation is being imposed with no demonstrable overall net benefit to workers, their unions, industry or the economy.

The cost burden of the proposed regulation is not fully offset by reductions in existing regulatory burden as there is no reduction in regulatory burden being proposed whatsoever. The proposed regulatory policy change has not been the subject of a Regulation Impact Statement.

There has been no consultation in a genuine and timely way with affected businesses and workers or their representative Unions and Associations. Nor has there been consultation with worker benefit funds.

There has been no effort made to avoid creating cumulative or overlapping regulatory burdens with many of the proposed changes being a replication of other regulatory requirements which already apply.

The sole aim of this legislation is to impose cost barriers upon Unions and employee benefit funds. Barriers which will have the effect of reducing workers' rights and benefits, not securing them.

The new regulatory regime will impose further compliance cost on both unions worker benefit funds. It will mean the members money in the worker benefit fund will be frittered away on lawyers and auditors due to the multiple and overlapping obligations. It is also likely

to make it difficult to attract investment in the setup of new funds or the expansion of existing schemes.

5 REGULATION ABOVE WHAT CORPORATIONS MUST COMPLY WITH

This Bill continues the practice of the Liberal Government to introduce a regulatory regime which goes far beyond those requirements which Corporations must comply with.
The level of Government interference and overreach into the operation of Unions and of worker benefit funds which Unions have set up in cooperation with industry is unprecedented.

Under the proposed bill worker benefit funds will be required to be regulated by Corporations Laws, Taxation Laws, the Registered Organisations Commission and the Fair Work Act, creating unnecessary duplication.

Employee benefit funds were created due to the high frequency of unscrupulous employers failing to pay their employees what they are owed. Whether that be through phoenixing, insolvency or straight out wage theft, all too often workers miss out on what is rightfully theirs.

On average, over 1,800 insolvencies occurred each year for the past 10 years in the construction industry.

The Senate Economic References Committee Report on Insolvency in the Australian Construction Industry which was released in 2015[1].

In its Report, the Committee noted that:

- Over the past decade, the construction industry has accounted for between one-fifth and one-quarter of all insolvencies in Australia, which is disproportionately high relative to its share of national output.
- Factors which have contributed to this high rate of insolvencies include: the structure of the commercial construction sector; serious imbalances of power in contractual relationships; and harsh, oppressive, unconscionable commercial conduct.
- Illegal 'phoenix' activity remains a significant issue in the construction industry.
- The construction industry is burdened with nearly $3 billion in unpaid debts each year.
- The legislative regime covering security of payment in the construction industry is "fragmented and disparate".

[1] An inquiry into the scale and incidence of insolvency in the Australian construction industry

In stark contrast to the above, there has not been a single case of a worker not receiving their legitimate entitlements from a Union controlled worker benefit fund.

Why the Government would seek to unnecessarily interfere with such important funds, particularly when they are so acutely aware of the issues, is beyond comprehension.

In the Senate Inquiries response to the report, recommendations were made including;

Recommendation 9

- The committee recommends that construction industry participants, particularly those representing the interests of subcontractors, develop partnerships with mental health support organisations to provide ready access to support, counselling and treatment for people in the industry who may suffer from the adverse mental health effects of the financial distress caused by contractual disputes and insolvency in the construction industry.

This Bill severely limits the capacity for Unions and employer associations to fund such initiatives.

6 SCHEDULES

To further articulate our concerns in relation to each of the proposed schedules the ETU provides the following information which outlines how poorly this legislation has been drafted and why it is misdirected.

Schedule 1 – Financial management and accountability

Firstly, the rules of Unions require all financial decisions of a Union to be scrutinised by the democratically elected, rank and fil committee of management.

Secondly, the Registered Organisations Act (RO Act) already contains provisions which require financial management and accountability of a higher standard than Australian Corporations.

The current RO Act provides for a Union to;

1. Comply with its own rules; and
2. Manage financial decisions including extensive disclosure, training and reporting requirements.

The RO Act already requires Unions to comply with a disclosure, training and reporting regime which is significantly greater than that required of companies under the Corporations Act.

Schedule 2 – Regulation of worker entitlement funds

The regulation of worker entitlement funds is currently prescribed by both taxation laws and corporations laws. This bill intends to introduce a third regulator to oversee the operation of worker benefit funds.

Once again, the bill will have the effect of applying a higher requirement on workers schemes than those that apply to employers.
Trust funds which benefit companies will be ignored while trust funds which benefit workers will be squashed under a regulatory avalanche of rules.

Trust funds which benefit companies will be run by whomever the company chooses, trust funds which benefit workers will have parts of their board composition dictated by Government.
Trust funds which benefit companies will be free to spend their money on whatever they choose while trust funds which benefit workers will be curtailed and prevented from spending their money in the industries they support.

Corporations are free to choose whichever fund or product they like, including choosing exclusivity where it suits their needs, workers are banned from deciding their preferred benefit fund.

Penalties for inadvertent breaches of an unnecessarily complex regulatory regime are disproportional and far beyond what the community's expectation would be. Penalties are significantly higher than those face by a corporation making an equivalent administrative error. Penalty's have been designed to ensure democratically elected officers of a Union are expelled from their positions for minor technical and administrative oversights and are further restricted from gaining employment in worker benefit funds.

Worker benefit funds will be compelled to make public sensitive and private information about welfare payments made to workers who find themselves in hard times, while a corporation can freely donate money to any cause it likes and in most circumstances avoid disclosing to anyone the amount of the payment and what benefit it provided the company or shareholders. A Government appointed Commissioner can intervene and demand documentation any time they choose with the lowest of thresholds of cause, effectively draining the resources of worker benefit funds while no equivalent power exists for the regulator of companies.

Meanwhile, employers who choose to do a deal with one of the big four banks to establish all manner of employee benefit funds including compelling their employees to utilise the employers chosen funds, yet somehow they escape the provisions of this proposed bill. In effect, an employer could receive huge commissions, sponsorship, free travel, attendance at sporting events and any other manner of kickbacks without ever disclosing them so as long as the employer restricts its funds to its own organisation.

<u>Schedule 5 – Disclosable arrangements</u>

Again, the ETU is not opposed to disclosures. This is something the Union does as a matter of course as Unions are already regulated to a standard far above that required of corporations. In addition, the rules of the union and the current Fair Work Act already require significant disclosures, including disclosures contemplated by the proposed bill.
Further, the proposed bill will create significant uncertainty through the insertion of a catch all clause giving the Minister of the day, powers to create new rules or vary existing rules at any given moment.

The bill does not actually require a Union to disclose arrangements to workers, instead it creates a convoluted and bureaucratic reporting process that will at best confuse industry participants and at worst, cause participants to not engage.
It is important to note that there is no reciprocal requirement for employers to notify Unions about their deals.

The proposed bill requires an employer to supply an overly complex and bureaucratic document to employees but makes no requirement for Unions or employers to explain the content or effect of the document.

The proposed bill contains no penalty for an employer that recklessly or deliberately misrepresents the disclosure to employees.

7 CASE STUDIES

Case Study 1

The QLD/NT Branch of the ETU worked in conjunction with the power industry to develop the Positive Power Mob program from 2008 through to 2012. The program was developed in partnership with Qld Aboriginal and Torres Strait Island communities to identify opportunities for participants to engage in an 8 – 12 week work ready pre-vocational program to assist in securing apprenticeships and other technical serviceperson roles within the South East Queensland power company Energex Pty Ltd.

Surplus income associated with a union controlled worker benefit fund was used to fund the ETU's resourcing requirements, necessary to make this program a success.

Over the life of the program, 50 workers of Aboriginal and / or Torres Strait Island descent secured vital work skills, knowledge and experience with over half of all participants securing electrical apprenticeships in the electrical industry.

This program could not have been funded under the proposed Bill.

Case Study 2

Mates in Construction was created in 2009 to provide real support to workers in the construction industry which had some of the highest suicide rates in the country. Whilst Mates in Construction has helped many people in the industry the most significant statistic is the 35 suicides that the program has directly intervened in and prevented since its inception.

Mates is Construction is expanding into other industry sectors particularly mining and the power industry. Seed funding for these expansions comes from a range of sources including surplus income associated with a union controlled worker benefit fund.
The Mates in Construction program regularly assists people outside of the construction industry and delivers training programs for Managers, Supervisors and Union Officials around mental health. Many of these people are not in the construction industry.

This program could not be funded under this proposed Bill.

Case Study 3

In Tasmania surplus income associated with a union controlled worker benefit fund is utilised to enter into arrangements with counselling and support services which are made available to all Union members and their families.

Since these arrangements have been in place, an average of 4 counselling appointments per month have been accessed for everything from financial counselling right through to assistance with depression and suicide prevention.

These services will have to be abandoned as they cannot be funded under this proposed Bill.

Case Study 4

In Western Australia surplus income associated with a union controlled worker benefit fund is utilised to enter into arrangements to provide ambulance cover which is made available to over 7,000 Union members and their families.

These arrangements have been in place for close to a decade and many families have been saved each year from paying massive ambulance costs and in some cases has meant that families have not had to think twice about calling an ambulance for fear they may not be able to afford the cost.

This service will have to be abandoned as it cannot be funded under this proposed Bill.

Case Study 5

In Victoria surplus income associated with a union controlled worker benefit fund is utilised to pay ambulance costs (where members are not a member of Ambulance Victoria), hardship payments (where members, their spouse or children have cancer and other illnesses) to help with the medical costs, and funeral costs (for members their spouse or children who have sadly passed). This support mechanism is in place for over 18,000 Union members and extends to their families.

These arrangements have been in place for well over a decade and many families have been saved each year from paying massive costs at some of the most difficult times in their lives.

By way of example, during the period 1/1/14 to 25/10/17 the following support payments were made to thousands of Victorian workers;

Ambulance Costs	$1,326,276
Funeral Costs	$710,477
Hardship Payments	$346,762

This support would no longer be available as it cannot be funded under this proposed Bill.

8 RECOMMENDATIONS

Recommendation 1

That Schedule 1 be rejected, or alternatively that Schedule 1 be amended so as to avoid duplication with existing laws and to ensure financial management and accountability is no greater than that required by corporations laws. Amendments should also ensure that penalties are in line with community expectations.

Recommendation 2

That schedule 2 be rejected entirely and that worker benefit funds remain under the jurisdiction of the corporate regulator.

Recommendation 3

That Schedule 3 be rejected, or alternatively that Schedule 3 be amended so as to avoid duplication with regulations which deal with election payments. Amendments should also ensure that penalties are in line with community expectations.

Recommendation 4

That Schedule 4 be rejected, or alternatively that Schedule 4 be amended so as to avoid duplication with existing regulations which deal with coercion. Amendments should also ensure that penalties are in line with community expectations.

Recommendation 5

That Schedule 5 be rejected, or alternatively that Schedule 5 be amended so as to avoid duplication with existing laws and to ensure treatment of disclosures is no greater than that required by corporations laws. Amendments should also ensure that penalties are in line with community expectations.

9 CONCLUSION

The proposed bill is completely unnecessary and misdirected.

The proposed bill should be rejected and the parliament should focus its efforts on the many important matters of public interest where it is currently failing, such as establishing a properly constructed, long term energy policy.

At best, this is a poorly constructed bill, devised as an ideological attack on Unions. At worst, it is a deliberate bill designed to assist the Government's political objective of interfering with and wasting union members resources through a mountain of convoluted regulation.

Neither are sound reasons for legislative change.