



WA CONSTRUCTION INDUSTRY REDUNDANCY FUND

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OUR REF:MMR/AMF: FBT SEL Committ.05/03

5 May 2003



The Secretary
Senate Economics Legislative Committee
Room SG 64
Parliament House
CANBERRA WA 2600

Dear Sir

RE: TAXATION LAWS AMENDMENT BILL (NO. 4) 2003

The WA Construction Industry Redundancy Fund is a fund providing redundancy benefits to building workers in the construction industry in Western Australia.

Our Fund is affected by the interpretation by the Commissioner of Taxation in his revised ruling whereby Fringe Benefits Tax is payable on contributions into the Fund by employers from the 1 April 2003. We will also be effected by the above legislation and wish to make the following submission for your consideration.

Requirement of an "Industrial Instrument"

With respect to the requirement as to "Industrial Instrument" the Bill intends to grant FBT exemption on contributions into an approved Workers Entitlement Fund provided those contributions are required by a registered Industrial Agreement. "(defined as a registered agreement or provision in either a Federal or State award) - SS58PA(b). Additionally, the contributions must be to fund benefits that are required by such an Industrial Agreement - SS58PA(c)(i).

Under the existing provisions of the Bill any contributions made that are not so required, or are in excess of the amount so required, will remain subject to FBT under the Commissioners revised ruling.

The construction industry consists of many permutations of employment contracts, ranging from national employers through to sole traders, working intermittently on both commercial and domestic building sites. Some employers have negotiated registered Industrial Agreements with the construction unions, whilst others chose not to enter into formal registered Agreements with

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the unions. However, they agree to comply with the conditions detailed in Industrial Agreements that have been registered by other employers, whilst they are working on particular building sites. Others work under the terms and conditions of awards but selectively agree to offer increased benefits, as over award conditions, to attract workers to work for them, but choose not to formalise these conditions, by registering those over award arrangements. Our experience is that few workers are employed solely under the provisions of an Award.

In short, a substantial number of employers who contribute into the WA Construction Industry Redundancy Fund, to provide “redundancy benefits” for their workers, will not be able to satisfy section SS58PA (b) and (c)(i) conditions that are essential for their contributions to be FBT exempt. Based on present figures over two thirds of employers contributing into WACIRF will not satisfy the section SS58PA conditions and will, under the present provision of the Bill, remain subjected to FBT. As a result the contributions of those two thirds of employers will still be subjected to double taxation, ie: the redundancy benefits arising from those contributions will be subject to FBT and also taxed to workers as ETP’s, despite the stated purpose of the Bill to avoid this result.

We believe that there should be no distinction made by reference to the underlying basis upon which contributions are made. If an employer contributes into an approved Workers Entitlement Fund then they will do so by reason of industrial negotiation required to attract workers and should be granted the same financial relief from FBT as those that have entered into a registered Industrial Agreement.

It should be remembered that registered Industrial Agreements have a limited life and at the expiry of their term, employers continue to comply with the expired clauses until a new agreement is reached. The provisions of the present Bill will mean that at the expiration of the term of the registered Industrial Agreement, FBT will become payable until a new agreement is negotiated and registered. This may take up to twelve months and will give rise to further anomalies by reference to the section SS58PA conditions for FBT exemption.

We therefore suggest that the Bill be amended by removing SS58PA (b) and the passage “under the industrial instrument” from SS58PA(c)(i) so that all contributions made by employers into an approved Worker Entitlement Fund, to meet “leave payments or payments when an employee ceases employment” and reasonable administrative costs incurred by the Fund, will be FBT exempt. Such an amendment to the Bill will ensure that in a real practical sense double taxation of contributions and benefits will be avoided, whilst still requiring that the contributions to Funds meet the strict requirements of the “Worker Entitlement Fund” definition. As it stands, the Bill will practically only prevent double taxation in a minor number of cases.

Surplus Income

The proposed Bill specifies what must be done with surplus income after deducting administrative costs.

Redundancy Funds were traditionally established to preserve employee members entitlements. Because of the sometimes-frail financial position of employer entities due to a multitude of factors, some of these entities collapse and this resulted in insufficient funds being available to meet employee’s termination entitlements.

Redundancy Funds were established to ensure that no matter what happened to the employer entity, the employees could be assured that their redundancy entitlements had been collected and held for them by the Funds. In that way the industry and wider community benefited by workers

having funds available to them for living expenses during periods of unemployment which are regular occurrences in the construction industry. This results in the workforce in the industry being retained and not lost to other areas of employment, despite periods of unemployment that frequently occur in the building industry.

Under Fund rules, if an employee is working, they are not entitled to make a claim for their Redundancy Fund entitlements. Whilst the entitlements are held by the Fund, they are invested. The earnings from these investments are firstly applied to pay the administrative costs of operating the Fund. Any amounts remaining are distributed to the sponsors of the Fund.

In our Fund, the sponsors are employer and employee bodies, namely, the MBA, CFMEUW, MPA, CEPU, CFMEU and the CCA. They have all entered into legally binding arrangements stipulating that any proceeds they received will be used exclusively for the benefit of the industry. The proceeds will be applied for benefits that are beneficial to the industry rather than distributing small amounts directly to the workers.

Historically the sponsors have applied their distributions to finance the provision of a number of insurance covers for employees, the establishment of various industry-training schemes and the funding of apprenticeship training.

In Western Australia, state legislation excludes from workers compensation (work cover) injuries sustained by workers travelling to or from their place of employment. The sponsors of our Fund placed insurance cover to protect workers financially who may be subjected to an injury whilst travelling to or from their place of employment. Without this cover, they would receive no income whilst not attending work as a result of an accident and it is therefore a complimentary benefit to 'redundancy benefits'.

History has shown that such instances occur frequently and the cover provided to workers is beneficial to workers and the community generally in allowing early rehabilitation and the return of an injured worker to the workforce.

The Bill intends that any surpluses must be distributed to either the contributing employers or participating employees.

It is estimated that with the existing WACIRF membership the amount of any distribution to a worker would be in the vicinity of \$10 per annum, and after deducting tax the net amount would be somewhere between \$5 and \$7. This is a negligible amount and pales into insignificance when compared to the benefits provided under the insurance covers that have been in place for many years.

Training of workers and apprentices is an ongoing cost, that, if not financed from sources such as Fund surplus income will certainly end, resulting in employees potentially being denied the opportunity of receiving vital training in current work practices and enabling them to enhance their skills and thus providing them with the opportunity of retaining employment in a rapidly changing work environment.

There are other worthy and commendable activities funded by Redundancy Funds around Australia such as drug and alcohol counselling, chaplaincy services and other trauma counselling services. If this Bill removes this funding then these services will probably cease to operate and the result will be detrimental to the general community, which will ultimately be the sufferers of the negative outcome of situations, which the above-mentioned services try and solve.

As was stated at the opening of this submission the primary function of WACIRF is to preserve members entitlements. The earnings generated are firstly applied to recover operating costs, which means that neither employers nor employees are charged an administration fee. Then any surpluses remaining are applied for the benefit of the industry as has been illustrated earlier. Thus, all of the contributions and any surpluses generated are applied towards the benefit of workers.

It cannot be argued that a small amounts paid to workers by way of an interest payment will be of greater value to the worker than the valuable insurance cover, training or free counselling presently provided at no cost to the employee.

We believe that to prohibit application of Fund income surpluses, that provide these services, will be to the detriment of workers and ultimately place additional financial pressure on employers to finance the same services that are now being financed by the surpluses generated by Redundancy Funds.

Rather than prohibiting the present funding of insurance, training and other industry benefits, the Bill could provide for guidelines and reporting to be introduced in consultation with the parties involved and the Government so that this vital funding can continue to play a very important part in the industry.

Yours faithfully

A handwritten signature in black ink, appearing to read "M Rzepecki", with a horizontal line underneath the name.

Murray Rzepecki
CHIEF EXECUTIVE OFFICER