



MATES in Construction | Submission

Senate Standing Committee on Education and Employment Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019 Inquiry

Background

Construction workers' suicide rates are 71% higher than the rates for other employed men in Australia.

Every year 191 construction workers take their own lives – one every second day. A construction worker is six times more likely to die by suicide than an accident at work. Around 5,500 construction workers will attempt suicide each year and of them around 970 will be permanently disabled after a suicide attempt.

MATES in Construction is a multimodal program establishing a local care program on construction sites where mates look out for mates. The program has trained more than 175,000 workers and we have a network of 14,000 volunteer connection points on sites across Australia. The organisation also provides case management being the missing middle between a worker in crisis and the right level of care. The service also operates a 24/7 helpline.

MATES in Construction (MATES) was established in Queensland in March 2008 by the Building Employees Redundancy Trust. The organisation was established in response to a report commissioned and funded in part by BERT establishing suicide to be a significant problem in the industry.

MATES in Construction was established in:

- WA in 2011 by Reddifund;
- SA in 2012 by BIRST; and
- NSW in 2013 by MATES Qld with support from the Commonwealth Government.

Research has shown MATES in Construction to have a return on investment particularly to the commonwealth of \$4.60 per dollar invested. Suicide rates in the Queensland construction industry fell by 7.9 over the first five years of the program against an increasing trend amongst Queensland men generally. This is without mentioning the difficulty of measuring the preventative effects of the MATES program and all the lives saved as a result.

This decrease in risk ratio has decreased continually in Queensland since the introduction of the program from almost 100% elevated risk to “only” 22% elevated risk. A conservative estimate is that up to 30 lives have been saved so far, just in Queensland.

Structure

Each organisation that makes up the MATES is a company limited by guarantee and is a wholly owned subsidiary of a State-based redundancy fund for workers in the construction industry i.e.:

- the sole member of Qld & NT is B.E.R.T. Pty Ltd ACN 010 917 281 (**BERT**);
- the sole member of SA is SABIRST Limited ACN 140 138 110 (**BIRST**);
- the sole member of WA is Reddifund Limited ACN 009 404 273 (**Reddifund**);

MATES in Construction is a registered charity with the Australian Charities & Not-for-profits Commission (**ACNC**) in the subtype of health promotion charity; and consequently is endorsed as a deductible gift recipient (**DGR**) pursuant to Item 1.1.6 of the table in section 30-20 of the *Income Tax Assessment Act 1997* (Cth) (**Tax Act**); and

Funding impact

Being industry led has allowed MATES in Construction to further develop the mental health agenda for the industry. In September 2016 the Minister for Health opened a roundtable facilitated by MATES and *beyondblue* to assist the industry in developing a blueprint for better mental health. Earlier this year we launched Australian Building and Construction Industry Blueprint for better mental health and suicide prevention.

MATES in Construction has broad industry support and has a broad funding base. The funding from worker entitlement funds is important to the stability and sustainability of MATES in Construction. In the 2016-17 financial year MATES in Construction received the same level of funding from four worker entitlement funds as was received from the Commonwealth Government.

An unintended consequence of changes to the operation of worker entitlement schemes, including redundancy trusts, could result in a substantial decline in funds to MATES for the operation of its services and outreach.

Funding breakdown

MATES receives funding for its activities from:

- the Australian Government, particularly the Department of Health;
- State governments;
- annual donations from the Redundancy Funds;
- the receipt of one-off grants from industry construction bodies for the employment of field officers;
- some fee-for-service work, e.g. a redundancy fund may purchase an amount of counselling to be administered by a MATES entity on their behalf; and
- an annual payment from the Redundancy Funds in return for delivering services to the industry and reporting on results and milestones on the Program e.g. number of people trained.

Over 18% of the MATES funding is received from the Redundancy Funds. The Redundancy Funds support MATES using income derived from the management of their assets which comprise contributions received from employers on behalf of the workers.

Royal Commission

The Royal Commission into the Building and Construction Industry (Royal Commission) report fundamentally formed a particular view in relation to income derived by Worker Entitlement Funds.

In the case of MATES however, the income which it receives from Worker Entitlement Funds is used solely for the purpose of benefiting construction workers and the industry more broadly by undertaking activities to further its charitable purpose. The distribution of income by the Redundancy Funds to MATES is a prime example of a return on investment of workers' contribution being used for proper purposes for the benefit of the workers.

At the end of Chapter 6, the Commission makes 3 recommendations for reform. Notably, and critically for MATES, whilst the Commission makes recommendations regarding the payment of contributions to Worker Entitlement Funds directly, it does not make any recommendation that the law should be amended to restrict how and to what parties income derived by an Worker Entitlement Fund can be applied or distributed.

The Report does not give a reason for this, but it can be inferred that the Commission was of the view that the other recommendations made for reform (such as requiring Worker Entitlement Funds be registered and subject to direct regulation and reporting requirements) are sufficient to ensure the proper operation of Worker Entitlement Funds and protection of workers such that specific legislation regarding the use of income derived by Worker Entitlement Funds is unnecessary.

Despite this, the Bill contains a proposed new section 329LD of the RO Act which limits the uses of income of Worker Entitlement Funds.

As stated in paragraph 6 of the explanatory memorandum, the Bill aims to apply “appropriate governance, financial reporting and financial disclosure requirements to worker entitlement funds and other similar funds”. This is to give effect to recommendations 45 and 46 of the Report.

Some of the drivers for reform pursuant to the explanatory memorandum are:

- (1) the lack of transparency and accountability of the financial affairs of registered organisations and associated entities;
- (2) the prevention of fraud and financial mismanagement in registered organisations and associated entities; and
- (3) ensuring acceptable standards of democratic governance in the interest of members

In the explanatory memorandum, the argument by the Government does not rely on any particular finding of the Commission in relation to proposed new section 329LD of the RO Act. The explanatory memorandum does however refer to the Commission's finding that the income of Worker Entitlement Funds generated from contributions received on behalf of employees should be used either for the benefit of employers who contribute to the fund or the employees who are ostensibly the intended beneficiaries of the fund.

However, as discussed below, section 329LD in its current form does not have this effect.

Consequences of the Bill for MATES

Proposed section 329LD is as follows:

329LD *Authorised uses of income*

- (1) *For the purposes of paragraph 329LB(1)(e), **income** of the **fund** may only be used for the following purposes:*
 - (a) *a purpose mentioned in subsection 329LC(1);*
 - (b) *to make payments other than worker entitlements to persons mentioned in paragraph 329LC(1)(a);*
 - (c) *to make payments to a contributor to the fund whose contributions are in respect of employees or former employees of the contributor;*
 - (d) *to make training or welfare payments covered by subsection (2).*

- (2) *A payment is a training or welfare payment covered by this subsection if:*
 - (a) *the payment made for the sole purpose of providing training or welfare services to either or both of the following:*
 - (i) *participants or former participants in any industry in which funds members participate;*
 - (ii) *spouses or dependents of such participants or former participants; and*
 - (b) *if the services are not provided by the operator of the fund;*
 - (i) *the services are provided at market value and on commercial terms;*
 - (ii) *all arrangements for providing the services are negotiated at arm's length from any director of the operator who has a material personal interest in the provider of the services; and*
 - (c) *the services are provided in a way that does not discriminate unfairly between fund members; and*
 - (d) *before it is made, the payment is approved by the voting directors of the operator; and*
 - (e) *the voting directors who approve the payment include:*
 - (i) *a voting director who is independent in the way described in condition 9;*
 - (ii) *a voting director who is independent in the way described in condition 10.*

Only payments covered by subsection (2) are relevant to MATES.

The term **income** is not defined in the Bill or the RO Act, so it is unclear whether the section applies to income derived before or after the imposition of income tax. The consequences of this are discussed further below.

The effect of subsection (2) is that the:

Redundancy Funds will be prohibited from distributing any income to MATES as it does currently, including by making a tax deductible donation;

Redundancy Funds will only be able to support the activities of MATES if these services are provided:

- a) at market value; and
- b) on commercial terms.

This is problematic for MATES for the following reasons:

A substantial amount of the MATES' funding is received from the Redundancy Funds by way of gift. Because each of the entities in MATES are endorsed as DGRs, the Redundancy Funds are afforded a tax deduction for these donations.

If the Redundancy Funds are prohibited from making donations to MATES, the overall funding would be significantly reduced.

There is no compelling reason, legally or otherwise, that an employee based organisation, such as the Redundancy Funds, should be precluded from making donations to a legitimate and effective charity, which is properly registered, endorsed and regulated, and which is carried on for the benefit of the employees themselves.

Due to the multi-modal and comprehensive nature of the Program, it is wholly impractical for MATES to quantify the market value of the Program as required by proposed section 329LD(2)(b)(i).

- a) The upshot of this is that it would be impossible, without significant alteration to the MATES' service model and more importantly, the way in which the Program is delivered, for MATES to be able to receive funds from the Redundancy Funds under section 329LD(2).
- b) As mentioned earlier, the effectiveness of the Program lies in its multi-modal nature. If the delivery model of the Program had to change in order to comply with the requirements of section 329LD, the effectiveness of the Program itself would likely be jeopardised. As a result, lives would be put at risk.

Ultimately, the immediate effect of the proposed section 329LD is that MATES' source of funding will be drastically reduced and as a consequence, its ability to continue to provide benevolent services to workers in the industry will be significantly compromised. The impact of the reduction in funding is as follows:

- **Queensland – 40% cut in staffing and services** (mainly frontline);
- **Western Australia – 25% cut in staffing and services** (mainly frontline); and
- **South Australia – the organisation will become unviable and be forced to close.**

It is difficult to reconcile a fundamental driver of reform (being the protection of workers and ensuring that the workers receive the benefit of the income derived from Worker Entitlement Funds) with the effect and impact of the proposed amending legislation.

For these reasons, and in relation to MATES and its role, section 329LD is inconsistent with the view of the Commission, which has been demonstrably accepted by the Commonwealth Government, that the income of Worker Entitlement Funds should be used for the benefit of the employees who contribute to fund.

The distribution of income from the Redundancy Funds to MATES is entirely consistent with the goal of ensuring that income generated on contributions received by Worker Entitlement Funds are used for the benefit of the employees who are the intended beneficiaries of the fund.

2017 Senate Committee Report

In November 2017 the Senate Education and Employment Legislation Committee, chaired by Senator Reynolds, completed its report into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017.

That bill included the same provisions in section 329LD that are of concern to MATES in the current version of this Bill.

In the committee report, recommendation 1 notes:

“The committee recommends that the government review the wording of proposed section 329LD in light of the concerns raised that it would not allow for a gift or donation to be made to charities operating in this sector.”

We would urge the government to accept this recommendation and make the necessary amendments to allow charities such as MATES to continue receiving funds to support the mental health of workers.

Possible solutions

1. ACNC amendment

Section 329LD(2) could be amended to specifically authorise distributions of income from a Worker Entitlement Fund to a registered charity in the same way that contributions to registered charities are authorised in the proposed amendment to section 194 of the *Fair Work Act 2009* (Cth) in accordance with the Commissioner’s Recommendation 49.

If thought necessary to ensure that the workers receive the benefit of such distributions of income from a Worker Entitlement Fund, the authorisation could be limited to apply only to charities that will benefit the workers, or the industry generally. MATES would fulfil this requirement.

The benefits of this approach are that:

- a) Charities registered with the ACNC are subject to rigorous regulation and reporting obligations under the *Australian Charities & Not-for-profit Commission Act 2012* (Cth) (ACNC Act). This will ensure that the recipient charity must be accountable and be transparent as required under the ACNC Act.
 - i. It is relevant to note that a key object of the ACNC Act is to maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector.
- b) There is little risk that a registered charity which receives income from Worker Entitlement Funds could use those funds for political purposes. This is because the purpose of promoting or opposing a political party or candidate for a political office is a disqualifying purpose under the *Charities Act 2013* (Cth), meaning that if a charity did engage in this kind of activity, it would risk having its registration as a charity revoked.

Ultimately, allowing Worker Entitlement Funds to donate income derived from employee funds to a registered charity will ensure that:

- a) the workers are receiving the benefit of their income through the receipt of necessary services;
- b) the recipient of the income and the use of the income by the recipient will be subject to regulatory and reporting obligations under the ACNC Act.

2. Subordinate legislation

The Minister could table subordinate legislation which could provide an exemption for MATES in Construction in relation to section 329LD(2)(b)(i).

Due to the unique nature of MATES' multi-modal program and its delivery, as far as we are aware, it appears that MATES is the only organisation that will be negatively impacted by section 329LD(2)(b)(i) at this stage.

By providing an exemption via subordinate legislation, it would address the concerns noted in this submission and give the Minister the discretion to exempt any other organisation that may fall into this unique legislative situation in the future.

Summary

In its present form, section 329LD risks the ongoing existence and extent of MATES' activities which are carried on solely for the benefit of the workers.

However, section 329LD can be amended to allow Worker Entitlement Funds to distribute income to MATES in Construction in a way that ensures that the income is being applied for the benefit of the workers and that there is accountability and transparency regarding the use of the income.

Alternatively, MATES in Construction can be exempted from certain provisions of section 329LD so that it can continue to receive funds for the benefit of workers and apply them as it has done for many years via its award-winning suicide prevention program.

MATES would note and congratulate the Morrison Government on its focus on mental health and suicide prevention. Particularly, we welcome the Prime Minister's words when recently announcing a new National Suicide Prevention Adviser:

"Suicide takes far too many Australians, devastating families and local communities. One life lost to suicide is one too many, which is why my Government is working towards a zero suicide goal".

We also note the Prime Minister's strong language at COAG in Cairns on 9th August 2019:

"We all know a story, and whether it's of a veteran, a young girl in an Indigenous community, whether it's a 47 year old male living in one of our suburbs and one of our big cities... contributing factors that can trigger, make worse, or in the worst of all certain situations, lead to an Australian taking their own life."

MATES share this concern and would urge both the Committee and the Government to allow us continued access to the important funding provided by Worker Entitlement Funds.