

**SENATE STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT
COMMITTEE**

25 SEPTEMBER 2019

Attorney General's Department

Question No. 1

Senator Louise Pratt asked the following questions at the hearing on 25 September 2019:

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Senator PRATT: Would that put those funds out of the way of any creditor in the case of a company collapse or not?

...

Senator PRATT: Has it been tested as to whether a bank would have any access to those funds in terms of the single employer owning it?

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Senator PRATT: In the context of single-employer funds, in terms of ensuring that proper entitlements are paid to workers, when a business goes into administration and an employer's trying to satisfy and secure creditors, such as their banks, you're asserting that the registered funds will be off limits to the banks?

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Senator PRATT: But we don't yet really know what level of asset protection is required in that registration?

The response to the honourable Senator's questions is as follows:

The Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019 (the Bill) relevantly responds to recommendation 45 of the Royal Commission into Trade Union Governance and Corruption, by providing legislation to deal comprehensively with the governance, financial reporting and disclosures of worker entitlement funds (WEFs). This is to ensure the ongoing viability of WEFs and protection of the employee entitlements they hold.

The Bill requires funds to comply with the relevant requirements set out in the table of conditions at section 329LA of the Bill. For both single-employer and multi-employer funds, these conditions include the requirements to have a written constitution, and that the constitution is complied with. The constitution of all registered funds must, among other things, require that:

- no more than 5% of the fund's assets may be invested in an entity controlled by a contributor to the fund (i.e. an employer making contributions to the fund) or an associate of a contributor;

- the assets of the fund must not be used to provide or facilitate any form of financial assistance, including a loan or donation, to a contributor, a fund member, an associate of a contributor or an associate of a fund member;
- contributions to the fund may only be used for the purposes authorised by section 329LC; and
- income of the fund may only be used for the purposes authorised by section 329LD.

These requirements are intended to ensure that employee entitlements held by WEFs, whether they are single-employer funds or otherwise, are appropriately protected.

The Bill also does not affect the operation of existing trust, insolvency or bankruptcy laws. In the event of an employer's insolvency, the application of these laws will depend on the particular facts and circumstances, including the form and structure of any relevant registered worker entitlement fund, within the constraints of the requirements in the Bill and the WEF's constitution.

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Question No. 2

Senator Matt O'Sullivan asked the following question at the hearing on 25 September 2019:

This may be a question for the ATO, so I'm happy for you to take it to them and come back to us. In relation to those donations, I get that, if you're not able to make a donation to a deductible gift recipient, a DGR, you couldn't claim a tax deduction on that. But, if it were just an expense because it was a fee for service, wouldn't that just be on the balance sheet as an expense and therefore essentially be the same?

The response to the honourable Senator's question is as follows:

An organisation can claim deductions for most business expenses incurred in gaining assessable income. Whether an expense is deductible depends on the particular facts and circumstances, but generally operating expenses (such as salary and wages, super contributions and costs relating to staff training) are deductible in the same year they were incurred.

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Question No. 3

Senator Louise Pratt asked the following question at the hearing on 25 September 2019:

Are there any company directors you know of who have been involved in companies that have drawn more than once on a taxpayer funded redundancy?

The response to the honourable Senator's question is as follows:

Yes. In the 2,639 Fair Entitlement Guarantee cases (entities) with liquidation dates from 1 July 2017 – 4 October 2019, 204 directors have been involved with two or more of those entities. Of these 204 cases:

- in 144, the liquidations occurred within a timespan of one month or less, suggesting the entities were part of a corporate group or a related business; and
- in 194, the director was associated with two or three entities.

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Question No. 4

Senator Louise Pratt asked the following question at the hearing on 25 September 2019:

Have you analysed this legislation in the context of its impact on worker benefits that might be paid out through the FEG?

The response to the honourable Senator's question is as follows:

The Fair Entitlements Guarantee (FEG) is a legislative safety net scheme of last resort in the event of employer insolvency. Where there is a relevant insolvency event, eligible employees may be able to make a FEG claim for unpaid wages, annual leave, long service leave, payment in lieu of notice, and redundancy payments as provided for in the *Fair Entitlements Guarantee Act 2012* (FEG Act).

A worker entitlement fund (WEF) may make payments to employees in respect of particular worker entitlements, subject to relevant legislative requirements and applicable fund rules. Unlike FEG, payment of employee entitlements from a WEF are not necessarily dependent on insolvency and may apply to a broader range of entitlements than FEG (such as personal leave). Entitlements payable by a WEF will be dependent on the rules of the fund.

The Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019 (the Bill) will not change the application of the FEG scheme. This is because the conditions for FEG liability to an eligible person are determined by the FEG Act, and are not be affected by the Bill.

The Bill will not prevent a WEF from making payments for worker entitlements, nor prevent an eligible employee from making a FEG claim to which they are entitled.

To the extent that an entitlement payable by a WEF to an employee overlaps with an entitlement that person has to an advance under the FEG Act, any WEF payments made, or that are due to be made, can be offset from that person's FEG advance. If the payment from the WEF does not cover the full amount the person would be entitled to under FEG, the difference would still be made up by FEG.