

The Education and Employment Legislation Committee

Submission to the Inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill
2017

25 October 2017

1. Submitting Entity

This submission is made on behalf of the Contracting Industry Redundancy Trust (CIRT)

2. Part 2 Clause 16 (new section 293R (1))

This Clause states that the Commissioner **may** publish One or more model policies. We believe that it should be a **requirement** for the Commissioner to publish model policies such that organisations can ensure that their policies are broadly compliant with what the Commissioner considers is appropriate.

Implementation of this clause should be set at 6 months after the model policies are released by the Commissioner.

3. Part 2 Clause 18(1)

This clause only allows 6 months for the implementation from the date of its commencement. As some of these changes will require changes to computer software, and will almost certainly require additional time for programming, testing and implementation.

Further, amendments will almost certainly need to be made to the trust deed under which the fund operates, and these will need to be drafted by solicitors, approved by Directors and then submitted to a General Meeting of the fund. With additional requirements of 30 days before a General Meeting can be called etc., and allowing the Commissioner 40 days to consider the application, it is quite conceivable that the funds will not get their constitutions changed, submitted and approved by the Commissioner within the 6 month period to allow the fund to be registered (or continue to be registered).

We suggest that this time period should be increased to 12 months.

4. Additional Clause 329LF Audited annual reports

Subclause (2)(b) requires the operator of a fund to provide the Commissioner with a written annual report within 3 months of the end of the financial year. As large amounts of the funds are invested in other managed funds, and those funds do not provide detailed reports until about 2 or 3 months after the end of the financial year, it will be almost impossible to get the accounts prepared, income tax returns completed, audit to be completed and their report prepared, and the accounts to be approved by the trustee within this time frame.

We consider that it would be more appropriate to increase the time frame required for the report to the Commissioner to a minimum of 4 months, and possibly 5 months after the end of the financial year.

5. Additional Clause 329LG Training Requirements

Subclause 1 requires that ‘each officer and staff member of the fund whose duties include duties that relate to the financial management of the fund’ undertake training that ‘covers those duties’. As every director effectively is responsible for the financial management of the fund, are we trying to limit the directors for the trustee company to being accountants?

We consider that it would be more appropriate for any Board to ensure that an appropriate range of skill sets (including financial management) be present on the Board, and not require every director to have financial management training.

6. Training and Welfare Payments

We welcome the inclusion of the ability of Funds to use fund income for the purposes of ‘training or welfare payments’ as provided by **s329LD(1)(d)** and **s329LD(2)**.

We are concerned by the requirement in **s329LD(2)(d)** that every payment in relation to training and welfare services must be approved by an independent director **s329LD9(2) (d)** and **(e)**.

We are further concerned that under **s329LF(3)(g)**, the Annual Report must disclose details of “each individual payment” in regard to training or welfare payments. We contest that this is onerous, a potential breach of privacy legislation. By way of example, we made over 400 payments in the last year to individuals, and almost all of those payments were under \$2,000.

We suggest that only payments over a minimum cap of say \$10,000 for any one person in any one year be applied.

7. General Drafting Problems

We have identified a number of drafting issues, but due to the limited time available to review the legislation, and make submissions, we can only make general observations, but there are a number of items that we are sure were not intended in the legislation. An example of this would be Item 20 in Section 329LA which states:-

‘The Operator:

- (a) On request, give a copy of the constitution of the fund to any contributor to the fund; and
- (b) Gives a copy of the constitution to each person who the operator knows may become a fund member; and
- (c) Ensures that each fund member has a copy of the constitution or has access to the constitution on the website of the fund (if any)’

If subclause (c) is complied with, we cannot see the need for subclauses (a) and (b).

8. Donation to Registered Charities.

Section 194(k) has been added to the Fair Work Act to permit payments to a registered charity (defined in Section 12) or deductible gift recipient, however Section 329LD(1) does not authorise payments to registered charities or deductible Gift Recipients from the income of the fund.

We believe an additional subclause (e) should be added to this section to include registered charities and deductible gift recipients.