

**STRONGER
TOGETHER**

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Senate Education and Employment Legislation Committee

***Fair Work Laws Amendment (Proper Use of Worker
Benefits) Bill 2017***

SUBMISSIONS BY

THE AUSTRALIAN WORKERS UNION

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INTRODUCTION

1. The Australian Workers Union

The Australian Workers' Union ("the AWU") is the nation's oldest and largest blue-collar trade union representing more than 100,000 working Australians in a range of industries including manufacturing, steel, aluminium, glass, oil & gas, aviation, agriculture, construction, state public services, local government, health, food, resources, aquaculture, and events.

Registered under the *Fair Work (Registered Organisations) Act 2009* ("the RO At") the AWU is structured and governed by its Registered Rules ("the Rules"), which are akin to a constitution. The Rules of the AWU (and Branches) determine the capacity and authority, conduct and power of the union's decision-making bodies, officials and members within the AWU.

The objects of the AWU are also set out in the Rules. In addition to representing members in matters directly relevant to our members' employment and employment conditions, a core function of the AWU is to build workers' knowledge, collective power, involvement and influence in relation to wider social, political and economic issues relevant to the wider society.

2. The structure of the Australian Workers Union

The AWU is a federally structured union, comprising separate Branches and a National Office. The AWU Branches are in Queensland, New South Wales, Victoria, Western Australia, South Australia and Tasmania. The National Office is the head office of the AWU.

The decision-making body of each Branch is its Branch Executive. The Branch Executive is responsible for most of the daily operational decisions of the union. In turn, the Branch Executives are subject to the over-riding authority of the National Executive and the National Conference.

The National Executive meets at least on a quarterly basis. Membership of the National Executive includes National Officers and Elected Representatives from each of the Branches.

Every four years AWU members democratically elect the officials of the Branches and the officials of the AWU Nationally - this includes the Branch Secretary, the Branch President, the Branch Assistant Secretary, Organisers and other positions. The same happens nationally with all members electing the National Secretary, National Assistant Secretary and National President every four years. Also elected at the same time is the National Executive and the Branch Executives which act as the Board of Directors for the union.

3. The Branches of the Australian Workers Union

Each Branch Executive is made up of different officials as provided by the Rules of the Union. The National Secretary has overall responsibility for the day to day operations of the AWU and the Branch Secretaries are responsible for the affairs of each Branch. The National and Branch Secretaries appoint staff, manage the finances and ensure the union operates effectively.

In addition to paid positions, a number of the Branch Executive or committee of management positions are honorary and unpaid. Many of the unpaid members elected by the members bring

practical expert experience from their trades and professions, but often have very limited administrative experience.

In the New South Wales Branch - the President, 2 Vice Presidents and 20 Branch Executive Committee members are unpaid positions. As to the Queensland Branch, the Branch is divided up into seven Districts, each with a District Office. In the Metals and Construction District there is to be a District President (honorary) and District Vice President (honorary). The Branch Executive also comprises one Branch President (honorary), and seven other Branch Executive Committee Members (unpaid positions).

In the South Australian Branch the President, two Branch Vice Presidents, and nine Branch Executive Committee Members are honorary and unpaid positions. In the Tasmanian Branch the President, One Branch Vice President, and Six Branch Executive Committee Members are honorary and unpaid.

As to the Victorian Branch the President, Two Branch Vice Presidents, and ten Branch Executive Committee Members are honorary unpaid positions. In relation to the Western Australian Branch the President, two Branch Vice Presidents, nine Branch Executive Committee Members, the Alcoa Pinjarra Sub-Branch President, and the Alcoa Pinjarra Sub-Branch Secretary are all honorary and unpaid positions.

Given the majority of honorary unpaid positions on the management boards are filled by members who also work full time jobs, the management and operations of the AWU and its Branches is more akin to that of an incorporated association rather than a Corporation.

Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017

4. Introduction of the Bill

On 19 October 2017 the Government introduced the *Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017* ("the Bill") to the Parliament.

According to the Explanatory Memorandum the legislative purpose of the Bill is to ensure appropriate governance and transparency requirements are applied to related entities of registered organisations, in particular worker entitlement funds and other similar funds.

The purpose of the Bill is also to implement some of the recommendations of the Final Report of the Royal Commission into Trade Union Governance and Corruption ("the Royal Commission").

On closer analysis, however, the issues and objectives the Government claims to justify the Bill have little relevance to the actual operation and powers of the Bill. It also becomes apparent that:

1. The Bill is politically motivated and seeks to unfairly target trade unions based on floored assumptions unsupported by evidence, and was developed without any proper policy development or thorough consultation;
2. The Bill goes above and beyond, and otherwise is in contradiction of the recommendations of the Final Report of the Royal Commission.
3. The Bill adds excessive administration and regulation provisions that do not apply to other similar entities.

4. The Bill is inconsistent with international law.
5. The Bill will have the effect of cutting funding to a number of important worker welfare and training services that benefits industry and their workers.

5. The Submissions of the Australian Workers Union

The AWU opposes the Bill. The AWU also strongly objects to the unreasonable time constraints imposed on the Union to seek instructions from its Branches and to prepare in order to make submissions to this inquiry.

The Bill is made up of 5 schedules. Due to the significant time constraints imposed on the Union by this inquiry, this submission is limited to addressing the Bill general using parts of the Bill to highlight some issues why the AWU has problems with the Bill generally and why it should not be passed by Parliament. The AWU otherwise reserves its rights to make more detailed submissions if the opportunity is provided.

Additional requirements to disclose – excessive and not required

Many parts of the Bill create additional administrative burdensome that are neither required nor justified and do not apply to similar entities in the Corporate world. Schedule 1 provisions provide for example additional requirements to disclose loans, grants and donations and impose new requirements about internal financial management practices and policies.

The AWU is a non-profit and largely volunteer managed organisation. The existing financial accounting obligations which are evidently the same as Tier 1 of the Australian Accounting Standards (and apply to public companies that raise capital) already provide more than sufficient governance, financial reporting and financial disclosures. Additional requirements, as set out in Schedule 1 of the Bill, would impose significant unnecessary administrative burdens without any evidence to justify why the excessive disclosure is required or needed.

The existing law, for example, already requires disclosure to the Registered Organisations Commissioner of the full particulars of loans, grants and donations of \$1,000 or more made by the organisation. The amendment will see loans, grants and donations to the organisation also disclosed in the same way. In addition, the \$1,000 disclosure threshold is to be modified such that loans, grants or donations from or to a particular person that total \$1,000 or more will need to be individually disclosed.

The amendment would impose unnecessary administrative burdens without any evidence to suggest this excessive additional disclosure is required.

Union policies in relation to finance expenditure – excessive, unnecessary, and grossly unfair attack on Union governance

As a further example of new provisions unfairly targeting Unions and their entities - creating excessive and unnecessary additional regulation (some which may not be able to be met – serious risk of exposing the Union and its officials to significant penalty and possible disqualification from office), the introduction of a new statutory requirement for organisations to develop policies dealing

with particular topics, including topics to be prescribed in regulations is excessive and there is no evidence to justify the excessive interference of the Union's internal government.

Under the current provisions the Union is already required by the *Fair Work (Registered Organisations) Act* ("RO Act") to contain provisions in their Rules that require the implementation of policies in relation to expenditure.

In addition to the extra administrative burden, the new statutory requirement is a civil penalty provision and there is no legislated grace period provided for making or changing of the relevant regulations.

This means under the Bill organisations such as the AWU and its officials could be prosecuted for non-compliance if they have been unable to conclude the internal democratic governance processes required to adopt new policies in time when the regulations change. Non-compliance with these requirements and non-compliance with the new requirement to review such policies every 4 years and lodge and post revised policies, will sound in civil penalties of up to \$105,000.

No such requirement and significant burden exist for corporations, whether they be small businesses or major public capital raising outfits. The Bill contains many other burdensome and excessive reporting and governance measures that are not needed and unfairly expose the Union to significant penalties despite best efforts to comply with the provisions. No such regulation exists for corporations.

Worker Entitlement Funds – excessive, unnecessary and an attack on Trade Unions with no justification

As another example of new provisions unfairly targeting Unions and their entities and industry support (which provide workers in industries with a number of different vital safety and health services) - creating excessive and unnecessary additional regulation, the new provisions set out in Schedule 2 to the Bill establishes a new regulatory and registration regime for Worker Entitlement Funds which is not needed and if passed contravenes a number of international laws.

Worker entitlement funds are different types of funds that provide a range of valuable benefits to workers, including training and training facilities, income protection insurance, welfare support and portable entitlements. Some are structured as trusts with a corporate trustee and commonly provide cover for redundancy and other employment entitlements that are accessed or termination of employment. These funds principally operate in industries with a high incidence of phoenix operators and unfunded entitlements and are typically established as 'joint ventures' between employer and employee organisations.

In addition to the important benefits these funds provide workers, the funds potentially save the Commonwealth millions of dollars in expenses that would otherwise be claimed against the Fair Entitlement Guarantee scheme. The funds also play an important part in helping to maintain confidence in particular industries. The new provisions introduce significant practical and administrative barriers to the operation of the funds and the benefit they provide workers and their respective industries.

No other managed investment schemes in Australia require registration in the Registered Organisations Commission nor was this additional regulation a recommendation of the Royal Commission. This additional regulation is not required and serves no other purpose than to impose separate additional restrictions on trade unions and trade union officials.

In contrast in employer can establish a fund for its own employees and suffer absolutely no restriction on the investment income generated. The employer is not covered by any of the new regulation in this schedule, unless they voluntarily opt-in to it.

Under the amendments, trade unions will no longer be able to operate worker entitlement funds. Worker entitlement funds, no longer operated by unions, will become the only managed investment schemes in Australia not only regulated by ASIC and the ATO but also regulated by the Registered Organisations Commission.

They will be the only managed investments schemes prohibited from distributing any income that they generate to their operator, of which are restricted in how their operator may dispose of income earned from operating the scheme.

Welfare and Training funds operated by unions, which used to benefit from some income distributions from Worker Entitlement Funds, will also not be able to receive income through terms of enterprise agreements. Whist this is also a clear contravention of Article 4 ILO Convention 98, it also contradicts the position of the Royal Commission which was predicated on welfare and training contributions continuing to be levied through enterprise agreements.

The prohibition on collective agreements providing contributions to be made to union operated worker entitlement funds is in contravention of Article 4 of ILO Convention 98 and the principle of voluntary agreement making.

Worker entitlement funds will no longer be able to make transfers of benefits from contributions (such as employment termination payments) to a fund member's superannuation funds. The Royal Commission report stated that this capacity should be retained.

6. Conclusion

The AWU strongly opposes the Bill on the basis that it introduces excessive and unnecessary additional administration and regulation which already exists.

The alleged need for additional regulation is unsupported by evidence and was developed without proper policy development and consultation with affected stakeholders.

The AWU also strongly objects to the unreasonable time constraints imposed on the Union to seek instructions from its Branches and to prepare in order to make submissions to this inquiry.