

## **'Protect Group' Submission**

### **To The Senate Education and Employment Legislation Committee**

For the Inquiry into the Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019

28 August 2019

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## 1. Executive Summary

Protect supports regulation and formalisation of good governance of Worker Entitlement Funds, insofar as it is in-line with standards which apply to other corporate or investment entities. However, there are many examples where the Bill is out of line with standards applying to other businesses:

- Disclosure of individual transactions and details of individual director votes on training and welfare payments is unprecedented
  - This is a major intrusion of company directors into the role of management – where company directors would be required to vote on individual payments!
- There is an obligation on funds to proactively 'give' (as opposed to make available) a copy of its constitution to people who it suspects *may* join the fund.
- There is potential for Ministerial Rules to be imposed at any time (discussed below)
- The Bill introduces a prohibition on distributions of surpluses (profits and accumulated profits) of trusts to registered organisation; a prohibition which does not apply to other trusts - nor to companies paying dividends. (discussed below)

We have concerns over the **risk, cost and uncertainty** surrounding the **extensive powers afforded to the Minister** to make *Worker Entitlement Fund Rules* in a range of areas which each have the potential to materially impact operations. There are no parameters to regulate the timeframes in which the Minister may impose such changes to the Rules, and the terms of reference are very broad, (governance, capital adequacy, liquidity) and allow the Minister to require public disclosure of any matter. Ultimately, this situation leads to uncertainty in the operation of Registered Worker Entitlement Funds.

The Bill introduces a prohibition on distributions to registered organisations. Trusts in all other fields are able to distribute surpluses to their sponsors/beneficiaries. Companies distribute profits to their owners via dividends. However, where the recipient is a registered organisation, such distributions will be prevented by this legislation.

We submit that an appropriate amendment is to permit distributions to registered organisations where those funds are set aside to only be used for training and welfare (permitted elsewhere in the Bill) and not for registered organisations to use the funds for political or industrial purposes. Protect

is not equipped nor has the expertise to provide training and welfare services for both employers and employees in the industry. This function is performed well by many programs established by employer associations and unions throughout Australia.

The Bill allows for Registered Worker Entitlement Funds to use funds to deliver **training and welfare** services for members. However, the onerous reporting requirements for individual payments go far beyond what is required of listed companies or regulated superannuation and investment trusts, which manage a significantly larger pool of assets for a broader section of the community. There appears to be no good policy reason for these payments to be singled out for special disclosure rules that do not apply to other forms of “reasonable administration expenses”. Of major concern is that the 2019 Bill has added an additional requirement above the 2017 Bill, to require disclosure of directors who voted in support of such payments. This is based on the misguided view that directors would be involved in operations at a transactional level.

Protect manages its portfolio to ensure it has more than sufficient funds available to pay workers entitlements, with sufficient cash available to pay multiple years’ claims without needing to realise/redeem other investments. Protect has paid \$472,000,000 in workers’ entitlements to nearly 90,000 workers.

Protect is a **strongly governed** organisation that already operates along the lines proposed in the Bill. Protect supports in-principle the aspects relating to formalising fund governance, registration and disclosure. Worker entitlement funds currently comply with Trust Law, the Corporations Act (including ASIC regulation), the Fringe Benefits Tax Assessment Act (to the extent they wish to be Approved Worker Entitlement Funds) and the Income Tax Assessment Act. As companies, directors must meet their obligations specified in sections 181 to 184 of the Corporations Act 2001.

## Summary of Recommendations

In summary, our key recommendations are:

- Remove the granting of power to a Minister to make Rules; instead, articulate matters of “capital adequacy, liquidity and governance” in the legislation, following a reasonable and genuine consultation process.
- Allow a trustee’s discretion on the distribution of current and prior year income as occurs in other sectors; failing that, allow distributions into a special purpose vehicle which provides for training and welfare programs or services.
- Remove onerous transactional approval and disclosure requirements relating to training and welfare payments; instead introduce a threshold for disclosure and approval.
- Amend the provision of information clauses relating to making a constitution available to members.
- Provide for grandfathering of existing investment arrangements for transitioning funds in the legislation