

Morrison Coalition government move to rip off Worker Entitlement Funds

There are now over \$2,000 million – that’s 2 billion – in a range of funds managed by joint union and employer boards in the building and construction industry to ensure portability and security of entitlements to all kinds of leave, but especially accrued long service leave and redundancy pay.

The Fair Work Laws amendment (Proper Use of Workers Benefits Bill) is part of the Federal Governments orchestrated attack against the building and construction unions.

If these funds earn a moderate 3 per cent per year, that means there is \$60 million per year – and growing – that is available for extra support to employees, beyond the legally-defined entitlements for which the funds were set up over the last 30 years.

Big employers – backed by the Morrison Coalition government - are trying to take these workers’ funds. Explain. Are they taking them or seeking to undermine them by giving employers the right to set up their own funds without a combined union/ employer governance structure thus undermine the industry wide nature of the existing funds and reducing the range of services offered? The fight is on now.

These funds were established 30 years ago as a union demand to manage the insecurity of the construction industry, which is dominated by subcontracting, short term, precarious and dangerous employment. They are a union response to protect workers in the private sector. In an age of precarious employment these funds provide an inspiring alternative to the free market free-for-all, which characterises so many employment arrangements today.

What are worker entitlement funds?

According to the [Australian Taxation Office](#), worker entitlement funds are established in recognition of the transitory nature of employment in certain industries, particularly building and construction.

“The funds are established to provide benefits to employees who would normally be entitled to benefits on termination of employment under the terms and conditions of their employment. The use of the funds is recognised in many awards and enterprise

agreements. Employers contribute to the funds to assist in satisfying their obligations when employees leave their employment. Typically, employers contribute to the funds at some point in each pay cycle. When you terminate your employment with your employer, the fund makes a payment to you and the amount is offset against the amount your employer is required to pay you under your employment agreement or industrial award.

“Approved worker entitlement funds meet certain criteria under fringe benefits tax (FBT) legislation and receive concessional FBT treatment.”

What do Worker Entitlement Funds do?

Workers’ Entitlement Funds invest the contributions by employers for long service leave, sick leave and redundancy entitlements, to ensure that the employee members’ entitlements are secure. Any surplus above those entitlements belongs to workers, and in many instances (NB not all funds e.g ACIRT fund services beyond entitlements) allocated by the Boards of the Funds to services and projects to benefit the workers.



Depending on the specific Fund, these extra services include workplace training, first aid training, hazardous wiring training, height awareness training, asbestos awareness training, tutorials for conflict management, workers comp schemes, free preparation-for-work support, free counselling hotline, free domestic violence awareness seminars, free post-natal depression awareness training, free gambling prevention, free anxiety and stress management services, free women's self-defence courses, free autism management behaviour support, free mental health support, suicide prevention, awareness and training, drug and alcohol awareness training, LGBTQI inclusivity training, free health checks, skin checks; and support to quit smoking.

Sick Leave, Personal Leave, Annual Leave, Long Service Leave, and Redundancy Entitlements are legal requirements set out in Industrial Awards or specified at a higher level than the Award in a Collective Bargaining Agreement. Employer contributions to fund these entitlements for their employees are not a voluntary gift to the employees, but their right. Worker Entitlement Funds are a proven mechanism for managing these entitlements in industries where jobs are short-term and irregular.

Worker Entitlement Funds are now managing over \$2 billion in funds, and have been operating for over 30 years. That's why the Morrison Liberal – National Coalition has decided to target them – to get these considerable funds into the hands of the employers so that the considerable surpluses can go into their pockets and no longer finance extra services for workers on top of their legal entitlements.

The Government's objectives are:

1. To prevent extra services being provided, thus reducing costs to some employers.
2. To remove the joint union - employer governance model.
3. To undermine the existing industry-wide coverage of the funds by prohibiting an EBA or award from nominating a specific workers entitlement fund thus seeking to reduce their economic power and surpluses and give employers the opportunity to set up their own funds.

Three typical worker entitlement funds

Protect, governed by a Trust Deed and the regulation of the Australian Taxation Office (ATO), the

Protect Board of Directors comprises independent representation, and nominees of the Victorian branches of the Electrical Trades Union (ETU) and National Electrical & Communications Association (NECA). It has 35,000 employee and 1,200 employer members.

Its primary purpose is to support employers, workers and their families in its industries during any period of unemployment, illness, injury, personal difficulty, career transition or skill development, by offering a range of services, including:

- administering a Redundancy and Severance Scheme
- facilitating income protection insurance
- offering counselling services, and
- assisting employers with their compliance obligations

BERT, the Building Employees Redundancy Trust, was established in 1989 to provide redundancy payments and benefits to its members, and training grants for employees in the Queensland and now also the Northern Territory building and construction industry. In 1996 a new trust, the BERT Fund was established to cater for new benefits introduced by BERT, including the Welfare Fund.

BERT is managed by a Trustee Company, BERT Fund Limited ACN 607 106 650. The company has eight directors. The Employer Association and Trade Unions that participate in BERT each nominate and appoint four of the trusts directors to sit on the Board. The Board is dedicated to providing security of greater redundancy payments and benefits to members. It also operates an Income Protection Fund and a Training Fund.

ACIRT, the Australian Construction Industry Redundancy Trust is a national fund supported by the major employer organisations and unions who cover the Building, Civil, Mechanical, Metal and Engineering construction industry.

The Fund provides for contribution flexibility as it allows employers to pay the minimum contribution of \$25.00 per week for their employees until the award redundancy entitlement is funded, or they can make higher contributions at the rate specified in an Industrial Instrument.

ACIRT is governed by a trust deed which established the Fund in 1994. The trustee of the Fund is ACIRT Pty Limited. It has a board of Directors with a maximum of 14 persons, with equal Trade Union and Em-

employer representation. The operations of the trustee company are governed by its Constitution.

The Board is responsible for setting the overall strategy for the Fund and ensuring it is operating in accordance with the Trust Deed and all applicable laws. The Board operates under a Board Charter which, amongst other things, defines the roles and responsibilities of Directors.

The Board has appointed an Investment Committee and a Risk, Audit and Compliance Committee to oversee the operations of the Fund in greater detail.



Worker Entitlement Funds have been a big success in preserving entitlements in the construction sector, where job insecurity is the norm.

What is the real position of the employers?

The Manufacturing Employers organization, AI-Group, wants to stop the use of surpluses from Worker Entitlement Funds for the many positive programs they now provide, and restrict all payments to the entitlements accrued. This way employers would reduce their contributions to the Funds – financed by the earnings on their employees' entitlements.

While the AI-Group suggests that the surpluses of these Funds should be distributed to the employee member, just as their Superannuation account surpluses are added to their individual superannuation accounts, the objective is quite different.

AI-Group approvingly quotes from the Cole Royal Commission into the Building Industry of 2003:

“Those administering the funds appear to have lost sight of the fundamental premise that employer contributions are to fund redundancy entitlements. It follows that contributions, and returns on investments of the fund, should be held by the fund and distributed only for the purpose of paying redundancy entitlements.”

“If funds were used only for the purposes for which they were established, contributions could be reduced – thus reducing building costs – or benefits to employees could be increased.”

That's it – the employers want their employees to finance their own redundancy and leave entitlements. And the Morrison Coalition government is trying to force that through now.

What is the logic of the government and employer opposition?

The main argument's put forward by the Morrison government are about “choice” and “freedom”, but this is quite deceptive. “Mean and Tricky” is closer to the mark.

This is how it was put by the government Member for Hinkler, Mr Keith Pitt, in the second reading debate on the Bill: “...this is about fairness, it's about choice and it's about giving an individual an opportunity to make their own decisions about what happens to their money. It requires any term of a modern award or enterprise agreement that names a worker entitlement fund or insurance product to allow an employee to choose another fund or insurance product.” (Very little attention in the debate has been given to insurance products. We need to give this more attention. Generally speaking many workers chose an insurance product offered by their superannuation fund. Is this another part of the attack on industry super funds? Suggest we need to look closer at income protection and what an attack on this represents especially with the current severe downturn in the building and construction sector. We could refer to some recent examples.

If the Bill is passed by the Senate, it would enable an employer to propose another fund to employees, where the employer would use the surpluses to pay future worker entitlements.

Here is the summary of the Bill a set out on the federal parliament website: Is this section needed as the issues are covered elsewhere and some of the issues below are extraneous to our main arguments.

- prohibit terms of a modern award or an enterprise agreement requiring or permitting contributions for the benefit of an employee to be

made to any fund other than a superannuation fund, a registered worker entitlement fund or a registered charity;

- require any term of a modern award or enterprise agreement that names a worker entitlement fund or insurance product to provide for an employee to choose another fund or insurance product;
- prohibit any term of a modern award, enterprise agreement or contract of employment permitting or requiring employee contributions to an election fund for an industrial association; and
- prohibit any action with the intent to coerce an employer to pay amounts to a particular worker entitlement fund, superannuation fund, training fund, welfare fund or employee insurance scheme;

[amend] *Fair Work (Registered Organisations) Act 2009* to:

- require registered organisations to have written financial management policies that have been approved by the committee of management;
- require registered organisations to report certain loans, grants and donations;
- require specific disclosure by registered organisations of the financial benefits obtained by them and persons linked to them in connection with employee insurance products, welfare fund arrangements and training fund arrangements;
- introduce a range of new penalties relating to compliance by registered organisations with financial management, disclosure and reporting requirements; and make minor technical amendments.

The amendments all prohibit what might be agreed in an Enterprise Agreement or are a clause in an Award even though the employer and union agree about contributions going to an agreed WEF. But the language is “freedom”, “choice”.

And the result is that money that belongs to the employees WEF could be transferred to the employer without proper governance oversight.

This fits the broader pattern of Liberal National Coalition initiatives such as the massive federal funding of private schools – in the name of “choice”.

The same change was made to the Superannuation Guarantee Levy in July 2005 by the Howard Liberal National government, to enable the big banks to get

access to workers’ superannuation contributions. But this did not work out well, with Industry Super Funds – jointly managed by union and employers – able to continue to expand because employees could see that Industry Super Funds had lower fees and performed better than the big retail funds. After the Banking Royal Commission in 2018 revealed terrible practices by these retail funds, many employees rapidly transferred out of the retail funds and into the Industry Super Funds.

The Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2019 does amend the Registered Organisations Act, which covers employer organisations like AIGroup, to make officers of unions and employer bodies report any benefit they obtain from a Workers’ Entitlement Fund, but this is whitewashing, since there are no reported cases of corrupt use of these funds, and the Workers Entitlement Funds are supervised by the Australian Taxation Office and the Australian Securities and Investments Commission, like any other company.

Can there be workers’ influence over the management of the funds?

Yes, employees already have a direct say over the management of Worker Entitlement Funds through their union representatives on the Boards which manage the funds.

These Boards report regularly to union Executives and Councils on their performance, and elected rank-and-file union members are the majority of these Executives and Councils.

These Worker Entitlement Funds are able to expand their reporting to members, and consult with members about the value of existing services and needs for new services.

It depends on the level of union democratic culture just how much influence workers can exercise, and this is part of the broader challenge to union members to defend and expand their unions in this time of massive employer-supported and Coalition government attack on the basic right of workers to organise and to collectively bargain. ■

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