Senate Education and Employment Legislation Committee
Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019

Organisation: The Civil Air Operations Officers' Association of Australia

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Contents

About Civil Air

The Civil Air Operations Officers' Association of Australia (Civil Air) was registered in 1948 to represent the industrial and professional interests of employees in civilian Air Traffic Control and related air traffic service personnel. In 2010, the organisation expanded to also incorporate representation of civilian ATCs working for the Department of Defence. The size of our organisation is correlated to the size of the occupation field we represent which is quite small - with approximately 1,100 members and an annual revenue of 2.2 million dollars.

Introduction

Civil Air would like to make a submission to the Senate Education and Employment Legislation Committee's (**Committee**) inquiry into the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* (**EI Bill**) and provide a specific perspective about the impact of this legislation upon a small registered organisation.

The EI Bill's intended amendments to the *Fair Work (Registered Organisations) Act 2009 (**RO Act**)* represent an unprecedented legislative encroachment upon the internal functioning of worker and employer organisations and their compass tramples a foundational human right to freely associate and assemble. We will not duplicate the arguments and points eloquently made in the submissions of the International Centre for Trade Union Rights or the Australian Council of Trade Unions, but we would like to record our complete agreement with their comments regarding the way this Bill conflicts with international law and our nations commitments to uphold fundamental human rights, including the right to freely associate as enshrined through Australia being a signatory to the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Protection of the Right to Organise Convention 1948* and also the *ILO Declaration on Fundamental Principles and Rights at Work.*

The proposed amendments are out of step with workplace legislation in other western democratic countries, and the potential damage to Australia's global reputation will be serious. As we move further away in time from the horrendous events of World War II, we must always revisit the reasons for ratifying our commitment to international covenants that sought to preserve and protect individual and collective voices. Trade Unions are always amongst the first to be targeted in authoritarian regimes and we urge the Inquiry to reflect on legislative proposals that may drift in this direction.

In his Second Reading Speech to the House, the Minister for Industrial Relations and Leader of the House stated that this "*…bill strikes the appropriate balance between ensuring that registered organisations and their officers act with integrity and obey the law, without affecting the vast majority of organisations and their officers that do the right thing and work hard to represent their members and act in their best interest*"[1]. He then went on to refer to the actions of the CFMMEU and its officers. Registered organisations reflect the plurality of members that they represent. To align all registered organisations with the CFMMEU is unfair and irrational and is not an appropriate or balanced response. Employee organisations represent a vast array of workers across Australia.

[1] Minister's Second Reading Speech for the EI Bill, Hansard dated Thursday, 4 July 2019 Page 289.

We make the point that the CFMMEU is a trade union that endeavours to protect its members from significant workplace hazards. Following the recent amalgamation, this union represents members in the maritime, textile, furnishing sectors as well as mining, forestry and construction. The seriousness of the conditions in the construction industry cannot be overstated. Between 2013 and 2017, Work Safe reported that the Construction industry recorded workplace fatalities of 21, 32, 34, 36 and 30 workers respectively in those years. [2] Not all registered organisations need to actively protect their members from danger on a daily basis. Civil Air uses its resources to assist members in all facets of their working lives, but we have never had a member die at work due to a dangerous workplace. The nature of the industry that the CFMMEU works in necessarily means that they must confront and deal with WHS issues even when employers disagree. This is a major cause of conflict, nevertheless, the union undertakes this vital work on behalf of their members. The recent case of *R v Truslan Constructions Pty Ltd [2019] NSWD 321* was a sad example of the employer not heeding the CFMMEU's notice which identified suspected height related WHS contraventions; 11 days later, a worker fell through a gap to his death. The judge found that the notice should have triggered an urgent inspection and risk assessment, yet no steps were taken.

It is also frequently overlooked that only half of the organisations registered under the *Fair Work Act 2009* are trade unions. We note that the most recent findings of violations against the RO Act have been about employer associations, such as the Master Builders Association of Victoria and Clubs Victoria.

In re-introducing this bill, the government states that it has *"listened to stakeholders to ensure that its provisions as closely as possible align with the standards for registered organisations and their officers with those that apply to companies and their directors*[3]". We note that there are no parallels in the Corporations Act with certain measures proposed in the EI Bill at Schedule 1 such as those related to automatic disqualification.

The regulatory compliance and quantum of penalties already in the RO Act well exceeds what is applied to big businesses and seems inappropriate for the not-for-profit sector and even more inappropriate for a small scale operation such as ours; an organisation that is largely run by volunteers who have full time employment as Air Traffic Controllers. As a small union we are more at risk of being tripped up by the current maze of rules and regulations as the regulatory burden is disproportionately greater on an organisation with fewer resources to manage these requirements.

The consequences of the EI Bill are also greater for a small union who rely heavily on volunteers operating in their own time being disqualified from office and having the union "short staffed", so to speak, on their Committee of Management.

Freedom of association

As previously stated, the EI Bill's intended amendments to the *Fair Work (Registered Organisations) Act 2009* violate a basic human right being the right to freedom of association, as protected under ILO Conventions 87 and 98. These rights are essential to the free and democratic function of unions. Civil

[2] https://www.safeworkaustralia.gov.au/system/files/documents/1908/number-and-incidence-rate-of-injury-related-fatalities-by-industry-2013-2017.pdf
[3] Ibid. Minister's Second Reading Speech for the EI Bill.

Air is over 70 years old and has a long history of unproblematic administration in protecting the rights of Air Traffic Services staff over that time.

Disqualification of officers

Schedule 1 of the EI Bill seeks to expand both the circumstances in which a person may be disqualified from office in a registered organisation, and the actors who may initiate disqualification.

Most organisation's rules have a rule about the disqualification of the organisations and deregistration of the organisation. In the case of Civil Air, Rule 34 (a) states that,

"*No person shall be eligible to hold or continue to hold a position as a Divisional Delegate or Branch Representative of the Association if:*
(1) he ceases to be a financial member of the Association; or,
(2) he is of unsound mind".

There are already provisions in the RO Act that can be relied upon to disqualify an elected official of a registered organisation.[4] We submit that the EI Bill expands the grounds for disqualification unnecessarily and we suggest well beyond the compass of the recommendations of the Heydon Royal Commission.

The Federal Court already struggles under its caseload and applicants frequently face delays. If this legislation is implemented, unions will face the prospect of defending claims regarding disqualification of officers in a jurisdiction that is already under strain and is an expensive realm to operate within. Is this measure warranted?

Deregistration or Administration of Unions

Civil Air has a "Dissolution of the Association" rule at Rule 58.

As mentioned in the introduction, it is clear from many public statements that the Government's major target for the proposed new deregistration provisions is the CFMMEU.[5] The Government could apply under existing section 28(1)(b) of the RO Act for deregistration of the CFMMEU. There is absolutely no legitimate basis for adding multiple new grounds of deregistration that would apply not only to the CFMMEU, but to *all* registered organisations.

There are rights and responsibilities attendant upon being a registered organisation, however, there are also supposed to be benefits. The EI Bill presents another raft of regulations to comply and contend with such that registered organisations are slowly being strangled with the python snake of bureaucracy. Certainly, the merits of remaining federally registered will be questioned by some registered organisations. Yet, is it not preferable to have everyone 'inside the tent' and subject to the rigours of the *Fair Work Act 2009* and RO Act frameworks than outside? We propose that this Inquiry considers whether there is a problem that requires rectification. If the Inquiry believes that a 'problem' exists, the

[4] RO Act s 215 and 212
[5] Ibid. Minister's Second Reading Speech for the EI Bill.

Inquiry could then consider whether this legislation is the 'cure' for that problem. It is our submission that it is not.

Public interest test for amalgamations

Schedule 4 of the EI Bill again extends well beyond the recommendations of the Heydon Royal Commission and seeks to introduce a new 'public interest' test for union amalgamations. A democratic process for amalgamation is already prescribed and regulated in the RO Act.

This proposed provision may see a smaller union refused amalgamation with a bigger, better resourced union that the members have decided is in their best interests.

Conclusion

The proposed amendments in the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* are in direct violation of Australia's labour and human rights obligations under international law.

Since 2016, the recommendations of the Heydon Royal Commission to increase the regulation, transparency and accountability of registered organisations have already been implemented through various forms of legislation.

We have not even mentioned the numerous changes brought about by the *Fair Work (Registered Organisations) Amendment Acts of 2012 and 2016.* Small registered organisations have been playing catch up with multiple legislative changes over the last 7 years. The unremitting pace of regulation feels like being on a ceaseless merry-go-round.

We urge the Committee to recognise the greater cost of denying internationally accepted human rights for democratic civil organisations and their members and recommend the unequivocal rejection of the EI Bill.

We thank the Committee for the opportunity to provide a submission to the Inquiry.