

**STRONGER
TOGETHER**

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ABN 28 853 022 982

Senate Education and Employment Legislation Committee
***Fair Work (Registered Organisations) Amendment (Ensuring
Integrity) 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 their employment and employment conditions, a core function of the AWU (as set out in the objects to the Rules (see cl. 4)) 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

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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 (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017

4. Introduction of the Bill

In mid-August 2017, the Federal Government introduced the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017* ("the Bill") into the House of Representatives.

According to the Explanatory Memorandum the legislative purpose of the Bill was to implement the Government's election commitments responding to community concern to ensure the integrity of registered organisations and their officials for the benefit of members and to implement the recommendations of the Final Report of the Royal Commission into Trade Union Governance and Corruption ("the Royal Commission").

The Explanatory Memorandum claims that the Bill will 'combat a culture of lawlessness' identified by the Final Report of the Royal Commission, 'ensure more acceptable minimum standards of

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behaviour and accountability for officers' and the 'promote democratic governance in the interests of members of registered organisations'.

The Federal Government claimed through the Second Reading speech, that the Bill restores balance and applies consistent community standards to registered organisations as are applied to corporations and boards.

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, based on floored assumptions unsupported by evidence, and was developed without any proper policy development;
2. The recommendations are based on a gross misunderstanding of the nature and purpose of industrial organisations and they fail to understand the wider societal function and importance of registered organisations. In addition the Bill goes over and beyond the recommendations of the Final Report of the Royal Commission.
3. The Bill is inconsistent with international law and Parliament's intention to help better facilitate organisational autonomy. The Bill, to the contrary, will make registered organisations susceptible to excessive external political, corporate and regulatory interference.
4. The Bill introduces measures that directly impedes on members' democratic control over their own organisation and representation.
5. The Bill interferes with the right of freedom of association, the right to form and join trade unions and the right of trade unions and their members to function freely under their own democratic control. .

6. The Submissions of the Australian Workers Union

The AWU has had the benefit of reviewing and considering the submissions filed by the Australian Council of Trade Unions ("the ACTU") to the Senate Education and Employment Legislation Committee dated 8 September 2017 ("the ACTU submissions").

Having considered the ACTU's material the AWU respectfully wish to support and adopt the ACTU's submissions and conclusions in respect to the substantive provisions of the Bill. The AWU also support and adopt the conclusionary submission that save for schedule 5 the Bill should not be passed.

The Bill is made up of 5 schedules. Addressed under separate heading below the AWU also say the following:

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Schedule 1

The disqualification of an official is a serious encroachment on the right of members to democratically elect and choose their own representatives. It is also a contravention of various international laws relating to the freedom of association.

The current RO Act contains disqualification provisions. Schedule 1 however significantly expands upon the existing grounds for disqualification. Firstly, it makes disqualification possible for a relatively minor breach. It also makes disqualification possible for breaches caused by other officials. Schedule 1 also makes it a criminal offence to hold office or significantly influence an organisation when disqualified.

Despite the significant additional encroachment on the right of members to democratically elect their choice of representatives— there was no evidence (arising out of the Royal Commission or otherwise) to suggest (far less provide probative justification for) the expanded powers to disqualify an official was needed. Similarly there was no evidence to suggest registered organisations were being influenced by officials who had already been disqualified from holding office. There is just no evidential basis to justify the need for expanded powers.

Schedule 1 also significantly expands the standing provisions and potential list of parties who can make an application for a disqualification order against an official of an organisation. The expanded standing will mean any party in dispute with a registered organisation could make an application and thereby influence the activities of the registered organisation. Given the size of the AWU and the broad range of industries the AWU covers, the AWU is particularly susceptible to the potential for the provision to be abused by external influences. Notwithstanding the significant risk the expanded standing provision may have, there is just no evidence to suggest the expanded standing is needed or warranted.

Schedule 2

Schedule 2 significantly expands the grounds for the cancellation of an organisations registration. Schedule 2 also provides for alternative orders, including disqualifying certain officers from holding office, altering eligibility rules to exclude certain members, restricting or controlling the use of the organisation's funds and property, and suspending the rights and privileges of the organisation and members.

Powers that could be used to restrict or influence the everyday function of a registration is a significant interference with the right to freedom of association and the right of trade unions to function freely without external interference. Such power may also significantly affect the balance in industrial disputes or negotiations and will disadvantage organisation members. Notwithstanding the consequence of the provisions and negative impact the provisions may have on the registered organisation and democratic rights to choose their own representatives, there is no evidence arising out of the Royal Commission or elsewhere justifying the need for the expanded powers.

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As with Schedule 1, Schedule 2 also significantly widens the standing of who can make an application for cancellation or the alternative orders. Expanded standing provided by Schedule 2 exposes registered organisations to the same issues as with Schedule 1. Despite the Government's claim that the Bill is simply setting the same community standards as with other parts of society and the economy, corporations are not subjected to this type of interference or influence.

Schedule 3 and Schedule 4

Schedule 3 expands the standing provisions and who may make an application for the appointment of an external administrator. Schedule 3 expands the categories of declarations that the Federal Court can be made and expands the provision for the Federal Court to make declarations to permit the appointment of an administrator under a scheme which sets out the functions of the administrator.

Critically, in contravention of international law, the provisions in Schedule 3 take power away from the members to decide the best interests of the organisation.

Schedule 4 significantly affects the provisions for the amalgamation of two or more industrial organisations. The current provisions provide for a relatively straight forward administrative amalgamation of organisations if the members of the organisations democratically elect to support the amalgamation. The provisions in Schedule 4 introduce a new scheme facilitating and encouraging external influence of the process. It also introduces a new "public interest" test that mandates considerations that are not relevant to the democratic freedom of members to be represented by the organisation they choose.

As with Schedule 1 and 2, the provisions in Schedule 3 and Schedule 4 are not based on any findings or recommendations of the Royal Commission. The expanded standing provisions in Schedule 3 and Schedule 4 are also vulnerable to the same abuse and manipulation by external influences, and notwithstanding the Government's claim, corporations are not subjected to this type of interference or influence or regulations. There is no evidence to support the justification for these provisions. It can only be concluded that the provisions have been introduced by political motivation.

7. Conclusion

Having considered the ACTU's material, the AWU supports and adopts the ACTU's submissions and conclusions in respect to the substantive provisions of the Bill.

The AWU also supports the final submission that save for schedule 5, the Bill is not warranted and should not be passed.

The Australian Workers' Union