



23 December 2015

Committee Secretary
Senate Standing Committees on Education and Employment
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

Request to correct testimony in Proof Hansard, Senate Estimates – 22 October 2015

Bernadette O'Neill, General Manager of the Fair Work Commission (the Commission) has asked me to write to you regarding a correction to information supplied in the recent Senate Estimates hearing.

On 22 October 2015, Ms O'Neill, together with Mr Chris Enright, Director of the Regulatory Compliance Branch, appeared before the Education and Employment Legislation Senate Estimates hearing. Ms O'Neill and Mr Enright responded to questions from Senator Johnston in relation to the process of amalgamation between two registered organisations as follows (see page 75 of Proof Hansard, 22 October 2015):

Senator JOHNSTON: *If I was in the building and construction industry looking over what has been going on in the last five years in that industry and thought that I was going to end up with officials from the MUA in addition to officials from the CFMEU, I would want to bring an application to stop the amalgamation. I do not believe there is a community of interest in the two unions. Are you telling me that industrial players who are under siege from these two unions—and I can take you to the cases and you have the stats out there. You just have to sit through Mr Hadgkiss's evidence in one of these to know that there is mayhem out there. Are you saying that industry players have no capacity to intervene before the commission to stop this amalgamation?*

Mr Enright: *That is so. Apart from the organisations themselves, there is no provision for us to intervene.*

Senator JOHNSTON: *But you have to be satisfied there is a community of interest, do you not?*

Ms O'Neill: *Yes.*

It has come to the attention of the Commission that part of the information provided by Ms O'Neill is incorrect.

Registered organisations wishing to amalgamate must comply with the requirements of Part 2 of Chapter 3 of the *Fair Work (Registered Organisations) Act 2009* (RO Act). Section 44 provides that organisations concerned in a proposed amalgamation must jointly lodge with the Commission an application for approval to submit the proposed amalgamation to a membership ballot. The application must be accompanied by a scheme of amalgamation and a written outline of the scheme. The Commission must approve the proposed amalgamation being submitted to a ballot of affected members if it is satisfied of the conditions set out in section 55(1) of the RO Act.

A registered organisation concerned in a proposed amalgamation may also apply for a community of interest declaration under section 43 of the RO Act. If granted, the requirement that 25 per cent of members on the roll of voters cast a vote in the amalgamation ballot does not apply (section 66(b)). However a community of interest declaration is not a condition of approval by the Commission of the proposed amalgamation being submitted to a membership ballot.

Ms O'Neill apologies for this error and for any inconvenience caused.

If you would like to discuss this matter further, or require further information, please do not hesitate to contact [REDACTED]

Yours sincerely

Samantha Mikkelsen
Manager, Reporting, Planning and Legal
Fair Work Commission