

2019

Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019

SUBMISSION BY UNIONS TASMANIA
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ABOUT UNIONS TASMANIA

1. Unions Tasmania has a long and proud history of advocating for working people in Tasmania. Initially established as the Trades and Labor Council of Hobart in 1883, and now operating as Unions Tasmania, there is no other Tasmanian peak body dedicated to giving a voice to working people. For over 135 years, Unions Tasmania has been advocating for the improvement of wages, conditions, safety and living standards for working Tasmanians and their families.
2. Unions Tasmania is comprised of 24 affiliate unions with approximately 50,000 members. We represent members across all industries, in the private and public sector. Unions Tasmania's largest affiliate unions are health and education unions dominated by female membership.
3. Unions Tasmania is also the local branch of the Australian Council of Trade Unions (ACTU).

INTRODUCTION

4. Unions Tasmania is strongly of the view that the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* (Cth) (the 'Bill') should not be passed.
5. This Bill is a political manoeuvre intended to silence working people and the unions that represent them. Unions act as a check on those who exercise disproportionate economic and political power. In order to continue to fulfil that critical role in a free democracy, unions must remain free from political overreach or corporate interference.
6. The Bill ignores an already comprehensive regime of union regulation and governance and gives politicians and big business unprecedented rights to seek to disqualify union officials, shut down unions and prevent workers from joining together to improve their wages and conditions. It is critical that unions maintain their member led structures where union members vote to choose their leadership. The Bill allows for politicians or corporate directors, whose profit motives or other political considerations do not have workers' best interests at heart, to seek to interfere in that vote.
7. The democratic nature of unions is enshrined in international law. The Bill has been criticised both within Australia by the Parliamentary Joint Committee on Human Rights as well as by the International Trade Unions Confederation (ITUC). Sharan

Burrow, ITUC Secretary, labelled the Bill 'anti-democratic' and likened it to the types of legislation seen in dictatorships and authoritarian regimes.¹

8. We note that the ACTU has made a submission to this Inquiry including detailed analysis of the provisions of the Bill. We support the arguments advanced by the ACTU in their submission.

ATTACKING UNIONS HURTS ALL WORKERS

9. This Bill is a politically motivated attack on unions that will ultimately hurt all working people. All Australians benefit from the operation of free and democratic trade unions whether they are members or not.
10. Throughout history, unions have won workplace changes that have transformed worker's lives for the better. Unions fought for workplace rights and conditions such as superannuation, annual leave, equal pay and workplace safety laws (to name a few) that have lifted our living standards.
11. It is unions that argue every year for increases in the minimum wage to lift low wage workers out of poverty. Around 2.2 million Australians rely upon unions to fight for an increase in the minimum wage. Curtailing the effective operation of unions will further limit the ability of working people to win fair pay rises like this, or secure other improvements to rights, conditions or safety.

TASMANIA – THE LOW WAGE STATE

12. Data from the Australian Bureau of Statistics² recently confirmed Tasmania as having the lowest full time adult average weekly earnings in the country. Weekly wages were highest for the Australian Capital Territory and Western Australia, at \$1,809.70, and \$1,780.80 respectively. By contrast, the weekly wage for a Tasmanian worker was significantly less at \$1,420.
13. Low wage growth and casualisation of jobs are major issues for Tasmanian workers. Any out-dated myths that Tasmanian wages are lower because of lower living costs have been clearly debunked. Tasmania is in the midst of a housing affordability crisis with many working people struggling to pay increasing rents. Rents in Hobart alone have increased by 30% in the last three years with Hobart recently named the least affordable city in Australia based on incomes for renters.

¹ Dana McCauley, 6 August 2019, 'Extraordinary act of vandalism': Burrow calls on Senate to block union-busting bill, www.smh.com.au

² Australian Bureau of Statistics, Average Weekly Earnings, May 2019 (cat. No. 6302.0), www.abs.gov.au

14. Unions are therefore working with our members to address low wages as a priority. We understand the economic benefits of workers having more money in their pockets will mean they spend more in our local small and medium sized businesses.
15. Government wage caps at a State and Commonwealth level are also hurting Tasmanian workers. Approximately 33,000 of Tasmania's 250,000 workers are employed in the Tasmanian State Service and the Australian Public Service (APS). Since 2014, the APS has been subject to a wage cap of 2% per annum with workers there missing out on pay rises for 2 to 3 years while negotiations sought to achieve a fairer outcome.
16. In the Tasmanian State Service, workers had been subject to a 2% pay cap since 2011. Initially implemented as a short-term response to the financial shocks of the Global Financial Crisis, the Hodgman Liberal Government extended the wage cap upon their election in 2014 and sought to extend it further during recent workplace agreement negotiations. This is despite the Consumer Price Index in Tasmania reaching as high as 3% over the past 12 months. They also proposed cutting a range of working conditions including public holidays.
17. Through the combined efforts of Tasmania's public sector unions, members were able to negotiate an agreement that delivered a fairer pay rise in excess of the 2% cap. This will have a positive impact on the pay packets of all Tasmanian public servants, many of whom are on low wages like school support staff who work mostly part time, are employed for only 40-42 weeks of the year and earn on average \$24,000 per annum.
18. The Bill threatens the rights of Tasmanian union members to elect leaders who will pursue fair wage rises so their pay keeps rising as living costs increase. The Parliamentary Joint Committee on Human Rights, in finding that the disqualification provisions of the Bill are likely to be incompatible with the right to freedom of association, noted that an entire elected leadership can be disqualified for contraventions of the union regardless of whether the union members considered that the conduct which led to a ground for disqualification being established was in their best interests³. Members may be of the view that taking particular action, such as industrial action, is in the interests of members.

³ Parliamentary Joint Committee on Human Rights, *Report 12 of 2017* (28 November 2017), 117-121. The Committee has reiterated its views in respect of the 2019 version of the Bill: *Report 3 of 2019* (30 July 2019), 15.

WAGE THEFT SHOULD BE THE PRIORITY

19. Unions Tasmania submits that the focus of Government should be on dealing with the wage theft crisis affecting Australian workers, not attacking unions who are supporting workers to retrieve stolen wages. Seemingly endless stories occupy our televisions screens and newspaper headlines, with celebrity chefs, some of Australia's largest franchises and the hospitality industry all notorious for repeated theft of worker's wages.
20. These are not stories exclusive to the mainland. Wage theft is happening in Tasmania. A number of notable cases have received local attention including:
- a) In February 2018, a Fair Work Ombudsman report highlighted the systematic exploitation of contract cleaners in Tasmania's supermarkets, finding that cleaning contractors at 90% of Woolworths sites were not complying with workplace laws.
 - b) In May 2018, the former operator of the Scamander Beach Resort on the East Coast of Tasmania was found to have grossly underpaid two Malaysian employees by \$29,326. The Court held that the operator racially discriminated against the two employees by paying them less and forcing them to work longer hours than other employees. In addition, 15 other casual hotel employees were underpaid over \$26,000. The Court ordered the employer to pay a penalty of \$176,005 for contraventions of the *Fair Work Act 2009* (Cth) (the 'Fair Work Act'). A separate penalty of \$35,099 was ordered against the owner for his involvement in the contraventions. He does not appear on the Australian Securities and Investments Commission's register of persons disqualified from managing a company.
 - c) In September 2018, 120 Chinese plasterers working on a major Tasmanian construction project, the Royal Hobart Hospital redevelopment, were not paid wages at all for up to 9 weeks. They were collectively owed almost \$1 million dollars in unpaid wages. It was only union action that uncovered this exploitation and ensured workers were paid their entitlements.
 - d) In May 2018, Kings Day Spa and Massage were ordered by the Fair Work Commission to pay back a total of \$39,830 to 22 employees working across the business' three Hobart massage centres. Instead of being paid the required minimum wage, employees were only paid a percentage of each massage they provided. They weren't paid overtime, penalty rates or casual loadings.

21. For every high-profile wage theft case reported in the media, Unions Tasmania knows there are many more that don't make the papers. We are contacted regularly by workers who are not being paid their wages or superannuation correctly. They are often in insecure work, young, or migrant workers, fearful of the consequences if they ask for what is a basic right – to be paid legally for their labour. We work with these workers and our affiliate members to get workers what they are owed.
22. While the Bill seeks to set a very low bar for disqualifying officers of unions and shutting down unions, wage theft on the scale detailed above can and does continue without significant consequences.
23. Under the Bill, contraventions of the Fair Work Act such as those described above can lead to, for unions:
- a) officers being disqualified (s 223(3));
 - b) an organisation's registration being cancelled or one of the so-called 'alternative' orders (s 28C(1)(c)); and
 - c) an amalgamation with another organisation being refused (s 72E(1)(a)).
24. If the officers were personally found liable for the conduct (such as in the case of Scamander Beach Resort detailed above), then under the Bill the officer contraventions could lead to:
- a) disqualification of the officers (s 223(1)(a));
 - b) an organisation's registration being cancelled or one of the so-called 'alternative' orders (s 28C(1)(c));
 - c) an administrator being appointed or other court-ordered scheme imposed (s 323(4)(a)); and
 - d) an amalgamation with another organisation being refused (s 72E(2)(a)).
25. By contrast, company directors may be disqualified for contraventions of corporate laws, but not in relation to contraventions of Fair Work or work health and safety laws. There is no direct mechanism for a company to be wound up or placed under administration or have a merger refused due to a history of non-compliance with law by the company, its directors or the members.

VOLUNTEER UNION LEADERS

26. Unions are not for profit, member led organisations. They are not comparable to corporations but more closely resemble incorporated associations. The overwhelming majority of union office holders are volunteers.
27. Unions are governed by executives or committees comprised of members of the union. These are unpaid roles as distinct from corporate directors who are often well remunerated for their time. In addition to being unpaid, members continue to undertake these roles in their own time, in the evenings and on weekends, while continuing to work full time in their chosen career.
28. These volunteers come from the industries that the union represents, bringing with them a wealth of sector knowledge and a close connection to the needs and priorities of their members. Their involvement means that the people running the union are invested in the decisions it makes and act as the conduit for members to have a voice at the highest decision making level of the union.
29. United Voice (UV) Tasmania is a union representing workers across a diverse range of industries including early childhood education, cleaning, security, hospitality and public services. An Executive of 12 members is responsible for the governance of the Tasmanian branch.
30. The only member of the Executive that is paid to work for UV's Tasmanian office is the Secretary, who is democratically elected to lead the Branch every four years, along with the rest of the team. The other eleven officials all work full time in their respective industries. They are cleaners, security guards and early childhood educators. They work in Tasmania's breweries and casinos. They are correctional officers at Tasmania's prisons. Half of the branch Executive are women.
31. The Tasmanian branch of the Australian Education Union (AEU) is one of Tasmania's largest unions. It has a Branch Executive that meets on a monthly basis at a minimum and is comprised of a President, four Deputy Presidents (a laboratory technician, a TAFE metal works teacher, a high school teacher and a college teacher), and 6 other positions currently filled by high school, primary school and relief teachers.
32. In addition to the Branch Executive is the AEU's Branch Council. This is a larger elected body with 60 representatives. It meets 4 times a year and, in addition to the President and 4 Deputy Presidents, it comprises 32 primary and high school teachers from across the State, 7 secondary college representatives, 9 support staff, 6 TAFE representatives and 1 indigenous representative.

33. Many member based committees for specific staff groups, such as Principals and New Educators, exist within the union that feed into the Branch Executive and Council decision making processes.
34. All these positions are elected every 3 years and, within the exception of the President, all are voluntary positions filled by union members who work for Tasmania's public education system.

THE VALUE OF LOCAL MEMBER INVOLVEMENT IN UNIONS

35. Most branches of Tasmania's unions are small, particularly in comparison to other States. Over half of Unions Tasmania's affiliates would have less than half a dozen paid employees working in the local branch office. They do not have significant staffing resources yet they work hard to meet all of the existing compliance, regulation and governance requirements the current system dictates while supporting their members through enterprise bargaining, individual advocacy, education and support.
36. This means that Tasmanian unions particularly value the close collaboration and involvement of their members. Tasmanian unions rely on the commitment of members to volunteer their time to help the union in many ways. The Bill threatens to discourage union members from involving themselves in the administration of their unions. Members should be encouraged to involve themselves in the running of their unions to ensure that they continue to truly reflect the voice of the workers they represent.