

ANMF

Tasmanian Branch

AUSTRALIAN NURSING & MIDWIFERY
FEDERATION (TASMANIAN BRANCH)
SUBMISSION

**Fair Work (Registered
Organisations)
Amendment (Ensuring
Integrity) Bill 2019
[provisions] Submission
to Senate Enquiry**

28 August 2019

Australian Nursing & Midwifery Federation (Tasmanian Branch)

Organisation Overview

The Australian Nursing and Midwifery Federation (ANMF) is both the largest nursing and midwifery union and the largest professional body for the nursing and midwifery teams in Tasmania. We operate as the State Branch of the federally registered Australian Nursing and Midwifery Federation. The Tasmanian Branch represents around 8000 members and in total the ANMF across Australia represents over 280,000 nurses, midwives and care staff. ANMF members are employed in a wide range of workplaces (private and public, urban and remote) such as health and community services, aged care facilities, universities, the armed forces, statutory authorities, local government, offshore territories and more.

The core business of the ANMF is the industrial and professional representation of nurses, midwives and the broader nursing team, through the activities of a national office and branches in every state and territory. The role of the ANMF is to provide a high standard of leadership, industrial, educational and professional representation and service to members. This includes concentrating on topics such as education, policy and practice, industrial issues such as wages and professional matters and broader issues which affect health such as policy, funding and care delivery. ANMF also actively advocates for the community where decisions and policy is perceived to be detrimental to good, safe patient care.

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Introduction

The primary role of the ANMF is to support nurses, midwives and carers to provide better care for patients. The Tasmanian Branch is part of the wider Australian Nursing and Midwifery Federation. We are a professional organisation as well as an industrial one. Consequently we, through our members, have a complete understanding of the nursing and midwifery professions. Our members work with small and large employers, in public and private settings and in aged care facilities (as well as in the provision of home based care).

We thank the Senate Education and Employment Legislation Commission for the opportunity to comment on the provisions of the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* (the Bill).

ANMF fear that, if passed, the subsequent legislation will potentially violate the long-held principles of freedom of association and result in disproportionately punitive outcomes that would be damaging to the Australian industrial relations system. It would alter the fundamental nature of a union, in that members (a collective coming together for the purposes of bettering their working conditions) are rightly the people who should make decisions about who will, and will not, represent them. Members can seek to remove individuals from office if they believe their interests are not being protected. Yet this Bill proposed to give the power to other parties outside the union.

ANMF is concerned that the passing of the Bill would be damaging to all workers, including our nursing, midwifery and carer members, and ultimately could see an end to the ability of our members to advocate strongly for their working conditions as well as to advocate for better health outcomes for their patients. This in turn could negatively affect the health outcomes of all Tasmanians.

ANMF Tasmanian Branch supports the submission of its federal body response to the Bill and submits the following in regard to the interests of our members in Tasmania.

General Comment in relation to the Bill

1. In his second reading speech on the Bill, the Attorney-General, Minister for Industrial Relations and Leader of the House, Christian Porter asserted:

*'The 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

2. The Bill is compared to provisions applying to companies and company directors. Yet the role of a union is very different to that of a company. Applying principles such as fiduciary and other duties to elected office holders is problematic. In an article entitled *Trade Union Regulation and the Accountability of Union Office-Holders: Examining the Corporate Model*², Anthony Forsyth investigated the concept of applying Corporate Law principles to the governance of unions. He concluded that:

¹

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2Fce759aa1-47bf-467d-a58b-3bf640990032%2F0085%22>

² (2000) 13 Australian Journal of Labour Law, 1- 22.

... the many differences between unions and companies – in terms of the reasons they exist, the purposes they serve, the interests created in their members and the role and functions of their managers – are such that the imposition of a corporate model of regulation on trade unions is inherently flawed. For this and other reasons, including the decline of the arbitration system and the statutory support it provided to unions, it is argued no justification can be made out for the government's proposals.³

3. Whilst this article was written in 2000 it is the belief of the ANMF (Tasmanian Branch) that the observations made remain valid. Furthermore, given the implementation of the *Fair Work Act 2009* (FW Act) and the *Fair Work (Registered Organisations) Act 2009* (RO Act), the regulation of unions has already increased since that date.
4. The ANMF (Tasmanian Branch) submits that the current regulatory scheme establishes high levels of reporting accountability, processes for conducting various activities and sanctions for contraventions. These provisions do not need to be expanded upon in order to meet those expectations.

Division 2 (28) and the definition of sufficient interest

5. Division 2 (28) in its current form opens the door to any number of parties, i.e. employers, who have had minor disruptions to their services, due to employees' actions, to apply to have a union deregistered under Division 3 28 (g). This division is potentially subjective as to where industrial action has prevented, hindered or interfered with the services set out under section 2.
6. ANMF (Tas) have real concerns with the broad nature of the powers allocated to a person with a sufficient interest under this Bill. We anticipate that essentially anyone could put claim to having a sufficient interest. This would potentially include a government who would have the ability to make vexatious complaints to disable unions; including the ANMF. The bill has the potential to be used for political and industrial purposes and could also be used by an employer to terminate Enterprise Agreement discussions.
7. This potentially places at risk the ability of Tasmanian ANMF's members to attempt to sway an employer in their quest for better and fair working conditions. In addition, members who are seeking better patient outcomes (which might result in costs for the employer) may be caught by the proposed legislation.
8. ANMF (Tas) Members on occasion use action which may be perceived to be 'industrial' in circumstances where an employer is refusing to use adequate resources to ensure that the care of clients under their care is adequate. Examples of when ANMF members have exercised their rights in this respect include:

Launceston General Hospital

9. ANMF (Tas) members at the Launceston General Hospital put very low level industrial action in place when they were unable to secure action from the hospital administration in regards to extra resourcing to overcome bed block, take pressure off the emergency department, decrease wait times for hospital beds and improve patient outcomes and care of those patients being admitted to the department. The action that members undertook included:

³ Ibid., p. 1.

- a. Handing out postcards to members of the public advising them of the issues faced by nurses working within the emergency department.
 - b. Wearing T-shirts with Campaign logos on them in place of their regular uniform.
 - c. Discussing their concerns with both members of the public, politicians and the media.
10. These actions could have been seen to be an unprotected action, at least under the Federal Act. ANMF (Tas) is highly concerned that if this Bill is passed it will limit the ability of the ANMF to support its members in campaigns such as these. Any one of the above actions could potentially be seen as being obstructive to the operations of the business. It is also concerning that a party with a sufficient interest in this scenario could be one of a number of parties including, the health service as our members' employer, the government as the funder of the system, any members of staff who does not agree with the action being undertaken. Any of these parties could apply under the act for deregistration of the union or any one of its officials who are seen to be facilitating the action.

The Use of Media to Advise the Public Service Provision issues

11. ANMF delegates and officials at times speak to the media regarding concerns that they have in regards their ability to provide safe client care within their service. This may happen for several reasons; including where an employer has failed to provide safe and appropriate work environment despite members requests. Scenarios that may lead to this include inappropriate funding, staffing shortfalls, work health and safety concerns. This activity is always undertaken by ANMF members with the public's best interests in mind, with the support of ANMF and where an employer has failed to address concerns raised by members.
12. An example of this has been seen in the mental health service in Tasmania, where a number of ANMF members and delegates have spoken out in regard to their inability to provide adequate care to their clients because of low staffing levels and lack of resources.
13. Where nurses and midwives use their connection to ANMF to speak out in regard to issues that affect their clients, it is concerning that if a group of members disagreed with the advocates choice to speak publicly and felt that it was not in their best interests to do so. It could be found that the organisation was not been acting in the best interests of a group of members. As such this may be seen as grounds for an application for undertakings under the act against the organisation or the individual, if they are an officer of the union under Division 3 Section 28C (c) of the Bill
14. If this bill is enacted ANMF holds concerns that this will result in our members and officers being less likely to speak out publicly in the best interests of their clients. It is the most venerable members of society who most often need to be afforded a voice in the current health care system. This includes mental health clients, aged care clients and children. Nurses and Midwives have historically been the voice both within and externally to organisations, for these clients. The ANMF has often been the facilitator of these conversations in the media, if this bill is enacted we are concerned that this voice could be lost.

Industrial Action is undertaken to ensure safety of the Workforce

15. Nurses and Midwives work in some high-risk areas for work health and safety such as Emergency Departments, Psychiatric Wards and Prisons. At times the working environment can lead to considerable risk to the nurses and midwives working in these areas and work practices can increase this risk. There are occasions where management is consulted regarding these issues but does not take action in a reasonable timeframe, and members are required to take action to ensure their own work health and safety.
16. An example of action was taken by ANMF members at the Risdon Prison. ANMF members raised concerns with management regarding medication management at the facility, especially in regard to the dispensing of schedule 4 and 8 medications that saw members carting large quantities of these medications across the facility to ensure patients received their required dose.
17. Members at the prison raised concerns regarding implications for their registration and safety in the dispensing process of these medications. When members felt that management action was not provided in an adequate manner, they instituted bans to ensure that they were safe and could dispense the medication while still meeting the requirements of their nursing registration.
18. In this high risk environment the action taken (if the public system was under the Federal Jurisdiction OR if we were talking about a privately run prison) could have been seen as disrupting the provision of a service being provided by the state, and hence could have been grounds for an application under the bill, even though the action implemented provided a short term fix while management dealt with the issue.
19. The ANMF (Tasmanian Branch) represents members in the private sector which includes, Aged Care, General Practice and private hospitals.
20. We would also ask how it is to be determined that an organisation is working in members' best interests. Is this for the whole membership or for each individual member? Circumstances may arise where the best interest of the group could leave a few members disgruntled, in such a case, will the disgruntled member be able to assert that the union is not working in their best interest?
21. In the matter of the approval of agreements, the FW provides for oversight of agreement to ensure a fair process (including balloting employees who will be covered by any Agreement).

Impact of the Bill if Passed

22. Passing this legislation without amendment will mean very limited (if any) industrial action can be taken by nurses and midwives across the country even if they have concerns about inadequate patient care, their professional obligations or own health and safety. This could lead to greater instances of clients receiving inadequate care due to business decisions made by employers. The current discussion about staffing levels in Aged Care is a prime example. Deciding whether to employ more staff is a business decision, and a way to reduce costs is to expect more from a smaller number

of employees. Nurses and carers wanting to agitate for better outcomes for residents and clients, would no longer be able to do so without fear of falling foul of the legislation.

23. Being charged with a criminal offence is a serious matter for a registered nurse or midwife. These workers are subject to the *Health Practitioner Regulation National Law Act 2009* (The National Law). Many of our Branch Council and Branch Executive Members are registered under that Act.
24. ANMF Tasmanian Branch urge the Senate Committee to recommend against passing this Bill. If required, we would welcome the opportunity to give further evidence in regards to the implications of this Bill during the Tasmanian Hearings.

29 August 2019