

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

Submission by the Finance Sector Union to the Senate Education and
Employment Legislation Committee

29 August 2019



**Finance
Sector Union**

Submission by the Finance Sector Union – Fair Work (Registered Organisations) Amendment
(Ensuring Integrity) Bill 2019

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Finance Sector Union

National Secretary: Julia Angrisano
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Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary,

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

Please find enclosed the Finance Sector Union's submission to this Committee's inquiry into the abovenamed Bill.

Yours sincerely,

Julia Angrisano
National Secretary
Finance Sector Union

THE FINANCE SECTOR UNION

The Finance Sector Union (FSU) is a registered employee organisation representing approximately 30,000 members across the banking and finance sector throughout Australia. Our members work in banking, insurance, superannuation, financial planning and finance. Our membership is predominately female, many of whom are engaged in part-time and casual employment.

The FSU is a democratic organisation with representative governance by elected officials and volunteer members. The FSU is a member led organisation in which rank and file members are elected to honorary official positions to governing bodies within the union. This includes the National Conference which is the supreme governing body of the union.

National Conference has the management and control of the affairs of the union and is comprised of predominately volunteer members. These members are elected by the membership to represent their interests. They are not paid officials.

The FSU is proud of its long history representing members to achieve better wages and fairer conditions. Our members are committed to greater integrity in the finance sector and see their role as advocates for a better industry. Our members share community frustrations when banks and other financial institutions are not held to account for poor practices and unethical conduct. This submission and our members stories express our deep concerns in relation to the proposed amendments contained in the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 (the Bill)*

THE FAIR WORK (REGISTERED ORGANISATIONS) AMENDMENT (ENSURING INTEGRITY) BILL 2019

The FSU is deeply concerned about the Bill and is of the strong view that it should not be passed. It is our view that the Bill is:

1. Bad for workers
2. Anti-democratic
3. Has no corporate or political equivalent

Bad for workers

The Bill is a yet another politically motivated piece of legislation designed to silence unions and their members. The Royal Commission into Trade Union Governance and Corruption (**TURC**) failed to uncover widespread corruption and wrongdoing within the union movement. The Government's claim that the TURC 'uncovered numerous examples of some organisations and officials repeatedly flouting industrial

and other laws'¹, and that the amendments 'will combat the lawlessness of some organisations'² is entirely misleading. Indeed, there were only a small number of convictions arising out of the TURC, an inquiry that cost taxpayers \$46 million.

The FSU and its members are committed to providing the best possible services to the finance and banking industry. Our members want to work in an ethical industry and are frustrated with the poor practices and lack of government response to improving the integrity of the industry. The FSU was granted permission to appear in every round at the banking Royal Commission highlighting the unethical practices of some financial institutions. The FSU made detailed submissions to the Commission in response to each round dealing with the subject case studies.

Despite criminal and unethical conduct, endless breaches by financial institutions and the recommendations by Commissioner Hayne from the banking Royal Commission, the Government has only acted on 8 of the 54 recommendations directed at it. Despite the 13 referrals from Commissioner Hayne and numerous case studies being looked at by ASIC, proceedings have only commenced in relation to one of the case studies.

So why hasn't the Government put up a Bill to address widespread breaches of the law by financial institutions when unions are being targeted with an unfair and unsound bill? Because there is one set of rules for unions and another set for the big end of town.

This Bill is bad for workers, particularly so when wages are stagnant whilst productivity and profits soar. The FSU is proud of its history in standing up for its members, securing more secure jobs and fairer pay and conditions. This Bill seeks to impose even more stringent laws on unions that have no comparison in any other industrial relations system in the developed world. Members deserve to be able to self-govern without fear of interference and reprisal under such oppressive laws. If unions are silenced who will represent workers interests? It won't be the big end of town.

The FSU is a democratic organisation and is governed by both elected officials and volunteer members, for the benefit of its members. These rank and file members participate in decision making at all levels within the union. The highest decision-making body of the union is National Conference. There are 38 delegates to National Conference with only two being elected officials, the National Secretary and National Assistant Secretary.

The FSU and its volunteer members are concerned with many aspects of the Bill, including those proposed amendments that may impact on their ability to participate in the unions affairs freely without fear of being held liable for the actions of others or interference in the running of the union.

¹ Explanatory Memorandum, p *i*.

² Explanatory Memorandum, p *ii*.

Under this Bill unions already face cancellation of their registration on limited grounds. This Bill introduces significant amendments that expand the grounds on which the Court can cancel a unions registration or alternatively make an order.

These new provisions allow a person with sufficient interest, such as a bank or insurance company, to make application to the Court to deregister a union. The Court can then make a decision about the ‘affairs’ of a union and can examine the internal management of the union, its governance or its business model and how it is structured. This includes the Court looking at the decisions made at all levels of decision making within a union, including in the case of the FSU’s structure, Local Executive which is made up of volunteer members. The Court can examine all these things when considering whether to make an order.

This type of legislation is unsound and highly punitive for conduct that may include less serious offences or technical breaches of industrial law. It helps employers who can continue to engage in conduct that is bad for workers and reduces a union’s ability to represent their members. These types of laws would not be in the interests of members and are bad for all workers.

“I’ve worked in retail banking for 40 years. When I first started working in banking the biggest concern for staff was what we would do if the bank was held up – In 1990 there were 91 robberies for every 1000 branches. In the early 2000s after a spate of robberies, we got sick of the Banks refusing to come to the table and spend the money they needed to ensure our health and safety. Instead we turned to our union, and together we successfully prosecuted the Banks for failing in their duty of care. This resulted in the Banks investing in improved security measures and the number of robberies fell dramatically.

Today the issues are different, but our employers are no less reluctant to take measures to protect the health and safety of their staff. Just last year during the Royal Commission into the misbehaviour in the banking and finance industry, the pressure that bank workers are under to continually sell products was revealed and it wasn’t pretty. The increased pressure and workloads are now causing an enormous increase in psychological injuries that our employers are refusing to take seriously. It will take another sustained campaign by our unions to force our employers to do the right thing.

The proposed Ensuring Integrity Bill will give the government and employers, including the banks, the power to interfere in the affairs of how unions are run. I’m worried that some of our employers who have very deep pockets would use their power to dig up minor technical errors, made by people like me, who are volunteer officials, not full-time union employees, in order to prevent our union making them meet their legal obligations to keep us safe at work.”³

Anti-democratic

Under present laws governing registered organisations, officials who do the wrong thing can already be disqualified from holding office for serious conduct such as fraud or offences of violence. This Bill goes even further by introducing provisions that would see the automatic disqualification from office of a union official or volunteer member who is convicted of an offence carrying 5 years imprisonment.

³ Myrna Ellery, FSU volunteer member

A person convicted of such an offence may not even be sentenced to any term of imprisonment, but they will still be disqualified. The offence may be totally unrelated to their duties and obligations. For example, an official or volunteer member may be convicted of a driving offence that carries a sentence of 5 years or more. That person would be automatically disqualified from holding office even though the conduct had nothing to do with their duties.

The Bill also introduces key concepts that would enable an employer to make application for an order disqualifying a union official or volunteer member if a certain finding had been made against them. These concepts relate to ‘designated findings’ and designated law’. Some grounds for disqualification have no relationship at all to the criminal law. For example, even minor technical breaches of industrial law such as failing to lodge records on time could lead to a finding being made against the person. If this happens an employer could make application for an order that the person be disqualified.

The amendments also introduce grounds for disqualification in circumstances where a volunteer member may be disqualified from their position for conduct that they have had little to do with. Again, this could be for minor technical breaches made by the union, yet the member may be disqualified.

The Bill would also allow a disgruntled member or employer to apply to the Court for a declaration that a union is not functioning effectively or officers of the union have acted in their own interests. If a declaration is made the Court could then appoint an external administrator to manage the union or a branch of the union. Unions, like other democratic organisations, have differing viewpoints about matters and it is not unusual for members to debate these issues, whilst still acting in the interests of its members. It is not appropriate for the Government or employers to intervene in matters that unions are best placed to resolve as a democratic organisation.

This Bill seeks to interfere in the internal affairs of workers and their organisations. Unions and its members should be free to govern their organisations without interference. The amendments in the Bill provide disincentives for members to participate freely in the running of the organisation to which they belong. This is anti-democratic and interferes with the right to freedom of association.

“I am an honorary official of my union. That is, I work in the finance industry and was democratically elected by the workers in my section of the industry, to represent them on the unions decision making bodies. At the last round of union elections, my position was contested, and I won it in a democratic ballot of FSU members based on my vision for the sector and the faith that finance workers put in me. I am not a paid employee of the Finance Sector Union, but rather work in the sector.

I am concerned that the proposed EI Bill would give the government and employers the power to interfere in the affairs of how unions are run. If I were to make a minor technical error that did no harm to FSU members, this bill would create the opportunity for employers to interfere in the running of the union. Employers in our industry have deep pockets and some have not hidden their anti-union agenda. If this bill passes it will make it even more difficult for us to win wage increases and to keep our workplaces safe.”⁴

⁴ Matthew Rowe, FSU volunteer member

Has no corporate or political equivalent

Under the Bill the Government or any person with ‘a sufficient interest’, which could be an employer, would be able to apply to the Court to disqualify a person from holding office, including a volunteer member or members. No such law applies to corporations under the *Corporations Act 2011* (Cth) (**Corporations Act**). If it did a person with ‘a sufficient interest’, such as a union could apply to the Court for an order disqualifying the CEO of a corporation.

The proposed expansion of the grounds for disqualification of a union officer or volunteer member could be entirely unrelated to their union activities and duties. There are no equivalent provisions for corporations. Directors of companies that engage in wage theft or expose their workers to serious injury would not face an application for disqualification as a Director.

The Bill also expands the grounds upon which a union may be deregistered, including the internal management and governance of the union. The Bill also allows the Court to appoint an administrator in circumstances where a union may not, on the Courts assessment, be functioning properly. There are no such equivalent provisions under the Corporations Act that allow a company to be wound up for conduct such as putting workers lives at risk or repeatedly engaging in wage theft. Similarly, there are no provisions under the Corporations Act that allow a Minister or person with ‘a sufficient interest’ to apply to the Court to have a company wound up. Only the company itself, a liquidator or creditor can do that.

Under proposed amendments relating to the merger of unions, the Bill provides far more stringent standards than those that apply to company mergers. The Bill introduces a ‘public interest’ test which considers the unions history of compliance and other matters said to be not in the public interest. No comparable provisions exist under the Corporations Act.

Conclusion

The Bill would allow for unprecedented interference in the democratic functioning of trade unions not otherwise seen in comparable democracies. The amendments would further restrict workers freedom of association and would breach ILO conventions that protect freedom of association. The Bill is bad for workers and undemocratic. The FSU urges the Committee to recommended that the Bill be rejected.
