



Submission

Senate Education and Employment Legislation Committee

Inquiry

Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017

Contacts:

Grahame McCulloch, General Secretary

Sarah Roberts, National Industrial Coordinator

Introduction

The National Tertiary Education Union (NTEU) which represents the professional and industrial interest of some 28,000 staff working at Australian universities, as well as research institutes and other tertiary education organisations, appreciates the opportunity to comment on the **Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017**.

Background

The Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017 (the Ensuring Integrity Bill) is a full frontal attack on trade union organisation.

This submission will identify that the Ensuring Integrity Bill, if passed, would:

- further breach International Labor Standard (ILO) Conventions;
- allow undue political and employer interference in trade unions; and
- unfairly apply a lower threshold for intervention than that applicable to corporations.

NTEU urges the Committee to recommend the Bill be rejected by the Parliament.

Disqualification from Office

Schedule 1 to the Ensuring Integrity Bill expands the basis upon which a registered organisation office holder may be disqualified from holding office. The basis on which disqualification may occur is if one of a specified list of grounds is made out, and the Court does not consider that it would be unjust to disqualify the person. This shift effectively reverses the onus onto the defendant to prove why the Court should not disqualify her or him, contrary to under the current legislative framework, and the arrangements applicable to companies under the Corporations Act 2001 (Cth) (Corporations Act). It goes further than the recommendations of the Hon Dyson Heydon in his *Final Report of the Royal Commission into Trade Union Governance and Corruption* (the Heydon Report)¹, which recommended the Court have the power to disqualify an official if a ground is made out and the order **is** justified.

Further, standing to bring an application for a disqualifying order is extended in the Ensuring Integrity Bill to the Registered Organisations Commissioner, the Minister or a “person with

¹ Paragraph 190, Final Report of the Royal Commission into Trade Union Governance and Corruption.

sufficient interest.” This last category could conceivably include an aggrieved employer who sought to exert political influence on a union to achieve their industrial goals.

In NTEU’s view, legislation designed to defend against corruption and ensure the integrity of trade unions should not at the same time provide additional mechanisms for employers to exert substantial power against the representative organisations of their employees.

For example, if the Ensuring Integrity Bill became law, an employer could apply to have a trade union official disqualified from office in circumstances where she had had her entry permit refused due to failure to return a previous permit on time. All that would be required would be for the Court to agree that it was not unjust to disqualify her. The union official would have to spend significant resources to defend this litigation, with a significant burden of proof to discharge. It is NTEU’s view that in no way would this better ensure the integrity of registered organisations.

Further, this aspect of the Ensuring Integrity Bill would offend the Freedom of Association and Protection of the Right to Organise Convention 1948 (No 87) (ILO Convention 87), which provides at Article 3:

1. *Workers’ and employers’ organisations shall have the right to draw up their constitutions and rules, **to elect their representatives in full freedom**, to organise their administration and activities and to formulate their programmes.*
2. ***The public authorities shall refrain from any interference which would restrict this right** or impede the lawful exercise thereof.*

Cancellation of Registration

The Ensuring Integrity Bill also expands the basis for cancellation of registration of registered organisations. If the Bill became law, it would be mandatory for the Court to cancel registration of a registered organisation if one of a number of grounds are made out and the organisation did not satisfy the Court that deregistration would be unjust.

The grounds themselves are expansive, being:

- Corrupt conduct of officers
- Multiple findings against an organisation
- Serious offence committed by an organisation
- Multiple findings against members
- Non-compliance with orders or injunctions
- Obstructive industrial action.

Thus it would appear the Bill could facilitate deregistration of a registered organisation in circumstances where a handful of members or officers engaged in improper behaviour. This is a heavy-handed and inappropriate response to trade union corruption; it is a response that unfairly punishes the members who benefit on a day-to-day basis from the bargaining, dispute handling and other industrial work performed by the many other union officials they pay dues to support.

Imposition of Administration

The Ensuring Integrity Bill allows the Court to put a registered organisation under administration, including the appointment of an administrator and effective control over union business. Again, an application for such orders may be made by the Minister, the Registered Organisations Commissioner, or any other person with sufficient interest. Currently only the union, a member, or a person with an interest could apply for an order for administration. This expansion of standing undermines the democratic control of unions by allowing the Minister to intervene in union affairs.

Such expansion is contrary to well-established International Labor Organisation principles. As stated in reference to ILO Convention 87, “Freedom of Association implies the right of workers to elect their representatives in full freedom and organise their administration and activities without interference from public authorities.”²

Amalgamation of Organisations

Under the proposed changes to the Fair Work Act, the Fair Work Commission must be satisfied any proposed registered organisation amalgamation is in the public interest. It would appear that the real purpose of this aspect of the Ensuring Integrity Bill, given its retrospective application, is to prevent the nascent amalgamation of the CFMEU, TCFUA and MUA.

These provisions should be rejected. They allow the Minister, and employer interest groups, amongst others, to interfere in the democratic will of union members. This directly contravenes ILO Convention 87.

The ILO Committee on Freedom of Association has relevantly stated as follows:

Legislative provisions which regulate in detail the internal functioning of workers’ and employers’ organisation pose a serious risk of interference by the public authorities.

² *Digest of the decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th edition) (2006, International Labour Organisation, Geneva) at p83 paragraph 454

*Where such provisions are deemed necessary by the public authorities, they should simply establish an overall framework in which the greatest possible autonomy is left to the organisations in their functioning and administration. Restrictions on this principle should have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organisations.*³

Conclusion

Australian workers' rights to take industrial action are more limited than in any other Western democracy. Our extant industrial laws are roundly inconsistent with international labor obligations and conventions and continue to be criticized on the international stage. At the same time misconceptions about union power and corruption abound. The reality is that industrial action is at a 50-year low and there is no evidence of the "iceberg" of trade union corruption of which Dyson Heydon identified the tip.

In these circumstances there is no justification for the expanded powers in the Ensuring Integrity Bill to disqualify, deregister, administer and otherwise intervene in democratic trade union business.

Each Schedule of the Bill clearly offends Australia's international obligations to free association under ILO Convention 87. This is not a fact that any Parliament should lightly ignore.

Accordingly NTEU urges the Committee to recommend the Bill be rejected by the Parliament.

³ Ibid, para 369