



**LORINDA**  
**EXECUTIVE MEMBER,**  
**NT BRANCH, PARAMEDIC**



**EDUCATION AND  
EMPLOYMENT  
LEGISLATION COMMITTEE**

**FAIR WORK (REGISTERED ORGANISATIONS)  
AMENDMENT (ENSURING INTEGRITY) BILL 2017**

**CHRIS**  
VICE-PRESIDENT, ACT  
BRANCH, CLEANER



## INTRODUCTION

United Voice is a union of 120,000 workers organising to win better jobs, stronger communities, a fairer society and a sustainable future. Our members work across a wide variety of industries, including aged care, health, early education and care, education, property services, hospitality and manufacturing. We do the essential work that keeps Australia running, every hour of the day, every day.

Many different unions have come together over the years – through a democratic vote of members to form the present day United Voice. Yet while we have called ourselves by different names over the years as we've amalgamated and grown, the essence of who we are remains – a big, bold and active union with a proud history of more than 100 years of making life better for working Australians everywhere.

Indeed, by working together, union members have won many benefits that all Australians enjoy, including annual leave, superannuation, a minimum wage, paid parental leave, the Modern Award system and much more.

United Voice has branches in each state and territory with a branch executive and council in each, as well as a National Executive and National Council. Our union is run by and for its members. There are over 530 positions filled by ordinary working people on our Executives and Councils. The overwhelming majority are volunteers and approximately 20 are paid officials.

Under our Rules, our Branch Councils are comprised of members from each section of membership, ensuring that school cleaners, aged care attendants, security officers, teacher aides, laundry workers, paramedics, early childhood educators, brewery workers, bakers, hospitality workers, casino attendants, firefighters, disability workers, dental assistants, hospital workers, and many others, are involved in the running of their union. Our Executives are no less diverse.



**ASHLEY**  
**BRANCH COUNCILLOR,**  
**TASMANIA BRANCH,**  
**SECURITY OFFICER**

Many of our hard working members are award-reliant, earning less than two-thirds of the median wage. It is common for our members to be trapped in a cycle of precarious employment, low pay and insecure work. United Voice plays an active and critical role in representing workers' interests to tackle inequality and to win secure and safe jobs with decent pay across a range of industries.

Throughout its long history and under its previous names, the Liquor, Hospitality and Miscellaneous Workers Union from 1992; The Federated Miscellaneous Workers Union from 1915; and The Watchmen Caretakers and Cleaners' Union from 1910; United Voice has consistently implemented best practice governance and has adhered to regulatory compliance regimes. Our volunteer officers and paid officials are motivated by the overriding imperative to act in the best interests of members. They abide by the law at all times in the carrying out of their duties.

**United Voice opposes the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017 ("the Bill") in its entirety.**

## **IN OUR SUBMISSION:**

- No grounds have been made out which support the need for any of the measures contained in the Bill;
- It is an unwarranted and egregious interference in the internal affairs of trade unions;
- It is an illegal attempt to control and mute workers and unions;
- It promotes an insidious political agenda aimed at attacking working people through their unions; and
- Is nothing other than a means by which to further criminalise the democratic rights and activities of working people.

**UNITED VOICE URGES THE COMMITTEE TO RECOMMEND THE REJECTION OF THE BILL IN ITS ENTIRETY.**

**CATHY**  
**PRESIDENT, SA BRANCH,**  
**CLEANER**



## **1. NO GROUNDS HAVE BEEN MADE OUT WHICH SUPPORT THE NEED FOR ANY OF THE MEASURES CONTAINED IN THE BILL**

The Bill seeks to curtail behaviour which is, and can be, properly regulated by existing criminal, industrial and civil law. **The very few union officials charged following the Heydon Royal Commission were charged with breaching existing and current laws.** No grounds have been made out which justify the imposition of new offences and the implementation of such is nothing other than a means by which to further criminalise working people and trade unions.

The Bill purports to be a legislative response to the recommendations of the Heydon Royal Commission ('Heydon Recommendations'), yet it seeks to enact numerous unwarranted provisions which were not part of these recommendations. It is more properly described as part of a long line of sustained attacks against working people and their unions.

**SELINA**  
**NATIONAL COUNCILLOR,**  
**HOSPITALITY WORKER**

## UNIONS COMPLY WITH AN ALREADY STRINGENT COMPLIANCE REGIME

In May this year, a new and onerous governance regime came into effect with the establishment of the Registered Organisations Commission ("ROC"). As part of the establishment of the ROC, significant changes were made to the Fair Work (Registered Organisations) Act 2009 ("RO Act") including **increased penalties** for existing offences, the introduction of **new penalties** for existing offences and the introduction of **new criminal offences**. These include, but are not limited to:

- Increased penalties for contraventions (100 penalty units, currently \$21,000) of an officer's general duties in relation to the financial management of organisations. New: introduction of increased penalties for 'serious contraventions' of these duties (1200 penalty units, currently \$252,000).
- New: introduction of penalty provisions for the failure to undertake financial training within 6 months: 100 penalty units, currently \$21,000.
- Introduction of new criminal offences for a breach of good faith, use of position and use of information (an officer's statutory duties) which attracts a maximum penalty of 2000 penalty units, being \$420,000, or five years' imprisonment, or both.
- The Federal Court was granted the power to make disqualification orders with respect to contraventions which may require a person to be removed from office and/or prohibited from contesting an office.
- The ROC was granted increased powers with respect to investigations, with increased penalties in relation to investigations and an expanded list of strict liability offences.

In its latest report, the ROC notes compliance rates in the order of 98-99% for the lodgment of financial and annual reports.

**We submit that no need has been demonstrated for the introduction of additional measures such as outlined in this Bill.**

Extensive and comprehensive regulation already exists. Criminal law already exists. **Working people already risk severe and oppressive penalties.**

## HOW MANY MORE CRIMINAL OFFENCES CAN BE FASHIONED AGAINST WORKING PEOPLE AND THEIR UNIONS?

**KERRI**

**PRESIDENT, VICTORIAN BRANCH,**

**EARLY CHILDHOOD EDUCATOR**



## **2. IT IS AN UNWARRANTED AND EGREGIOUS INTERFERENCE IN THE INTERNAL AFFAIRS OF TRADE UNIONS**

The Bill extends the tentacles of the State further into the internal affairs of worker organisations.

It broadens the grounds upon which a union can be placed into administration, or have its registration cancelled. It also imposes various other orders effecting rights, and seeks to impose a public interest test on union amalgamations.

**There are no parallel provisions imposed on corporations and the Bill is oppressive and unjust.**

### **SCHEDULE 1: DISQUALIFICATION OF OFFICERS**

#### **Section 223- expansion of grounds for disqualification**

#### **Section 222- expansion of standing**

The grounds upon which officers can be disqualified have been expanded and these grounds go further than the Heydon Recommendations (s. 223). Most egregiously, standing has been extended to allow the Minister or a person “with sufficient interest” to bring an application to disqualify someone (s. 222).

This expansion of standing is without foundation or precedent in industrial law. It would allow an employer or employer organisation, among conceivably many others with no legitimate role in the running of unions, to bring disqualification applications against workers’ representatives. This will undoubtedly be used as a form of political attack and represents undue interference in the rights of workers to elect their own representatives in accordance with international law.

Nor are there safeguards in the Bill which would guard against the bringing of frivolous or vexatious claims- a feature of the Corporations Act (s. 237(2)). These safeguards are a standard legislative feature, and should be even more so with such an expansion of the concept of standing- an expansion for which no rationale has been proffered.

The lack of these safeguards in the Bill is a further example of the Bill’s real agenda: to promote undue interference in the internal affairs of trade unions and to distract unions from their work in advocating and protecting workers’ rights, by occupying unions in defending baseless and politically motivated claims.

This is further exemplified by the fact that the Bill will amend the Act to make continuing to hold office or standing for office while disqualified, a strict liability offence, subject to a penalty of \$21,000 or two years imprisonment (or both).

**This is double the penalty imposed under the Corporations Act for equivalent conduct<sup>1</sup> and in the circumstances where there is no evidence of any union officers continuing to hold office following disqualification.**

<sup>1</sup> Section 206A(1) of the Corporations Act provides that disqualified persons must not manage corporations. A penalty for a breach of these provisions is 100 penalty units and one year imprisonment (or both).

**HAYDON**

**EXECUTIVE MEMBER, WA BRANCH,  
CASINO WORKER**



## **SCHEDULES 2 AND 3 OF THE BILL: DEREGISTRATION OR ADMINISTRATION OF UNIONS**

**Section 28- expansion of standing**

**Section 28K- expanded grounds for cancellation of registration**

**Section 28C- expanded grounds for cancellation**

**Section 28N- further avenues for disqualification of officers**

**Section 28P- alternation of eligibility rules to forcibly expel members**

**Section 323(3)(d)- expanded grounds for declaration to be made  
which can result in administration**

## **DEREGISTRATION, ADMINISTRATION, DISQUALIFICATION**

### **Sections 28K; 28C; 28N; 323(3)(d)**

Schedules 2 and 3 of the Bill enable the Court to deregister or make alternately oppressive orders, or place an organisation in administration where it finds that an organisation (or part thereof) has, among other things, been conducted in a manner which is 'contrary to the interests of members.'

**Workers decide what is in their collective interest - there is no place for an external determination of this interest. It is both paternalistic and an undue interference in the internal affairs of workers' organisations.**

These provisions represent an unwarranted expansion of the existing means by which a union can be placed in administration or deregistered and go further than anything in the Heydon Recommendations.

Grounds for cancellation of registration include the imposition of behavioural standards on union officials which are currently only applied to staff of law enforcement agencies (s 28C(1)(a)-28C (1)(c)). **Employees of corporations are exempt from such requirements.** Sections 28C(1)(d) and (e) are adapted from grounds in the Corporations Act which apply to directors of a company. **Unions are not run by highly-paid directors, but by working people, the majority of whom volunteer their time to their union.**

Courts can also disqualify officers under these provisions and this represents yet another means by which officers can be removed. As noted above, **there is no conduct which this Bill purports to cover which cannot be addressed by existing law.** This is simply another means by which to criminalise working people who serve their unions.

**REBECCA**

**BRANCH COUNCILLOR, QUEENSLAND**

**BRANCH, EARLY CHILDHOOD EDUCATOR**



## EXCISION OF MEMBERS

### Section 28P

Under the Bill, Courts will be able to order the alteration of a union's eligibility rules to exclude a class of members. Eligibility rules are **an internal matter** solely for, firstly a union's members and secondly other unions with an interest in the area of proposed coverage. The attempt to allow an external body the ability to excise part of a union's rightful membership represents clear interference and undue involvement in not only the internal affairs of an organisation, but also in the collective determinations of workers in the scope and coverage of **their own organisations**, to say nothing of the actual members effected by **the forceful expulsion from their own union**.

There is also an open question about what other union expelled members could join, given that the eligibility rules of other unions will almost certainly not entitle them to membership. This proposed clause therefore denies workers the right to join a union – a right which is protected under Australian and international law. **The Bill is in breach of both the objects and the freedom of association provisions of the Fair Work Act 2009** as well as numerous international treaties and conventions.

Do the Courts have the power to tell a company with multiple business interests that it must cease its operations in particular sectors?

## STANDING

### Sections 28; 28A; 323

Applications for cancellation of registration; alternate orders; or declarations leading to administration can be brought by "a person with sufficient interest" (ss. 28; 28A, 323). As noted above, no justification has been given for this expansion of standing which would allow those without any legitimate interest in the conduct and management of unions to regulate worker organisations. It is without foundation or precedent in industrial law. There are no safeguards in the Bill which would guard against the bringing of frivolous or vexatious claims.

As noted above, this is a further example of the Bill's real agenda: to endorse gratuitous meddling in the internal affairs of trade unions and undermine their legitimate and rightful role.



**JUDETH**  
**NATIONAL COUNCILLOR,**  
**AGED CARE WORKER**

## **SCHEDULE 4: PUBLIC INTEREST TEST FOR UNION MERGERS**

### **Sub-division A**

**Workers decide what is in their collective best interest- the public interest has no rightful place in this consideration.**

Throughout its history, as noted above, United Voice, has amalgamated with other unions- when determined by each respective unions' members in a democratic vote - in the interest of members. Amalgamations include the amalgamation of the LHMU with the Bakery Employees and Salespersons Federation Association of Australia in 1995, the amalgamation of the FMWU with the Hospital Employees' Industrial Union of Western Australia in 1982; the Northern Australian Workers Union in 1971; the Hairdressers' Union of Tasmania in 1966; and the Lift Drivers' Union of South Australia in 1958; among others.

**At no time, was there, nor should there have been, any regard to matters of public interest.** Unions are run for and by their members and this Bill represents undue and unwarranted interference in the ability of working people to determine for and by themselves what is in their collective best interest.

No similar fetters are placed on the running and establishment of corporations. Companies merge, make acquisitions, change direction, and develop into new markets constantly, without external interference. The often cited example of competition law and its regulation of corporate mergers and acquisitions is not an appropriate comparison in the industrial context. Unions have no monopoly over labour in any given industry and freedom of association laws ensure that this is the case.

Importantly too, the Bill confers a statutory right on a broad range of parties to be heard in relation to the public interest. These include employers, other organisations who may be affected (such as peak employer organisations) and any other person with a "sufficient interest" (s 72(c)). This expansion of standing is without foundation or precedent in industrial law.

**This Bill permits those without any legitimate role in a union to be heard in relation to matters which are rightly and properly internal affairs.** It represents yet further interference in the internal democratic processes of unions and it breaches international obligations in relation to workers' rights to organise.

**Workers decide what is in their collective interest - there is no room for any other person or organisation to weigh in to the decision of workers to amalgamate their union with another.**

**ADRIAN**

**VICE-PRESIDENT, TASMANIAN  
BRANCH, BREWERY WORKER**

### **3. IT IS AN ILLEGAL ATTEMPT TO CONTROL AND MUTE UNIONS AND WORKERS**

As the above analysis indicates, this Bill is nothing other than an attempt to control and mute workers and unions. It breaches the Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87), one of the eight fundamental ILO Conventions.

*"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."*

The Government asserts that the Bill complies with international law. This assertion is made on the basis that, notwithstanding the clear wording of ILO Convention No. 87, the Bill is necessary to achieve better governance, that it has the sole and legitimate objective of protecting the interests of members, and that it is reasonable, necessary and proportionate. We reject this contention:

- The Bill further regulates conduct which is regulated by existing law, including a recently enacted and onerous governance regime establishing the ROC.
- There are no grounds justifying its enactment, and nor is it reasonable or proportionate.
- Its objective is clearly to promote control and interference in union affairs and criminalise workers. It has no legitimate objective.

The provisions of the Bill allowing for an assessment of 'members' best interests', the expanded notion of standing which allows a whole host of people and organisations with no legitimate role in unions to weigh into this assessment, and the unfounded additional criminal offences all seek to control and mute unions and workers.

## 4. IT PROMOTES AN INSIDIOUS POLITICAL AGENDA AIMED AT ATTACKING WORKING PEOPLE THROUGH THEIR UNIONS

This Bill is part of a long line of legislative means by which the Government has sought to attack workers' rights and control the legitimate activities of people working together to protect and promote their job security, wages and conditions.

It does nothing to achieve its purported aim of promoting good governance. Rather, it further criminalises working people and interferes in the internal decisions of unions. It goes beyond the Heydon Recommendations and seeks to impose a regulatory regime that has no parallel in the corporate sector - a matter which can only speak to its real agenda: to attack working people through attempting to impede the legitimate operation of their unions.

Corporate misconduct and criminal activity is rampant - including wage theft, tax avoidance, insider trading, fraud, money laundering, and misleading and deceptive and breaches of other laws.

**Domino's Pizza:** \$1.1 million in wage and superannuation theft uncovered in 2017. Notwithstanding the clear governance failures and breaches of industrial and potentially criminal law, no fines or charges have been laid against any directors or franchisees.

**7-11:** widespread wage and superannuation theft uncovered in 2016, with almost 3000 employees so far making underpayment claims. The company has paid over \$110 million to workers as part of its own scheme; not pursuant to industrial law. Notwithstanding the clear governance failures and breaches of industrial and potentially criminal law, no fines or charges have been laid against any directors or franchisees.

**Caltex:** following allegations of widespread exploitation and wage and superannuation theft, Caltex has set up a \$20 million compensation fund. Notwithstanding the clear governance failures and breaches of industrial and potentially criminal law, no fines or charges have been laid against any directors or franchisees.

**MAdE Group:** Nearly 200 hospitality staff at George Calombaris' restaurants underpaid to the tune of \$2.6 million. Some staff were underpaid for up to six years. The wage and superannuation theft was blamed on 'poor processing'. Claims were to have been settled by 30 June 2017, however staff have been told that they will need to wait another year for their entitlements. Despite clear governance failures and breaches of industrial and potentially criminal law, no fines or charges have been laid against directors or the company.

**Corporate Tax Avoidance runs rampant.** Examples of companies paying \$0 in tax, include:

- » Spotless Group, \$2.2 billion in revenue
- » Pratt Consolidated Holdings, more than \$2.5 billion in revenue
- » Hoyts, \$417 million in revenue
- » McDonald's Asia-Pacific Consortium, \$478 million in revenue.

The cost to the economy and to individuals impacted by corporate greed and misconduct reaches billions and billions of dollars, yet corporations do not face biannual legislative amendments, let alone any which provide any meaningful increase in regulation or oversight. Even the recently introduced Protecting Vulnerable Workers Act provides a plethora of avenues for companies to escape liability and insufficient protection for the vulnerable workers it seeks to safeguard.

Many of the provisions in the Bill have no corresponding provision in the Corporations Act or related laws, further revealing the true agenda behind the Bill.

**JANE**

**EXECUTIVE MEMBER, NSW BRANCH,  
HOMECARE WORKER**



## **5. THE BILL IS NOTHING OTHER THAN A MEANS BY WHICH TO FURTHER CRIMINALISE THE DEMOCRATIC RIGHTS AND ACTIVITIES OF WORKING PEOPLE**

As noted above, new and further criminal offences and increased penalties aimed at working people came into effect in May 2017. In the circumstances where no grounds have been established for this Bill and when a compliance and regulatory regime already exists and has recently been amended, this Bill is nothing other than a means to further criminalise working people.

Through our history, United Voice members have stood up for one another and for others, to defend, protect and promote working rights. Our officers are almost exclusively volunteers seeking to contribute to their union. We have always respected the 'law of the land' and will continue to do so, but equally, we have always shared the same goal - to be agents of positive social change and to continuously stand up for the type of society we believe in.

**We oppose this Bill which is an affront to working people and to our democratic rights and we urge its rejection in its entirety by the Committee.**