

2 October 2019

Committee Chair
Senate Education and Employment Legislation Committee
Parliament House
CANBERRA ACT 2600

By email: eec.sen@aph.gov.au

Dear Committee Chair

Response to question on notice from Committee hearing on the Ensuring Integrity Bill 2019

Please find below question on notice and response arising from the Committee hearing on 24 September 2019 in relation to the Inquiry into the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 (the proposed law)*.

Question on notice

Hansard has recorded the question on notice as follows:

Senator O'NEILL: Can I ask one more question?
CHAIR: We are running a little bit late already.
Senator O'NEILL: Perhaps on notice?
CHAIR: On notice, yes.
Senator O'NEILL: Ms Hurley and Ms Howie, today we have not got the crossbench with us but there have been a number of discussions in public by the crossbenchers about their response to this legislation. I invite you to put a particular appeal on the record to Centre Alliance and Ms Lambie and indeed the Hanson party to put advice to them in a very particular way about this legislation—on notice, because we are out of time. If you could direct your comment specifically to them, I think that could be helpful.

Response to question on notice

The Human Rights Law Centre urges the Standing Committee on Education and Employment to recommend that the Senate not pass the proposed law.

In our view, the proposed law is an unnecessary and unreasonable limitation on Australians' right to freedom of association with others, including the right to form and join trade unions (protected in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights).

Freedom of association can be limited, but only when any limitations on the right are necessary, reasonable and proportionate. For the reasons set out in the table below, the proposed law is not a necessary or proportionate limitation on the rights of working people. Australia's current domestic laws already fall well short of international standards and the proposed law would only exacerbate this. The Parliamentary Joint Committee on Human Rights shares these concerns.

Our main concerns with the proposed law, from a human rights perspective, are set out in the following table:

Bill provisions	Principle of international law	Problems with the Bill
Disqualification provisions	The right to freedom of association includes that members of a union should	These provisions are not a necessary or proportionate limitation on the right to freedom of association because the expanded standing

	have the freedom to democratically elect their representatives.	grounds and the broad scope of “designated findings” means that union officials can be disqualified from their role in a union for technical contraventions of laws and, in some circumstances, actions that are not necessarily related to their ability to run a union.
Cancellation of registration provisions	Registration of a union is an essential part of the right to organise. It is the first step that needs to be taken in order for unions to function efficiently and represent their members.	These provisions are not a necessary or proportionate limitation on the right because they are too broad and could result in members of a union being punished for the actions of a few, potentially triggering the most drastic outcome – deregistration of a union.
Administration provisions	The right to freedom of association includes the freedom for unions to organise their internal administration without interference.	These provisions are not a necessary or proportionate limitation on the right to freedom of association because they are too broad. This is concerning given that placing a union into administration can have significant consequences in terms of the representational rights of employees and any current campaigns.
Amalgamation provisions	As part of the right to freedom of association, members of a union should have the freedom to democratically decide whether their union should merge with another union.	These provisions are not a necessary or proportionate limitation on the right to freedom of association because they will mean that union members have less input into decision-making processes about whether their union should merge with another union and allow non-member, third parties to intervene in this process.

Corporate equivalency

Finally, the disproportionality of the proposed law is highlighted by the lack of corporate equivalency for many of the provisions. For example, the proposed law expands the grounds for disqualification of people working as officials in unions to be much broader than for company directors. As well as conduct pertaining to their duties as a union official, a court can disqualify an official for conduct unrelated to their union role. This introduces a markedly different standard for union officials when compared to company directors. Such differential treatment is unjustified and no amount of tinkering with the proposed law would make it a necessary and proportionate limitation on the rights of workers.

We strongly urge all Senators not to pass the proposed law.

If you have any queries, please contact Emily Howie on _____ or _____

Yours sincerely

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