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

The Housing Industry Association (HIA) would like to provide the following comments in relation to the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* which has been referred to the Senate Education and Employment Legislation Committee for inquiry and report.

HIA is the leading industry association in the Australian residential building industry. HIA supports and represents the views and interests of over 60,000 member businesses. HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA submit that this Bill will support improvements in the behaviour expected by registered organisations and the individuals who hold positions within those organisations.

The proposed amendments also implement a number recommendations arising from the Royal Commission into Trade Union Governance and Corruption.

HIA supports the Bill.

HIA provide the following specific comments in relation to the Bill below.

Removal of officers - not fit and proper

The proposed new section 223 would enable the Federal Court to ban officials of registered organisations from holding office where they repeatedly break the law or are otherwise not a fit and proper person to hold office in a registered organisation.

The conduct of officers of registered organisations has recently come under the spotlight with the Federal Court imposing personal payment orders against union officials. In December 2018, a CFMMEU official was fined $44,000 for a series of threats and actions over an unfavoured subcontractor working on a level

crossing site in 2013 and 2014.[1] The imposition of personal payment orders has been described as the 'sting' necessary to serve as a deterrent.[2]

There is a clear need for additional measures targeted at the actions of officers of registered organisation who continually engage in unsavoury behaviour.

Section 206E of the *Corporations Act* gives the Court the power to disqualify officers of companies where there have been repeated contraventions of that Act.

In light of the special privileges and position registered organisations hold, it is appropriate that such similar standards be applied to officers of registered organisations.

Cancellation of registration

The Bill proposes to allow the Federal Court to cancel the registration of an organisation on a range of grounds including corrupt conduct by officials, repeated breaches of a range of industrial and other laws by the organisation or its members and the taking of obstructive unprotected industrial action by a substantial number of members.

HIA acknowledges that such measures should not be taken lightly, but the building and construction industry has a long history and culture of intimidation, and lawlessness. This has been well catalogued in the Cole Royal Commission (2003) and Heydon Royal Commission (2015).

In 2016, the ABCC was re-established to enforce the industrial law in the building and construction industry and addresses systemic intimidation, coercion and anti-competitive practices in the industry. Yet the measures in the *Building and Construction Industry (Improving Productivity) Act 2016* will not alone improve adherence to the rule of law or achieve cultural change in the industry.

Justice Vasta in *ABCC v Dig It Landscapes & Ors*[3] observed:

> *"It beggars belief that the CFMEU believe that they can act in a manner where they are the ones who dictate who can or cannot work on a construction site.*
>
> *The Parliament is the only entity that sets the law in this country and the Parliament is directly responsible to the people of this country. It seems that the CFMEU feel that they can usurp Parliament and that they can set the law in this country. There is no place for such an attitude in Australian society."*[4]

HIA notes that such comments echo much of what was said by the Honorable Former Prime Minister Robert Hawke who in 1985, when introducing legislation to deregister the Builder Labourers Federation (BLF), remarked:

> *"The Bill now before the house is a unique and I believe especially important piece of legislation, it stems directly from the government's conviction that no government can tolerate, or in any way acquiesce, in the forms of unionism perpetrated by unions such as the BLF. As I said when foreshadowing this legislation last week:*
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> > *' the BLF's complete disdain for the law, their frequent resort to practices of thuggery and physical coercion: have no place in our society." the BLF has forfeited any claim it might otherwise have had either on the community at large or on the trade union movement.*
> >
> > *The government believes that over many years the BLF has demonstrated nothing but contempt for the system and values of Australian society, there should now be no basis upon which it can hope to elicit any measure of protection or support from our society.'*

[1] Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining And Energy Union (The Springvale Rail Crossing Removal Case) [2018] FCA 1968 (7 December 2018)
[2] Construction, Forestry, Maritime, Mining and Energy Union v Australian Building and Construction Commissioner (The Non-Indemnification Personal Payment Case) [2018] FCAFC 97 (25 June 2018) at paragraph 40
[3] [2017] FCCA 2128 (5 September 2017)
[4] Ibid at paragraph 55-56

Public interest test for mergers

HIA does not oppose the rights of unions or other registered associations to merge or amalgamate or establish a peak body.

There may be any number of practical or legitimate reasons why a merger is necessary or desirable. In some cases they may help reduce anti-productive demarcation disputes and turf wars between competing industrial associations.

However the existing regulatory framework for union mergers is insufficient as it does not require considers of whether the merger or amalgamation is in the public interest.

The Fair Work Commission approval processes are currently limited to reviewing technical matters, such as ballot proceedings and the capacity of the new legal entity, rather than the merits of the merger.

This is at odds with the approach taken to corporate mergers.

For many years the *Competition and Consumer Act 2010* and its predecessor the *Trade Practices Act* prohibited corporate mergers and acquisitions that were likely *'to substantially lessen competition'* unless authorised by the ACCC (formerly the Trade Practices Commission) as providing public benefits.

Apart from their considerable industrial influence, large national trade unions such as the previous CFMEU and Maritime Union of Australia are significant and powerful organisations holding asset bases that exceed those of many medium sized, listed private companies and should be subject to appropriate scrutiny. It has been reported that the recently merged CFMMEU has approximately 144,000 members with estimated revenues of almost $150 million a year and more than $300 million in assets.

Further, the introduction of a public interest test, which will allow relevant matters to be taken into account, such as the organisation's history of compliance with workplace laws, is another key element in stopping the spread of a culture of lawlessness identified by the Heydon Royal Commission.

Yours sincerely,
HOUSING INDUSTRY ASSOCIATION LTD

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