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Dear Secretary

Inquiry into the provisions of the *Fair Work (Registered Organisations) Bill*

We and our affiliates have made comprehensive submissions to past inquiries in support of our call for this Bill to be emphatically rejected. We rely on that material to support that call in the present inquiry.

The Bill establishes a new regulator, while retaining the existing one. If the Bill is passed, there will be two government authorities administering the one piece of legislation and unions (and employer organisations) will be subjected to decisions of both those authorities in terms of their reporting requirements.

Little more than a year before this Bill was first introduced, this regulatory framework was overhauled, tripling the penalties that applied for breaches, introducing new standards in relation to financial management and mandating training for officers with financial responsibilities. The ACTU promptly developed an approved national training course and resourced a national roll out. We have also contributed to the adoption of improved governance standards by commissioning an Independent Panel on Best practice for Union Governance and developing a Best Practice Governance Handbook. Each of those initiatives was time consuming and resource intensive. This Bill means more compliance effort and resourcing in the short term, before facing a potential third transition if or when the Government chooses to revisit the matter yet again as part of its response to the Heydon Royal Commission.

Whilst not a substitute for a proper consideration of the extensive material we have provided to date, we here put briefly a number of our concerns and criticisms regarding this Bill.

Firstly, the reasons advanced in support of the need for reform are unsound. The explanatory material in support of the Bill continues to refer to two, and only two, justifications for reform: the extent of non compliance by unions with their reporting obligations and the misconduct uncovered at the HSU. Whilst these were also the sole justifications advanced in such material on the last occasion the Bill was before Parliament, they haven't become any more convincing with the passage of time. In our last submission, we showed how compliance with reporting obligations has improved in recent years. The most recent statistics on this front are published by the Fair Work Commission and speak for themselves: https://www.fwc.gov.au/registered-organisations/compliance-trends. We also conducted a thorough analysis of exactly how the existing body of law has been used to call particular persons once associated with the Health Services Union to account. In summary, there have been 10 court cases (not including the criminal proceedings just instituted against Ms Jackson), and the outcomes obtained to date by the relevant prosecutors have included a total of 7.5 years jail time, over $290,000 in fines and nearly $15 million in compensation. The explanatory material makes no mention of how it is that the Bill would improve on such an outcome. Our own analysis however suggests that if the Bill

had applied, the union may have be liable for millions in fines for deeds perpetrated *against* it, and that union members money that would be called on to pay those fines.

Secondly, and related to the first issue above, the availability of a greater number of criminal offences to charge people with for the same conduct doesn't mean much at all. We have made the case in previous submissions that specialised statutory offences for conduct that is already punishable by the criminal law is an entirely unnecessary addition to the Act. We have also pointed out that the corresponding criminal offence provisions in the Corporations Act have been roundly criticized and indeed the Commonwealth's own technical advisory committee has recommended that they be repealed.

Thirdly, although the revised investigation framework contained in this Bill certainly takes up many more pages than the existing one, it doesn't add anything legitimate to the information gathering powers that plainly have seen the HSU matters thoroughly investigated and pursued (and which have since been strengthened in any event). It is clear that the drafters of the legislation were under an instruction to try and adopt and adapt the ASIC framework "because it applies to corporations and they should be the same", without any consideration being given as to what, if any, improvements actually needed to be made. This is thought bubbles replacing evidence based policy making. As an aside, we have, on numerous occasions, drawn attention to the fact that under the revised framework proposed in the Bill, unionists (but not company directors) can be jailed if they refuse to answer a question that is ***not*** relevant to an investigation. This apparently doesn't seem to concern the government at all.

Fourthly, the thought bubble referred to above needs to be burst. Modern corporate governance regulation owes much of its existence to a reform process that was triggered by the corporate excesses of the 80s. The drivers of those reforms were concerns that:

(a) corporations were not sufficiently accountable to their shareholders; and
(b) corporations had too much influence on markets and the broader economy to be left so unaccountable.

The comparison with unions fails at the first step: Unions have always been (well before the law so required) tightly and democratically controlled by their membership. Today, over 90 pages of legislation, countless chapters of union rules (which are subject to regulatory approval) and numerous legislative instruments are dedicated to ensuring union democracy overall and in every branch and division, including by how unions must provide for elections, how (and by whom) those elections must be carried out, inquiries into elections, member plebiscites, members rights to injunctions to compel compliance with union rules , the supremacy of general meetings of members and how the activities of the union must be reported to members. As to (b) above, union power in the economy (which is actually workers' collective power) has since 1901 been subject to either or both of two external controls that corporations have never been subject to: The agreement of employers or decisions by the independent umpire. The other fundamental reason why the corporate model of regulation is ill suited to unions is that unions don't exist to generate profit. The nature of rights and interests that union members have in their union and its activities are not the same as the economic interests that shareholders have in companies. The ACTU does not challenge the view that, at a higher level, principles of good governance can be applied to numerous different types and structures of organisations. However, any attempt to descend into translating the granular detail without any regard to the above context is misguided. It also runs the risk of duplicating provisions that have proven to be problematic in their original setting.

Finally, it is important to remember who it is the Bill will most directly impact. This Bill is not about regulating the equivalents of Chief Executives or corporate boards. It is about regulating the individuals who choose, often on a voluntary basis, to commit their time to their union or employer association – even those who are only required to attend only one meeting a year. Further, those who compare unions to corporations often forget this fundamental fact: the compliance obligations in this Bill are devolved down to every level in a union organisation, not just those at "head office". Every branch, of every division (including those with no employees) and every elected officer within them that even votes on matters relating to financial management (like a decision to reinvest in a term deposit) is being subjected to the types of reporting and disclosure obligations that apply to and in some respects exceed those imposed on the Directors of the largest publicly listed companies in Australia. Wrongdoing under this Bill can sound in disqualification from office, criminal prosecution and civil penalties in excess of

Corporations Act equivalents. Unions, Employer Groups and even the explanatory material circulated with the Bill recognise the risk that the provisions of this Bill could make people less inclined to participate in registered organisations. With recent research from the OECD, IMF and the World Bank all supporting the association between lower unionisation and higher income inequality, the Government must accept that it is the orthodox view that weakening participation in unions is poor economic policy.

Yours faithfully,

Dave Oliver
Secretary