



28 August 2019

Committee Secretary
Senate Education and Employment Committees
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Canberra ACT 2600

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Dear Madam/Sir

UnionsWA submission to inquiry into the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019 [provisions]

UnionsWA is the governing peak body of the trade union movement in Western Australia, and the Western Australian Branch of the Australian Council of Trade Unions (ACTU). As a peak body we are dedicated to strengthening WA unions through co-operation and co-ordination on campaigning and common industrial matters. UnionsWA represents around 30 affiliate unions, who in turn represent approximately 140,000 Western Australian workers.

UnionsWA thanks the Committee for the opportunity to make a submission to the inquiry into the above Bill. UnionsWA supports the proposition that officials of registered organisations should be held to high standards in their personal and professional conduct, however we agree with the ACTU that the foundations of this *Amendment Bill* are unsound, specifically that:

- The Bill is politically motivated and bad for workers.
- The Bill imposes more onerous standards and processes on industrial organisations than it does on companies—or politicians.
- The Bill is anti-democratic, inconsistent with international human rights law and with Parliament's stated intention in enacting the *Registered Organisations Act*, especially in respect of organisational autonomy.

We call attention in particular to Schedule 1 of the *Amendment Bill*, which significantly expands the regime for the disqualification of persons from holding office in registered organisations.

The expanded definition of 'prescribed offence', for the purposes of the automatic disqualification mechanism, to include 'an offence under a law of the Commonwealth, a State or Territory, or another country, punishable upon conviction by imprisonment for life or a period of five years or more'—whether or not a custodial sentence is imposed, and whether or not the conduct to which the offence relates was engaged in in the course of performing functions in relation to the organisation

UnionsWA submits that there is no track record in Western Australia of problems with the existing laws regarding conduct of elected union officials. No compelling evidence has been provided by the government of a problem that these changes are supposed to solve.

The inclusion of offences under 'a law ... of another country' is particularly problematic, given that a prescribed offence is a ground for automatic disqualification. Automatic disqualification allows no discretion for a court to assess whether there is an equivalent offence under Australian law or whether such an offence is punishable by an equivalent penalty.

This section assumes that other countries have similar legal and political systems as Australia. Thus a conviction in one country is as sound as a conviction in any other. This is demonstrably not the case. Around the world workers are at risk of persecution by state authorities. They can be arrested and imprisoned on trumped up charges to stop them from exercising internationally recognised rights of freedom of association. To take one example from the 2018 International Trade Union Confederation (ITUC) Global Rights Index¹

In 2018, a number of labour activists and trade union leaders remained in jail for their activism. In Korea, after international calls for his release, Han Sang-gyun, leader of the Korean Confederation of Trade Unions (KCTU), was granted parole on 21 May 2018 from his three-year jail term for organising the People's Mass Mobilisation on 14 November 2015 against the repressive labour reforms of the former government of President Park Geun-hye.

It can be very easy in many countries for workers to gain a track record of charges and convictions while exercising and defending trade union rights. Many of these trade unionists would be 'disqualified' from holding office in a Western Australian trade union if the current amendments are adopted.

Registered Organisations are already highly regulated in ways that surpass the regulatory burden of existing corporation law in many instances. Unions are membership-based, democratic, non-profit organisations, more akin to mutual interest societies rather than trading or financial businesses.

Compared to businesses, there has historically been relatively little scandal or concern involving the financial probity of union officers. Corporate scandals such as the insolvency of HIH Insurance, the AWB wheat sale affair, or the collapse of Storm Financial, have no equivalent in the union movement. Corporate scandals can lead to potentially ruinous individual losses of many thousands of dollars by retirees and investors.

The function of unions is not to profit from dealings with the general public. Their potential to harm individuals with whom they have financial dealings is nowhere near as great as that of private or public companies. Unions do not have shareholders with significant financial investments at risk. Union members have necessarily invested only their generally fairly modest membership fees.

Union members have a democratic interest in the organisation of a union, rather than a financial or proprietary interest. The imposition of a 'corporate' governance model on unions would not be value-free: because unions have a quasi-political function, changes imposed on unions could be seen as

¹ <https://www.ituc-csi.org/IMG/pdf/ituc-global-rights-index-2018-en-final-2.pdf>

liable to hinder their broader role within society. In our view unions, as Registered Organisations under industrial legislation, are fundamentally different from trading or financial organisations.

Accordingly, UnionsWA urges the Committee to recommend rejecting this Bill, and its flawed approach to regulation.

UnionsWA and its affiliates would be happy to give evidence directly to the Committee. Please contact me on _____ or _____ to discuss matters further.

Yours sincerely

Meredith Hammat
Secretary