

Submission: Ensuring Integrity Bill

James Cook University Branch Committee – National Tertiary Education Union

There have been many good submissions on this Bill from unions and community organisations. This submission is from a group of National Tertiary Union members who have been elected by our fellow-members to the James Cook University NTEU Branch Committee (committee of management) as unpaid volunteers. It is therefore from rank and file union members in Cairns and Townsville, who are also officials of our union and therefore could be affected by this Bill. Presumably workplace delegates in other Unions who can come under the definition of ‘officers’ in their rules would be in the same position (Fair Work (Registered Organisations) Act 2009 s. 9 (1)).

We believe the Bill should be rejected for the following reasons:

1. Unfair and draconian provisions

Many media sources agree that the intention of this legislation is ‘union-busting’. It will undermine the democratic right of workers to combine in unions to protect and further their workplace pay and conditions.

This bill would bring in draconian new provisions against unions, despite Australia being described as already in breach of ILO conventions: “The right to strike has already been degraded, in breach of International Labour Organisation conventions, and now freedom of association and the right to organise is at stake”. (Paddy Manning, *The Monthly*, 29 July 2019)

It will:

- give any “interested party” the power to apply for orders to intervene in the running of unions. Given that enterprise bargaining makes employers an ‘interested party’, this is yet another huge advantage for employers in a system that is already heavily weighted in their favour (see Appendix).
- allow the Court on application by an “interested party” to:
 - deregister a union
 - disqualify persons from being an officer of a union
 - exclude classes of people from being a member (alter eligibility rules)
 - suspend rights or privileges of members of a union or the union itself
 - restrict the use of union funds or property
 - appoint an administrator to run the union
- automatically disqualify a person from being an officer of a union for conviction of any offence that is punishable by a period of imprisonment of 5 years or more (regardless of the actual sentence for that offence), including in voluntary positions such as workplace delegates and those we serve in, on our Branch Committee . This is directly opposed to democratic member-controlled unionism, noting that the NTEU is an extremely democratic organisation.
- the grounds on which a person can be disqualified from being an officer of a union are considerably expanded as is the range of people who can apply for that disqualification.
- it will be a criminal offence to influence or assist a union while disqualified eg. as a volunteer. This would bar us as members from participating in the democratic structures of our union.

All of the above would make it extremely difficult for a union to represent the interests of its members without the threat of serious interference by any 'interested party' which could include employers, a Minister of a party unsympathetic to the labour movement (ie. political interference), employer groups etc.

Real life examples of offences that could lead to disqualification of a Union official (and the loss therefore of that person's job or their right to participate in their union's activities) include:

- failure to provide to the AEC the accompanying declaration that the membership register has been maintained properly
- late filing of financial or other records
- officer holder changes and officer fails to complete the financial training within 6 months
- contravening an award or agreement term eg. failure to follow steps of a DSP
- providing claims for bargaining late
- not giving 24 hours notice of a Workplace Health and Safety right of entry
- Organisation prepares Officer and Related Party disclosure according to legal advice but court later interprets a provision differently and finds a contravention.

These are outrageously severe penalties for mere failures of paperwork and make a mockery of the Government's claim that it is only trying to prevent criminal activity by unions. The ACTU makes the point that "Fraud and serious crime should be dealt with under the criminal law" – not a law that specifically targets trade unions.

2. Unequal treatment of unions and employers

Again, many media sources allege the bill is in response to one union leader (John Setka) who is perceived (ie. not proven in court) to have broken the law. There are thousands of instances of businesses breaking the law every day, and an unending series of scandals involving politicians, but as ACTU President Michele O'Neil says, "We don't see an ensuring integrity bill for big business, we don't see an ensuring integrity bill for politicians".

The CFMEU has been accused of breaking the law on numerous occasions, but this ignores the fact that the ABCC legislation criminalises what in other industries would be normal union behaviour, defending the rights, safety and conditions of their members. Contrast this with the scandals about dangerous high-rise construction faults which have been hitting the headlines regularly over the past few months. We do not see the Government making any move to develop an Ensuring Integrity bill for construction companies.

The legislation is deeply unjust. Employers in conflict with unions would potentially be able to apply to the Federal Court to get a union official disqualified or a union deregistered. There is no equivalent for unions in conflict with employers to have the latter's executives disqualified as a director or manager, have their legal recognitions withdrawn, or have their businesses wound up.

As the ACTU says, "a company can repeatedly put workers' lives at risk, commit wage theft, illegally dump toxic chemicals or produce dangerous products and not be wound up, whereas a union could have its registration cancelled if a group of members take unprotected industrial action."

Even if an application by an employer against a union or its official is frivolous or vexatious, it would involve the Union in considerable expense to defend itself (or that official). The Government is bringing in separate legislation which it says is being done out of concern to protect union members' funds. This is somewhat hypocritical when the 'Ensuring Integrity' bill has the potential to waste millions of dollars of union members' contributions to their union in court costs. As one media source says, who is going to have more money when it comes to tying unions up in litigation, companies or workers?

The section on amalgamation is particularly galling. Where is the legislation that prevents companies amalgamating? The U.S. tried 'trust-busting' legislation to stop industrial monopolies which were considered not in the public interest, but there has been very little done to prevent company amalgamations that are not in the public interest in Australia.

3. International comparisons

There is no comparable legislation in other industrialised democracies. The nearest equivalent is in countries notorious for their abuses of human rights. For example the government of Kazakhstan is persecuting independent trade unions. Erlan Baltabay is the leader of the Industrial Trade Union of the Fuel and Energy workers, known as 'Decent Work'. His trade union was dissolved by a decision of the court, and criminal proceedings against Erlan began ten months ago. On 17 July this year, he was sentenced to seven years in prison and he was also given a seven year ban on any public activity. Erlan's only crime was to engage in trade union activity -- and to speak out in defence of other jailed trade union leaders. This Bill could lead to the same situation here.

4. The economic consequences of union-busting legislation

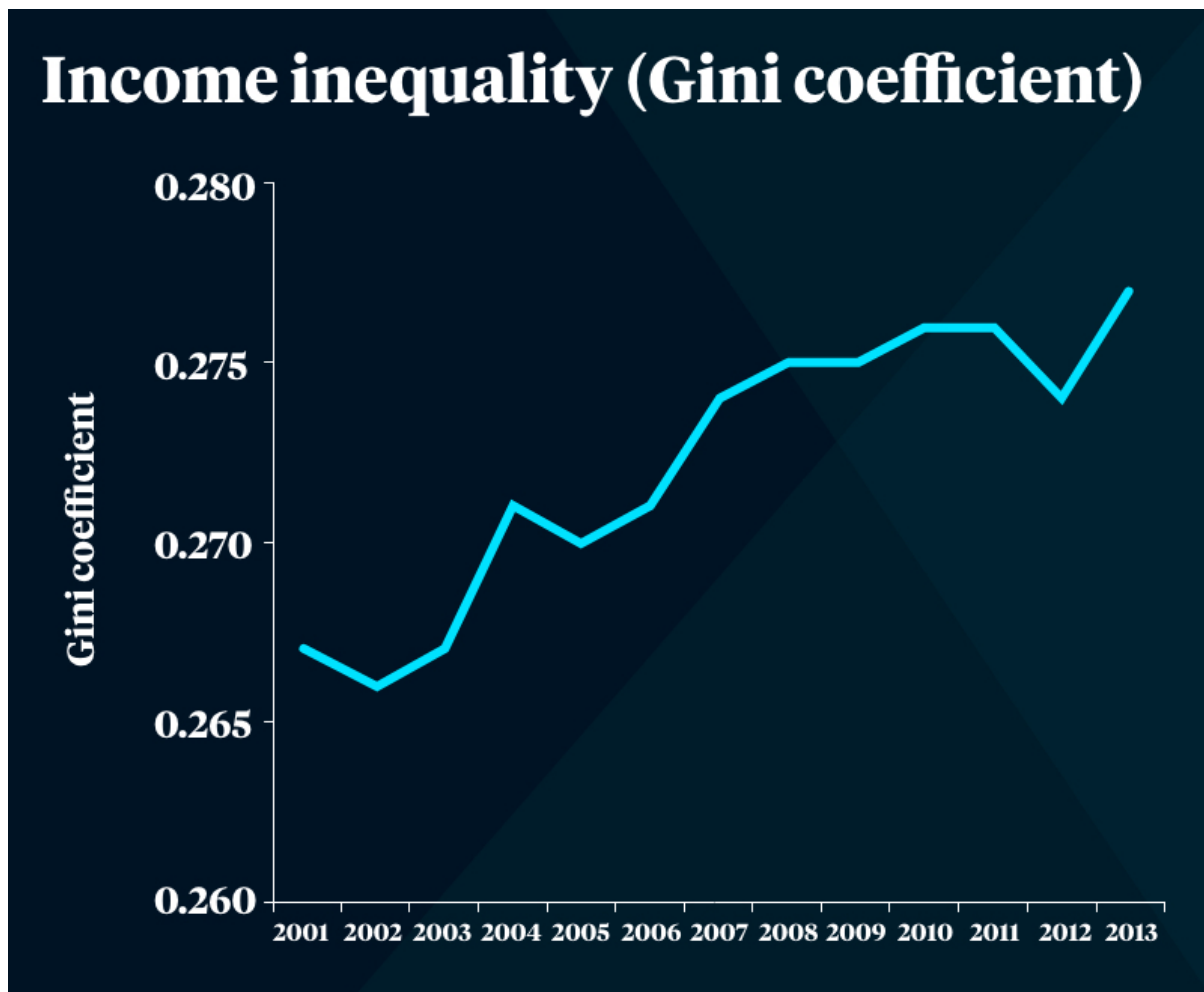
Economists and the Reserve Bank have been lamenting the slow nominal growth of wages – in real terms, a fall - and its impact on the economy for some months now. A Treasury paper (*Analysis of wage growth November 2017*) shows the trends have been the same in non-mining regional areas as in the capital cities, and income growth in mining regions has slowed dramatically as well.

Historically, wages growth has been mainly led by unions organising their members and representing them. This Bill's new attack on the integrity and effectiveness of unions will further degrade the ability of workers to obtain reasonable pay rises and conditions, especially through enterprise bargaining, and therefore continue the decline in consumption which is causing concern for the economy. Note the table below which shows that median wages – ie. the earnings of a typical worker, to the exclusion of the pull upwards on the mean (average) wage of the top earners – have actually gone backwards since 2009.

Household annual disposable incomes, 2009-2017

	Mean	Median
2009	\$90,578	\$80,637
2010	\$90,870	\$78,205
2011	\$90,959	\$76,352
2012	\$92,377	\$80,573
2013	\$93,469	\$80,208
2014	\$92,547	\$79,653
2015	\$92,446	\$78,901
2016	\$92,959	\$80,592
2017	\$93,734	\$80,095
% change	▲ 3.476%	▼ 0.76%

This means income inequality, the gap between the highest earners and the majority, is steadily rising:



(Graphs from the New Daily, https://thenewdaily.com.au/money/finance-news/2019/07/30/incomes-falling-hilda-report/?utm_source=Adestra&utm_medium=email&utm_campaign=Morning%20News%20-%2020190730)

If trade unions are further disadvantaged by this legislation, these trends will continue and the economy will continue to suffer. It is worth noting that in the great depression of the 1930s, the U.S. encouraged trade union activity to boost wages in order to increase consumption and therefore demand for goods and services, in order to fight that depression.

Summary

We believe this Bill is prejudicial to the interests of Australian workers. It will cause a worsening of Australia's already-unbalanced industrial relations system, which is strongly biased in favour of employers. Enterprise bargaining will become even more unfair, and this in turn has negative implications for the economy.

Sources:

ACTU analysis of the Bill https://www.actu.org.au/media/1385250/d136-ctr_ensuring-integrity_briefing2018.pdf

<https://www.themonthly.com.au/today/paddy-manning/2019/29/2019/1564379539/busting-unions>

<https://www.theguardian.com/australia-news/2019/jul/11/actu-lobbies-crossbenchers-to-oppose-coalitions-unfair-union-busting-bill>

https://thenewdaily.com.au/money/finance-news/2019/07/30/incomes-falling-hilda-report/?utm_source=Adestra&utm_medium=email&utm_campaign=Morning%20News%20-%2020190730

<https://treasury.gov.au/sites/default/files/2019-03/p2017-t237966.pdf>

Appendix: Existing bias in favour of employers for enterprise bargaining in the current industrial system

1. Employers can decide if and when to enter bargaining negotiations. If they refuse, workers have no way of forcing them.
2. The criteria for 'good faith bargaining' are extremely low – mere attendance at negotiations and giving consideration to the other side's position is all that is required.
3. Workers have no automatic right to strike or hold any other industrial action during negotiations. There are many rules hampering unions: an expensive ballot of members done by the AEC, with set percentages of responses required for the ballot and for each proposed action; types of actions are limited; employers have to be notified of actions, with Fair Work Commission-imposed notice periods, so employers can minimise the impact of actions (but employers can spring draconian actions such as that in (4) below on unions at the bargaining table); industrial actions can be challenged, leading to cancellation and prohibition by the Court, if they cause 'inconvenience' (the whole point of the exercise).
4. Employers can terminate an existing agreement (usually extended to cover the bargaining period if its term is up) and reduce workers to basic conditions and pay.
5. The Fair Work Act can be used by employers to constrain Union organisers' ability to communicate with members and campaign, with the threat of fines and banning of officials.
6. The Fair Work Commission can only assist to resolve a dispute between parties if the employer agrees to allow it.
7. Unions are not allowed to 'pattern bargain' for an entire industry, yet employers regularly get together to plan for the next round of bargaining in a sector and agree on common tactics.
8. Employers regularly use high-powered lawyers against unions in a jurisdiction that is supposed to be lawyer-free.