

# Communist Party of Australia

## Central Committee

General Secretary: Andrew Irving  
President: Vinnie Molina

74 Buckingham St  
Surry Hills NSW 2010 Australia

Web: [www.cpa.org.au](http://www.cpa.org.au)



28 August 2019

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

### **Re: *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017***

The Communist Party of Australia welcomes the opportunity to make this submission to the Department of the Senate.

This Bill is squarely aimed at putting the trade union movement out of action by targeting its leadership, leaving workers defenceless and strengthen the hand of employers to accelerate the present roll-back of wages and conditions. It is both political and economic in its aims and objectives.

Under the legislation officials and unions could be taken to court for such acts as attempting to negotiate with employers; protecting their members' wages and conditions; attempting to meet with their members or recruit new members; and ensuring the safety of workplaces.

The bill states that the Federal Court *must* cancel the registration of a union on any of the following grounds:

Corrupt conduct of officers

Two findings against the union for disqualification of officers

Multiple findings against a substantial number of members of the organisation or a part of its membership

Non-compliance with orders or injunctions or "obstructive" unprotected" industrial action.

There is a catch-all, "not a fit and proper person" clause, that can be used to disqualify a union official. This includes situations where a right of entry permit has been revoked or suspended, or there have been certain criminal or civil findings as well as for "any other matter the Court considers relevant."

Freedom of Association is being completely ignored by the proposed *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017* providing for sweeping powers to interfere in trade union organisations and threatening the industrial relations system in Australia.

The guise of curtailing criminal activity is a red herring. Issues of criminality should be dealt with in criminal law, the primary purpose of which is to reduce crime. The State has and should have the power to investigate and prosecute perpetrators of criminal activity. No special protections exist for trade unionists against the application of the criminal law. Further the Ensuring Integrity Bill will do

nothing to improve the functioning or efficacy of those laws. This legislation is not designed to effectively combat unlawful conduct. The legislation is clearly aimed at attacking and destroying workers' organisations.

Further we are deeply concerned that the proposed Bill is incompatible with Australia's commitments under the ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and can only be harmful to workers. Australian workers will be restricted from exercising their fundamental rights to freedom of association through the abusive interference of the state.

Of great concern this Bill does not distinguish between criminal fraud and minor infractions of industrial laws. The Ensuring Integrity Bill in fact seems to encourage interference in trade unions' activities allowing even minor instances of unlawful behaviour as justification. It allows for the gravity of an offence to be ignored and promotes the very real danger that outcomes will be disproportionate to any offence.

This should be taken very seriously as the outcomes for an individual may destroy their career and the cancellation of registration for an organisation punishes workers who have not been involved in any wrong doing.

Of even more concern these judicial sanctions may be initiated by not only the State or the Minister but also an undefined class of interested persons - an invitation to union-busters and anti-union forces.

The legislation blurs the liabilities of trade union officials and the organisations they represent and work for. It permits sanctions against the entirety of a union's membership for the acts of individual officers, as well as sanctions against individual officers for the acts of members or other officers not under their control.

This legislation spells a serious threat to trade union democracy giving the state regulatory power to interfere in union democracy; to determine its right to function; to dictate whom its members may elect; and even to administer the union's functions.

The proposed legislation also invites an even greater bureaucratic burden on industrial relations further damaging labour relations in Australia which may have lasting effects on workers in this country.

Ensuring Integrity Bill authorising an unprecedented level of state interference and supervision over the democratic process and establishes broad categories that can be wielded to disqualify union officials depriving members of their rights to elect their officials.

The proposed disqualification cuts across several divisions in the Bill giving powers on such a broad range of issues as to be arbitrary ranging from serious crime through to failure to comply with the duties ordinarily placed on the officers of corporations to even minor aspects of industrial law including the obscure reference to 'fitness'. The potential grounds for disqualification could include minor or technical failures, for example a late lodgement of a union's financial reports. Hardly grounds for disqualification and yet would be allowable under the powers of this Bill.

This Bill subverts the democratic process and disrespects the principles of freedom of association. Most comparable states do not interfere with the elections within trade unions and have no provisions for restricting who may stand for union election. Those rights are the reserve of the relevant union's membership.

A notable exception is Brazil, but the provision is a legacy of the Vargas dictatorship in 1943. The US also has temporary disqualification provisions but only when serious crime or fraud are involved.

Article 3 of ILO Convention No. 87 states clearly that: 'workers' and employers' organisations shall have the right to [...] to elect their representatives in full freedom...' and emphasises specifically, that 'the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof'.

The Communist Party of Australia calls on the Senate to protect the interests of the Australian workers to be able to form organisations that represent their interest and have control over those organisations and the right to Freedom of Association. Workers must be able to participate to freely elect their trade union officials without interference from the State. Members should be able to hold individuals to account under the union's own rules.

Conduct connected with trade union activities should not provide grounds for disqualification or deregistration. The system of criminal law should be used for any fraud or any serious criminal offences. There is no justification for trade union officials to be treated differently from any other citizen.

Further, there should be no legislation allowed that permits collective punishment of trade union members by curtailing their fundamental rights. Unions are democratic organisations and attacking them hurts all working people. This law will undermine workplace safety, increase wage and superannuation theft and make it harder for workers to get pay increases and be represented when they need help.

No conditions to registration should be imposed that impact on workers' freedom of association including the right of union members to vote for amalgamation with another union.

Free and independent unions are an essential part of a healthy democracy, governments and employers should not interfere in the internal operations of unions. We urge Senators to uphold the rights of working people in this country.

*Vinnie Molina*

On behalf of the

Communist Party of Australia, CPA