



IEUA
Independent Education Union of Australia

**Submission to the Senate Education and Employment
Legislation Committee's inquiry into the Fair Work
(Registered Organisations) Amendment (Ensuring
Integrity) Bill 2019**

August 2019

Introduction

1. The Independent Education Union of Australia (IEUA) is pleased to have the opportunity to make a submission to the Senate Education and Employment Legislation Committee's inquiry into the Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019.
2. The IEUA is the federally registered union that represents workers, including teachers, principals, and school support staff, in Catholic, other faith-based and community independent schools; early childhood centres; and post-secondary English language and vocational colleges; across all the states and territories of Australia.
3. While the majority of members of the IEUA are teachers, the membership of the IEUA also consists of workers engaged as teacher aides, administrative staff, gardeners, cleaners and caterers.
4. Membership of the IEUA is also diverse in respect to the types of workplaces included in its coverage. These range from very large schools with significant resources to extremely small rural schools and community early childhood centres with very limited resources. The variety of schools, early childhood centres and post-secondary colleges represents great diversity. These include a wide variety of faith based and non-denominational schools, including, Catholic schools, Independent schools, Islamic schools, Anglican schools, Jewish schools, Steiner schools, Lutheran schools, Montessori schools, community and private early childhood providers and privately run post-secondary providers.
5. The union currently has a membership of over 75,000.
6. The governance of the IEUA by its Committee of Management/Executive/Council in each Branch is undertaken predominantly by rank and file members, in an honorary capacity, who largely provide their service, expertise and commitment in their own time, outside of their day-to-day employment.

Commentary

7. The IEUA is strongly of the view that the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* (Cth) (**Bill**) should not be passed.
8. The IEUA argues that the foundations of the Bill are unsound for the following reasons:
 - a. The Bill is **politically motivated** and **bad for workers** and will negatively impact on the capacity of our organization to represent the legitimate interests of IEUA members and in all likelihood discourage rank and file members in schools, early childhood centres and other non-government education workplaces from volunteering to undertake the critical governance roles they fill. See the attached statements from current IEUA governance committee members.
 - b. There has been a total lack of proper policy development, such as stakeholder consultation and independent research or inquiry, in support of the Bill, or the changes from the 2017 version. The IEUA has not been afforded the opportunity by the Government to engage with the Bill's development.
 - c. There is no **corporate or political equivalent**. The Bill continues to impose more onerous standards and processes on industrial organisations that it does on companies—or politicians.
 - d. The Bill is **anti-democratic**. The Bill is inconsistent with international human rights law and with Parliament's stated intention in enacting the RO Act, especially in respect of organisational autonomy. The IEUA notes that the Parliamentary Joint Committee on Human Rights (**Joint Committee**) (28 November 2017 & subsequently 30 July 2019) found that every Schedule of the Bill is incompatible with the right to freedom of association. The IEUA is aware through our engagement with colleague

unions in other countries that the regulation of industrial organisations in countries with commensurate levels of economic and industrial development there is no equivalence for the degree of state interference in the functioning and establishment of trade unions, but frighteningly the IEUA is aware that similar 'draconian measures' as proposed in this Bill exist in some authoritarian regimes in which independent trade unions are suppressed or entirely prohibited.

9. Schedule 1 of the Bill significantly expands the regime for the disqualification of persons from holding office in registered organisations. The amendments proposed by Schedule 1 interfere with the principle of free elections within industrial organisations. These amendments go beyond the recommendations of the Royal Commission into Trade Union Governance and Corruption (**Royal Commission**) or equivalent provisions in respect of corporations or incorporated associations.
10. Schedule 2 of the Bill significantly expands the regime for the cancellation of registration of an organisation and a range of far-reaching 'alternative' orders. The amendments proposed by Schedule 2 interfere with principle of organisational autonomy of industrial organisations. These amendments are not based on any recommendations of the Royal Commission.
11. Schedule 3 of the Bill significantly expands the existing regime for the administration of 'dysfunctional' organisations. The amendments proposed by Schedule 3 fundamentally change the nature of the existing regime, which provides for a remedial scheme to be imposed by the court for the benefit of members in limited circumstances, to provide for punitive measures to address alleged wrongdoings by an organisation or its officers or members. These amendments are not based on any recommendations of the Royal Commission. Again, recourse is made to the regulation of corporations to justify the amendments, but again, the provisions are not equivalent and, more importantly, nor are the nature and purpose of the entities that the respective regimes seek to regulate.

12. Schedule 4 of the Bill significantly expands the matters of which the FWC must be satisfied before an amalgamation of registered organisations can take effect. The current amalgamation regime, consistent with the principle of organisational autonomy and democracy, provides for a simple procedural process for amalgamations to give effect to the wishes of the respective organisations' members, as expressed in a ballot conducted by the Australian Electoral Commission (**AEC**). The amendments proposed by Schedule 4 impose a range of additional requirements, including the consideration of political and corporate interests, that are irrelevant to the merits of the proposed amalgamation from the perspective of the organisations' memberships and their interests. These amendments are not based on any recommendations of the Royal Commission.
13. The IEUA believes that legislation will have a chilling effect on the already very limited capacity of unions to protect employees from wage theft.
14. It is clear from the spate of revelations and evidence that Australia already has employers who are engaging in systematic wage theft and then utilising mechanisms under FWA Right of Entry (RoE) provisions to frustrate unions trying to enforce minimum wages (eg refusing entry on spurious grounds, or making unfounded applications to have permits cancelled).
15. There is every reason to expect that such employers would avail themselves of the mechanisms under this legislation, with much more serious consequences. In an environment where even the Reserve Bank Governor is concerned about the failure of the economy to deliver wage increases to the lowest paid, new legislation should be aimed at bolstering the capacity of unions to enforce minimum wages (noting that it would otherwise require the Government to vastly increase the funding to the FWO for wage underpayment prosecution).
16. The administrative and legal burden on unions flowing from the capacity of so many people and bodies to make disqualification applications will seriously undermine the rights of workers, and the erode the expectation

that IEUA members and others should have in relation to a 'fair go' in having their legitimate workplace rights represented and, where necessary, enforced.

17. Attached to this submission are reflections on the impact of the proposed legislation from the perspective of IEUA rank and file Committee of Management/Executive/ Council members, that clearly illustrate problems with the legislation and the over-reach of such regulation on their ability to contribute to the quality governance of their Union for their colleagues.

Chris Watt
Federal Secretary
Independent Education Union of Australia
August 2019

Statements by IEUA Committee of Management/ Executive/ Council members

- 1. Gabrielle Connell**
- 2. Patricia Murnane**
- 3. Denise McHugh**
- 4. Suzanne Penson**
- 5. Tina Ruello**

Registered Organisations (Ensuring Integrity) Bill – statement from Independent Education Union of Australia – NSW/ACT Branch Executive Member Gabrielle Connell

As a member of the Committee of Management (Executive) of the Independent Education Union of Australia – NSW/ACT Branch, I am writing to express my concerns about the proposed Registered Organisations (Ensuring Integrity) Bill and its implications for my Union and for union members such as myself who volunteer to serve on my Union's Executive.

At present I am a casual early childhood teacher after 35 years working in early childhood services. I am also currently contracted to NESAs as an Accreditation Supervisor - working with and supporting new early childhood teachers through the accreditation process to proficient status.

I have been a member of the IEU for 26 years, on IEU Early Childhood Council for 13 years and Vice President Early Childhood on IEU Executive for 11 years.

I am a member of the Quality Teaching Council for NESAs (NSW Education Standards Authority) and also I am a current Board member of CELA (Community Early Learning Australia). These are all voluntary roles and I take all these roles very seriously and act ethically in all circumstances.

The IEU and other unions are already subject to very high levels of compliance under the requirements of the Registered Organisations Commission and the proposed Ensuring Integrity legislation appears to go beyond what is required of unions in any other any other comparable country.

Of particular concern to me is the potential impact on volunteer members of union Committees of Management and how they could be caught out by innocent minor errors or omissions. As an IEU Executive member I undertake training in accordance with ROC requirements and my fellow Executive members always act diligently and in good faith to protect the interests of IEU members.

I have a concern that the impact of the Bill will be onerous and excessive and deter union members such as myself from serving in voluntary Committee of Management roles. That would be a loss to the union movement as it would detract from the diversity and practical expertise of input from members to the leadership of unions.

I personally would have to consider my ongoing voluntary contributions and believe that others are of the same mindset and this would be a great loss of experience and dedicated people across many professions. This experience has ensured in the past, the passing on of accumulated knowledge and the promotion of their professions.

Unions play a vital role in democratic societies and I therefore have a concern that this proposed legislation will diminish the valuable work of unions such as the IEU in protecting pay and conditions, promoting workplace health and safety, and in being a voice for justice.

For these reasons, I hope that the Registered Organisations (Ensuring Integrity) Bill will be withdrawn or significantly amended as I believe that in its present form it will adversely affect the successful operation of unions and the capacity of long term members such as myself to make a contribution to the leadership of my Union.

Gabrielle Connell

Vice President Early Childhood on the Executive of the Independent Education Union of Australia – NSW/ACT Branch



2-8-19.

Concerns about the Federal Government's Registered Organisations (Ensuring Integrity) Bill

I am a member of the Independent Education Union of Australia – NSW/ACT Branch. I hold an elected position as a General Member of the IEUA NSW/ACT Executive. This is a voluntary officer position and thus I do not receive any remuneration except for expenses that may be incurred in the carriage of my responsibilities.

I hold serious concerns about the proposed amendments to the Fair Work Registered Organisations (Ensuring Integrity) Bill 2017. I think that the proposed amendments move the already highly restrictive industrial relations legislation in Australia far beyond the notions of fair and reasonable. I believe that the proposed amendments do not align 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).

Unions are collective bodies of workers who use democratic processes to organise their institutions and work for the industrial rights, wages, safety and welfare of their members in their workplaces. Unions are fundamental in the ongoing provision of harmonious industrial relations. They are a positive force and contributors to the prosperity of Australia.

I think that the proposed legislation will make it easier for the Industrial Relations Minister, employers or any other party with a 'sufficient interest' to hinder and damage unions. I think that the amendments are designed to create a belief that unions are bogey or a bête noire and this is an odious lie. It takes the rightful control of the unions from the members to others as it places workers at the behest of the government of the day, employers and possibly individuals who seek to be malicious. One example is that an administrator can be appointed if a declaration of dysfunction is made. The administrator will be able to commandeer the powers of the board of management who had been democratically elected by the members. The proposed amendments do not support the dignity of humans and their work and their rights to organise and be self-determined. The legislation also runs counter to the notion of the equality and interdependence of all humans. It would seem to reintroduce the antiquated and unjust system of master-servant relationships.

The current Fair Work legislation is already rigorous and demanding of unions with regard to compliance in all financial and organisational aspects of unions. There is already enough scope and opportunity for investigation and examination of union finances and structures to ensure integrity, honesty and transparency in unions. I believe that laws already exist for the application of criminal law to individual union members and union managers who act corruptly. The proposed amendments intend to impose a higher standard for the conduct of trade union officials than is expected of others in society including politicians and business leaders. Why?

One current responsibility is for members of union boards of management/executive is to undergo financial responsibility training. My union complies with this directive and supports the values of financial accountability to their members. The proposed amendment runs the danger of affecting 'volunteer' members such as myself with regard to timing errors made for obtaining financial training should a person's role on the board of management or executive change. A mere error will be registered as a calculated transgression and the person will be found to be engaged in financial misconduct in relation to carrying out their functions, with the possible consequence of disqualification from office. The penalties indicated by the proposed amendment are sledge-hammer in approach and disproportionate. In the above example, a person will be found to have failed a 'fit and proper person' test thus creating the illusion of 'criminality'. The idea is simply wrong.

I think that the proposed amendments are wrong, unnecessary and dangerous. They allow for unfair

and even malicious interference in the workings of unions as democratic institutions. This will undermine the human right of workers in Australia to associate collectively. This is abhorrent. Further, I believe that this will have direct consequences for the continuing development and stability of Australian democracy. This cannot be allowed to happen.

Patricia Murnane

Pa. Murnane
2.8.2019

Registered Organisations (Ensuring Integrity) Bill – statement from Independent Education Union of Australia – NSW/ACT Branch Executive Member Denise McHugh

As a member of the Committee of Management (Executive) of the Independent Education Union of Australia – NSW/ACT Branch, I am writing to express my concerns about the proposed Registered Organisations (Ensuring Integrity) Bill and its implications for my Union and for union members such as myself who volunteer to serve on my Union's Executive.

I have worked in education as a teacher and education consultant for more than 40 years in both the government and independent sectors, and have been either a member of the IEU or Teacher's Federation during that time. I have been a member of the IEU Council for 21 years and an executive member for 18 years. I value the important work that unions do for their members.

As an IEU Executive member I undertake training in accordance with ROC requirements and my fellow Executive members and I always act diligently and in good faith to protect the interests of IEU members. I am extremely concerned with the implications of Registered Organisations (Ensuring Integrity) Bill may have on myself as a volunteer executive member where I could be caught out by innocent minor errors or omissions.

The IEU and other unions are already subject to very high levels of compliance under the requirements of the Registered Organisations Commission and the proposed Ensuring Integrity legislation appears to go beyond what is required of unions in any other comparable country.

The Bill is described as making unions comparable to corporations. In that case why is there no "public interest test" for company directors? Why the inability to deregister corporations? If there was, the Boards of 7-Eleven, Caltex and Grocon would be sacked for breaching the FairWork Act for stealing wages and companies stopped from merging. Only recently we have had George Calombaris fined \$200,000 for wage theft of \$8,000,000. This is not a simple mistake, it is a business model. This is the exact thing that unions work to expose.

I am very concerned that the Bill will have a negative impact on the ability of people like myself putting their hand up to represent the union membership in voluntary Committee of Management roles. I have a concern that the impact of the Bill will be onerous and excessive and deter union members such as myself from serving.

Unions play a vital role in democratic societies and I therefore have a concern that this proposed legislation will diminish the valuable work of unions such as the IEU in protecting pay and conditions, promoting workplace health and safety, and in being a voice for justice.

For these reasons, I hope that the Registered Organisations (Ensuring Integrity) Bill will be withdrawn or significantly amended as I believe that in its present form it will adversely affect the successful operation of unions and the capacity of long-term members such as myself to make a contribution to the management of my Union.

Denise McHugh
Executive Member of the Independent Education Union of Australia – NSW/ACT Branch

 Denise McHugh, 2/8/19