

Opening statement

At a time when wage theft is making headlines, wages growth is at record lows and work is becoming increasingly insecure, the advocacy work that trade unions do on behalf of workers is vital.

Trade unions play an integral role in a healthy democracy and serve as an important mechanism to help workers exercise their freedom of association, and through it, their right to safe and fair work conditions.

While the Ensuring Integrity Bill is framed as reform aimed at addressing serious crime and misconduct in the trade union movement, the proposed laws will weaken and undermine the ability for trade unions to perform their fundamental functions.

The proposed laws will do this in two main ways.

First, it will give more people (including the Minister and anyone else who might have a “sufficient interest” – including employers) broader powers to interfere in union leadership and make applications to remove officials from their position in a union in a broader range of circumstances.

And second, it gives more people (again, including the Minister and anyone else who might have a “sufficient interest”) broader powers to interfere in the functioning – and even the existence of – unions themselves, by giving them a greater say in the decisions:

1. to cancel a union’s registration;
2. to place a union into administration; and
3. prevent unions from merging with one another.

As people who are lucky to live in a healthy and vibrant democracy like Australia, freedom of association is something that we all enjoy in everyday life. We have the right to join or leave groups as we please. This includes joining and leaving political parties, religious organisations, sports clubs, community groups or a myriad of other types of clubs and associations. We also have the freedom to choose how those groups run and are governed.

Freedom of association is particularly important for trade unions because of the important role they play in regulating the power imbalance between workers and employers. It is the bedrock for the protection of workers’ rights. The system of collective bargaining, which ensures that Australian workers are employed subject to fair conditions and pay, relies on the freedom of trade unions to form, meet and support their members without the threat of interference by the Government or others.

International human rights law recognises that everyone has the right to freedom of association with others, including the right to form and join trade unions.

Article 22 of the International Covenant on Civil and Political Rights – the ICCPR – protects the right to freedom of association and states that “everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of [their] interests”. This right is also set out in ICESCR - the International Covenant on Economic, Social and Cultural Rights.

The interpretation of the rights in these Covenants are informed by International Labour Organisation treaties, which state that workers have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing.

Trade unions also have the right to: draw up their constitutions and rules; elect their representatives in full freedom; organise their administration and activities; and to formulate their own programs.

Nothing in the relevant provisions of the ICCPR or ICESCR authorises State Parties like Australia to make laws which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in the International Labour Organisation Conventions.

Freedom of association is not an absolute right, but it should only be limited where it is necessary and those limitations must be reasonable and proportionate.

In our view, what is proposed in the Bill is not a necessary or proportionate limitation on the rights of workers. The Parliamentary Joint Committee on Human Rights shares these concerns.

The recommendations of the Royal Commission into Trade Union Governance are being used as a smoke screen to attack democracy in the union movement. The recommendations made by that Royal Commission were specific and narrow. There is nothing in them that authorises the Government to grant themselves wide ranging powers to kick people out of union leadership and shut unions down.

The Bill appears to use the justification of a “few bad apples” to import wholesale structural reform that would further weaken workers’ rights.

If serious crime exists in the trade union movement, the people responsible should be dealt with through the applicable criminal and industrial laws.

A good government would respect the vital role that trade unions play in a democracy and strengthen peoples’ freedom to act collectively to seek fairer work conditions.

It is therefore our submission that this Committee recommend that the Senate not pass the Ensuring Integrity Bill.