ANALYSIS OF SUBMISSIONS TO SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

Bill Name: Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019

Total Submissions as at [Date] : [#] **Submissions Closed**: 29 August 2019 **Committee Reporting Date:** 25 October 2019

#	SUBMISSION	KEY ISSUES RAISED
1	**International Centre for Trade Union Rights (ICTUR)**	Does not support International obligations/freedom of association • The EI Bill is incompatible Australia's ILO commitments and likely to produce arbitrary and disproportionately punitive outcomes damaging to Australia's industrial relations system. • There are precedents in authoritarian states that curtail freedom of association by way of like-restrictions and often do little to reduce instances of trade unions operating outside the law. Designated findings/proportionality • The legislation conflates criminal fraud and other serious crimes with minor infractions of industrial laws. By distilling such a broad spectrum of unlawful activity into the same category of offence, the legislation would permit equal punishments for unlawful acts that are not of comparable gravity, and lead to unacceptably disproportionate outcomes. • The legislation blurs the liabilities of trade union officials and the organisations they represent and work for, and 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. Standing • Giving standing to the Minister or a person of sufficient interest could also allow the cancellation provision to be weaponised. • Sanctions against unions proposed in the legislation have the practical effects to threaten to destroy the careers of individuals or the very existence of workers' organisations. These sanctions are more concerning because they can be initiated by anyone with a sufficient interest. Criminal law • Tightening regulations on unions' registrations and elections is not the appropriate response to criminal matters. Issues of criminality should be dealt with in criminal law, the primary purpose of which is to reduce crime.

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		Regulatory and legal burden • The Bill invites a greater bureaucratic and juridical burden on industrial relations, without addressing the root causes of the problems it is ostensibly meant to resolve. • The Bill shifts labour disputes into new areas of law, and trade union administration becomes an uncertain proxy for both industrial policy and criminal law. • The Bill could have long-lasting repercussions for harmonious industrial relations in Australia. Corporate comparison • While the public interest test under the EI Bill is mandatory, corporate mergers are merely subject to voluntary notification under the Australian Competition and Consumer Act 2010 and their authorisation is based on detailed guidelines concerning competition, with no consideration to record of compliance with the law. Schedule 1 - Disqualification • The disqualification regime provides grounds for disqualification that are completely unrelated to serious crime, and where an officer could be disqualified on grounds for which they bear no personal responsibility. These provisions have no comparisons in any other modern liberal democracy, and find closer similarity with laws in Brazil created under Brazil's historical Vargas dictatorship. Schedule 2 – Cancellation of registration • In cases of serious criminal matters and corruption, ICTUR recognises the legitimacy of deregistration provisions. However, the scope of the Bill's deregistration provisions are too broad, and cover less serious offences and technical non-compliance with industrial laws. • The bill makes the 'nuclear option' of deregistration the default response, as the Federal Court *must* cancel registration under S28. Schedule 3 - Administration • Minor technical failure to fulfil financial duties could lead to sweeping administrative powers over a union. • By conflating a range of grounds within the ambit of powers for an administrative takeover of unions, the Bill creates avenues for the law to be abused in order to disrupt legitimate trade union activities. • Few other jurisdictions have similar legislation, with only other Anglophone jurisdictions such as the US or UK having laws that allow for the appointment of a trustee to look after members' interest, but which do not have the full power than an administrator under the EI Bill would have.

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		Schedule 4 – Amalgamation • The public interest test risks subverting the democratic will of members to a wide variety of arbitrary obstacles created by parties which claim an interest in the unions' administration over and above the interests of members. • There are no comparative public interest test in other jurisdictions, and was informed by US colleagues that such a test would likely be unconstitutional in the US.
2	**Community and Public Sector Union, SPSF Group**	Does not support International obligations/freedom of association • The EI Bill breaches freedom of association rights guaranteed by ILO conventions that Australia has ratified. Designated findings/proportionality • Some of the grounds for liability under 'designated finding' are too low-level, such as late filing of financial or other records, breaching a bargaining order, or failure to return a right of entry permit on expiry Standing • Giving standing to individuals with 'sufficient interest' is too broad and unclear, and in breach of ILO conventions.
3	**Victorian Government**	Does not support International obligations/freedom of association • The Bill contravenes ILO Conventions including the right to freedom of association. The Bill also interferes with union democracy and the right to self-determination. • The public interest limits the freedom of associations to amalgamate and the right to organise. The Victorian Governments submits these limits are neither justifiable nor proportionate to achieve the legitimate objective of improving union governance. • The Victorian Government endorses the finding of the Federal Parliamentary Joint Committee on Human Rights on the provisions in the previous 2017 Bill, (which are broadly the same as the provisions in the current Bill with respect to the public interest test) indicating that the measures are likely to be incompatible with the right to freedom of association. Designated findings/proportionality • The grounds for disqualification based on 'designated finding' are too broad, and could include technical breaches such as late lodgement of financial reports and other routine aspects of industrial law. Standing • Allowing any person with sufficient interest to seek the cancellation of a union's registration is problematic, particularly as there is no equivalent ability to do so under the *Corporations Act 2001*. This differential treatment is not explained or justified

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		and 'sufficient interest' is not adequately defined and potentially broad in its reach. A well-resourced employer or lobby group may be able to weaponise this provision for union disruption, rather for genuine governance issues. <u>Schedule 1 - Disqualification</u> • The proposed disqualification goes beyond the disqualification regime for company directors, who can only be disqualified for dishonest offending, bankruptcy and in relation to foreign court orders. There is also no general 'fit and proper person test' for company directors under the *Corporations Act 2001* (Cth). <u>Schedule 2 – Cancellation of registration</u> • Concerned about the 'obstructive industrial action by a substantial number of members' ground for cancellation lacks clarity, including how many members constitutes a 'substantial number'.
4	**Communist Party of Australia**	Does not support <u>General concerns</u> • The Bill is aimed at the trade union movement by targeting its leadership and to strengthen the hand of employers. • 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. <u>International obligations/freedom of association</u> • The Bill provides for sweeping powers to interfere in trade union organisations and undermines freedom of association. • The Bill is incompatible with Australia's commitments under the ILO Conventions 87 and 98. • Restricting who may stand for election in a union is comparable to the 1943 Vargas dictatorship in Brazil. <u>Designated findings/proportionality</u> • The Bill does not distinguish between criminal fraud and minor infractions of industrial laws. Minor infractions against industrial laws will encourage interference in union affairs. The gravity of an offence may be ignored and outcomes may be disproportionate to any offence. <u>Standing</u> • Giving standing to persons with an interest invites union-busting and anti-union activity. <u>Fit and proper person test</u> • The 'fit and proper person' test is a catch-all. 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."

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		Legal concerns • The Bill 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. Criminal law • Issues of criminality should be dealt with in criminal law, the primary purpose of which is to reduce crime. No special protections exist for trade unionists against the application of the criminal law. The Bill will do nothing to improve the functioning or efficacy of criminal laws. Regulatory and legal burden • The Bill creates a greater bureaucratic burden on registered organisations. Schedule 2 – Cancellation of registration • The cancellation of registration for an organisation punishes workers who have not been involved in any wrongdoing.
5	**Community and Public Sector Union, SPSF Group, Victorian Branch**	Does not support Designated findings/proportionality • The trigger for some of the serious processes under this Bill including disqualification of an officer, placing the union into administration, deregistration or the prevention of an amalgamation can be for relatively low-level breaches. • The consequences of breaches of civil penalty provisions are not proportional with the conduct. These disproportional consequences are paired with the ability - unknown in the Corporations Law - for persons with little connection with the union (as a person with a "sufficient interest") to bring these proceedings. Regulatory and legal burden • It is already difficult to encourage members to stand for election to honorary officer roles. Changes to governance and compliance obligations in recent years along with the risk of civil and criminal prosecutions and fines is a strong disincentive. The Bill will worsen this situation. • The Bill will take the compliance responsibilities of honorary Committee of Management members way beyond those of company directors under the Corporations Law. • The Union faces a huge compliance obligation that is constantly changing and very technical in nature. It is therefore very easy for the Union to miss a reporting deadline or to make some other minor technical breach that have the potential to breach a civil penalty provision.

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		Corporate comparison • An honorary official of a Union Committee of Management is not comparable with the role of a Company Director. Company directors are usually paid sitting fees to compensate for their responsibilities.
6	**Human Rights Law Centre, The Australian Conservation Foundation, The Public Interest Advocacy Centre and Community Legal Centres NSW**	Does not support International obligations/freedom of association • The proposed law will weaken and undermine the democratic operation of the trade union movement internally and drastically limit its ability to perform its function in a democratic society. • None of the industrialised democracies surveyed in the ICTUR/ACTU submission have laws that resemble the punitive regime for deregistration of trade unions set out in the proposed laws. Nor do any of the other countries surveyed have an obvious comparator when it comes to the broad powers to place unions into administration. • Justifying the merger rules on the grounds they will enhance relations in the workplace and reduce the adverse effects of industrial action is incorrect. It cannot be assumed that industrial disputes necessarily have adverse effects given that the right to take industrial action is protected as a matter of international law. Designated findings/proportionality • The provisions are also disproportionate because the types of conduct that could result in a trade union official being disqualified could include taking unprotected strike action or the mere late lodgement of financial report. A designated finding may be a very minor or technical breach. • Union members may have democratically decided to take unprotected industrial action. Under the proposed law, if multiple "designated findings" are made against the union or members, an application could be made to cancel the registration of the union. The current law already regulates that activity. • Many of the grounds for cancellation could relate to less serious contraventions of industrial law or to taking unprotected industrial action. This leaves the provisions susceptible to abuse. • A short delay in filing a financial report can be used by Registered Organisations Commissioner or the Minister as evidence of "dysfunction" and grounds to impose an unelected administrator on a union. These matters are clearly not necessarily indicative of a union ceasing to exist or function effectively. Standing • The provisions go too far in granting the Minister and employers standing to bring disqualification proceedings. There is broad scope for a "person with sufficient interest" to be interpreted to include an employer, lobby group, a rival in a leadership ballot, or any person who can claim they have a "sufficient interest". This could allow organisations with an anti-union agenda to initiate either of these processes at any time and to massively disrupt unions.

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		• The proposed law has the potential to impair the right to freedom of association by providing employer organisations or lobby groups with an avenue to interfere in this process. • In relation to amalgamations, the Fair Work Commission may consider any objections from employer organisations and anyone with a "sufficient interest in the amalgamation". This leaves broad scope for abuse and could allow for matters of questionable relevance to be raised in order to prevent or delay amalgamations. <u>Fit and proper person test</u> • The fit and proper person test can see a person disqualified for technical breaches such as not giving the correct period of notice when entering a workplace. Largely the fit and proper person test does not relate to the person's role working as a union official (findings and criminal offences such as driving offences). <u>Overly broad laws</u> • The law establishes an overly adversarial and litigious framework for interactions between the Government and employers on the one hand and the union movement on the other. Overly broad laws cannot be justified by an expectation that the courts will enforce them appropriately, particularly when laws like these restrict the ambit of the court's consideration. <u>Criminal law</u> • If serious crime exists in the trade union movement, the appropriate response is for those people to be dealt with through the existing criminal and industrial laws which already provide adequate protection. <u>Corporate comparison</u> • There are no equivalent provisions or requirements for corporations seeking to merge. Corporate mergers are merely subject to voluntary notification under the ACC Act and their authorisation is based on detailed guidelines concerning competition. None of these considerations concern the record of compliance with the law of either the merging corporations or their management. • There is a lack of corporate equivalency. The proposed law expands the grounds for disqualification of people working as officials in trade unions to be much broader than for company directors. As well as conduct pertaining to their duties as a union officer, a court can disqualify a union officer for conduct entirely unrelated to their union role. A union officer could twice be caught driving while their licence is disqualified and be exposed to disqualification, while this would not have the same consequences for a company director. <u>Schedule 1 - Disqualification</u> • There is a threshold question whether the provisions are necessary, given that the current legislative regime is more than sufficient and provides for disqualification for receipt of a range of criminal and civil penalties.

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		• The current provisions are adequate. • The disqualification provisions will impede the right to strike. The right to strike is a fundamental right and this should be respected whether the strike is protected or not. International bodies have already commented on how Australia's laws already go beyond permissible restrictions on industrial action. Where a union has engaged in two or more such contraventions, the entire elected union leadership could be subject to disqualification. • The ability for the Court to supervise the disqualification process is not a sufficient safeguard. "Unjust" is not adequately defined in the legislation. <u>Schedule 2 – Cancellation of registration</u> • The provisions make the most punitive outcome – deregistration of the union – the default response, rather than a last resort following the exhaustion of alternative options. • They allow for applications to be made to cancel the registration of a union in overly-broad circumstances - by a Minister or an employer. • The loss of status as an organisation and a body corporate means that the union is relegated to the status of an association. The practical implications of this are that neither it nor its members are entitled to the benefits of any modern award, order of the Fair Work Commission or enterprise agreement that bound the organisation or its members. <u>Schedule 3 - Administration</u> • Administration allows unelected administrators to gain control of a union, overriding the union's own democratic processes and denying the members their right to elect their own representatives. • The scheme may also require that an election be organised, making this process attractive to anyone who – for whatever motive – might like to overturn the elected leadership of a union. <u>Schedule 4 – Amalgamation</u> • The public interest test allows the Fair Work Commission to block the democratic mandate of union members on potentially quite minor or technical grounds. • The provisions will significantly increase the burden on union branches seeking to merge, will mean that union members have less input into the decision-making process and allow third parties (who are not members) an opportunity to intervene in the process. • If the test had been applied to the MUA-TCFUA-CFMEU merger then the amalgamation may not have been successful given business groups and the government would have been given standing to interfere in the process.
7	**National Tertiary Education Union,**	<u>Does not support</u> <u>General concerns</u>

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	James Cook University Branch	• It is rank and file union members, who are also officials of the union branch who could be affected by this Bill. Workplace delegates in other Unions who can come under the definition of 'officers' in their rules would be in the same position. • 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. • The Government inconsistently punishes unions while businesses who break the law are not punished in the same targeted way. • 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. <u>International obligations/freedom of association</u> • There is no comparable legislation internationally, this behaviour is more similar to countries which abuse human rights such as Kazakhstan. <u>Designated findings/proportionality</u> • The grounds for officer disqualification are broad and sometimes minor, but the consequences are severe. <u>Standing</u> • The provisions 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, or employer groups. <u>Regulatory and legal burden</u> • 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). Employers and government have more money to use to tie up unions in legal proceedings. <u>Corporate comparison</u> • There is no ability for a union to apply to have a company director disqualified, have businesses wound up, or legal recognition withdrawn. • There is no legislation which stops businesses from amalgamating.
8	**Australian Institute of Employment Rights**	Do not support <u>General concerns</u>

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		• The provisions of the EI Bill fail to protect or benefit members and instead propose a regime of targeted sanctions, in addition to existing criminal and civil regimes, that will ultimately disadvantage and harm the membership of registered organisations. <u>International obligations/freedom of association</u> • The amendments proposed by the EI Bill are in direct violation of Australia's labour and human rights obligations under international law. The right to freedom of association is essential to any democratic society; enabling a working population to build power and voice to promote and protect their economic and social interests. <u>Designated findings/proportionality</u> • The grounds proposed for disqualification of union officials and deregistration of unions are broad and include minor or technical breaches of industrial legislation. • Under the current RO Act, persons convicted of a prescribed offence are automatically disqualified from holding elected office in a registered organisation. This definition is expanded under the EI Bill. • The EI Bill expands the grounds for disqualification of registered organisation officials to include 'designated findings' under proposed new s 9C of the RO Act. • This proposed definition of 'designated findings' conflates criminal and civil violations, potentially roping in a range of minor or technical contraventions, such as right of entry breaches in response to serious safety concerns or the late lodgement of a union's financial records which do not justify disqualification from office. • The provisions of Schedule 2 are so broad as to constitute a 'scatter-gun' approach. Deregistration may be also be sought in response to acts undertaken by an individual official of a registered organisation, in direct violation of freedom of association principles. • The measures proposed in the new s323 (administration) go far beyond protecting members from maladministration and represent an unjustifiable interference with trade union democracy. The conflation of available grounds in this provision, as seen elsewhere in the EI Bill, and the variety of actors with standing to apply to the Federal Court invite potential for misuse of a mechanism designed to address the dysfunctional operation of an organisation. The provision offers yet another avenue for interference with the internal functioning of unions on the ground of non-compliance with other applicable laws. <u>Standing</u> • Sanctions under the EI Bill may be sought by persons of 'sufficient interest' — an invitation to employers, employer associations and industry lobby groups to hinder and attack trade unions. • The substantive unfairness of the proposed disqualification order provisions, they are procedurally unfair in that they give standing to a wide range of parties to apply to the Federal Court for an order. The scope of relevant actors here goes well beyond Recommendation 38 of the Heydon Royal Commission, which proposed that only 'the registered organisations regulator' could apply to the Federal Court for a disqualification order.

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		• The proposed new public interest test would enable a wide range of persons and organisations to intervene in matters in which they may have only a remote — or no — real interest. <u>Fit and proper person test</u> • The fit and proper provisions constitute a sweeping new regime for the disqualification of union office-holders, which imposes unwarranted forms of double punishment in certain circumstances. <u>Corporate comparison</u> • Corporate mergers under Australian law are subject to voluntary notification, and do not require consideration of the compliance records of either merging firms or their managers. <u>Schedule 1 - Disqualification</u> • These provisions unjustifiably interfere with freedom of association and the right of workers and employers to elect their membership in full freedom. • The disqualification of union officials may be ordered on grounds not directly related to the conduct of the individual but rather that of the organisation. • Where a union has engaged in multiple contraventions, the effect of the proposed legislation 'could be that the entire elected union leadership could be subject to disqualification' regardless of whether members agreed to participate in such action or believed it to be in their best interests. • The Bill proposes a new Division 4 in Part 4 of Chapter 7, RO Act, establishing several offences for disqualified persons including to stand as a candidate, hold office or act to influence a registered organisation reflecting Recommendation 37 of the Heydon Royal Commission. This recommendation was made to bolster the existing RO Act provisions for disqualification of union officials as a result of serious criminal offences. The proposed expansion of the grounds on which disqualification from office may be ordered (see above) renders the addition of the offences proposed in Recommendation 37 unnecessary and inappropriate. <u>Schedule 2 – Cancellation of registration</u> • The existing s 28 of the RO Act providing for deregistration applications to be made to the Federal Court has been described as allowing the 'excessive … punitive deregistration of trade unions' unparalleled in comparable industrialised democracies. The current laws are already in direct contravention of the internationally recognised principles of freedom of association. • There is no support for this significant change to existing law in the recommendations of the Heydon Royal Commission. Commissioner Heydon recommended against deregistration of the union, either under special legislation or under the process available under s 28 of the RO Act.

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		• The Government's major target for the proposed new deregistration provisions is the CFMMEU. There is absolutely no legitimate basis for adding multiple new grounds of deregistration that could apply not only to the CFMMEU, but to *all* registered employee organisations. • Deregistration of a union is a very serious step with drastic consequences for the members of the deregistered organisation. There is the prospect of deregistration being ordered following a minor or one-off breach of a relevant law by one part of the organisation. • The current deregistration provisions in the RO Act form part of a compact — established at the commencement of the conciliation and arbitration system in 1904 — under which trade unions accepted the advantages of registration under federal law in exchange for a high level of external regulation of their internal affairs and activities. The proposed deregistration provisions in the EI Bill further erode that balance and may lead some unions to question the value of continuing to remain federally registered organisations. <u>Schedule 3 - Administration</u> • Given the expanded grounds under proposed s323 the potential arises for a union to be placed into administration or subject to court-ordered elections in a manner that breaches accepted principles of freedom of association. <u>Schedule 4 – Amalgamation</u> • The provisions proposed in Schedule 4 of the EI Bill are a clear violation of the right of workers to determine their constitutions and rules in full freedom.
9	**Queensland Law Society**	Does not support <u>Designated findings/proportionality</u> • Concerned about the proposed grounds for disqualification, which are extremely broad. That is, the scope of grounds seems to include seemingly minor infractions with more serious criminal conduct. <u>Standing</u> • Concerned that the extension of the class of persons who can make an application to the Federal Court to cancel the registration of an organisation to the Commissioner; and in this regard, the proposed change from a 'person interested' (Section 28(1) of the Act) to 'a person with a sufficient interest'. <u>Schedule 1 - Disqualification</u> • There should be a conviction before the disqualification provisions can be invoked.

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		• The scope of behaviour captured by the proposed grounds for disqualification under the bill are wider than that recommended by the Royal Commission report. They may also overlap with existing disqualification provisions under the Fair Work Act and create uncertainty about the interaction between the relevant laws. <u>Schedule 2 – Cancellation of registration</u> • Proposed section 28J of the bill shifts the onus of proof to the organisation • There are significant implications for an organisation in cancelling registration. Standing to make such applications should not be changed and that the court's discretion in these matters should remain as provided for in the Act.
10	**Australian Nursing and Midwifery Federation (Tasmanian Branch)**	Does not support <u>General concerns</u> • The current regulatory scheme establishes high levels of reporting accountability, processes for conducting various activities and sanctions for contraventions. These provisions do not need to be expanded upon in order to meet those expectations. • Passing this legislation without amendment will mean very limited (if any) industrial action can be taken by nurses and midwives across the country even if they have concerns about inadequate patient care, their professional obligations or own health and safety. This could lead to greater instances of clients receiving inadequate care due to business decisions made by employers. • Members instituting safety bans on certain aspects of their work (refusing to perform high risk actions for example) can be seen as disrupting the provision of a service being provided by the state and therefore provides grounds under the bill. <u>International obligations/freedom of association</u> • The legislation will potentially violate the long-held principles of freedom of association and result in disproportionately punitive outcomes that would be damaging to the Australian industrial relations system. • The Bill would alter the fundamental nature of a union, in that members (a collective coming together for the purposes of bettering their working conditions) are rightly the people who should make decisions about who will, and will not, represent them. • Places at risk the ability of Tasmanian ANMF's members to attempt to sway an employer in their quest for better and fair working conditions. In addition, members who are seeking better patient outcomes (which might result in costs for the employer) may be caught by the proposed legislation. <u>Standing</u> • Members can seek to remove individuals from office if they believe their interests are not being protected. This Bill proposed to give the power to other parties outside the union.

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		• Division 2 (28) in its current form opens the door to any number of parties, i.e. employers, who have had minor disruptions to their services, due to employees' actions, to apply to have a union deregistered under Division 3 28 (g). • Concerned about the broad nature of the powers allocated to a person with a sufficient interest under this Bill. We anticipate that essentially anyone could put claim to having a sufficient interest. This would potentially include a government who would have the ability to make vexatious complaints to disable unions; including the ANMF. The bill has the potential to be used for political and industrial purposes and could also be used by an employer to terminate Enterprise Agreement discussions. • It is concerning that a party with a sufficient interest in [avoiding industrial action] could be one of a number of parties including, the health service as our members' employer, the government as the funder of the system, any members of staff who does not agree with the action being undertaken. <u>Corporate comparison</u> • The Bill is compared to provisions applying to companies and company directors. The role of a union is very different to that of a company. Applying principles such as fiduciary and other duties to elected office holders is problematic. <u>Schedule 2 – Cancellation of registration</u> • Small scale industrial action such as wearing t-shirts or handing out flyers at Launceston Hospital could have been seen to be an unprotected action. If this Bill is passed it will limit the ability of the ANMF to support its members in campaigns such as these. Any one of the above actions could potentially be seen as being obstructive to the operations of the business. • Where nurses and midwives use their connection to ANMF to speak out in regard to issues that affect their clients, it is concerning that if a group of members disagreed with the advocates choice to speak publicly and felt that it was not in their best interests to do so. It could be found that the organisation was not been acting in the best interests of a group of members.
11	**Unions WA**	Does not support <u>International obligations/freedom of association</u> • The Bill is inconsistent with international human rights law. <u>Regulatory and legal burden</u> • The Bill is inconsistent with Parliament's stated intention in enacting the Registered Organisations Act, especially in respect of organisational autonomy. <u>Corporate comparison</u> • Registered Organisations are already highly regulated in ways that surpass the regulatory burden of existing corporation law in many instances. • Registered Organisations under industrial legislation, are fundamentally different from trading or financial organisations.

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		• 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 liable to hinder their broader role within society. <u>Schedule 1 - Disqualification</u> • No compelling evidence has been provided by the government for the expanded definition of 'prescribed offence'. There is no track record in Western Australia of problems with the existing laws regarding conduct of elected union officials. • The inclusion of offences under 'a law … of another country' is particularly problematic as it 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. <u>General</u> • The Bill is politically motivated, bad for workers and is antidemocratic.
12	**National Tertiary Education Union (NTEU)**	Does not support <u>General concerns</u> • The government claims the changes have the sole objective of protecting the interests of members and guaranteeing the democratic functioning of organisations, they in effect do the opposite by allowing external parties to directly interfere in the operation of democratically elected unions. <u>International obligations/freedom of association</u> • The amalgamation provisions highlight the extent to which the government is prepared to allow itself and employers to directly interfere in the right of freedom of association and the democratic wishes of union members. <u>Designated findings/proportionality</u> • Expanding the grounds on which a union official can be disqualified, is likely to make it more difficult for a small highly democratic union like the NTEU to fill all of its elected positions. • The bulk of their members are employees of Australian universities who have a right to make controversial public. NTEU are concerned the expansion of grounds on which an individual might be disqualified as a union official might affect their exercise of free intellectual inquiry. • The Bill allows a court to disqualify a union officer for conduct unrelated to their union role, such as being caught twice driving while their licence is disqualified.

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		Standing • Raises whether the Bill could unintentionally provide employers with an incentive to formally prosecute technical breaches of the Fair Work Act as a pathway to disqualification of union officials that they consider difficult to deal with. Corporate comparison • The provisions are harsher on unions and union officials than they are on corporations or their director. • The Bill allows the Minister or others with a 'sufficient interest', which could include business lobby groups or employers, to seek a disqualification order against a union official. No such equivalent provisions exist for corporations. • The Bill significantly expands the grounds for cancellation. Most of the grounds in the Bill have no ready equivalent to the grounds for winding up a company in the Corporations Act. • There is no equivalent means by which the conduct of a company director can lead to the company being placed under administration. • The anti-competitive provisions that apply to company mergers or take-overs are far narrower and concentrate solely on market impacts. They do consider a company or its director's legal compliance. Schedule 1 – Disqualification • The narrative of the Government gives the impression there is currently no or little regulation of trade unions and other registered organisations. The Registered Organisations Act already contains extensive provisions dealing with the disqualification of officials and registration of unions. The current Bill simply seeks to expand these provisions including allowing the Minister or person with sufficient interest to interfere with the internal working of unions. Schedule 2 – Cancellation of registration • The threat of deregistration for non-compliance with reporting rules also presents as an important issue for a small highly democratic union with a large number of elected positions and frequent movement of people in and out of elected positions. Schedule 3 – Administration • The Registered Organisations Act already provides for the Court to make remedial orders to reconstitute a union or branch that has ceased to exist or to function effectively. Schedule 4 – Amalgamation • The new provisions remove the right of the members of existing

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		organisations to determine whether an amalgamation or merger is in their best interests and allows a broad list of persons including governments, lobby groups and businesses to argue against such a merger.
13	**Unions NSW**	Does not support General concerns • The legislation is unnecessary; the Government has not justified the wide sweeping changes. • The Government has made cosmetic and minor changes to the 2017 bill and has presented it to the Parliament. The 2019 Bill remains a significant threat to the operation of trade unions and hampers their ability to effectively represent their members. International obligations/freedom of association • The ability for the court to appoint administrators to a union and set elections undermines the ability for unions to run as democratic and independent organisations. The threshold for allowing administrators to take over the running of the union is far too low. Designated findings/proportionality • The threshold for an individual to have a designated finding made against them is low and does not accurately reflect the severity in which it can be applied in the Bill. Provides examples of not returning a right of entry permit or an administrative oversight at grounds. • If a substantial number of officials who are also members (the exact number required is not defined in the Bill) have a finding made against them in relation to the late return of an expired permit, this could be considered grounds for the deregistration of the union. • A finding against the organisation would also be considered a designated finding under the proposed Bill and could be used as a ground to prevent an amalgamation from occurring. • Often in unions officer positions are filled by active and long-term members of the union who hold positions as part of the democratic and representative nature of their union. These members may now be exposed to prison sentences for up to 2 years if they hold an honorary position after being disqualified. • The Bill proposes an expansion to also include minor administrative offences contained within the Fair Work Act and Registered Organisations Act as grounds for deregistration. • A union may be de-registered as a result of the actions of a group of members, even if the union and its officials had made attempts to stop members from committing a designated offence. • The Bill includes the 'organising' of industrial action as a ground for de-registration, even if the action is not carried out. All the planning and organising for industrial action takes place before the action is considered 'protected' under the law. As such, almost all industrial action could at some point be considered a ground for deregistration as a result of this Bill's expanded definition of 'obstructive' industrial action to include the organising of action.

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		• Only a class of members or group in the organisation need to have taken part in the organising or taking of the industrial action for there to be grounds, which then has consequences for the entire organisation and membership. <u>Standing</u> • A person of 'significant interest' is not defined by the legislation and could include an employer, employer representative, corporate players in the broader industry or supply chain, political opponents and/or opposing candidates in a union election. The Bill provides no safeguards against frivolous and/or vexatious applications. • Unions and union officials could find themselves tied up in expensive, time consuming litigation, used as a tool by opponents to undermine union work. • The Bill does not provide limits on who an application can be made against. While the Court is able to consider whether an individual should be disqualified from holding or standing for office, there is no requirement for that individual to currently hold or even be intending to hold office. • Restricting the ability of union members to take protected industrial action will have a significant impact on the bargaining power of the affected workers. An application for alternate orders can be made by any person with significant interest, including employers. There are no safeguards within the Bill to prevent employers from using this legislation as another means to undermine union collective action and power in negotiations around pay and conditions. <u>Fit and proper person test</u> • A right of entry decision could be used maliciously as a tool to disqualify a union official from holding office. This may have the unintended consequence of deterring union officials from applying for or renewing their right of entry, out of fear of the broader ramifications of a negative decision. <u>Overly broad laws</u> • The automatic disqualification grounds are too broad and are not adequately related to the operation of the union. • The Bill specifically defines part of an organisation to include branches of the organisation. Grounds for the disqualification of officers, cancellation of registration and the placing of the organisation into administration, can all be based on the actions of a part of the union. If a ground is established the Court can apply orders across the entire union, including separate branches. State branches operate autonomously from each other and from the federal union, with separate elected leadership and committees of management. For example, if a designated finding were to be made against a union or official from a branch in NSW, this could provide an employer with the grounds to successfully make an application to intervene in the union affairs of all state branches. <u>Legal concerns</u>

#	SUBMISSION	KEY ISSUES RAISED
		• The protection against retrospectivity is undermined by the reference to right of entry as a ground for disqualification. The Bill stipulates an officer having a right of entry refused, revoked or suspended is a ground for disqualification. Under these amendments a refused, revoked or suspended right of entry could be used against an individual or union to trigger a disqualification application. • When considering if a disqualification would be unjust the Court may consider 'any other matters the Court considers relevant'. A union official's actions prior to the commencement of the Bill could be taken into account. This undermines the Bill as it allows unions and union officials to be punished for actions they did not know the consequences of at the time they were committed. • The Bill reverses the onus of proof. It requires a union official to stand before a court and justify their role within their union. This is despite the fact they have been elected into the position by the union members they represent. • There is no restriction placed on the timing of other 'relevant' matters in relation to deregistration, meaning actions and the Court can consider events prior to the commencement, effectively making the legislation retrospective • For deregistration, if grounds have been established against a union, it must stand before the Court and justify its very existence. This shifts the burden of proof onto the organisation. <u>Schedule 1 – Disqualification</u> • The Bill's proposal for disqualification from holding office is already dealt with in Union Rules governed by the Fair Work Commission and or the NSW Industrial Relations Commission. Union Rules ensure integrity and transparency by regulating the behaviours of union officials, including the removal from office of officials in circumstances such as gross neglect of duty in the conduct of office. • It is unclear how these new offences (holding office while disqualified) will interact with union structures that have dual registration at the Federal and State level. If a union official is disqualified from holding office under this Bill, they may step down from their position in the federal branch yet continue to be an official in the state registered union. <u>Schedule 2 – Cancellation of registration</u> • Of particular concern is the proposed s 28C(1) which establishes a grounds for deregistration. It is impossible to simultaneously meet the interests of members collectively and individually. The nature of unions requires them to balance the needs and interests of individuals against those of the broader collective. As an example of how the amendment could be inappropriately applied; a union member who joined the union a month ago may call the union requesting assistance with a workplace injury claim which happened six months ago. The issue is highly technical and will require legal representation. The member wants the union to assist. When considering what action the union takes it must make a decision based on what is the fairest use of collective resources. • Restricting the rights of union members to take protected industrial action or the rights of unions officials to access union members on site by exercising their right of entry is an excessive measure, particularly considering an order can be made

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		against the entire union, including all its branches, even if the grounds have only been met because of the actions of one group or class of members. <u>Schedule 3 – Administration</u> • The grounds for dysfunction are highly dependent on the actions of individuals within unions. The ability to place a union into administration because of the actions of an individual officer is extreme and unnecessary. • The grounds also capture minor administrative errors concerning the financial operation of the union. For example, if a union was late in filing their financial reports to the ROC, this could be used as a ground to claim the union is dysfunctional. Human error does not equate to dysfunction. • A ground for dysfunction that requires a union to dually operate in the interests of the collective and individual members runs contrary to the nature of diverse, democratically run organisations like unions. The nature of unions requires them to balance the needs and interests of individuals against those of the broader collective. • It is not clear what the legislation is trying to capture when it refers to officers who have 'repeatedly failed to fulfil duties'. The duties of a union officer are broad and open to interpretation. This ground could be open to abuse by disgruntled former members and employers to make applications against unions and disrupt their work. • Failure to comply with this section of the Bill is a strict liability offence of 120 penalty units. The penalty for this offence has more than doubled since the 2017 drafting of the Bill where the penalty was 50 penalty units. No explanation has been provided for the significant increase in the penalty. <u>Schedule 4 – Amalgamation</u> • The Bill's amendments to the approval process of amalgamations are politically motivated. There is no similar requirement for corporations to meet such a broadly interpreted 'public interest test', which extends to a record of legal compliance. • The events considered in a compliance record are incredibly broad and cover relatively minor administrative offences. Further, the compliance record considers events which occurred before the commencement of the Act. The retrospective nature of the Bill places an unfair burden on unions seeking to amalgamate. These unions are being punished for actions and events, they were not aware of the consequences of at the time they were committed. • An amalgamation of a union or its internal structures should not be based on how whether it is in the interests of employers. Considering the interests of employers when deliberating if a union can amalgamate restricts the free and democratic operation of unions.
14	**Business Council of Australia**	Supports <u>General concerns</u> • The Bills reflect unfinished business arising from recommendations of the Heydon Royal Commission as well as other amendments necessary to strengthen the integrity of Australia's workplace relations system.

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		• The integrity of the workplace relations system is integral to its ability to deliver shared benefits for employers and employees. The Business Council supports the Bill as it will raise standards of conduct in the system. <u>International obligations/freedom of association</u> • The Bill contains no restrictions on the ability of an organisation to conduct its own elections and act in accordance with its own rules. • For over a century, registered organisations have been regulated by Commonwealth laws that have placed limits on their operations. The registration of these organisations, their own internal rules and their continued existence are all already subject to the oversight of the Fair Work Commission and Federal Court under the RO Act. The rules of registered organisations must be approved by the Fair Work Commission. Organisations are not free to set their own rules as they please. <u>Standing</u> • The Federal Court already has the power under the RO Act to de-register registered organisations for certain breaches of workplace laws, and can do so on the application of any 'interested person'. The Bill does nothing more than codify the existing 'interested person' test. • The Minister already has standing under the RO Act in relation to a range of matters dealing with registered organisations. The most recent exercise of this power was in 2012 when the Federal Court appointed an administrator to the Health Services Union on the grounds of its ongoing dysfunction. • The Bill does not hand power to any business or Minister to interfere in registered organisations. Only the Court has the power to impose the various remedies, and only when very clear criteria have been met. <u>Corporate comparison</u> • If company directors deliberately and repeatedly breach Corporations Law they can be banned by a court from being company directors. If other professionals, such as doctors, nurses, psychologists, or lawyers, breach the laws that apply to them they can be stripped of their right to practice their profession. • The Bill goes no further than aligning the rules governing registered organisations and their officials more closely with those governing corporations and their directors. As such, it is a measured and incremental reform.
15	**Registered Organisations Commission**	Supports <u>General concerns</u> • The ROC does not envisage its role as formulating a view as to what is necessary or conducive to promoting the objects and purposes of the ROC. The main focus of the submission is to identify the duties conferred on it by Parliament and indicate how the ROC might perform them if the Parliament was minded to confer additional functions on the ROC by enacting this Bill.

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		Schedule 1 – Disqualification • The Commissioner takes and would continue to take a forensic, evidence-based approach to determining whether one or more of the disqualification grounds existed. • The ROC is aware of an example of which the regulator became aware that a person who appeared to be disqualified from holding office under section 215 of the RO Act had been nominated as a candidate for an upcoming election in a registered organisation. The candidate withdrew their candidacy after the regulator warned them this would be unlawful under the current RO act and threatened to take action. • An organisation or branch of an organisation may apply to the Commissioner under section 183 for an exemption to enable the organisation or branch to conduct its own elections without the involvement of the Commissioner or the AEC. 23 organisations currently do this. ROC says this makes it hard to monitor if disqualified persons are running for office. ROC is aware of one example where the ROC revoked an exemption due to allegations of misconduct. The revocation was upheld on appeal. Schedule 2 – Cancellation of registration • The Commissioner would, consistent with his approach elsewhere, take a forensic, evidence-based approach to determining whether one or more of the cancellation grounds exist and have regard to matters in the ROC's compliance policy. Schedule 3 – Administration • As with schedules 1 and 2, the ROC would take a forensic, evidence-based approach to determining if circumstances existed for making a declaration under s 323(3), and would have regard to the ROC's compliance policy. • The ROC is aware of a range of examples in which the regulator has become aware of an organisation that was dysfunctional, in circumstances where the regulator has had limited options available to seek to remedy the dysfunction. In one case, an organisation was unable to conduct elections to fill offices for an extended period, which prevented it from resolving to pass necessary rule changes to simplify future election processes. In another, an organisation wishing voluntarily to deregister was unable to hold a special general meeting of members in order to resolve to apply for deregistration. In another, the rules of the organisation provided for the existence of branches which had ceased to exist. Schedule 4 – Amalgamation • While the term "public interest" has not been defined in the Bill, it is generally understood to refer to considerations which affect the interests and wellbeing of the community and its citizens. It is a concept of broad meaning and is not limited by precise boundaries. • The ROC recently provided advice and assistance to two organisations regarding one completed amalgamation and one proposed amalgamation. The advice and assistance concerned whether the post-amalgamation rules and financial reporting structures of the amalgamated organisations were consistent with the requirements of the RO Act.

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#	SUBMISSION	KEY ISSUES RAISED
16	**Australian Council of Social Service**	Does not support <u>General concerns</u> • Concern is stagnating wage growth, underpayment and exploitation of employees in entry level jobs in sectors such as hospitality, agriculture and retail where unionisation is low, and the increasing insecurity of employment in these sectors. • Over the past century, unions have played the key role in winning decent rates of pay, limitations on working hours, job security, annual, sick and parenting leave, and other rights in the workplace. • Over the last two decades, a power imbalance has grown between employers and unions. This power imbalance has undermined basic workplace entitlements, including the widespread underpayment of workers in hospitality, agriculture and retail jobs. These problems cannot be resolved by legislation, or by regulators like the Fair Work Ombudsman, in the absence of unions that can effectively represent those affected. • Affects the ability of unions to operate democratically - indeed, to operate at all. • They note the HLRC's conclusion that: ''The explanatory materials accompanying the proposed law do not articulate compelling reasons why the existing laws are inadequate and why new, broad provisions are necessary and proportionate. If serious crime exists in the trade union movement, the appropriate response is for those people to be dealt with through the existing criminal and industrial laws which already provide adequate protection.'' <u>International obligations/freedom of association</u> • The proposed changes strike at the right to freedom of association <u>Standing</u> • Cites the Human Rights Law Centre (HLRC) submission. "If the Bill is passed, it gives more people broader powers to interfere in union leadership and remove officials from their position in a union in an extraordinarily wide range of circumstances and to interfere in the functioning - and existence - of unions, by giving them a greater say in the decision to cancel a union's registration, place a union into administration and for unions to amalgamate with one another."
17	**Australian Industry Group**	Supports <u>General concerns</u> • Ai Group supports the Bill and urges the Committee to recommend that the Bill be passed without delay. • The Final Report of the Royal Commission set out very persuasively why the provisions in the Bill have merit. • Ai Group is of the view that the amendments made to Schedule 2 in the 2017 Bill would not significantly detract from the effectiveness of the Bill in achieving its purpose.

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		• Ai Group says organisations that do the right thing have nothing to fear. It then uses the CFMMEU as an example. The CFMMEU's repeated law breaking is 'unacceptable', and notes some examples of CFMMEU misconduct. Ai Group submits that In a civilised society, no-one and no organisation can be allowed to act as though they are above the law. To allow the CFMMEU to continue its law-breaking would seriously undermine the critical role of the Commonwealth Parliament. important that Parliament acts to protect the integrity of Parliament and the Courts by passing the Bill. <u>Schedule 1 – Disqualification</u> • These days many registered organisations have large financial and other resources, and it is essential that the officers are fit and proper persons to hold office. • Persons who are convicted of serious criminal offences are not fit and proper persons to be officers of registered organisations, and should be automatically disqualified. People who repeatedly break industrial laws are also not fit and proper. • Despite amendments that have removed provisions of the 2017 Bill from the 2019 Bill, Ai Group is of the view that Bill will still be effective in achieve its purpose. <u>Schedule 2 – Cancellation of registration</u> • Along with rights and privileges that they enjoy under industrial laws, comes the responsibility for registered organisations to comply with the law. Where a registered organisation repeatedly breaches industrial laws, it is appropriate that the organisation is exposed to the potential loss of the rights and privileges that it enjoys under the industrial laws. Otherwise there is little incentive to comply with the laws, particularly if the registered organisation has sufficient revenue to readily pay fines that are imposed by Courts for unlawful conduct • Giving the Federal Court the powers contained within Schedule 2 of the Bill, would give those unions that are currently regularly breaking the law a strong incentive to stop their law-breaking • Each registered organisation is readily able to implement the necessary systems to ensure that the organisation, its officers and staff comply with the law. Therefore, each registered organisation is able to readily remove the risk of having its registration suspended or cancelled. All that is require is that the registered organisation comply with the law, as every Australian citizen and organisation is rightly expected to do. • The Federal Court has considerable flexibility in determining what orders are appropriate in any particular case. For example, the Court is able to make orders relating to particular divisions and branches of unions. <u>Schedule 3 – Administration</u> • The Ai group considers the provisions of Schedule 3 to be fair and reasonable. <u>Schedule 4 – Amalgamation</u>

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#	SUBMISSION	KEY ISSUES RAISED
		• A registered organisation's record of compliance with industrial laws, is a relevant factor that the FWC should be able to take into account in assessing whether or not it would be in the public interest for the organisation to amalgamate with another registered organisation. • The FWC and its predecessors have a great deal of experience in weighing up relevant considerations and determining where the public interest lies. The FWC must consider the public interest in several other areas (whether to grant to leave to appeal a decision by a member, deciding whether an agreement passes the BOOT, before approving a greenfields agreement ect.)
18	**Housing Industry Association**	Supports <u>Fit and proper person test</u> • There is a clear need for additional measures targeted at the actions of officers of registered organisation who continually engage in unsavoury behaviour. • Section 206E of the Corporations Act gives the Court the power to disqualify officers of companies where there have been repeated contraventions of that Act. • In light of the special privileges and position registered organisations hold, it is appropriate that such similar standards be applied to officers of registered organisations. <u>Schedule 2 – Cancellation of registration</u> • The Bill proposes to allow the Federal Court to cancel the registration of an organisation on a range of grounds including corrupt conduct by officials, repeated breaches of a range of industrial and other laws by the organisation or its members and the taking of obstructive unprotected industrial action by a substantial number of members. • HIA acknowledges that such measures should not be taken lightly, but the building and construction industry has a long history and culture of intimidation, and lawlessness. This has been well catalogued in the Cole Royal Commission (2003) and Heydon Royal Commission (2015). <u>Schedule 4 – Amalgamations</u> • HIA supports the Bill. The existing regulatory framework for union mergers is insufficient as it does not require considers of whether the merger or amalgamation is in the public interest. • The introduction of a public interest test, which will allow relevant matters to be taken into account, such as the organisation's history of compliance with workplace laws, is another key element in stopping the spread of a culture of lawlessness identified by the Heydon Royal Commission.
19	**Catholic Religious Australia**	Does not support <u>General concerns</u>

#	SUBMISSION	KEY ISSUES RAISED
		• The members of CRA are deeply concerned that the Ensuring Integrity Bill will have a most destructive impact on the working people of Australia. Unions provide one of the pillars of democracy. • From the perspective of social justice and the common good this Ensuring integrity Bill strikes at the very heart of the Union movement – namely the ability of the workers to organise and run their own unions determining who leads them. <u>Standing</u> • The Bill gives power to the Government, employers and other parties deemed to have 'self interest' to: apply to deregister a union, disqualify a person from office, exclude certain members, impose an administrative structure. <u>Schedule 4 – Amalgamation</u> • The 'public interest test' will be applied to mergers in a way no corporation would accept. This 'test' allows Government, lobby groups and large corporations to seek to block a union merger, even if members agree. It takes into account a much wider range of factors than the Corporations Act requires of businesses. This applies double standards to unions but not to corporations.
20	**The Civil Air Operations Officers' Association of Australia**	Does not support <u>General concerns</u> • Represents an unprecedented legislative encroachment upon the internal functioning of worker and employer organisations and tramples a foundational human right to freely associate and assemble. • References the Minster's second reading speech and raises that aligning all registered organisations with the CFMMEU is unfair and irrational and is not an appropriate or balanced response. Employee organisations represent a vast array of workers across Australia. • With the new regulations, the merits of remaining federally registered will be questioned by some registered organisations. <u>International obligations/freedom of association</u> • Agree with the submissions of the International Centre for Trade Union Rights and the Australian Council of Trade Unions that the Bill conflicts with international law and our nations commitments to uphold fundamental human rights, including the right to freely associate. • The proposed amendments are out of step with workplace legislation in other western democratic countries, and the potential damage to Australia's global reputation will be serious. <u>Regulatory and legal burden</u> • Concerned as a small union they are more at risk of being tripped up by the current rules and regulations as the regulatory burden is disproportionately greater on an organisation with fewer resources to manage these requirements.

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		Corporate comparison • The regulatory compliance and penalties already in the RO Act well exceeds what is applied to big businesses and seems inappropriate for the not-for-profit sector and even more inappropriate for small scale operations. Schedule 1 – Disqualification • The consequences of the EI Bill are also greater for a small union who rely heavily on volunteers operating in their own time being disqualified from office and having the union "short staffed", so to speak, on their Committee of Management. • The EI Bill expands the grounds for disqualification unnecessarily and well beyond the recommendations of the Heydon Royal Commission. • The Federal Court already struggles under its caseload and applicants frequently face delays. If this legislation is implemented, unions will face the prospect of defending claims regarding disqualification of officers in a jurisdiction that is already under strain and is an expensive realm to operate within. Schedule 4 – Amalgamation • Extends well beyond the recommendations of the Heydon Royal Commission and seeks to introduce a new 'public interest' test for union amalgamations. A democratic process for amalgamation is already prescribed and regulated in the RO Act. • This proposed provision may see a smaller union refused amalgamation with a bigger, better resourced union that the members have decided is in their best interests.
21	**Attorney-General's Department**	
22	**Finance Sector Union (FSU)**	Does not support General concerns • The Bill is a yet another politically motivated piece of legislation designed to silence unions and their members. • TURC failed to uncover widespread corruption and wrongdoing within the union movement. The Government's claim that the TURC 'uncovered numerous examples of some organisations and officials repeatedly flouting industrial and other laws', and that the amendments 'will combat the lawlessness of some organisations' is entirely misleading. Indeed, there were only a small number of convictions arising out of the TURC. • This Bill is bad for workers, particularly so when wages are stagnant whilst productivity and profits soar. Designated findings/proportionality • Concerned that official won't be able to conduct their affairs freely without fear of being held liable for the actions of others or interference in the running of the union.

#	SUBMISSION	KEY ISSUES RAISED
		• The Bill is unsound and highly punitive for conduct that may include less serious offences or technical breaches of industrial law. • Some grounds for disqualification have no relationship at all to the criminal law. For example, even minor technical breaches of industrial law such as failing to lodge records on time could lead to a finding being made against the person. • The Bill introduces grounds for disqualification in circumstances where a volunteer member may be disqualified from their position for conduct that they have had little to do with. Again, this could be for minor technical breaches made by the union, yet the member may be disqualified. <u>Standing</u> • The Bill would also allow a disgruntled member or employer to apply to the Court for a declaration that a union is not functioning effectively or officers of the union have acted in their own interests. If a declaration is made the Court could then appoint an external administrator to manage the union or a branch of the union. Unions, like other democratic organisations, have differing viewpoints about matters and it is not unusual for members to debate these issues, whilst still acting in the interests of its members. <u>Regulatory and legal burden</u> • This Bill seeks to impose even more stringent laws on unions that have no comparison in any other industrial relations system in the developed world. <u>Corporate comparison</u> • Under the Bill the Government or any person with 'a sufficient interest', which could be an employer, would be able to apply to the Court to disqualify a person from holding office, including a volunteer member or members. No such law applies to corporations under the *Corporations Act*. If it did a person with 'a sufficient interest', such as a union could apply to the Court for an order disqualifying the CEO of a corporation. • The proposed expansion of the grounds for disqualification of a union officer or volunteer member could be entirely unrelated to their union activities and duties. There are no equivalent provisions for corporations. Directors of companies that engage in wage theft or expose their workers to serious injury would not face an application for disqualification as a Director. • There are no equivalent provisions under the Corporations Act that allow a company to be wound up for conduct such as putting workers lives at risk or repeatedly engaging in wage theft. • There are no provisions under the Corporations Act that allow a Minister or person with 'a sufficient interest' to apply to the Court to have a company wound up. • The Bill introduces a 'public interest' test which considers the unions history of compliance and other matters said to be not in the public interest. No comparable provisions exist under the Corporations Act.

#	SUBMISSION	KEY ISSUES RAISED
		Schedule 1 – Disqualification • A person convicted of such a serious offence may not even be sentenced to any term of imprisonment, but they will still be disqualified. The offence may be totally unrelated to their duties and obligations. For example, an official or volunteer member may be convicted of a driving offence that carries a sentence of 5 years or more. That person would be automatically disqualified from holding office even though the conduct had nothing to do with their duties. Schedule 3 - Administration • The Court can make a decision about the 'affairs' of a union and can examine the internal management of the union, its governance or its business model and how it is structured. This includes the Court looking at the decisions made at all levels of decision making within a union, including in the case of the FSU's structure, Local Executive which is made up of volunteer members. The Court can examine all these things when considering whether to make an order.
23	**Professor David Peetz**	Does not support General concerns • The Bill runs counter to the direction of the national policy framework, which has shifted from unions being a compulsory institution integrated into state regulation of industrial relations, to one in which regulation is conducted independently of unions and the latter are a wholly voluntary organisation. International obligations/freedom of association • As the Bill imposes major restrictions on unions which appear to substantially undermine freedom of association, it can be validly said that it runs counter to the direction of international policy, as shown through international conventions. It also runs counter to the direction of policy in other countries, which has been towards greater freedom of association. • There do not appear to be any developed industrialised countries with the type of regulation of the internal affairs of unions envisaged in the Bill, and those countries that do impose substantial new restrictions on unions tend to mainly be countries which have experienced military coups, martial law or some other trauma to the democratic process.
24	**Uniting Church in Australia, Synod of Victoria and Tasmania**	Does not support International obligations/freedom of association • The provisions of the Bill are inconsistent with freedom of association. Standing

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		• While it is appropriate for laws to require unions to act ethically and with integrity, the broad standing provisions combined with the breadth of grounds in this Bill appears to create provisions where anti-union employers will be able to seek to harass unions with applications for disqualification and deregistration. • Standing will also be available to less ethical members of the union movement to harass their political or industrial opponents in the union movement. • Recommendation 38 recommended that the additional power to disqualify a person from holding any office in a registered organisation for a period of time the court considers appropriate should be only upon the application of the registered organisation regulator. There was no mention of extending the application to the Minister or "a person with sufficient interest". <u>Regulatory and legal burden</u> • Disqualification orders will create a regime of litigious harassment of union officials by those employers that hold anti-union views or those that wish to disrupt lawful union activities. Even where an application for disqualification is later dismissed as being without merit or substance, the official who is the target of the application will need to spend time and resources defending against the application. <u>Corporate comparison</u> • There is no proposal to allow unions to object to the merger of businesses on 'public interest' grounds, where such mergers may reduce the influence of unions in a sector. Other members of the public whose "rights, interests, or legitimate expectations would be effected" do not get to make submissions into business mergers. <u>Schedule 1 – Disqualification</u> • Disqualification itself should only apply to serious matters that are related and relevant to the person's suitability to hold office and not for other issues that are unrelated to their role as an official or as the result of minor infringements. <u>Schedule 2 – Cancellation of registration</u> • Where an organisation has had its registration cancelled by the Federal Court the cancellation should not be undermined by the re-registration of the organisation or the registration of an organisation that has the same, or substantially the same, officers as those in the organisation that had its registration cancelled. <u>Schedule 4 – Amalgamation</u> • The Synod believes it is highly inappropriate that a 'public interest' test be applied to the proposed merger of unions. Such a test is a curtailing of the freedom of employees to make decisions about their human right to form and join a union of their choice, as stated in Article 23(4) of the UN Universal Declaration of Human Rights of 1948.

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#	SUBMISSION	KEY ISSUES RAISED
		• Standing for the public interest test will allow employers the right to object to a merger between unions. We have worked for many years on the issue of systematic exploitation of employees on farms in the horticultural sector. Many employers and employer organisations in this industry have openly expressed hostility to trade unions in this sector. Employers are likely to make arguments opposing the merger that conceal their actual anti-union bias. • The Minister or a Minister who has responsibility for workplace relations in a referring state to be able to make a submission to an amalgamation, opening up the risk of politically motivated objections to a union merger. • The previous requirement of the Australian Industrial Relations Commission to take into account the 'public interest' under subsection 103(2) of the Workplace Relations Act 1996, mentioned in the Explanatory Memorandum (p. xiv), did not create the kind of process this Bill proposes.
25	**Maurice Blackburn Lawyers**	<u>Does not support</u> <u>General concerns</u> • It is obvious from these reports that wage stagnation and growing inequality impact those in precarious, low paying work more than others. Those in precarious, low paying work that most need the protection and support of unions. This Bill puts that at risk. <u>Designated findings/proportionality</u> • The introduction of grounds akin to breaches of directors' duties, are plainly unnecessary given the existing scheme of General Duties introduced by the 2016 amendments to the RO Act. The obligations in respect of misuse of position or information, extends beyond office holders and also covers employees of registered organisations. <u>Standing</u> • As discussed earlier, the Bill gives anyone with a 'sufficient interest' to take steps which may affect the leadership of a union. This might be an employer organisation, or an unhappy employer who may have not liked a union's involvement on an EBA negotiation, or even the Minister. This gives significant power to those who might seek to diminish the position of unions, in the context of bargaining dynamics. <u>Corporate comparison</u> • There is no equivalence between registered organisations and corporations. The main problem with the policy settings underpinning the Bill is a failure to acknowledge that there are profound differences between organisations and corporations in terms of their reason for organisational existence, decision-making processes and how they are resourced. Whereas corporations have the primary purpose of carrying out commercial activities and advancing profits, unions exist to improve the working conditions of their members.

#	SUBMISSION	KEY ISSUES RAISED
		• The Bill does not achieve equivalence in how unions and corporations are treated by law. It continues to impose more onerous standards and requirements on registered organisations than it does on companies. • The effect of the Bill in purporting to further subject registered organisations to corporate-style regulation neglects the purpose of corporate regulation which is to manage commercially driven entities on a scale that is unparalleled to those of registered organisations. • The most recent amendments to the RO Act have already introduced provisions modelled on the regulation of corporations and directors, and investigatory powers of ASIC under the Corporations Act. • If standing for disqualification orders were matched in the Corporations Act, they could potentially allow a union, or a union official, as a 'person with sufficient interest', to apply for the disqualification of company directors or the winding up of companies due to serious and systemic industrial wrongdoings such as breaches of workplace health and safety laws, liability in relation to workplace injuries and deaths, and wage theft. No such provision currently applies to company directors, unlike registered organisation office holders. • The Bill attempts to introduce a further prescribed offence, being an offence under a law of Australia or another country punishable by at least 5 years' imprisonment. Further, the Bill introduces grounds for disqualification including contempt in relation to laws beyond the RO Act, as well as the ground of failing to meet the standard of 'fit and proper' to hold office. There is no corporate equivalent for such grounds. <u>Schedule 1 – Disqualification</u> • Given that the existing Act already provides a regime for automatic disqualification of office holders that is broader than that of company directors under the Corporations Act, we consider that attempts by the Bill to further expand the regime of automatic disqualification are unnecessary. <u>Schedule 2 – Cancellation of registration</u> • It is unnecessary for additional grounds to be added that attempt to further regulate deregistration, such as industrial action and noncompliance with orders or injunctions.
26	**NSW Business Chamber (NSWBC) and the Australian Business Industrial (ABI)**	<u>General concerns</u> • It is imperative that, given the special standing, rights and privileges that registered organisations, and their officers, have in society that the people who are given the honour of holding such offices are people of good standing and record. <u>Criminal law</u> • The Bill blurs the lines between the criminal and industrial sphere without having the desired deterrent effect. The higher standard of proof of 'beyond a reasonable doubt' required to be met in a criminal case makes it harder to obtain a conviction and will tie up significant resources in order to obtain a conviction. The preferred approach of ABI and NSWBC is to significantly increase the fines and penalties that can be imposed against the individuals and the registered organisations themselves.

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#	SUBMISSION	KEY ISSUES RAISED
		• If an officer of a registered organisation has committed criminal conduct punishable by the existing relevant State or Federal criminal statute, then we support prosecution. However, we are of the view that a criminal penalty will have no additional deterrent value and caution should be exercised before criminalising activity in the industrial relations sphere.
27	**Chamber of Minerals & Energy of Western Australia (CME)**	Supports <u>General concerns</u> • Could go further to comprehensively address the ongoing potential for Registered Organisations to manipulate current workplace regulation to expand their representational reach. • Strategic union alliances, for example, have the potential to create greater disruption in WA's resource sector, including our nationally significant offshore oil and gas projects, and negatively impact competitiveness and investment attractiveness.
28	**Civil Contractors Federation (CCF)**	Supports
29	**Australian Chamber of Commerce and Industry (ACCI)**	Supports <u>General concerns</u> • Previous claims of any rush in these propositions, inadequate consultation or insufficient time for examination by this Committee, cannot be sustained given that the previous legislation and the most recent iteration have effectively been before the Senate for almost two years. The ACTU, Australian Chamber and others were given an opportunity to comment on the legislation prior to its introduction through the COIL / National Workplace Relations Consultative Council, and the Royal Commission recommendations the Bill seeks to implement have been publicly available for more than three and a half years. • The Bill will have no adverse effect on registered organisations which abide by the law • The submission has a strong emphasis on consistency with the Royal Commission recommendations. • The International Centre for Trade Union Rights (ICTUR) is not an independent international think tank, despite the ACTU attempting to portray it as such in the media. <u>International obligations/freedom of association</u> • The ILO's Convention No. 87 does not exempt unions from laws on governance and accountability, proper conduct or running capable organisations. • ILO's Committee on Freedom of Association accepts the capacity for countries to apply proper standards of legal governance and accountability to trade unions and employer bodies. • The ILO accepts the capacity for independent courts to be able to dissolve union or employer bodies in serious cases, subject to a right for unions to be heard in court. <u>Standing</u>

#	SUBMISSION	KEY ISSUES RAISED
		• Under the current Registered Organisations Act, the Registered Organisations Commissioner and the General Manager may apply for a Federal Court order disqualifying a person from holding office. The Minister already has the power to intervene in such proceedings. • A person with "sufficient interest" is a standard term used in legislation across the Commonwealth, including for example the Competition and Consumer Act 2010, Copyright Act 1968, Judiciary Act 1903, and the current Registered Organisations Act, which is the very legislation that would be amended by this item. • The case law in this area demonstrates the high bar and type of substantial interest that the court will consider to meet the test of 'sufficient interest'. • Ministerial standing is appropriate given that under the Registered Organisations Act the Minister has a role in protecting the public interest and in ensuring that the regulatory system achieves its statutory objectives. As a model litigant any matter which proceeds to litigation must be in the public interest to commence the proceedings and have reasonable prospects of success. • In the matter of Brown v HSU, Justice Flick said it was unclear if the Minister would constitute a 'person with sufficient interest' to have standing to place branches of the HSU into administration. <u>Corporate comparison</u> • The provisions in the Bill are adapted from existing workplace and corporate laws. In re-introducing the Bill this year, the Government has adopted several amendments raised during the previous committee process which more closely align these reforms with their corporate equivalents. • The *Competition and Consumer Act* test for merging companies provides that the Australian Competition Tribunal may only approve a merger that substantially lessens competition if it is in the public interest. This test is broad and allows the Tribunal to consider any relevant matter, as it has previously done in legislation preceding the Fair Work Act. <u>Schedule 1 – Disqualification</u> • The grounds and standing to bring applications for disqualification orders in schedule 1 are not "far too wide." As the Explanatory Memorandum makes clear, the new provisions in relation to disqualification are made in response to the recommendations of the Royal Commission, the highest form of legal inquiry in our legal system, and are based on extensive evidence. They are both necessary and proportionate, and have been recast in parts to respond to concerns identified regarding the 2017 Bill. • This new disqualification regime will help better encourage the standards of behaviour by officers of registered organisations that the members of those organisations, those impacted by their activities and the broader community should reasonably expect. This is graduated, enabling the Court to suspend or condition rights prior to disqualification to further influence appropriate standards of behaviour.

#	SUBMISSION	KEY ISSUES RAISED
		Schedule 2 – Cancellation of registration • The grounds for cancellation of registration and alternative orders are not "far too wide". The grounds for cancellation of registration have been refined since the 2017 Bill, so it is unclear whether this claim is maintained in relation to the 2019 Bill. In any case, employers do not aspire for the provisions in relation to cancellation of registration to be widely used, if ever. Employers want to see all registered organisations and officials comply with the law. • Cancellation is not a step that can be taken lightly and employers do not aspire for these powers to be used. All registered organisations should comply with the law. However, it is clear that effective measures are needed to drive improved conduct and behaviour. • An organisation that enjoys the broad rights and privileges of industrial registration, cannot expect to engage in such conduct and expect to retain this privileged position. Schedule 3 – Administration • The grounds for administration as drafted in 2017 are not "far too wide". The proposed grounds are sensible and well-reasoned, with considerable checks, balances and protections built into this schedule. Further, the proposed new provisions are also broadly consistent with and broadly reflect the existing administration provisions in New South Wales. • The provisions would address some the limitations of the current framework, which as the case of Brown v HSU has demonstrated, are extremely difficult to administer. This case was ultimately resolved because the parties largely agreed the facts in issue (after the leadership of the HSU changed). Schedule 4 – Amalgamation • Introducing the public interest test (as has existed in previous legislation governing registered organisations) would appropriately balance the freedom of registered organisations to operate without unnecessary interference with consideration of the legitimate interests of the Australian public. • Consideration of the 'public interest' in industrial relations or governance of corporations is not a novel concept and should not be considered to be controversial. Consideration of the public interest has long played a role in Australian workplace relations.
30	**Australian Salaried Medical Officers' Federation, Tasmanian Branch**	Does not support General concerns • This bill will divert further resources away from valuable activities such as providing a conduit between workers and their employer to help improve working conditions and safety for doctors, and advance our public health system Designated findings/proportionality

#	SUBMISSION	KEY ISSUES RAISED
		• The implication of this bill is that any breach, however small and unintentional, of the legislation could result in the Federal Minister suspending the local branch and putting it into the administration of another body, thus disempowering the local entity and removing local representation. • The bill could also lead to the disqualification of union officials working for the entity if they fail to stop their organisation from breaking the law. <u>Standing</u> • The fact that third parties with 'a public interest' can make an application to deregister a union body under this bill, opens unions up to outside political attack to cause union resources to be diverted from one area to that of defence in another, whether the deregistration is successful or not. <u>Regulatory and legal burden</u> • The current Act imposes certain obligations on our branch in relation to the records that must be kept on membership and officers, the keeping of financial records and accounting and auditing. The current regulatory regime of standards and reporting is already particularly onerous for a small organisation such as ASMOF Tasmania, which has very limited resources to put towards compliance obligations. • This bill with its increased compliance and heavy handed approach may make it harder to encourage members to volunteer on the Board. We are already finding it difficult to fill Executive positions due to the requirements of the AEC election process and mandatory training associated with the role.
31	**Mr Danny McCormick**	Does not support Disability support worker who has been employed in both the government and private sector for over 25 years. <u>General concerns</u> • There is already an inherent power imbalance in the Australian industrial landscape and it is largely the result of regulation that places corporate interests above those of ordinary workers. <u>Designated findings/proportionality</u> • If a company CEO is found guilty of criminal conduct, do we dismantle the company? If a church leader is found guilty of a crime, do we order the church be disbanded? <u>Criminal law</u> • Criminal law is supposed to treat us equally, yet unions are again to be singled out for prejudicial treatment.

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#	SUBMISSION	KEY ISSUES RAISED
		Corporate comparison • Unions are already held to far higher levels of scrutiny than comparable institutions. • Churches and community organisations are free to wield their influence without disproportionate levels of government involvement. Schedule 4 – Amalgamation • Would we feel so comfortable in seeking to restrict interdenominational mergers?
32	**Ms Elaine Chevalier-Carter**	Does not support Retired community sector worker. Corporate comparison • The Government and Federal Court do not prosecute against company CEOs or others within a company unless such people have been charged with an actual criminal offence. To rid the company from apparently corrupt holders of such office, (unless charged with a criminal offence) is left up to the Board and shareholders of said company. • It should be left to Union Boards and members to decide on the same grounds that such decisions are made within companies and Governments and/or Parliaments. • The rules of this Bill should apply to Unions should also apply to all organisations, including Businesses and Politicians. • The designated findings in the bill are specific to unions only, whereas this conduct would be acceptable in other organisations.
33	**Master Builders Australia**	Supports General concerns • Submits the passage of the Bill will bring marked improvements to the standard of industrial conduct displayed by registered organisations within the building and construction industry and that this will be of significant positive benefit to workers, business and the industry as a whole. International obligations/freedom of association • It has been alleged that Schedule 1 impinges on the rights of union members to decide who represents them or prevent those members being able to elect representatives to Official roles. This is incorrect. Schedule 1 – Disqualification

#	SUBMISSION	KEY ISSUES RAISED
		• Implements a Heydon recommendation in a way that addresses constitutional questions with appropriate independent oversight; • Would assist in changing a culture of disregard for the law by officers of employee ROs in an industry which is renowned for being a hotspot of such culture; • Would better protect the public and members of ROs; and • Would create an additional scheme of deterrent for those seeking to break the law. <u>Schedule 2 – Cancellation of registration</u> • That a further incentive is created for ROs and their officials to comply with the law; • It would provide greater protections for members of an RO, and ensure (where relevant) • that any consequence for breaking the law is targeted at the part of an RO so involved; and • It would improve the standard of industrial conduct while protecting RO members and the public more generally. <u>Schedule 3 – Administration</u> • Master Builders supports this as it improves the Act by addressing gaps identified with the move to place HSU East Branch of the Health Services Union (HSU) and the NSW registered HSUeast into administration. • This matter did identify the absence of clarity within existing provisions and demonstrated the cost and complexity. • Where financial resources are likely to be limited, the interests of those members of an RO in administration are not served if forced to expend additional resources on legal proceedings that could otherwise have been avoided. • Neither are members' industrial interests best met if there is uncertainty to the status of their organisation or a delay in the identification of those responsible. • Such an outcome is not only desirable as a standalone policy proposition, it is also entirely consistent with the objects of the Act. <u>Schedule 4 – Amalgamation</u> • Master Builders submits that the provisions of the existing Act are deficient • Existing provisions operate to restrict interested parties from making submissions and this prevents the Commission from being aware of all relevant circumstances, material and context that should otherwise be available. • Schedule 4 will address this deficiency and ensure that the Commission is better able to inform itself ensuring more comprehensive regard is had to all impacts of an amalgamation order sought. • The requirement for the FWC to have regard to the prior conduct of ROs before amalgamation is also welcome. • Any amalgamation must be in the public interest and not merely contrary to it.
34	**Ms Heather Smith**	Does not support

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#	SUBMISSION	KEY ISSUES RAISED
		Union organiser formerly with Health and Community Services Union Tasmania Branch • The bill is totally unjustified. Penalties already exist, and are used, to deal with infractions by unions. • It should be the priority for government to support industrial organisations, rather than bring in laws that would mean unions could spend half their time in court defending themselves against poorly defined threats to their basic democratic freedoms.
35	**Professor Anthony Forsyth**	Does not support <u>General concerns</u> • The assumption that registered employee organisations (unions, the main focus of the Bill) and companies should be subject to the same forms of regulation is flawed. • In any case, the Government's application of the corporate model to the regulation of unions, through the provisions of the Bill, is highly selective <u>Corporate comparison</u> • Companies are mainly vehicles for carrying on commercial activity, with a view to generating revenue and profit and obtaining limited liability. Trade unions e primarily formed in order to improve the working conditions of their members (and workers generally), not to accumulate profit for distribution to their members. The principle of limited liability does not apply to a union or its members. • Shareholders primarily have a proprietary interest or ownership interest in a company. Union members however, have a democratic interest: ensuring that the union fulfils its obligation to improve the position of members, through industrial representation, collective bargaining and (increasingly) the provision of services. • Unions traditionally accepted regulation in return for rights and privileges from the state. However in recent years the balance of this compact has turned against unions: while the level of regulation has constantly increased, the benefits of participating in the formal system of industrial relations have dwindled (e.g. registered unions are just one of many possible employee bargaining representatives under the Fair Work Act 2009 (Cth) (FW Act)) which also include unregistered unions. • The significant differences between the two types of organisations mean that there is no basis for the automatic application of the corporate model of regulation to unions. Corporate model should be a starting point. <u>Schedule 1 – Disqualification</u> • Automatic disqualification would apply in a wider range of circumstances under the Bill than in the Corporate Sphere. ○ Under the Corporations Act, directors are automatically disqualified mainly in respect of convictions for offences relating to decisions affecting the company; or Corporations Act offences punishable by more than 12 months' imprisonment (or at least 3 months' imprisonment for dishonesty-related offences). The EI Bill would disqualify anyone convicted of an offence of 5 years imprisonment or more.

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		• The discretionary disqualification regime also goes beyond corporate equivalents.
		  ○ Grounds for disqualification under the corps act relate mostly to contraventions by directors of civil penalty provisions of the Corporations Act itself. The RO Act currently is already aligned in this respect, allowing court-ordered disqualification for breaches of its own civil penalty provisions.
		• There is no Corporations Act equivalent to the proposed fit and proper person test for union officials.
		  ○ The Victorian Labour hire scheme which prof. Forsyth recommended had a fit and proper person test. However the EI fit and proper test has no rationale.
		  ○ Corrupt officials have already been the subject of regulation. If the Gov wishes to maintain consistency with corporate legislation, then there should be equivalent provisions in the Corporations Act (e.g. George Calombaris should be able to be disqualified as a company director for FW Act breaches.)
		• Standing for Minister and person of sufficient interest is too broad. an employer organisation could seek to have a union official disqualified for involvement in the taking of unlawful industrial action, but a union could not apply to have Mr Calombaris removed as a director for his involvement in systemic underpayments of worker
		
		<u>Schedule 2 – Cancellation of registration</u>
		• Same concerns for standing as with schedule 1
		• Deregistration has long been considered a last resort measure.
		• Some of the provisions for deregistration aim to match Corporations Act equivalents. However, the addition in the Bill of grounds for deregistration relating to a union's (or members') non-compliance with a wide range of laws (e.g. FW Act, health and safety legislation) has no equivalent in the Corporations Act.

37	**Queensland Council of Unions**	Does not support <u>International obligations/freedom of association</u> • Contravenes Australia's international obligations and historical precedent can only be found in a previous, right-wing dictatorship in Brazil. • The Bill is against one union. • The Bill has potential to deny workers the fundamental human right to organise. <u>Designated findings/proportionality</u> • The Bill conflates minor breaches of industrial legislation with serious criminal offences. • The designated laws include industrial relations and WHS laws that are very prescriptive with respect to the requirements placed on unions and union officials. • The late filing of documents required by the ROC could give rise to the disproportionate penalties.

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		• The Bill conflates the conduct of an individual with an entire organisation or its membership. <u>Standing</u> • Parties to industrial disputes could use the provisions proposed by the Bill as weapons. By opening up the list of potential applicants for sanctions the Bill would create legal uncertainty, litigation and industrial strife. <u>Corporate comparison</u> • There is little equivalence between what is proposed and the regulation of the corporate sector. <u>Schedule 2 – Cancellation of registration</u> • A concerning aspect of the Bill are the alternative orders that are available if the Federal Court considers cancellation to be harsh. • The alternative orders provide a backdoor way in which litigants can cause grief for organisations, individuals and groups of workers. <u>Schedule 3 – Administration</u> • The Ensuring Integrity Bill includes an expansion of provisions to install an administrator for 'dysfunctional' organisations. The Bill expands the definition of 'dysfunctional' beyond what its proper purpose. It is extreme to place unions under administration for minor infractions and the failure to fulfil officers' duties. <u>Schedule 4 – Amalgamation</u> • The public interest test would consider the record of compliance with industrial and WHS laws. Questions that these types of issues would be considered relevant to whether organisations are permitted by law to amalgamate. • The Bill includes the impact of the amalgamation on employers as part of the public interest test. The impact of an amalgamation on an employer has little to do with any normal definition of public interest and is not relevant to an amalgamation.
38	**Health Services Union**	Does not support <u>General concerns</u> • The Bill is an attack on the social fabric of our country. <u>International obligations/freedom of association</u> • The Bill will allow for undue interference in the democratic operation of unions and poses a serious threat to the rights of workers, including the freedom of association, right to collective bargaining, and choice of representation.

#	SUBMISSION	KEY ISSUES RAISED
		Standing • The Bill introduces a protracted amalgamation process, designed to provide various third party interests the opportunity to interfere in and delay an amalgamation process. • The Bill positions employer interests as of equal importance to the interests of union members in the FWC's consideration of whether a union amalgamation ought to proceed. Schedule 3 – Administration • The existing administration regime already gives the court significant powers, discretion and flexibility in dealing with most of the officer conduct contemplated by expanded grounds. • By contrast, the Bill focusses on misconduct and wrongdoing, and radically changes the nature of the provisions from remedial to punitive. • The Bill does not require an administrator to have any particular qualifications or any experience with registered organisations. • In cases involving federal and state unions or branches, the proposed provisions will be of limited use unless orders can be made in relation to both.
39	**Community and Public Sector Union**	Does not support General concerns • The Bill would reduce the effectiveness of CPSU to work for members' interests, by unfairly and unnecessarily tying up the resources of the union. The Bill could also allow improper intrusions into the structure and operations of the CPSU that would undermine the democratic, member-led nature of the union (p. 1). • The Bill would reduce the effectiveness of the union to work for members' interests by unfairly and unnecessarily typing up the resources of the union (p. 1). • The legislation also risks being abused by Government or employers to threaten court action in an attempt to dissuade unions from exercising their rights under legislation where these rights are disputed (p. 4). • This Bill would make it harder for unions to do their job, which would impact negatively on all working people (p. 6). International obligations/freedom of association • The Bill is undemocratic. The CPSU supports a legislative regime that promotes the autonomous operation of accountable, democratic and effective trade unions that are member-governed. This is also a requirement of international law (p. 4). • CPSU notes that the Parliamentary Joint Committee on Human Rights found that every Schedule of the Bill is incompatible with the right to freedom of association (p. 5).

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		• The Bill could also allow improper intrusions into the structure and operations of our union that would undermine the democratic, member-led nature of the union (p. 1). • The role of unions also has special recognition in international law in a much different way to companies (p. 2) <u>Standing</u> • The CPSU has specific concerns about this Bill given the proposed expanded and intrusive powers for the Minister to intervene in the internal affairs of unions, given that the Minister is the decision-maker both as an employer for our members in Commonwealth Government and as a regulator (p. 1). • There is an unacceptable risk that the Bill would give the Minister the ability to use these broad powers as leverage against the Government's own workforce or against the CPSU as the advocate for federal government employees (p. 3). • Similarly, in relation to CPSU's workforce in the private sector, the Bill broadens the standing of other 'interested parties' to take action against unions. The Bill does not contain safeguards to ensure that these powers are not abused or used for political or other ideological motivations (p. 3). <u>Legal concerns</u> • The Bill proposes to introduce a number of measures which could allow political or corporate interference into the internal affairs of unions, including Intrusive 'alternative orders' that may be made by a court (p. 5). <u>Regulatory and legal burden</u> • Unions are already subject to extensive laws relating to accounting, reporting and disclosure and a higher regulatory burden than applies to corporations in many areas (p. 2). <u>Corporate comparison</u> • To the extent that the Government seeks to justify this Bill as aligning the regulation of registered organisations with the standards that apply to companies and their directors, this is not a relevant comparison (p. 2). • A union is more comparable to an incorporated association given that the majority of office holders in a union are volunteers. It is easy to forget looking at the Government's information on these Bills that unions are not-for-profit, member-based associations, often with far more limited resources than the employers they deal with. The changes proposed in the Bill will act as a deterrent for member participation in union governance (p. 2). • The Bill imposes harsher penalties and stricter requirements than equivalent regulations for corporations (p. 2). <u>Schedule 1 – Disqualification</u> • The proposed new s 222(1) provides that an application for a disqualifying order can be brought by the Commissioner, the Minister or a 'person with sufficient interest'. The latter could conceivably include an employer, employer organisation, or

#	SUBMISSION	KEY ISSUES RAISED
		even a business within the supply chain that is not in the relevant industry. There are no limitations to standing or the bringing of an application that could operate as safeguards against frivolous or vexatious claims. Persons holding office in unions could therefore be subject to significant burdensome litigation, which is a disincentive for members to participate in an organisation's democratic processes and stand for office (p. 3). • The grounds for bringing an action for disqualification of an official are so broad that they include minor and even inadvertent breaches of legislation such as filing financial records late or putting the wrong address on an entry notice. Although disqualification requires that the court 'does not consider that it would be unjust to disqualify the person' this essentially puts a reverse onus on an official so show that their disqualification would be unjust (p. 3). <u>Schedule 2 – Cancellation of registration</u> • Of particular concern is the ability of the Commissioner, Minister or person with sufficient interest to bring an application for deregistration on the grounds that affairs of the union have been conducted in a manner that is contrary to the interests of members of part of the organisation. This ignores the industrial reality in which unions elected representatives often have to make choices between options that would favour different parts of its own membership (p. 3). <u>Schedule 3 – Administration</u> • The Bill proposes to introduce a number of measures which could allow political or corporate interference into the internal affairs of unions, including the imposition of an administration scheme on an organisation by a court on application by Minister, Commissioner or any other person with sufficient interest (p. 5). <u>Schedule 4 – Amalgamation</u> • The Bill proposes to introduce a number of measures which could allow political or corporate interference into the internal affairs of unions, including a public interest test for mergers which have been decided on by members (p. 5).
40	**Nurses' Professional Association of Queensland and the Fair Work Employment Lawyers**	Does not support <u>General concerns</u> • Given the Bill's serious sanctions for organisations, currently registered organisations would be motivated to either join or create unincorporated or incorporated associations that are out of reach of its operation (p. 1). • The Bill opens up unintended consequences including potentially making agreement making more complex for employers if 'dysfunctional' registered organisations or their officials form incorporated or unincorporated trade unions (p. 1). • The NPAQ recommends that, the FW (RO) Act could be amended to support a member better being able to raise an actual or perceived democratic failures to facilitate an extraordinary general meeting (p. 2). • NPAQ is concerned that the proposed new laws will not change unsavoury union official behaviour and the current status quo would be maintained (p. 5).

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		• There is a clear path where those that wish to avoid the reach of the Bill can simply operate outside the National System (p. 10). • We have a scenario where anointed legacy trade unions are being granted privileges (eg/ right of standing to bring causes of action in their own right under the FW Act, the right of entry, and the default bargaining agent in enterprises for where they have coverage) as part of registration and then in rare cases, exploiting them. Having regard for the ACCC's position on competition, the NPAQ urges the Committee to open up the competitive field by enabling all trade unions, not just registered ones to access the privileges limited to the few (p. 12) <u>International obligations/freedom of association</u> • The Bill's focus on the organisational operation of Registered Organisations has Human Rights Implications that potentially significantly impede Article 22 and other Conventions (p. 1). • The Bill's focus goes beyond the permissible limitations on ICCPR rights (p. 1). • From a human rights perspective the aims of The Bill are being incorrectly sought by attempting to create systemic change to the ILO framework to sanction organisational conduct, not targeting individuals holding particular office, as well as the individuals involved in electing such representatives (p. 9). <u>Designated findings/proportionality</u> • The NPAQ recommends that, in the event a registered trade union's senior officials or executive are the subject of Designated Findings, that currently triggers deregistration, that this be limited to a temporary period only, as reasonably necessary, to appoint a temporary administrator to facilitate an Extraordinary General Meeting that allows for democratic elections of members to appoint newly elected officials (p. 2). <u>Standing</u> • The NPAQ recommends that, to ensure integrity, all trade unions have the right of standing to causes of action under the FWA (p. 2). <u>Legal concerns</u> • The NPAQ recommends that, to ensure integrity, all trade unions and officials have the right to apply for right of entry permits (p. 2). • The NPAQ recommends that, to ensure integrity, all trade unions are treated equally for dispute resolution clauses under the EBA or Modern Award in that if the trade union has a member, they have standing to advocate on behalf of their member (p. 2).

#	SUBMISSION	KEY ISSUES RAISED
		• The NPAQ recommends that, to ensure integrity, if a trade union can demonstrate membership of an employee covered by a proposed EBA, then it has the same benefits as registered organisations that they become an alternate default bargaining representative (p. 2). • The NPAQ respectfully submits that the Bill can be overcome through the enterprise agreement making processes, in particular with 'permitted matters' in the agreement making process. Bargaining representatives could simply insert clauses in the EBA that allow for 'deregistered' organisations to return as trade unions and insist on right of entry clauses bringing the 'dysfunctional behaviour' back to the workplace (p. 11). • Given the significant human rights issues enabling trade unions to function freely, the NPAQ urges the committee to look at individual conduct. The Bill could be improved in our respectful submission including cascading the conduct that warrants sanctions, with increasing severity: mistaken fact, reckless conduct, deliberate, then an aggravation for senior officials (p. 11). <u>Schedule 2 – Cancellation of registration</u> • The NPAQ recommends that the Bill walk away from deregistering and amalgamation of registered organisations as this will further lessen competition and prevent registered trade unions from functioning freely (p. 1). <u>Schedule 3 – Administration</u> • Drafting of Section 6 under Schedule 3 of The Bill allows for the possibility of a non-interim administrator, an event that would lead to the union no longer have the democratically elected representative in the immediate term and the deregistration/disbanding of the organisation more completely (p. 9). <u>Schedule 4 – Amalgamation</u> • The NPAQ recommends that the Bill walk away from deregistering and amalgamation of registered organisations as this will further lessen competition and prevent registered trade unions from functioning freely (p. 1). • Drafting of Schedule 4 in creating a public interest test for a potential amalgamation creates a hurdle for members of two or more unions to vote in a ballot to approve the potential amalgamation as per the wishes of the members, giving effect to their human right to both vote and have that vote directly impact their representational right without interference of other individuals and companies not directly related to such representation (p. 9). • Under section 72C allows a broad range of potential submissions from both inside and outside the relevant industry, with section 72C(c) allowing a body with a remote connection (although not necessarily a remote interest) to have a substantive effect on the representational rights of the individuals of the unions applying for amalgamation (p. 9). • The addition of compliance record events as a disqualifying factor under 72E only appears to require a single organisation in the amalgamation to reach this threshold (p. 9).
41	**Mr Neil Smith**	Does not support

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		Member of the public General concerns • Mr Smith is genuinely concerned that the Bill is designed to stop unions from doing a proper job of protecting members. • If certain union representatives have broken the law, they have been penalised with fines etc. These laws already exist. There is no reason to use as an excuse to attack unions because of philosophical differences.
42	**United Firefighters Union of Australia**	Does not support International obligations/freedom of association • The Bill amounts to undue political and outside interference on the general legal principle of freedom of association and this Bill is a direct attack on International Labor Organization conventions, trade unions, trade union members and the working class of Australia. • The provisions of the Bill contravene Article 23(4) of the United Nations Universal Declaration of Human Rights and Article 22(2) of the International Covenant on Civil and Political Rights, as well as Article 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights and Article 3 of ILO Convention 87. • The measures have the potential to deny individuals the right to form and joint trade unions due to the actions of individual officers or members. Corporate comparison • Bill is justified by Corporations Act comparison, but a trade union differs vastly from a corporation. • Schedule 1 goes beyond the Corporations Act which has no fit and proper person test. • Schedule 2 goes beyond the Corporations Act power for a court to wind up a business. • Schedule 3 grounds are unjustifiably broader than the grounds for the appointment of an administrator under the Corporations Act. Schedule 1 – Disqualification • Disqualification is on an expansive range of grounds. • Automatic disqualification means that officials will be ineligible to be a candidate, to hold office or to be elected in an organisation unless the conviction and any term of imprisonment was more than 5 years ago. The Bill broadly redefines 'prescribed offence to include an offence against a designated law'. • Standing allows governments, or even employers with adverse interests, to dictate whether a democratically elected representative retains their position. There are no proposed safeguards to monitor and prevent frivolous or spiteful applications. • Only members should be able to remove elected union leaders.

#	SUBMISSION	KEY ISSUES RAISED
		• The Act contains existing provisions for removal of persons from office and unions have their own processes. • Designated finding could include minor offences such as late lodgement of financial reports, alongside more serious criminal convictions such as fraud. • Automatic disqualification excludes Court's discretion – in cases where a person is disqualified because of a conviction against an overseas law this may preclude the court from considering whether the conviction is viewed at a similar gravity under Australian law. <u>Schedule 2 – Cancellation of registration</u> • The court must cancel registration if certain grounds are established and the organisation does not satisfy the court that deregistration is unjust. • There is the potential for deregistration to be ordered following a minor breach of the law by only one part of the organisation. Unacceptable that individuals may be denied representation because of the actions of another person. • Even where a union satisfies the court deregistration would be unjust they can make alternative orders. Court can dictate who leads a union or who can be a member. • Important that unions feel free to recommend industrial action where appropriate, yet some forms can lead to cancellation under the Bill. • Standing for a person with sufficient interest invites bodies with an anti-union agenda to interfere with union affairs and use court processes to divert union resources. • Reverse onus of proof in the schedule is unexplained and problematic. It lies with the organisation to justify why it should not be deregistered. Onus should be on the applicant, which would also decrease the likelihood of claims aimed at attacking unions. <u>Schedule 3 – Administration</u> • Schedule 3 essentially provides punitive measures to address any alleged wrongdoings by the union or its officers. • Strict liability offence in this section has not been justified and is beyond the recommendations of the Heydon Royal Commission. • Allocates an unelected administrator with a broad range of powers which could result in the overturning of an elected representative of the union. • The most appropriate persons to decide whether a union is dysfunctional and acting contrary to member interests, are the members themselves. It is unsuitable for the court to make this decision on the members' behalf. <u>Schedule 4 – Amalgamation</u> • The new public interest test process infringes on the democratic choices of union members to freely amalgamate their organisations.

#	SUBMISSION	KEY ISSUES RAISED
		• Compliance record events include serious criminal activity alongside minor industrial relations breaches • There is no mechanism to distinguish between findings of individuals who held office in the past and it is unclear whether these could be utilised as a factor against amalgamation. • Standing for anyone with a sufficient interest is problematic. <u>Miscellaneous</u> • The submission spends time detailing issues facing firefighters and undue government interference with the profession. It notes the 2016 changes to the FW Act to impose restrictions on emergency management employment agreements that are not imposed on any other industry or employee.
43	**National Farmers' Federation**	Supports (raises no objections) <u>General points</u> • Claims of misconduct and criminality in relation to a particular RO or its office-holders can compromise the purposes of the individual organisation as well as harming the reputation of ROs more generally. The NFF is therefore supportive of any legislative instrument which seeks to promote a higher standard of conduct amongst those organisations and their office-holders in the interests of all affected parties, including the ROs themselves (p. 6). • The NFF supports the Bill on the basis that it seeks to identify and address serious and recurring misconduct by ROs and their office-holders in order to ensure these organisations are acting in the best interest of their members and the Australian public (p. 7). • The NFF does not raise any concerns or reservations in relation to the Bill (p. 7). <u>Regulatory and legal burden</u> • We acknowledge that legitimate concerns may exist as to the breadth of the new provisions and the potential for burdensome overreach – the NFF is naturally wary of any new law that threatens to impose unnecessary red tape. All such concerns should be given due consideration and assessed on their merits as part of the legislative process (p. 6).
44	**Unions Tasmania**	Does not support <u>General concerns</u> • This Bill is a political manoeuvre intended to silence working people and the unions that represent them. Unions act as a check on those who exercise disproportionate economic and political power. In order to continue to fulfil that critical role in a free democracy, unions must remain free from political overreach or corporate interference (p. 2). • Unions Tasmania submits that the focus of Government should be on dealing with the wage theft crisis affecting Australian workers, not attacking unions who are supporting workers to retrieve stolen wages (p. 5).

#	SUBMISSION	KEY ISSUES RAISED
		• The Bill threatens to discourage union members from involving themselves in the administration of their unions (p. 8). <u>International obligations/freedom of association</u> • The democratic nature of unions is enshrined in international law. The Bill has been criticised both within Australia by the Parliamentary Joint Committee on Human Rights as well as by the International Trade Unions Confederation (ITUC) (p. 2). <u>Regulatory and legal burden</u> • The Bill ignores an already comprehensive regime of union regulation and governance and gives politicians and big business unprecedented rights to seek to disqualify union officials, shut down unions and prevent workers from joining together to improve their wages and conditions (p. 2). <u>Corporate comparison</u> • Company directors may be disqualified for contraventions of corporate laws, but not in relation to contraventions of Fair Work or work health and safety laws. There is no direct mechanism for a company to be wound up or placed under administration or have a merger refused due to a history of noncompliance with law by the company, its directors or the members (p. 6). <u>Schedule 1 – Disqualification</u> • The Parliamentary Joint Committee on Human Rights, in finding that the disqualification provisions of the Bill are likely to be incompatible with the right to freedom of association, noted that an entire elected leadership can be disqualified for contraventions of the union regardless of whether the union members considered that the conduct which led to a ground for disqualification being established was in their best interests. Members may be of the view that taking particular action, such as industrial action, is in the interests of members (p. 4).
45	**Chamber of Commerce and Industry WA**	Supports <u>General concerns</u> • It is the experience of CCIWA and its members that harmonious industrial relations are promoted when the rules governing the operation of the industrial relations system are complied with by all parties. <u>International obligations/freedom of association</u> • The Bill does not impinge on the elections conducted by registered organisations. However, the argument raises questions as to how democratic union elections are. • Does not infringe upon employees' freedom of association.

ANALYSIS OF SUBMISSIONS TO SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

#	SUBMISSION	KEY ISSUES RAISED
46	**Australian Resources and Energy Group (AMMA)**	Supports General concerns • The EI Bill contains four main measures aimed at ensuring all Registered Organisations and their officials act in accordance with the law and exhibit behaviour and accountability that their members and the broader community are entitled to expect. These measures include: a. increasing the powers of the Federal Court to disqualify an official of a Registered Organisation for repeated breaches of workplace laws and making it an offence for a disqualified person to continue to act as an official; b. providing the Federal Court powers to cancel the registration of a Registered Organisation for repeated breaches of workplace laws; c. allowing the Federal Court to declare a Registered Organisation to be 'dysfunctional' or incapable of functioning effectively and appointing an administrator; and d. reintroducing a public interest test for proposed amalgamations of Registered Organisations • AMMA submits the Senate Committee investigate and recommend further measures to address an emerging strategy whereby trade unions are using formal "alliances" to circumvent some of the measures within the EI Bill.
47	**Menzies Research Centre**	Supports General comments The Bill represents the culmination of the Australian community demanding a certain standard of acceptable behaviour and conduct of officials. It goes a long way to restoring integrity to our registered organisations.
48	**Queensland Nurses and Midwives' Union**	Does not support Schedule 2 – Cancellation of registration • Section 28G of the bill will capture all public, private and aged care nurses because an employer (or person with sufficient interest) will be able to argue any industrial action by nurses and midwives could have a substantial adverse effect on the safety, health or welfare of the community or part of the community. Thus, the peak body, the ANMF could be subject to deregistration on the basis of action taken by one branch that may in itself be minor. Schedule 4 – Amalgamation

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		• 'A person with a sufficient interest' will have the right to be heard in the amalgamation process along with the ROC, the Minister and other registered or unregistered organisations in the industry or otherwise affected. This level of interference is unprecedented and unnecessary. The public interest is fundamental to the purpose of unions. To allow third parties with sectoral interests to intervene in union amalgamations delivers these parties an extraordinary power that is not replicated should a union wish to intervene in a company merger. It is a double standard that by any measure is unreasonable and unwarranted.
49	**Australian Services Union**	Does not support <u>General concerns</u> • Trade unions in Australia are now the most scrutinised public organisations in the country. • The Bill comes at a time when Australians are fed up, not with trade unions, but rather with the total lack of scrutiny of corporations with corruption, wage theft and corporate excesses increasingly becoming a common business model rather than the exception. If the Federal Government was genuine about 'Ensuring Integrity' in all public organisations they would establish a National Anti- Corruption Commission. To argue otherwise is to only demand that registered organisations act under burdening regulation, while corporations and other public organisations can self-regulate their own integrity. • The excessive power of an interventionist Registered Organisations Commissioner, anti-union Minister or any person with sufficient interest in direct conflict with the Union or individual officers will drive volunteers away from holding office. <u>International obligations/freedom of association</u> • The Bill is undemocratic, inconsistent with ILO Conventions and allows undue political and industry interference into how unions conduct themselves. The Bill interferes with the right to freedom of association, the right to form and join trade unions and the right of trade unions to function freely. <u>Standing</u> • The granting of standing to 'a person with sufficient interest' once again provides a tactical advantage for employers and corporations seeking every opportunity to attack unions and reduce labour costs and further embed inequality in the workplace. <u>Regulatory and legal burden</u> • The aim of any heavy handed regulation will be to silence this voice so as trade unions become no more than community bystanders rather than at the forefront of setting minimum working conditions and social reform such as Medicare and compulsory superannuation to name a few.

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		• The free and democratic functioning of unions and employer organisations without regulatory, political or industry interference is recognised in international law. Australian research has demonstrated that corrupt practices within unions are more effectively addressed by member participation and internal democracy than by state regulation. <u>Schedule 1 – Disqualification</u> • The proposal to replace and extend the existing grounds for disqualification from holding office is legislative overreach. Once a ground for disqualification is established the Court may have regard to matters that occurred before the commencement of Schedule 1. • A person of sufficient interest could potentially include an employer who was seeking a tactical advantage over a union in bargaining. The balance in power in the workplace would tip even further to employers, particularly large corporations who are free of any such level of scrutiny. • Volunteer Officers will suffer the most under the Bill as they will be subject to limited, if any, access to union resources and will be left on their own to fight disqualification from office or deregistration of their union purely for legitimately advancing or just trying to protect their members' best interests. <u>Schedule 2 – Cancellation of registration</u> • The Bill strips the members of a union of their right to decide what is in their best interests and places it in the hands of the Court. It is offensive that a Court should determine the best interests of the members of an organisation, rather than the members themselves. • In the case where a ground is established, the Court must cancel the registration of a union if the union does not satisfy the court that the cancellation of registration would be unjust. If the union satisfies the Court that cancellation of registration would be unjust, the Court may make alternative orders. These orders would allow the Court to decide that a properly elected person could not run the union, as well as who could be members of the union and how the organisation would carry on its activities and exercise its rights under the *Fair Work Act 2009*. • The Bill also invites the intervention of external bodies in the affairs of the union. The Bill may permit an employer or employer association to seek the deregistration of a union. Aside from the violation of the right to freedom of association, there is a risk that this standing could potentially be used by employers tactically during disputes and bargaining. • The Bill may also prevent a union from strategically applying its resources in the best interests of its members (s 28C (1)(b)). Unions routinely focus their activities and then allocate resources to ensure that they can best advance the interests of their membership as a whole. This may mean a greater focus on one section of the membership than another from time to time. So long as these decisions are made according to the democratic processes described in the organisations rules, they are an appropriate part of the organisation's self-management. • Section 28C establishes a system of collective punishment for individual actions. 28C incorporates concepts from corporations' law that cannot be applied in the industrial context. Members, who may have been entirely divorced from the activities of the

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		corrupt individuals, could be denied industrial representation and the other benefits of trade unionism. Deregistration is not the appropriate remedy to deal with the corrupt conduct of individual union leaders. <u>Schedule 3 – Administration</u> • The ASU is most concerned with the Minister, Commissioner and indeed "any other person having a sufficient interest in the organisation" having standing for an application to permit the appointment of an administrator to registered organisations as part of a remedial scheme for dysfunctional organisations. There are Federal Governments like the current Morrison Government and previously the Turnbull Government; who have treated most if not all unions as dysfunctional with little or no role in a modern deregulated economy. • The Bill significantly expands the existing regime for administration of 'dysfunctional' organisations, which are said to be modelled and adapted from broadly equivalent provisions of the Corporations Act. However registered organisations are not corporations and in any case the provisions are not consistent with the Corporations Act. • The Court has a broad power as to the remedial scheme that can be imposed on an organisation, which can include reports to be given to the Court and the holding of elections. The ASU contends that this is an overreach. <u>Schedule 4 – Amalgamation</u> • The new public interest test for union amalgamations is designed to stop amalgamations regardless of the will of the members' vote. A range of persons can make submissions about 'compliance record events' where clerical and administrative oversights will be held against amalgamating unions while those having engaged in 'obstructive industrial action', regardless of the circumstances e.g. extremely unsafe workplaces; is relevant to the Fair Work Commission's decision. The amendments enable significant regulatory, political and industry interference in the free and democratic functioning of unions.