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Daily Media Overview



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Government's anti-union bill 'retrospective'

Australian Financial Review, Australia, General News, David Marin-Guzman

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Government's anti-union bill 'retrospective'

David Marin-Guzman
Workplace correspondent

The Morrison government's proposed anti-union laws could punish unions for past breaches of workplace laws, unions argue, potentially allowing the takeover of the militant construction union and ejection of controversial Victorian leader John Setka.

Australian Council of Trade Unions president Michele O'Neil told a Senate inquiry on Tuesday that parts of the government's Ensuring Integrity Bill were retrospective as they allowed a court to consider industrial breaches that occurred before the law commenced when disqualifying an official, deregistering a union or placing one into administration.

The bill significantly expands the existing grounds to disqualify union officials or cancel unions by including civil breaches of workplace laws alongside certain criminal offences.

The grounds themselves are not retrospective but the ACTU argues that a

second step – requiring the court to be satisfied that deregistration or disqualification is not “unjust” – is.

“The government has offered no justification for departing from the most fundamental principles of good law-making,” Ms O'Neil told the inquiry.

In cases of forcing dysfunctional unions into administration, Ms O'Neil said there was “absolutely no limit to retrospectivity whatsoever”.

The bill expands the definition of “dysfunctional” to include when officials have breached workplace laws on multiple occasions and allows the min-

ister, the union watchdog or other persons with “sufficient interest” to apply to put a union into administration. Ms O'Neil said if a union's officers had already breached workplace laws,

the bill left it open for a court to remove a union's entire elected leadership, appoint an administrator and order fresh elections.

“If this was passed, any behaviour in terms of multiple breaches prior to the

passing of this legislation could be used to basically take over the running of a union and remove it from control of its members,” she said.

The courts have already found CFMEU construction officials have repeatedly breached laws on right of entry, coercion and unprotected industrial action. Further, CFMEU leaders have recently raised concerns about the union's functioning due to Mr

Setka, who is refusing the ACTU's calls to step down for harassing his wife, and for poaching organisers and members from the union's manufacturing division. Mr Setka's actions prompted the CFMEU's mining division last week to pass a resolution that it was “extremely concerned that our union cannot function effectively, unless all divisions respect our shared rules”.

When asked if the CFMEU was dysfunctional, mining division president Tony Maher, who is also president of the broader union, told the ABC “it's impossible to hold a meeting”.

He said the union's national executive had not held a meeting since July, when Mr Setka's comments about anti-violence campaigner Rosie Batty were reported in the media.

“No-one will turn up, ever since there was an alleged leak,” he said. “We haven't had a meeting since then. So I think that is a real problem and we need to not start poaching but start talking.”

In the Senate inquiry, Australian Industry Group workplace policy director Stephen Smith defended the government's bill by arguing it was “aimed

at a pattern of conduct or serious misconduct not a minor or isolated incidence”.

“We think it's fanciful that a federal court would deregister a union for an isolated circumstance,” he said.

Ms O'Neil argued that even if deregistration did not occur for minor matters, the bill's broad grounds “set such a lower bar to bring an application ... it will see union resources diverted from advancing members' interests to defending litigation”.

The Senate committee is expected to report on October 25.

Key points

The government's Ensuring Integrity Bill could allow the takeover of unions.

The laws could be used to eject controversial CFMEU leader John Setka.



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Michele O'Neil said the government's bill "disturbingly" included no limits on retrospectivity when placing unions into administration. PHOTO: ALEX ELLINGHAUSEN

