

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

Thank you for the opportunity to respond to this inquiry.

COSBOA is an organisation whose members are industry associations or groups representing small business people. We have some 34 member associations that have a reach out to over 450,000 businesses. COSBOA unambiguously represents the needs of small businesses.

No organisation should be afraid of regulation. Regulators exist for a reason, and that reason is that not all people, or organisations, can always be trusted to do the right thing even to the point of breaking the law. Thankfully the great majority can be trusted and most readily obey laws and regulation, some do not.

We have world class regulators in Australia. They are not perfect regulators, indeed they are imperfect like the people they regulate but in the main they engage deeply with their stakeholders and they are always under the microscope of the media who are often their greatest critics.

We have regulators for important items such as competition, taxation, interest rates, financial services and systems, workplace relations, corporate structures and behaviours, power supply and generation, drugs in sports, media behaviour and the list goes on.

A small business person has many regulators and hopefully we do not see them often if at all. Yet we also look to our regulators to provide the information we need to be compliant. We want that information to be easy to find, to be easy to understand and we want it to be easy, wherever possible, to comply.

Small business employers are regulated by the Fair Work Commission and the Fair Work Ombudsman. These people are also likely to be regulated by ASIC if we are incorporated and we will always be regulated by the ATO. Regulators exist and always will.

Why therefore would a registered organisation (including unions) not want to be regulated? What is a registered organisation hiding? Good organisations embrace regulation and will work with regulators to make rules and process sensible and easy, and also work with their members to achieve compliance.

A good example of an organisation embracing regulation is ACAPMA (The Australian Convenience and Marketers Association). Some time ago this organisation was confronted by the fall out coming from the Seven Eleven and Caltex underpayment dramas. ACAPMA didn't run away or hide or pretend it didn't happen. It confronted the problem and introduced a compliance regime for its members. It stated very publicly that what had happened was not good enough and that transparency of compliance would be a priority.

ACAPMA completed 985 site audits (14% of the network) during 2018-19 under the umbrella of the Compliance Partner Programme.

The 2018-19 results provided a valuable fact base that provides a transparent record of the industry's performance in respect of compliance with:

- Employment Law: "***Employers who look after their staff***"
- Public safety: "***Businesses that take safety seriously***"
- Environmental: "***Businesses that act responsibly***"
- Consumer and retailing law: "***Reputable retailers***"

Where necessary other registered organisations need to take the same path.

And of course, we need to acknowledge that the only group really objecting to this regulation is the trade union movement. Why?

If an employer group objected to the existence of the FWO that group would be rightly seen as dodgy and ingenuous. The answer the employer group may provide is that there are mechanisms in place already if an employee has a problem of some sort, they would just have to go to court. We know with the imbalance of power that exists that is not fair or likely.

If a union decides to bully or punish a small business we have the same issue. The union is in a place of power and the small business person cannot *just* resort to a court case.

As an example, some years ago when the penalty rate for Sundays was increased from 150% to 200% in various jurisdictions several business people were approached by media and asked if that was a problem. One business person responded yes and they would have to think about whether they could afford to now open on a Sunday, those comments were published. Some members of the TWU decided to place a black ban on that business. A black ban that would close that business down and put its employees out of work and put that business owner's house at risk – all because they stated a truth, a truth that the members of the TWU didn't like being stated in public

We have also had instance of stand over tactics taken by unionists against women in business who place a sign in their shop window saying they would open on Sundays if they could pay the same penalty rates as Coles or Woolworths or McDonalds. We have not been able to provide media with information on these businesses as we know those business owners would likely to be targeted again by some union members. Union people who believe they are above the law or that the law is not compulsory for them but is for others.

This situation reached the point where COSBOA and other industry associations strongly advised members not to make public comments.

Some union members had done what history tells us is a dangerous thing to do, they stopped public comment on an important issue. They had stopped the natural discourse of democracy.

So, unions, all registered organisations, need special regulation. To resist regulation is to admit guilt of some sort, in this case guilt of abuse and stand over tactics on small business people.

We ask the Senate to pass these bills as soon as possible, knowing full well that only the dishonest will suffer.

Ends. (edited 19 Sept 2019)