

## ***Fair Work Legislation Amendment (Closing Loopholes) Bill 2023***

### **EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE INQUIRY**

**October 2023**

#### **Submission of the Independent Education Union of Australia (IEU)**

##### **IEU**

1. The Independent Education Union (IEU) welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee in respect of its inquiry into the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*.
2. The IEU represents members in non-government education in all states and territories throughout Australia. The union's coverage spans early childhood education, schools and colleges, non-government educational institutions and post-secondary education. At the time this submission was prepared the IEU had 74801 members. The IEU is the only union with coverage of principals, educational leaders and teachers in non-government schools and maintains a density in excess of 54% in respect of these members.
3. Our response to the Bill is informed by and consistent with the union's policies developed and endorsed through the union's democratic structures. This submission focusses only on delegates' rights, that part of the Bill most relevant to IEU members.
4. Prior to making this submission the IEU has had the opportunity to read the submission of the ACTU and supports that submission in every respect.

## Workplace Delegates' Rights

5. The IEU supports the amendments to the Act proposed by the addition of the delegates' rights provisions in the Bill.
6. Workplace delegates have a central and essential place in the IEU's democratic structures and decision-making. That role extends well beyond representing the union and its members at the workplace and providing advice and support to individual members. Elected workplace representatives constitute many of the union's advisory and governing bodies.
7. **The new provisions will assist the IEU in meeting its obligations under the Fair Work (Registered Organisations) Act 2009 (the RO Act).**
8. Sections 2 and 3 of the RO Act in part provide that:

*“...associations of employers and employees are required to meet the standards set out in this Act in order to gain the rights and privileges accorded to associations under this Act and the Fair Work Act.*

*(3) The standards set out in this Act:*

  - (a) ensure that employer and employee organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and*
  - (b) encourage members to participate in the affairs of organisations to which they belong; and*
  - (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and*
  - (d) provide for the democratic functioning and control of organisations...*
9. The RO Act also has a strong emphasis on democratic control of organisations.
10. Access to the resources of the employer and workplace facilities, particularly the capacity to use employer provided laptops, email and copying facilities will ensure IEU representatives:
  - save time at the workplace through improved communications with members
  - can communicate freely with the union and obtain industrial advice more promptly
  - can contribute more effectively to bargaining and consultative processes at the workplace

- are better able to participate in the affairs of the union by attending virtual meetings of its councils (particularly rural and remote delegates), setting policy and ensuring that the union meets its reporting and regulatory obligations

**11. A significant number of major employers in non-government school education in Australia either already provide or support the workplace delegate measures in the Bill. They provide access to facilities at the workplace and support the training of union delegates and members.**

12. Delegates in some states, in particular those employed at Catholic schools, already have access to paid trade union training leave.

13. The Victorian Catholic multi-enterprise agreement referred to at paragraph 19 below provides an entitlement of one day's leave for this purpose for union representatives and members representing employees in consultative committees. The Queensland single-enterprise multi-employer agreement covering employees at Catholic schools provides for up to 3 days "Union Education Leave" in the following terms:

*"to attend courses, seminars or workshops of an industrial or professional nature conducted by the Australian Council of Trade Unions (ACTU), IEUA, ANMF/QNMU or specific union training courses approved by the union"*<sup>1</sup>

That agreement also provides for *Union Development Leave* through which members can be booked off the job and work for the union for between 4 weeks and 2 school terms without losing continuity of employment with their employer.<sup>2</sup>

14. An entitlement to access training for workplace representatives will assist the union in meeting its obligations under the RO Act as delegates will obtain:

- a better understanding of the industrial relations system and their rights and responsibilities under that Act and the *Fair Work Act* particularly of the complex legislative arrangements concerning bargaining
- a better understanding of the union's structures and their role in the democratic functioning of the union
- skills that will enable more effective grievance resolution at the workplace, reducing levels of disputation

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<sup>1</sup> Catholic Employing Authorities Single Enterprise Collective Agreement – Diocesan Schools of Queensland 2019-23 at paragraph 6.14.1(a)

<sup>2</sup> Ibid at 6.15

15. **The work of the IEU’s elected representatives at the workplace is essential to the union being able to meet its responsibilities under its rules to represent members.**
16. There are 2915<sup>3</sup> non-government schools in Australia. In 2022 there were 12,999 service providers delivering a preschool program to children aged 3-6 years.<sup>4</sup> There are 2880 active private registered training organisations operating across Australia.<sup>5</sup> The union employs around 110 organisers and industrial relations practitioners to service members’ needs yet maintains a network of more than 2000 elected workplace representatives.
17. It should be clear from the above statistics and given the primacy of single enterprise bargaining through the *Fair Work Act*, that the IEU, together with the majority of registered organisations, is dependent upon its workplace representatives to assume significant responsibility in providing advice to members and bargaining.
18. **The work of the IEU’s workplace representatives not only serves the needs of IEU members but is essential to enable employers and governments to meet industry objectives and continue to provide quality education to the Australian community.**
19. In addition to their role in providing advice and support to members many industrial agreements set out key elements of the work performed by the IEU’s workplace representatives.
20. An example of this work is the setting and monitoring of teacher workload in schools. Reducing teacher workload is an essential element of the National Teacher Workforce Action Plan, a strategy developed by the Federal and State Governments together with a wide range of industry representatives, including the IEU and the National Catholic Education Commission. That plan, inter alia, seeks to address the worsening teacher shortage in Australia and relevantly provides as follows:
- “Objective: To improve retention by increasing support for teachers, enhancing career pathways, **reducing unnecessary workload and freeing up teachers to focus on core teaching tasks and collaboration.**”<sup>6</sup>*

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<sup>3</sup> Australian Curriculum and Reporting Authority - National Report on Schooling in Australia 2022

<sup>4</sup> Australian Bureau of Statistics – Preschool Education release dated 30.3.23

<sup>5</sup> Parliamentary Library Research Paper – The vocational education and training sector: a quick guide (As updated 24 June 2021)

<sup>6</sup> National Teacher Workforce Action Plan: Priority Area 3 – keeping the teachers we have

21. The union’s members in Catholic schools in Australia primarily have their terms and conditions of employment set by a number of multi-enterprise agreements. The predominant such agreement in Victoria covers the work of 29,781 employees employed by 31 employers in 461 schools. It is typical of similar agreements covering the work of members in all states and territories in Catholic Schools.
22. The agreement provides for the establishment of a Consultative Committee in each school. There are 6 members of the Consultative Committee of which 2 are nominated by the union and 1 is elected from the staff of the school. The union always nominates the elected union representative(s). The agreement sets out the Consultative Committee’s responsibilities as follows:

*The Consultative Committee shall provide recommendations or proposals to the Principal, prior to the Principal, as the employer’s representative, making decisions on the following issues:*

- (i) *Class sizes*
- (ii) *Scheduled class time*
- (iii) *Total workloads for Teachers including meetings, parent-Teacher meetings and extra/co-curricula duties*
- (iv) *Staff email and other communication protocols, including parents and after hours; and*
- (v) *Positions of Leadership*<sup>7</sup>

23. While the agreement sets out entitlements and benchmark standards the work undertaken by the IEU’s workplace delegates in consultation committees directly and practically contributes towards reducing unnecessary workload. Delegates provide an oversight of workload and are key to identifying non-core, predominantly administrative tasks that are better performed by non-teaching specialist staff.

**24. The proposed workplace delegates’ provisions of the *Closing Loopholes Bill* directly address an imbalance of power in Australia’s bargaining system.**

25. As a recent Fair Work Commission Full Bench decision made clear “*enterprise-level bargaining is intended to be the primary and preferred mode of agreement making under the FW Act.*”<sup>8</sup> The continued primacy of single employer (and most commonly single-site) bargaining means that delegates carry the majority of responsibility for negotiations in many workplaces across

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<sup>7</sup> Catholic Education Multi-Enterprise Agreement 2022: Diocese of Ballarat, Diocese of Sandhurst, Archdiocese of Melbourne and Lavalla Catholic College Traralgon at 16(3)(d)

<sup>8</sup> [2023]FWCFB 176 at {41}

all but a few industries. This is more often the case in small businesses and rural and remote Australia. The proposed amendments are common sense provisions that do no more than give those delegates rights to:

- Access training at the employer's expense to enable them to meet their responsibilities including their legislative obligations
- Speak to their workmates where they work, while they're at work, about their work
- Reasonable use of employer facilities to enable them to fulfil their duties as delegates more efficiently
- Be given a fair go by their employer in performing their duties as a delegate

26. In giving consideration as to whether to support the amendments members of the Committee should take into account that there are not now and never have been any restrictions on the capacity of employer representatives to access any level of support in their performance of the employer's human resources and industrial relations functions. At the same time, without resorting to adverse action, many employers retain and utilise the capacity to lawfully hinder workplace delegates. This Bill will go some of the way to correcting that imbalance in representative capacity.