



The Executive Director  
Australian Law Reform Commission  
GPO Box 3708  
Sydney NSW 2001

25 September 2015

Dear Professor Croucher,

**Re: Submission to the Inquiry into Traditional Rights and Freedoms.**

Unions NSW welcomes the opportunity to make a submission to the Australian Law Reform Commission's (ALRC) Inquiry into Traditional Rights and Freedoms.

Unions NSW is the peak body for trade unions and union members in NSW and has been fighting for the rights of working people in Australia since 1871. It has over 65 affiliated unions and Trades and Labour Councils representing approximately 600,000 workers across the State. Affiliated unions cover the spectrum of the workforce and in both the public and private sectors. Unions NSW is a not-for-profit organisation funded by its affiliates.

Unions NSW supports the submissions made by the Australian Council of Trade Unions and the NSW United Services Union. These submissions focus on the restrictions the *Fair Work Act 2009 (Cth)* places on the rights of workers to exercise their freedom of association.

Unions NSW would like to draw the ALRC's attention to the implied right to political expression and the importance of this right in upholding representative government.

One of the objectives of Unions NSW is to represent and advance the interests of working people in NSW. The majority of this work takes place at the workplace level and through the industrial relations systems. However, the interests of workers are also inextricably linked to the Government of the day and their legislative and policy agenda.

Unions NSW and our affiliates take an active role in political debates for the purpose of representing and progressing the interests of working people. Our affiliates and their members are cognisant that few individuals have the financial, social or political capital to affect change on their own. This is why unions and their members have historically pooled their resources to run campaigns collectively.

Ostensibly unions engage directly in the political process by campaigning during election periods. Elections provide a pivotal point in the electoral cycle when

candidates are most directly accountable to electors. It is also at this time when union members as constituents are able to actively engage in the political process and to collectively prosecute issues which directly affect their social and economic wellbeing. Unions NSW and our affiliated unions have a long history of electoral campaigning at both a state and federal level.

The engagement of unions as the collectivised voice of working people in political debate and electoral politics is fundamentally reliant on the implied freedom of political communication within the Australian Constitution.

In 2012, the NSW Parliament passed laws that amended the *Election Funding, Expenditure and Disclosures Act 1981 (NSW)* (EFED Act) and restricted the implied freedom of political communication. The Act prohibited persons or entities which are not enrolled on the New South Wales electoral roll from making political donations to political groups, parties, candidates, members and third-party campaigners. Section 96D of the EFED Act made it clear that affiliation fees paid by a union to the political parties with which it is affiliated is a donation and therefore unlawful. The amendments also sought to aggregate in section 95G(6) the 'electoral communication expenditure' incurred by a political party with that incurred by an affiliated organisation of that political party.

The amendments to the EFED Act were effectively an attack on the rights of collectivised workers to participate in political campaigns.

Unions NSW successfully challenged the legislation in the High Court on the grounds it breached the implied freedom of political communication contained in the *Constitution*<sup>1</sup>. In light of the High Court Case the NSW Government was required to amend the EFED Act to remove sections 96D and 95G(6). In October 2014 the Government then attempted to make amendments to the Act which would have restricted the spending of third party campaigners in election periods. These amendments did not gain support from the NSW Legislative Council, however they are indicative of the NSW Legislatures continued attempts to significantly constrain the implied freedoms of political expression of third party campaigners.

Unions NSW is concerned any state or federal government may in the future consider placing restrictions on the implied freedom of political communication by seeking to restrict the spending of specific groups of third party campaigners during election periods. The Joint Selection Committee on Electoral Matters is currently conducting an Inquiry into Campaigning at Polling Places. Given the narrow terms of reference, which appear to focus specifically on the campaigning activities of unions and their members on polling booths, Unions NSW is concerned this was a political exercise to identify ways of limiting the ability of unions to participate in the electoral process.

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<sup>1</sup> Unions NSW v NSW [2013] HCA 58

Unions NSW believes such a move is contrary to the principles of supporting the current freedoms associated with people's right to participate in the democratic process of elections and would burden the implied freedom of political communication.

Unions NSW is concerned by any Government's attempt to limit the rights of unions and their members as third party campaigners to actively participate in electoral campaigns and democratic processes. The implied right of political communication is increasingly disregarded by Government's seeking to curtail the voice of campaigners who seek to propose an alternative position to that being prosecuted by the Government of the day.

If you have any questions regarding this submission, please contact me at Unions NSW on (02) 9881 5999 or [mmorey@unionsnsw.org.au](mailto:mmorey@unionsnsw.org.au)

Yours sincerely

Mark Morey  
Assistant Secretary