

CHAPTER 1

Introduction and background

Reference

1.1 On 19 June 2012 the Senate referred the provisions of the Fair Work (Registered Organisations) Amendment Bill 2012 (the bill) to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for inquiry and report by 25 June 2012.¹

Conduct of inquiry

1.2 Details of the inquiry were placed on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 10 individuals and organisations, as listed in Appendix 1.

A public hearing was held in Canberra on 22 June 2012. The witness list for the hearing is at Appendix 2.

Purpose of the bill

The bill seeks to amend the Fair Work (Registered Organisations) Act 2009 (Registered Organisations Act) to increase the financial and accountability obligations of registered organisations and their office holders. The bill also seeks to strengthen the investigative powers of Fair Work Australia (FWA) and enhance the remedies available under the Registered Organisations Act. The following proposed amendments are intended to achieve this purpose:

- requirements that the rules of all registered organisations must deal with disclosure of remuneration, pecuniary and financial interests;
- increases in civil penalties under the Registered Organisations Act;
- enhanced investigative powers of Fair Work Australia under the Registered Organisations Act; and
- a requirement that education and training must be provided to officials of registered organisations about their governance and accounting obligations.

1.3 In Chapter 2 the committee considers the key issues that arose during this inquiry.

Background

1.4 The *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* repealed the Workplace Relations Act 1996, except for schedules 1 and 10

1 *Journals of the Senate*, 2012, p. 2528.

which dealt with registered organisations. These schedules, with amendments, were renamed the Registered Organisations Act. The bill seeks to amend that Act.

1.5 The bill has been introduced to 'improve the operation and accountability of registered organisations and raise and restore public confidence in the operations of the workplace relations system'.² The government announced its intention to implement these improvements on 7 May 2012.³

1.6 The government consulted on the content of the bill with the members of the National Workplace Relations Consultative Council who gave unanimous support for the bill.⁴ Members of the council who participated in discussions with the government include:

- Australian Council of Trade Unions
- UnionsNSW
- Australian Education Union
- Australian Industry Group
- Business Council of Australia
- Master Builders Australia
- Australian Chamber of Commerce and Industry
- National Farmers Federation.⁵

Key provisions of the bill

Objects and dictionary

1.7 The bill proposes to amend the objects clause with an explicit provision reflecting parliament's recognition of and respect for employer and employee organisations in facilitating the operation of the workplace relations system.⁶

1.8 The bill proposes to introduce the term 'non-cash benefit' to property or services in any form other than money. This definition would not include a computer, mobile phone or other electronic device that is used mainly for work purposes.⁷

2 The Hon. Mr Bill Shorten MP, Minister for Employment and Workplace Relations, Second Reading Speech, *House of Representatives Hansard*, 31 May 2012, p. 3.

3 The Hon. Mr Bill Shorten MP, 'Release of Fair Work Australia report into Health Services Union', *Media Release*, 7 May 2012. Available online: <http://ministers.deewr.gov.au/shorten/release-fair-work-australia-report-health-services-union> (accessed 20 June 2012).

4 The Hon. Bill Shorten MP, Minister for Employment and Workplace Relations, Financial Services and Superannuation, Media Release, 'Communiqué from the National Workplace Relations Consultative Council', 25 May 2012.

5 The Hon. Mr Bill Shorten MP, Minister for Employment and Workplace Relations, Second Reading Speech, *House of Representatives Hansard*, 31 May 2012, p. 4.

6 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsection 5(5).

1.9 The bill also proposes to introduce the term 'related party', adapted from the definition in the *Corporations Act 2001*.⁸ An entity controlled by an organisation is a related party of that organisation unless:

- The entity is a branch, sub-branch, division or sub-division of the organisation; or
- The entity is an association of employers or employees registered under State or Territory industrial law, and the organisation is a federal counterpart of the association.⁹

1.10 The following persons are related parties of an organisation:

- Officers of the organisation and their relatives
- Spouses of officers of the organisation and their relatives¹⁰
- An entity controlled by any of the above¹¹
- An entity that has been a related party in the previous 6 months, or expects to become a related party at any time in the future¹²
- An entity that acts 'in concert' with a related party on the understanding that the related party will receive a benefit if the entity gives the organisation a financial benefit.¹³

Improved financial disclosure requirements

1.11 The bill proposes that the rules of all registered organisations must provide for the disclosure of remuneration of certain officials, disclosure of material personal interests of officers and relatives, and disclosure of payments made by an organisation or branch. The Minister would be able to issue guidelines of model rules which an organisation or branch could adopt in whole or part.¹⁴

7 Fair Work (Registered Organisations) Amendment Bill 2012, Item 45.

8 Fair Work (Registered Organisations) Amendment Bill 2012, proposed section 9B.

9 Fair Work (Registered Organisations) Amendment Bill 2012, proposed section 9B(1)

10 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsection 9B(2) and 9B(3).

11 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsection 9B(4)

12 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsections 9B(5) and 9B(6)

13 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsections 9B(7)

14 Fair Work (Registered Organisations) Amendment Bill 2012, proposed section 148F. The Minister would be required to give notice in the *Gazette* and any model rules issued would not have the status of legislative instruments.

Disclosure of remuneration paid to officers – 148A

1.12 The bill proposes that the rules of an organisation or branch must require that each officer must disclose as soon as practicable any remuneration they receive as a result of:

- being a member of a board, where the officer has been appointed because of their position in the organisation or branch, or because they received the nomination by the organisation or branch or peak council; or
- being a related party of the organisation or branch in connection with the officer's duties.¹⁵

1.13 The bill proposes that the rules must also require the organisation to disclose to its members the remuneration of the five highest paid officers in the organisation, and the two highest paid officers in each branch. This disclosure would include the name of each officer and details of cash and non-cash benefits, either in dollar value or otherwise as appropriate.¹⁶ Disclosure must be made each financial year or more regularly if required by the rules.¹⁷

Disclosure of material personal interests of officers and relatives – 148B

1.14 The bill proposes that the rules of a branch and of an organisation must require officers to disclose material personal interests.¹⁸ Under these rules:

- officers must disclose any material personal interest that relates to the affairs of the branch or organisation that either the officer or a relative obtains.
- the branch or organisation must disclose this information to its members each financial year or more often if specified in the rules.

Disclosure of payments made by an organisation or branch – 148C

1.15 The bill proposes that the rules of an organisation or branch must require disclosure to the members of the organisation and its branches of payments made to:

- related parties of the branch or organisation; and
- each declared person or body of the organisation or branch (i.e. a person or organisation that has been declared by an officer as a material personal interest).

15 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsections 148A(1) and 148(2).

16 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsections 148A(6) and 148A(7).

17 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsection 148A(4), (8).

18 Fair Work (Registered Organisations) Amendment Bill 2012, proposed section 148B.

1.16 The disclosure must include itemised and total payments made to each group.¹⁹ Under proposed section 148D, the General Manager would have the power to grant an organisation an exemption from complying with the requirements where an application is received from the organisation and the General Manager is satisfied that:

- special circumstances exist in relation to the organisation; and
- taking into account the evidence provided, the proposed alterations of the rules of the organisation provide for disclosures, of payments made by the organisation, that are appropriate for the organisation's special circumstances and are appropriately transparent; and
- that the proposed alterations of the rules:
 - comply with and are not contrary to this Act (other than section 148C); and
 - are not otherwise contrary to law; and
 - have been decided on under the rules of the organisation.

1.17 If an exemption is granted, it remains in force for 5 years, unless it is revoked earlier.

Requirement to develop financial policies

1.18 The bill proposes that the rules of an organisation must require the organisation and each of its branches to develop and implement policies relating to expenditure.²⁰ Further, that the Minister may issue guidelines containing model rules which may be adopted in whole or part by an organisation or branch.²¹

Obligation to undertake training

1.19 The bill proposes that rules of organisations must require officers whose duties relate to the financial management of the organisation or the branch to undertake approved training in relation to financial management obligations.²²

1.20 The General Manager of FWA would have the power to approve training that can be provided by an organisation, peak council or other body where he or she is satisfied that it has the appropriate skills and expertise.²³

1.21 The explanatory memorandum notes that it is intended that the General Manager would be able to approve a range of training of different formats, styles and

19 Fair Work (Registered Organisations) Amendment Bill 2012, proposed section 148C.

20 Fair Work (Registered Organisations) Amendment Bill 2012, proposed new subparagraph 141(1)(ca).

21 Fair Work (Registered Organisations) Amendment Bill 2012, proposed section 142A. The Minister must provide notice in the *Gazette*. Such notice is not a legislative instrument.

22 Fair Work (Registered Organisations) Amendment Bill 2012, proposed section 154D.

23 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsection 154C(1).

lengths. This is in recognition of the different significance that financial management duties have to the roles of different officials and well as the different backgrounds, experience and qualifications of officials.²⁴

Enhanced investigatory powers for the Fair Work Australia

Power to obtain information

1.22 Proposed section 335A would provide the General Manager with additional powers to obtain information from third parties where that information cannot be obtained from an officer, former officer or auditor of a registered organisation. Civil penalty provisions would apply to a person who does not comply with such a request for information.²⁵ It would be an offence to provide false or misleading information, or to be reckless about whether or not the documents are false or misleading. An exception applies if a person can prove reasonable excuse.²⁶ The proposed amendments also include protection against self incrimination however this cannot be used as a defence for not providing information.²⁷

Power to disclose information

1.23 Proposed section 335C would empower the General Manager to disclose or authorise the disclosure of information if it is necessary or appropriate to do so, or where disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory. This power is non-delegable.

Other matters

1.24 Proposed section 335B would require the General Manager to complete an investigation into non-compliance with the Registered Organisations Act as soon as practicable.

1.25 The powers to obtain and disclose information would apply in relation to investigations that began on or after the commencement of these provisions.²⁸ Most of these powers would also be delegable by the General Manager to certain employees.²⁹ Certain responsibilities could also be delegated to any other person or body with substantial or significant experience or knowledge in accounting, auditing, financial reporting, compliance investigations or audits and any other prescribed field.³⁰ However, the General Manager would retain final decision making power.

24 Explanatory Memorandum, Fair Work (Registered Organisations) Amendment Bill 2012, p. 8.

25 Fair Work (Registered Organisations) Amendment Bill 2012, proposed new subsection 337AA.

26 Fair Work (Registered Organisations) Amendment Bill 2012, proposed new subsection 337AA(5).

27 Fair Work (Registered Organisations) Amendment Bill 2012, proposed new subsections 337AA(6) and 337AA(7).

28 Fair Work (Registered Organisations) Amendment Bill 2012, Item 28.

29 Fair Work (Registered Organisations) Amendment Bill 2012, Items 31–35.

30 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsection 343A(3A). This would apply in relation to functions and powers under sections 330–333.

Increase of civil penalties

1.26 The bill proposes to increase the maximum civil penalties so that they are consistent with the Fair Work Act.

1.27 Under the Registered Organisation Act the civil penalties of \$11,000 for organisations and \$2,200 for individuals have remained static since the predecessor legislation was introduced into parliament in 2002 by the then Minister for Industrial Relations, the Hon. Tony Abbott MP. The bill proposes to triple these penalties to a maximum of \$33,000 and \$6,600 respectively.³¹

Commencement and transitional provisions

1.28 Provisions in the bill have two separate commencement times. Generally provisions that relate to FWA's role in approving training, the conduct of investigations and inquiries, certifying alterations to rules, and the maximum civil penalty breaches would commence on Royal Assent.³²

1.29 Those provisions which relate to new requirements in relation to the rules of organisations would commence on Proclamation.³³ For example, where a registered organisation is required to amend its rules in order to comply with the bill (if passed), the bill proposes to allow registered organisations to submit any necessary changes to FWA for approval prior to the commencement of those provisions.³⁴

Human rights implications

1.30 The provisions of the bill engage the right to freedom of association and the prohibition on unlawful and arbitrary interference with privacy.³⁵ The Explanatory Memorandum states that the bill is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.³⁶

Matters identified by the Senate Scrutiny of Bills Committee

1.31 The committee notes that the Senate Standing Committee for the Scrutiny of Bills wrote to the Minister for Employment and Workplace Relations, the Hon Bill Shorten MP on 21 June, regarding certain aspects of the bill. These specifically relate to the potential in the bill for abrogation of the privilege against self-incrimination,

31 Fair Work (Registered Organisations) Amendment Bill 2012, proposed amendments to subsections 306(1)(a) and 306(1)(b) and proposed subsection 306(1A).

32 Explanatory Memorandum, Fair Work (Registered Organisations) Amendment Bill 2012, p. 8.

33 Explanatory Memorandum, Fair Work (Registered Organisations) Amendment Bill 2012, p. 8.

34 Fair Work (Registered Organisations) Amendment Bill 2012, Item 38. See also, Explanatory Memorandum, pp 17–18.

35 Articles 17 and 22 of the International Covenant on Civil and Political Rights, Article 8 of the International Covenant on Economic, Social and Cultural Rights and the International Labour Organisations Convention 87.

36 Explanatory Memorandum, Fair Work (Registered Organisations) Amendment Bill 2012, pp 3–6.

and the strengthening of safeguards in relation to the delegation of the General Manager's investigations power.

1.32 The committee has considered the Scrutiny of Bills Committee's comments on these matters, but notes that it has not received any evidence from submitters relevant to these concerns. The Minister's response is unlikely to be received before the tabling of this report. The committee trusts that the concerns raised by the Scrutiny of Bills Committee will be satisfactorily resolved by the Minister in his forthcoming response.

Acknowledgement

1.33 The committee thanks those organisations and individuals who contributed to this inquiry by preparing written submissions and giving evidence at the hearing.

Note on references

1.34 References in this report to the Hansard for the public hearings are to the proof Hansard. Please note that page numbers may vary between the proof and official transcripts.