

CHAPTER 2

Issues

2.1 All submitters to the inquiry expressed in-principle support for the increase of financial and accountability obligations of registered organisations and their office holders. Submitters also supported the enhanced investigative powers of Fair Work Australia and the improvements the bill would make to remedies available under the *Fair Work (Registered Organisations) Act 2009* (Registered Organisations Act).

2.2 The Australian Industry Group (AiG), the oldest registered organisation in Australia, expressed its broad support for the bill, agreeing that a greater degree of disclosure and accountability for registered organisations is important. The AiG noted that it had worked with the government to ensure that the amendments are not 'unfair' and do not impose 'an unreasonable compliance burden'.¹

2.3 The Australian Chamber of Commerce and Industry (ACCI), which represents a number of registered organisations, expressed 'in-principle support for the amendments', but signalled its members may provide technical commentary on the disclosure and training requirements.² On balance, the ACCI submitted that the amendments to the Act are 'in the general public interest'.³

2.4 The Australian Council of Trade Unions (ACTU), who also represents a number of registered organisations, supports the bill. Mr Tim Lyons, Assistant Secretary, told the committee that the bill, while it contained positive measures to respond to matters of recent concern, does not place unreasonable or unnecessary demands on registered organisations.⁴

2.5 The Institute for Public Affairs considered that the bill is a 'step in the right direction' but noted that the reforms 'do not go far enough'.⁵ The committee notes that the Institute for Public Affairs is not a registered organisation, nor does it purport to represent registered organisations.

2.6 The Australian Mines and Metals Association (AMMA) 'welcomes' the bill which provides 'for greater transparency of the financial activities of registered

1 Australian Industry Group, *Submission 2*, p. 2.

2 Mr Daniel Mammone, Director, Workplace Policy and Legal Affairs, Australian Chamber of Commerce and Industry, *Public Hearing*, Canberra, 22 June 2012.

3 Australian Chamber of Commerce and Industry, *Submission 6*, p. 3.

4 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Public Hearing*, Canberra, 22 June 2012. See also, *Submission 10*.

5 Institute of Public Affairs, *Submission 1*, p. 1.

organisations'. However, the AMMA also believed that the reforms brought about by the bill should go further.⁶

2.7 Master Builders Australia (MBA), whose members are registered organisations, advised that it 'generally has few concerns with the bill'.⁷

2.8 In contrast, the Master Plumbers' and Mechanical Services Association did not support the bill at all, arguing that it creates unnecessary bureaucratic and administrative burdens on registered organisations, and will prevent 'suitably qualified candidates' from applying for office due to rigorous disclosure requirements.⁸

Disclosure of remuneration, pecuniary and financial interests

2.9 Submitters to the committee generally supported the proposed disclosure of remuneration, pecuniary and financial interests. For example, the Australian Industry Group considers these amendments are appropriate in 'the interests of improving transparency and accountability'.⁹

2.10 The Australian Chamber of Commerce and Industry supported the disclosure arrangements in principle, but indicated that it would work with the General Manager to develop the exact format. The ACCI suggested that some of its concerns might be overcome by disclosing remuneration within predefined bands, rather than providing an exact dollar figure. During the hearing Mr Daniel Mammone, Director, advised that further detail on this point might be provided by member organisations.¹⁰ Master Builders expressed similar concerns, and suggested that reporting aggregate remuneration of a number of officers may be an appropriate way of addressing their concerns.¹¹

2.11 The committee believes that this issue can be resolved through consultation between the General Manager and ACCI, and since it concerns the model rules, does not relate directly to the proposed amendment.

2.12 Master Builders Australia, while not critical of the disclosure reforms, suggested that clarification could be provided by the Department or the General Manager about the meaning of 'material personal interest' and 'officer'. The committee

6 Australian Mines and Metals Association, *Submission 9*, p. 3.

7 Master Builders Australia, *Submission 8*, p. 3.

8 Master Plumbers' and Mechanical Services Association of Australia, *Submission 5*, pp 1–3.

9 Australian Industry Group, *Submission 2*, p. 3.

10 Mr Daniel Mammone, Director, Workplace Policy and Legal Affairs, Australian Chamber of Commerce and Industry, *Public Hearing*, Canberra, 22 June 2012.

11 Master Builders Australia, *Submission 8*, p. 5.

considers that this clarification is likely to be contained in the model rules, and encourages MBA to raise this concern directly with the General Manager.¹²

2.13 The Australian Council of Trade Unions considered these measures to be appropriate, noting that some registered organisations may already have similar policies in place.¹³

2.14 In contrast to all other submitters, the Master Plumbers' and Mechanical Services Association of Australia criticised the disclosure requirements, arguing that this would prevent the recruitment and retention of 'suitable qualified persons' because they would not want to disclose their remuneration, and personal or family affairs.¹⁴

2.15 The committee was initially concerned at the prospect of officers only being required to disclose remuneration and any material personal interests 'as soon as practicable', and considered the wisdom of recommending a prescribed period within which disclosure should be required to be made.¹⁵ However, the committee took subsequent evidence from Mr Jeremy O'Sullivan, Chief Counsel, Department of Education, Employment and Workplace Relations, that the phrase is widely understood judicially, and that an objective, reasonable test would be applied when deciding whether a person made the relevant disclosure 'as soon as practicable'. The committee notes that this form of words is also used in the requirement to disclose a material personal interest under the *Corporations Act 2001*.¹⁶

Committee view

2.16 The committee believes that the proposed remuneration, pecuniary and financial interest disclosures are appropriate. The committee notes that requirement that certain disclosures be made by officers as soon as is 'reasonably practicable' is a suitable standard in the circumstances.

Increases in civil penalties

2.17 Registered organisations, and their representatives, generally accept the proposed increases to civil penalties.

2.18 The Australian Industry Group submitted that the increase in penalties is 'appropriate given the results of Fair Work Australia's recent investigations into the

12 Master Builders Australia, *Submission 8*, pp 4– 5.

13 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Public Hearing*, Canberra, 22 June 2012.

14 Master Plumbers' and Mechanical Services Association of Australia, *Submission 5*, pp 1–2.

15 Fair Work (Registered Organisations) Amendment Bill 2012, proposed subsections 148A(3) and 148B((3).

16 *Corporations Act 2001*, s. 191.

Health Services Union'.¹⁷ When asked by the committee whether the penalties were sufficient, Mr Stephen Smith, Director, National Industrial Relations, advised that he would be very concerned if penalties were further increased. This is because none of AiG's board members are paid, and a further increase to penalties may discourage senior officers from sitting on the board.¹⁸

2.19 The Australian Council of Trade Unions supported the proposed increase to civil penalties, noting that the Federal Court also has the power to make restitution order where there has been a breach civil penalty provisions and the criminal law operates alongside the civil jurisdiction.¹⁹

Committee view

2.20 The committee believes that the proposal to increase civil penalties under the Act is appropriate, and strikes the right balance.

Education and training requirements

2.21 The bill proposes that the rules of registered organisations must require officers to undertake training approved by the General Manager in relation to financial management duties.²⁰ Officers of registered organisations come from a variety of backgrounds with a range of qualifications and experience. While some submitters, such as Master Builders Australia, expressed concern about the training requirements for officers, both in terms of who is required to receive training and the content of that training, the committee was pleased to note that the Explanatory Memorandum clarifies that approved training may be general or specific and may be of a range of 'different formats, styles and lengths'.²¹

2.22 The Australian Industry Group supported the approach taken, submitting that flexibility is important because:

Members of Ai Group's National Executive and Branch Councils and Chief Executives and senior executives of Ai Group Member companies and are typically very busy. Therefore, it is essential that FWA be able to approve training programs of different types and formats to reflect the circumstances.²²

17 Australian Industry Group, *Submission 2*, p. 3.

18 Mr Stephen Smith, Director, National Industrial Relations, Australian Industry Group, *Public Hearing*, Canberra, 22 June 2012.

19 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Public Hearing*, Canberra, 22 June 2012.

20 Fair Work (Registered Organisations) Amendment Bill 2012, proposed sections 154C and 154D.

21 Master Builders Australia, *Submission 8*, p. 5. Explanatory Memorandum, Fair Work (Registered Organisations) Amendment Bill 2012, p. 8.

22 Australian Industry Group, *Submission 2*, p. 10.

2.23 During the hearing Mr Stephen Smith, Director, National Industrial Relations, Australian Industry Group, noted that the skills mix of officers within each registered organisation will factor into what training is appropriate. Mr Smith told the committee AiG was satisfied with assurances it had received from the government that there would be flexibility in the types of programs the General Manager could approve, and that it is confident appropriate programs could be developed for its organisation.²³

2.24 The Australian Council of Trade Unions observed that financial management training occurs in a number of its member organisations already, but noted that codifying this requirement was 'an important and useful contribution'.²⁴

2.25 The Australian Chamber of Commerce and Industry accepted the training requirements in principle, but submitted that it is 'essential' that the government and the General Manager work 'collaboratively' with registered organisations to ensure that registered organisations are consulted in relation to training requirements.²⁵ The ACCI also called for prior recognition of learning where the relevant officers already have the skills to meet the new financial training obligations.²⁶ During the hearing, Mr Mammone advised the committee that he believed the bill allowed for enough discretion on the part of the General Manager to allow registered organisations sufficient flexibility and consultation in their training requirements.²⁷

Committee view

2.26 The committee is satisfied by the statements made in the Explanatory Memorandum, and believes that the bill would provide the General Manager with the discretion to approve appropriate training requirements which account for the particular backgrounds, qualifications and skills of officers in different registered organisations.

Recommendation

The committee recommends that the Senate pass the bills.

Senator Gavin Marshall Chair

23 Mr Stephen Smith, Director, National Industrial Relations, Australian Industry Group, *Public Hearing*, Canberra, 22 June 2012.

24 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Public Hearing*, Canberra, 22 June 2012.

25 Australian Chamber of Commerce and Industry, *Submission 6*, p. 6.

26 Australian Chamber of Commerce and Industry, *Submission 6*, p. 6.

27 Mr Daniel Mammone, Director, Workplace Policy and Legal Affairs, Australian Chamber of Commerce and Industry, *Public Hearing*, Canberra, 22 June 2012.

