

The Senate

Education, Employment
and Workplace Relations
Legislation Committee

Fair Work (Registered Organisations)
Amendment Bill 2012 [Provisions]

June 2012

© Commonwealth of Australia

ISBN: 978-1-74229-659-3

This document was produced by the Senate Standing Committees on Education, Employment and Workplace Relations and printed by the Senate Printing Unit, Parliament House, Canberra.

Membership of the Committee

Members

Senator Gavin Marshall, **Chair**, ALP, Vic.

Senator Chris Back, **Deputy Chair**, LP, WA

Senator Catryna Bilyk, ALP, Tas.

Senator Bridget McKenzie, Nat., Vic.

Senator Lee Rhiannon, AG, NSW

Senator Matt Thistlethwaite, ALP, NSW

Participating Members

Senator the Hon Eric Abetz, LP, Tas.

Secretariat

Mr Tim Watling, Secretary

Ms Bonnie Allan, Principal Research Officer

Ms Natasha Rusjakovski, Senior Research Officer

Mr Jarrod Baker, Research Officer

Miss Sarah Bainbridge, Administrative Officer

PO Box 6100
Parliament House
Canberra ACT 2600

Ph:02 6277 3521
Fax: 02 6277 5706
E-mail: eewr.sen@aph.gov.au

Table Of Contents

Membership of the Committee	iii
CHAPTER 1	1
Introduction and background	1
Reference	1
Conduct of inquiry	1
Background.....	1
Key provisions of the bill	2
Human rights implications	7
Matters identified by the Senate Scrutiny of Bills Committee.....	7
Acknowledgement	8
Note on references	8
CHAPTER 2	9
Issues	9
Disclosure of remuneration, pecuniary and financial interests	10
Increases in civil penalties.....	11
Education and training requirements.....	12
Coalition Senators' Additional Comments	15
Introduction	15
The Problem	17
The Straw Men	18
The Government's proposed solution	22
The Opposition's Better Plan	23
The Member for Barton's Intervention	32
Conclusion	33

ATTACHMENT A.....	35
ATTACHMENT B.....	41
ATTACHMENT C.....	45
APPENDIX 1	48
Submissions received by the Committee	48
APPENDIX 2	49
Witnesses who appeared before the Committee	49

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.

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.

Coalition Senators' Additional Comments

Introduction

1.1 Coalition Senators note from the outset their extreme disappointment that the Senate Education, Employment and Workplace Relations Legislation Committee was not allowed the time to fully investigate provisions of the Fair Work (Registered Organisations) Amendment Bill 2012.

1.2 The bill was introduced into the House of Representatives on 31 May 2012. At the next available opportunity, the Coalition sought referral of the bill to the committee. While the bill was referred, the committee was expected to review the bill in just five working days.

1.3 A number of submissions expressed concerns with the committee's truncated ability to have a proper review. For example, the Australian Chamber of Commerce and Industry observed:

It is regrettable that the timetable does not provide a more fulsome opportunity to consider submissions of ROs who will be affected by the Bill.¹

1.4 Master Builders expressed similar concern, noting in its submission that: Master Builders reiterates its concerns about a truncated timetable for the Committee's processes in considering the Bills.²

1.5 The reason for the expedited inquiry and the bill being subject to a Senate guillotine motion is because it is 'a budget bill or a key appropriation', according to correspondence from the Leader of the Government in the Senate, Senator the Hon. Chris Evans to Senator the Hon. Eric Abetz dated 13 June 2012. The Department of Education, Employment and Workplace Relations submitted that the bill is not a budget measure during the hearing on 22 June 2012:

Senator ABETZ: I would have thought you would give that answer and that is, if I might say, the correct answer. We were provided by the leader of the government in the Senate with a letter saying the government has a number of key appropriation and budget related bills which require passage before 1 July 2012, attached are attached a list of these bills for consideration. One of those bills is the Fair Work (Registered Organisations) Amendment Bill 2012. Reading through it as I did last night, I found there is nothing that actually requires passage before 1 July 2012, albeit it might be nice for certain people's timetables. But it is not a budget related matter that requires passage by 1 July, is it?

1 Australian Chamber of Commerce and Industry, *Submission 6* , p. 2

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

Mr Kovacic: It is certainly not a budget related bill.³

1.6 The Coalition Senators note that Senate guillotine motions should only be used in extreme circumstances. However, in this Parliament debate has been guillotined 125 times, whereas under the Coalition, it was only exercised 36 times over a full three year period.

1.7 This rushed inquiry does not allow for good public policy making. Indeed Labor Senators have recognised this in the past, previously rallying against the rushing through of bills. For example, the now Leader of the Government in the Senate, Senator the Hon Chris Evans, observed that:

We got better legislation when Bills were thoroughly scrutinised by committees, the public had their input and governments were forced to listen and respond.⁴

The Senate has both a right and a responsibility to debate and review legislation – this legislation and all other legislation that comes before the parliament. That is what Australians expect from this chamber.⁵

1.8 Unfortunately as a result of the Labor's party's tight time frame, a number of people who were approached with expertise in this area were unable to appear or prepare a submission in the short period of time that was available to do so. Coalition Senators are disappointed not to have received the opportunity to understand their concerns.

Recommendation 1

1.9 That the Fair Work (Registered Organisations) Amendment Bill 2012 be removed from the Senate guillotine motion to allow for full and proper consideration of the bill by the Senate through the Education, Employment and Workplace Relations Legislation Committee.

1.10 Given the substantive impact that the proposed amendments will have, this bill should be subject to a Regulatory Impact Statement in line with the Office of Best Practice Regulation's guidelines. It appears that neither a Regulatory Impact Statement nor an exemption from the Prime Minister have been undertaken or sought.

Recommendation 2

1.11 That the bill be subject to a Regulatory Impact Statement in line with the Office of Best Practice Regulation guidelines.

3 Mr John Kovacic, Deputy Secretary, Department of Education, Employment and Workplace Relations, *Proof Committee Hansard*, 22 June 2012, p. 30.

4 Senator the Hon Chris Evans, Speech to the Australian Labor Party Subiaco Branch, 29 June 2007.

5 Senator the Hon Chris Evans, *Senate Hansard*, 14 June 2005.

1.12 Coalition Senators agree that the seemingly never-ending saga of the Fair Work Australia investigations into the Health Services Union (HSU) have made it absolutely clear that major reform is needed in this area. However, the reform is needed in the management rather than the legislation. Coalition Senators firmly believe that this bill is nothing more than a hasty attempt by the Minister for Employment and Workplace Relations and the Australian Labor Party to give the appearance that the problems with the HSU investigation lies in the legislation.

1.13 Coalition Senators agree with the assessment of the former Attorney-General, the Hon. Robert McClelland MP, that there are areas of this bill that can be strengthened.⁶ However, Coalition Senators agree with the statement in the Institute of Public Affairs submission:

The Bill is a step in the right direction. However, its reforms are modest and do not go far enough.⁷

1.14 Coalition Senators also agree with the Department of Education, Employment and Workplace Relations' submission:

[That] recent events have demonstrated the need for stronger penalties for any registered organisations and their office holders that do the wrong thing.

...

Questions have been raised about the ability of FWA as the regulator to effectively investigate and take action against organisations that are alleged to have breached those obligations.⁸

1.15 Nevertheless, while Coalition Senators agree with the justification, we firmly believe that this is a limp bill that will not achieve the intended goals it seeks to address. Coalition Senators will explore the concerns in more detail through these additional comments.

The Problem

1.16 Fair Work Australia's investigations into the HSU Victoria Number 1 Branch and the HSU National Office, by Fair Work Australia's own admission took 'an unreasonably long time'.⁹

1.17 Further, the Coalition have expressed real concerns over the conduct of the investigation in a number of key areas:

6 The Hon Robert McClelland MP, *House of Representatives Hansard*, 21 June 2012.

7 Institute of Public Affairs, *Submission 1*, p. 2.

8 Department of Education, Employment and Workplace Relations, *Submission 7*, p. 2.

9 Ms Bernadette O'Neill, General Manager, Fair Work Australia, *Proof Committee Hansard*, 15 February 2012, Opening Statement.

- A long and protracted investigation;
- Failure to cooperate with police;
- Alleged inability to prepare a brief of evidence for the Commonwealth Director of Public Prosecutions; and
- The key personnel in Fair Work Australia and their background as former union bosses.

1.18 While the process raises serious questions, the final reports were substantive and detailed bodies of work.

1.19 The report into the HSU National Office contained a litany of findings against former Labor MP, Mr Craig Thomson. Chapter after chapter deals with unauthorised expenditure of union funds for Mr Thomson's personal benefit and on his campaign to be a Member of Parliament for the New South Wales Central Coast seat of Dobell, as well as contraventions by him in managing the HSU's National Office. The findings detail lavish expenditure of low-paid union members' funds on escort agencies, travel, restaurants and cash withdrawals. Indeed, Fair Work Australia has gone as far as to suggest that substantive parts of Mr Thomson's evidence to it may have been 'false and misleading'.

1.20 What compounds this outrageous expenditure are the pages of the Fair Work Australia report devoted to rejecting the stories put up by Mr Thomson in an effort to deny his involvement.

The Straw Men

1.21 Fair Work Australia's refusal to cooperate with police was reprehensible. This is especially so, as the predecessor body believed the issues should have been referred to police as early as 30 June 2009.

1.22 In correspondence obtained by the Coalition under the *Freedom of Information Act 1982*, Fair Work Australia responded to a request for information from Victoria Police in the following terms:

Naturally I wish to cooperate with your request to the extent that would be appropriate, consistent with the powers and functions conferred upon the General Manager of FWA by the RO Act.¹⁰

1.23 However, later in the same piece of correspondence, the General Manager stated that:

...neither I, nor FWA, have power to inquire into or investigate, nor reach conclusions about whether a reporting unit (or anybody) may have contravened a Victorian criminal law...Accordingly, I regret to advise that I

10 Correspondence between Ms Bernadette O'Neill and Detective Sergeant Tyquin, 14 October 2011, Attachment 1, p. 1.

do not consider it would be appropriate for me or for any of my staff, to respond to the questions set out in your email...¹¹

1.24 This bizarre argument was debunked by a Detective Sergeant Tyquin of the Victorian Fraud and Extortion Squad, who responded in the following terms:

Your above-mentioned decision appears to have been based on the mistaken belief that the Victoria Police were seeking to have the FWA inquiry extended to include a consideration of whether or not Victorian criminal law may have been contravened or to inquire into or investigate such matters.

...

The determination as to whether or not that material advances the investigation by Victoria Police into possible breaches of the criminal law is a matter for Victoria Police.¹²

1.25 Further, advice obtained by the Coalition from eminent lawyer, Mr Stuart Wood SC, states clearly that the refusals to cooperate with police 'appear to be based on an erroneous analysis of the statute' and 'are inconsistent with the intention of the Parliament' in enacting the *Fair Work (Registered Organisations) Act 2009* (Registered Organisations Act).

1.26 Coalition Senators believe that amendments should not be required to the Registered Organisations Act to allow for the cooperation with police, as the power to co-operate already exists under the current legislation and should have happened in the first place.

1.27 Coalition Senators also note that an email sent from Mr Doug Williams, the former Industrial Registrar to the lead investigator, Mr Terry Nassios, on the day prior to Fair Work Australia coming into existence. In this email Mr Williams stated that the investigation should be referred to police.¹³ The question begs, if Mr Williams was not constrained, why were Mr Lee and Ms Bernadette O'Neill?

1.28 Nonetheless, as Fair Work Australia have placed themselves in this absurd straight jacket, Coalition Senators believe the Government's amendment does not go far enough to make it expressly clear, how, when and on what basis Fair Work Australia should cooperate with police and other law enforcement bodies.

Recommendation 3

11 Correspondence between Ms Bernadette O'Neill and Detective Sergeant Tyquin, 14 October 2011, Attachment 1, p. 4.

12 Correspondence between Detective Sergeant Tyquin and Ms Bernadette O'Neill, 22 March 2011, Attachment 2, p. 2.

13 See Attachment 3.

1.29 That the bill be amended to ensure absolute clarity in clause 335C relating to cooperation with police and law enforcement agencies.

1.30 On 4 April 2012, Fair Work Australia provided the Commonwealth Director of Public Prosecutions (CDPP) with a copy of its report into the Health Services Union National Office. However, the CDPP made it clear in a press release that 'the material forwarded is not a brief of evidence.'¹⁴

1.31 Former Chairman of the National Crime Authority, Peter Faris QC described the report that was forwarded to the CDPP as 'just a report like a report from a commission and yes, I'm sure it's useless.'¹⁵

1.32 The Commonwealth Director of Public Prosecutions appeared to reach a similar conclusion:

The report and related material forwarded is not a brief of evidence and as a consequence could not be assessed against the tests for prosecution that are contained in the Prosecution Policy of the Commonwealth.¹⁶

1.33 Fair Work Australia then concluded that they could not prepare a brief of evidence. Ms O'Neill, General Manager, announced:

I have further considered whether I am able to provide a brief of prosecution and concluded that I am unable to do so.¹⁷

1.34 The committee received evidence from Mr John Lloyd, Director, Institute of Public Affairs. Mr Lloyd is a former Australian Building and Construction Commissioner (ABCC), and observed that in his time at the ABCC, while not having express powers to prepare a brief of evidence, there were no impediments to doing so. The following exchange occurred during the hearing on 22 June 2012:

Senator ABETZ: So in preparing that brief of evidence would you liaise with the Commonwealth Director of Public Prosecutions to ensure that that which you provided the director of prosecutions was in fact in a format that could be used and employed by the Director of Public Prosecutions?

Mr Lloyd: Certainly. It was a fundamental requirement that there be a brief of evidence prepared. It was quite explicit in any electronic or written material that comes from the DPP. So, on the occasions when we prepared a brief of evidence, my lawyers would liaise with the lawyers of the DPP about what form and that type of thing was required. We would go ahead and prepare the brief of evidence. I recall reading those very carefully before I signed off on them and sent them to the DPP.

14 Commonwealth Director of Public Prosecutions, Press Release, 4 April 2012.

15 Peter Faris QC, Radio National Interview, 5 April 2012.

16 Commonwealth Director of Public Prosecutions, Press Release, 3 May 2012.

17 Fair Work Australia, Press Release, 7 May 2012.

Senator ABETZ: As you read the Fair Work (Registered Organisations) Act as it currently stands, there is nothing stopping the general manager from doing exactly what you did in the Building and Construction Commission.

Mr Lloyd: No. I was surprised that they did not prepare a brief of evidence, and I suspect the quick response by the DPP shows he was surprised as well.¹⁸

1.35 Coalition Senators contend that the Registered Organisations Act offers no impediment in this regard, and could not need be clearer. Section 336 relevantly provides:

336 Action following an investigation

...

(c) refer the matter to the Director of Public Prosecutions for action in relation to possible criminal offences.¹⁹

1.36 Coalition Senators note that other Commonwealth agencies do not have an express power in their governing Acts to prepare briefs of evidence. While Coalition Senators do not believe amendments are required in this regard as Fair Work Australia was able to prepare a brief of evidence all along, Coalition Senators believe Fair Work Australia should be expressly given the power to prepare a brief of evidence to prevent Fair Work Australia placing themselves in an absurd straight jacket again in the future.

Recommendation 4

1.37 The bill should be amended to ensure that Fair Work Australia is provided with the express power to prepare a brief of evidence.

1.38 Coalition Senators note the statement issued by the General Manager of Fair Work Australia:

It is unfortunate that the legislative scheme that has been in place for many years and that I am required to act within, does not permit me to conduct an investigation into whether criminal offences have been committed, whilst at the same time it does not permit me to disclose information concerning potential criminal offences to the appropriate investigatory agency, namely state and federal police.²⁰

1.39 Coalition Senators contend that Fair Work Australia's statement was a face-saving measure designed to deflect attention from the poor administration of Fair Work Australia.

18 Mr John Lloyd and Senator the Hon. Eric Abetz, *Proof Committee Hansard*, 22 June 2012, p. 9.

19 *Fair Work (Registered Organisations) Act 2009*.

20 Fair Work Australia, Press Release, 7 May 2012.

The Government's proposed solution

1.40 The bill before the Parliament is a weak bill designed by a former union boss to govern union bosses and will have the 'cop on the beat' as a former union boss.

1.41 The bill will:

- require that the rules of all registered organisations deal with disclosure of remuneration, pecuniary and financial interests;
- increase the civil penalties under the Registered Organisations Act;
- enhance the investigative powers available to FWA under the Registered Organisations Act; and
- require education and training to be provided to officials of registered organisations about their governance and accounting obligations.

1.42 While it is a step in the right direction, it does not go far enough, explained in these additional comments.

1.43 Coalition Senators fear that this bill has been rushed together to meet a political end rather than dealing with the substantive problems. Further, the Government have flagged that further changes to the Act may be required. The Minister in response to a Question on Notice said:

...the Government will consider the findings of the KPMG review before deciding to comment publicly on this matter.²¹

1.44 The Department confirmed that more changes may come as a result of the KPMG review during the hearing on 22 June 2012:

Senator ABETZ: Are we able to shed any light on whether or not the government might consider further amendments to the Fair Work (Registered Organisations) Act in light of recommendations that might come out of the KPMG review?

...

Mr Kovacic: What I can say is that we will have a look at the KPMG report once it is released or finalised and made available. I suppose those judgments will be made by government in the light of having seen it.

Senator ABETZ: Yes, I know all that, but have the government indicated to you at this stage ...

Mr Kovacic: My sense would be that, if there were issues in there that were not addressed in the context of this bill and required further response by the

21 Answer to Parliamentary Question on Notice 1570, tabled 20 April 2012.

government, the government would be open to considering those sorts of responses.²²

1.45 Noting that Fair Work Australia have indicated that the HSU investigations are the only investigations, Coalition Senators believe that the bill should be delayed from further debate until the August 2012 sittings. This would allow the Minister and the Parliament to benefit from the KPMG review which is scheduled to be concluded by the end of July before making changes to the Act. Coalition Senators believe that a one month delay, after three and a half years of investigation will not negatively impact the membership of registered organisations or Fair Work Australia.

Recommendation 5

1.46 Further debate on the bill be suspended until the August 2012 Parliamentary Sittings.

The Opposition's Better Plan

1.47 The Leader of the Opposition announced a Better Plan for the Accountability and Transparency of Registered Organisations on 28 April 2012. It is notable that this announcement preceded Minister Shorten's rushed announcement by ten days.

1.48 Coalition Senators believe that Australians who join trade unions or employer associations deserve to have confidence in the conduct and administration of those organisations. Registered organisations are a central part of the Fair Work regime and they must operate to the highest of standards.

1.49 The worst aspect of the ongoing HSU scandal is that 70,000 low paid workers have had their hard-earned money misspent by union officials on political campaigns and escort services.

1.50 For example, the Fair Work Australia's investigation into the HSU found that officials had used union members' money for personal advantage, failed to act in the best interest of members, and breached financial management rules. Had these offences occurred in a company with directors, the officials would have been subject to criminal penalties including personal fines of up to \$200,000 and up to five years imprisonment.²³

1.51 However, under the Registered Organisations Act, registered organisations and their officers are only exposed to civil penalties with the potential for comparatively modest fines of up to \$2,200.

22 Mr John Kovacic, Deputy Secretary and Senator the Hon. Eric Abetz, *Proof Committee Hansard*, 22 June 2012, p. 30.

23 *Corporations Act 2001*, s. 1311 and Schedule 3.

1.52 The overwhelming majority of registered organisations already do the right thing. But there is clear evidence that the money paid by members to some registered organisations is being used for personal gain and inappropriate purposes.

1.53 The Hon. Tony Abbott MP announced that, if elected, a Coalition Government will:

- amend the laws to ensure that registered organisations and their officials have to play by the same rules as companies and their directors;
- ensure that the penalties for breaking the rules are the same that apply to companies and their directors, as set out in the Corporations Act 2001;
- reform financial disclosure and reporting guidelines under the Registered Organisations laws so that they align more closely with those applicable to companies; and
- establish a separate Registered Organisations Commission.

1.54 It is also clear that Fair Work Australia, which is responsible for enforcing the laws governing registered organisations, has failed to do its job. The three year FWA investigation into the Health Services Union is a model of incompetence.

1.55 There needs to be a watchdog that works, to ensure that the members of trade unions and other organisations are protected from malfeasance.

1.56 If elected, the Coalition will establish a new body, the Registered Organisations Commission, that will:

- take on the role of registered organisations enforcer and investigator, currently held by the General Manager of Fair Work Australia.
- provide information to members of registered organisations about their rights and act as the body to receive complaints from their members; and
- educate registered organisations about the obligations that apply to them.

1.57 The Registered Organisations Commission will be independent and will operate within the office of the Fair Work Ombudsman. The Registered Organisations Commission will also be required to cooperate with other law enforcement bodies.

1.58 Coalition Senators believe that the members of registered organisations deserve transparent and accountable representation. Australian workers who join trade unions deserve to know that their membership fees are being used for proper purposes.

1.59 The Coalition will consult with registered organisations on how best to implement these reforms.

1.60 Coalition Senators note that a number of submissions suggest that registered organisations should be covered by the Corporations Act 2001 and governed by the Australian Securities Investment Commission.²⁴ While Coalition Senators agree that the rules and disclosure requirements should be essentially harmonised between the Fair Work (Registered Organisations) Act 2009 and the Corporations Act 2001, the Coalition recognises the importance of having industrial organisations governed by a specialist agency focused on industrial organisations.

1.61 Further, Coalition Senators note the evidence provided by Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions (ACTU), in relation to the Coalition's policy:

The more substantive point about the proposed bill that was foreshadowed by Mr Abbott is: the core of it is to pick up union regulation and to dump it into the corporations system. I have already dealt with a range of aspects that. I might make one additional point—and, really, this is the reason we oppose it.²⁵

1.62 The ACTU's new found basis for opposition to the Coalition's policy is false. The Coalition's policy would have similar rules and penalties for Registered Organisations. The Coalition believes that this would allow for transparency for members and a sufficient deterrent for poor conduct.

1.63 It is of concern to the Coalition that a Member of a Trade Union who is also a shareholder in a corporation cannot expect the same accountability and transparency in both organisations.

1.64 Coalition Senators note that a number of provisions similar to the Corporations Act, in relation to conduct, already exist in the Registered Organisations Act, however the penalty provisions do not. The following table outlines the contracts between the two legislative regimes:

Corporations Act 2001	Fair Work (Registered Organisations) Act 2009
180 Care and diligence—civil obligation only Care and diligence—directors and other officers (1) A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would	285 Care and diligence—civil obligation only (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she: (a) were an officer of an organisation

24 See for example, Australian Mines and Metals Association, *Submission 9*, p. 3 and Institute of Public Affairs, *Submission 1*, p. 1.

25 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions, *Proof Committee Hansard*, 22 June 2012, p. 23.

exercise if they:

(a) were a director or officer of a corporation in the corporation's circumstances; and

(b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Note: This subsection is a civil penalty provision (see section 1317E).

Business judgment rule

(2) A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they:

(a) make the judgment in good faith for a proper purpose; and

(b) do not have a material personal interest in the subject matter of the judgment; and

(c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and

(d) rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

(3) In this section:

business judgment means any decision to take

or a branch in the organisation's circumstances; and

(b) occupied the office held by, and had the same responsibilities within the organisation or a branch as, the officer.

Note: This subsection is a civil penalty provision (see section 305).

(2) An officer of an organisation or a branch who makes a judgment to take or not take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:

(a) makes the judgment in good faith for a proper purpose; and

(b) does not have a material personal interest in the subject matter of the judgment; and

(c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and

(d) rationally believes that the judgment is in the best interests of the organisation.

The officer's belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.

<p>or not take action in respect of a matter relevant to the business operations of the corporation.</p>	
<p>181 Good faith—civil obligations</p> <p>Good faith—directors and other officers</p> <p>(1) A director or other officer of a corporation must exercise their powers and discharge their duties:</p> <p>(a) in good faith in the best interests of the corporation; and</p> <p>(b) for a proper purpose.</p> <p>Note 1: This subsection is a civil penalty provision (see section 1317E).</p> <p>Note 2: Section 187 deals with the situation of directors of wholly-owned subsidiaries.</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note 1: Section 79 defines <i>involved</i>.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p>	<p>286 Good faith—civil obligations</p> <p>(1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties:</p> <p>(a) in good faith in what he or she believes to be the best interests of the organisation; and</p> <p>(b) for a proper purpose.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p>
<p>182 Use of position—civil obligations</p> <p>Use of position—directors, other officers and employees</p> <p>(1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:</p> <p>(a) gain an advantage for themselves or someone else; or</p> <p>(b) cause detriment to the corporation.</p> <p>Note: This subsection is a civil penalty provision (see section 1317E).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p>	<p>287 Use of position—civil obligations</p> <p>(1) An officer or employee of an organisation or a branch must not improperly use his or her position to:</p> <p>(a) gain an advantage for himself or herself or someone else; or</p> <p>(b) cause detriment to the organisation or to another person.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p>

<p>Note 1: Section 79 defines <i>involved</i>.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p>	
<p>183 Use of information—civil obligations</p> <p>Use of information—directors, other officers and employees</p> <p>(1) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation must not improperly use the information to:</p> <p>(a) gain an advantage for themselves or someone else; or</p> <p>(b) cause detriment to the corporation.</p> <p>Note 1: This duty continues after the person stops being an officer or employee of the corporation.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note 1: Section 79 defines <i>involved</i>.</p> <p>Note 2: This subsection is a civil penalty provision (see section 1317E).</p>	<p>288 Use of information—civil obligations</p> <p>(1) A person who obtains information because he or she is, or has been, an officer or employee of an organisation or a branch must not improperly use the information to:</p> <p>(a) gain an advantage for himself or herself or someone else; or</p> <p>(b) cause detriment to the organisation or to another person.</p> <p>Note 1: This duty continues after the person stops being an officer or employee of the organisation or branch.</p> <p>Note 2: This subsection is a civil penalty provision (see section 305).</p> <p>(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.</p> <p>Note: This subsection is a civil penalty provision (see section 305).</p>
<p>184 Good faith, use of position and use of information—criminal offences</p> <p>Good faith—directors and other officers</p> <p>(1) A director or other officer of a corporation commits an offence if they:</p> <p>(a) are reckless; or</p> <p>(b) are intentionally dishonest;</p> <p>and fail to exercise their powers and discharge their duties:</p>	<p style="text-align: center;">PROPOSED COALITION AMENDMENT</p> <p>343B Disclosure of information</p> <p>(1) This section applies to information acquired in the performance of functions or exercise of powers under this Act.</p> <p style="text-align: center;"><i>Disclosure that is necessary or appropriate, or likely to assist</i></p>

<p>(c) in good faith in the best interests of the corporation; or</p> <p>(d) for a proper purpose.</p> <p>Note: Section 187 deals with the situation of directors of wholly-owned subsidiaries.</p> <p>Use of position—directors, other officers and employees</p> <p>(2) A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:</p> <p>(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or</p> <p>(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.</p> <p>Use of information—directors, other officers and employees</p> <p>(3) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation commits an offence if they use the information dishonestly:</p> <p>(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or</p> <p>(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.</p>	<p><i>administration or enforcement</i></p> <p>(2) The General Manager may disclose, or authorise the disclosure of, the information if the General Manager reasonably believes:</p> <p>(a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, under this Act; or</p> <p>(b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.</p> <p><i>Obligation to disclose information relevant to commission of offence</i></p> <p>(3) If a member of the staff of FWA reasonably believes that the information is relevant to the commission, or possible commission, of an offence against a law of the Commonwealth, a State or a Territory, the member of staff must disclose the information to the General Manager.</p> <p>(4) If the General Manager reasonably believes that the information is relevant to the commission, or possible commission, of an offence against a law of the Commonwealth, a State or a Territory, the General Manager must disclose, or authorise the disclosure of, the information:</p> <p>(a) for an offence against a law of the Commonwealth—to the Australian Federal Police; or</p> <p>(b) for an offence against a law of a State or Territory—to the police force of the State or Territory.</p> <p><i>Information may be disclosed despite inquiry or investigation under this Act</i></p> <p>(5) To avoid doubt, if the information relates to a matter that is the subject of an inquiry or investigation under Part 4 of Chapter 11, a person need not wait until the conclusion of the inquiry or investigation before disclosing, or authorising the disclosure of, the information under subsection (2), (3) or (4) of this section.</p>
--	---

1.65 As noted in the above table, the Coalition has circulated amendments in the House of Representatives to add the penalty provision to the bill.

1.66 While Coalition Senators note some concerns about enhanced penalties, only those who have done the wrong thing need fear additional penalties.

1.67 Further, Coalition Senators note the contribution by the Member for Chifley, Mr Ed Husic MP, in the House of Representatives:

When those opposite argue that the easiest thing to do in this case in relation to legislation before the House is just to mirror corporations law or the Corporations Act and basically ensure that the penalties and approaches that are used in that law be mirrored entirely for registered organisations, it flies against common sense and reality. I explained the simple reason: look at any measure of the wealth of those corporations—I am not talking generally; I am talking about the funds at hand and the breadth of those organisations—or even at the pay differential between those who are either directors or senior managers in those corporations and the management committees of unions, made up of shop floor delegates who are probably hundreds of times less remunerated and who have less control over the shape, form and direction of an organisation than someone who is a director or senior manager directing some of the biggest firms in this country, whose operations may be based either here or internationally. This compares the types of provisions that govern those individuals—directors or senior managers—and looks at the pay differentials that exist there and the responsibilities they have, and seeks to have the penalties and regime that apply to them then apply to workplace delegates who sit on management committees of unions. This is totally disproportionate and is prejudice masked by policy. This is more about those opposite trying to make it difficult for anyone to even contemplate sitting on the management committee of a union or an organisation that seeks to represent working Australians.²⁶

1.68 Evidence given by the ACTU during the hearing on 22 June 2012 further adds to this myth:

Senator ABETZ: Do you accept that some of your members have holdings of tens of millions of dollars worth of assets?

Mr Lyons: Some unions are quite large and are very old and certainly do have assets. Those assets are held in property and other investments.

Senator ABETZ: So why would you say that an officeholder in a company that might hold less assets than some of your member organisations who do not act in good faith should have a higher penalty regime applied against them than officeholders in registered organisations that have a bigger property and cash base to them?

26 Mr Ed Husic MP, *House of Representatives Hansard*, 21 June 2012.

Mr Lyons: I would say that even the largest union—or employer association, for that matter—in terms of its turnover and assets, would pale into insignificance and into even a modestly sized business which is regulated by the Corporations Law which has to extend to the extent of being able to regulate what are giant multinational companies. While you are correct in suggesting that assets run into the millions of dollars, I do not think a suggestion that that scale implies some parallel with large businesses is an accurate one. The point is that, to have a specialist regulatory regime which recognises that the accountability required in this case is to members and not shareholders is a fundamentally different relationship.²⁷

1.69 Both Mr Ed Husic MP and the Mr Lyons are mistaken. The Institute of Public Affairs submission to this inquiry makes it clear that:

Unions are large financial entities. For example, the 2010 financial report of the Victorian Branch of the CFMEU Construction and General Division reported net assets of \$42 million. In 2011 the ANF Victorian Branch held \$22 million in net assets. The NSW division of United Voice reported \$25 million in net assets in 2011. If these unions were classed as proprietary companies they would be considered large corporations.²⁸

1.70 Further, it is worth noting that the so-called ‘tax cuts for small businesses’ as a part of the Government’s mining tax, required small businesses to be corporations. On both counts, Mr Husic and Mr Lyons are seriously mistaken.

Recommendation 6

1.71 The bill should be amended to implement the Coalition’s Better Plan for Accountability and Transparency of Registered Organisations in full.

Recommendation 7

1.72 The bill should be amended to establish a Registered Organisations Commission within the office of the Fair Work Ombudsman.

Recommendation 8

1.73 The bill should be amended to ensure that accountability and transparency provisions as well as penalty provisions are brought in line with the Corporations Act 2001.

27 Mr Tim Lyons, Assistant Secretary, Australian Council of Trade Unions and Senator the Hon. Mr Eric Abetz, *Proof Committee Hansard*, 22 June 2012, p. 21.

28 Institute of Public Affairs, *Submission 1*, p. 3.

The Member for Barton's Intervention

1.74 Coalition Senators note the speech made by the Member for Barton, the Hon. Mr Robert McClelland MP, in the House of Representatives, where it was argued that the bill could be strengthened.

1.75 The former Attorney General also referred to the Prime Minister's involvement in a situation of union funds being misapplied some time ago.

1.76 The Australian Financial Review explored this on Friday, 22 June 2012:

Mr McClelland repeatedly referred to allegations made against Mr Wilson that have been made several times in the Victorian Parliament, most recently in 2001 when he was accused of misappropriating about \$500,000 of union funds, including \$102,000 spent on a house in Kerr Street, Fitzroy.

The Prime Minister had no comment yesterday and has repeatedly denied allegations she was linked to union corruption. Mr McClelland made pointed references to the Prime Minister's involvement.

[From page 1]"Indeed, I know the Prime Minister is quite familiar with this area of the law, as lawyers in the mid-1990s, [we] were involved in a matter representing opposing clients," Mr McClelland said in Parliament.

"Indeed, my involvement in that matter has coloured much of my thinking in this area and resulted in me moving amendments on 17 September 2002 to actually strengthen the powers of the Federal Court of Australia." Ms Gillard, who was then a lawyer at Slater & Gordon, is alleged to have given Mr Wilson legal advice.

Mr McClelland worked at law firm Turner Freeman before entering Parliament.

He gave legal advice to another former union official, Ian Cambridge, who pursued Mr Wilson.

The vast majority of trade unions were professionally managed by highly competent and dedicated people, Mr McClelland said.

"But, regrettably, there have been exceptions to that.

"Officers have sought to obtain personal benefit or benefit on behalf of others at the expense of members of their union. Reported instances include not only misapplying funds and resources of the union but also using the privileges of their office to attract and obtain services and benefits from third parties." Mr McClelland highlighted that union governance laws in the mid-1990s did not extend to union officials who had retired, meaning Mr Wilson could not be pursued because he retired soon after the allegations were made.²⁹

29 Australian Financial Review, 22 June 2012, p. 1.

Conclusion

1.77 Coalition Senators believe this is a poor bill that will not deal with the substantive issues borne out of Fair Work Australia's investigation.

1.78 Coalition Senators agree with the Master Plumbers and Mechanical Services Association of Australia submission that in terms of the:

...objectives of Fair Work Australia in relation to compliance and education, the Bill will not achieve the objectives sought.³⁰

1.79 Further, with an independent review presently being conducted by KPMG this exercise could be superseded.

Recommendation 9

1.80 The bill be considered after the conclusion of the KPMG review and further improved with substantive amendments.

Senator Bridget McKenzie
Senator for Victoria

Senator the Hon. Eric Abetz
Leader of the Opposition in the Senate

30 Master Plumbers and Mechanical Services Association of Australia, *Submission 5*, p. 1.

ATTACHMENT A

14 October 2011

Det. Sgt. Tyquin
 Fraud and Extortion Squad
 Victoria Police
 5/452 Flinders Street
 Melbourne VIC 3000



GENERAL MANAGER

By email: john.tyquin@police.vic.gov.au

Dear Det. Sgt. Tyquin

I refer to your email of 6 October 2011 to Ailsa Carruthers in which you ask certain questions about the Fair Work Australia (FWA) investigation into the National Office of the Health Services Union (HSU) that is being conducted under the *Fair Work (Registered Organisations) Act 2009* (Cth) (RO Act).

Naturally I wish to cooperate with your request to the extent that would be appropriate, consistent with the powers and functions conferred upon the General Manager of FWA by the RO Act.

As Acting General Manager of FWA, my powers of inquiry and investigation are set out in sections 330 and 331 of the RO Act. In essence those provisions empower me to inquire and investigate into whether there has been a contravention of one or more of:

- a provision of Part 3 Of Chapter 8 of the RO Act;
- a provision of the Reporting Guidelines made under Part 3 of Chapter 8 of the RO Act;
- a regulation made under Part 3 of Chapter 8 of the RO Act;
- a rule of a reporting unit (such as, the HSU National Office) relating to its finances or financial administration; or
- a civil penalty provision of the RO Act.

Transitional provisions contained in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* extend this power to inquiring or investigating into whether there has (before 1 July 2009) been a contravention of the equivalent provisions in Schedule 1 to the *Workplace Relations Act 1996* (Cth).

11 Exhibition Street
 Melbourne Victoria 3000
 GPO Box 1994
 Melbourne Victoria 3001

Telephone: +61 3 8661 7855
 Facsimile: +61 3 9655 0421
 Internet: www.fwa.gov.au



GENERAL MANAGER

Section 336 of the RO Act confers certain powers and duties upon the General Manager at the end of an investigation.

First, if I am satisfied that there has been a contravention by a reporting unit (such as the HSU National Office) of:

- a provision of Part 3 of Chapter 8 of the RO Act;
- a provision of the Reporting Guidelines made under Part 3 of Chapter 8 of the RO Act;
- a regulation made under Part 3 of Chapter 8 of the RO Act; or
- a rule of a reporting unit (such as, the HSU National Office) relating to its finances or financial administration;

I must notify the reporting unit accordingly (see subsection 336(1)).

Second, by reason of subsection 336(2), I may also do any or all of:

- issue a notice to the reporting unit requesting them to take specified rectification action;
- apply to the Federal Court for an order under Part 2 of Chapter 10 of the RO Act (that is, institute proceedings in relation to the contravention of a civil penalty provision); or
- refer the matter to the Commonwealth Director of Public Prosecutions for action in relation to a possible criminal offence.

Nothing in sections 330, 331 or 336 of the RO Act or indeed elsewhere confers any authority on me, or on FWA, to:

- inquire or investigate into whether a reporting unit (or anybody) may have contravened a Victorian law (criminal or otherwise);
- reach a conclusion about whether a reporting unit (or anybody) may have contravened such a law; or
- refer a 'matter' arising from an inquiry or investigation conducted under s330 or 331 of the RO Act to a Victorian law enforcement body.

To the extent that I am able, I have delegated my powers under sections 330 and 331 of the RO Act in respect of this matter to Mr Terry Nassios. Pursuant to that delegation, Mr Nassios is investigating whether the provisions of:

11 Exhibition Street
Melbourne Victoria 3000
GPO Box 1994
Melbourne Victoria 3001

Telephone: +61 3 8661 7855
Facsimile: +61 3 9655 0421
Internet: www.fwa.gov.au



GENERAL MANAGER

- (i). Part 3 of Chapter 8 of Schedule 1 to the *Workplace Relations Act 1996* (Cth);
- (ii). the Reporting Guidelines made by the then Industrial Registrar on 20 June 2003 under Part 3 of Chapter 8 of Schedule 1B (as it then was numbered) to the *Workplace Relations Act 1996* (Cth);
- (iii). the rules of the HSU relating to its finances or financial administration; or
- (iv). section 237 and sections 285-287 of Schedule 1 to the *Workplace Relations Act 1996*

have been contravened by the National Office of the HSU, and/or by officials or employees of the National Office of the HSU in relation to transactions occurring between 16 August 2002 and 1 March 2008 and record keeping, reporting and auditing issues arising from transactions during this period. In particular, Mr Nassios is examining whether:

- officers of the HSU National Office exercised their powers and discharged their duties with reasonable care and diligence, in good faith for the best interests of the organisation and for a proper purpose during this period;
- officers or employees of the National Office of the HSU have improperly used their position to gain an advantage for themselves or someone else, or to cause detriment to the organisation during this period;
- transactions of the National Office of the HSU made during this period were properly authorised;
- proper financial records were kept of such transactions by the National Office of the HSU; and
- proper financial, expenditure, donation and audit reports were approved by the National Office of the HSU and filed with the Australian Industrial Registry or FWA (as appropriate) in respect of the 2002/03 to 2008/09 financial years.

Mr Nassios is also investigating whether the Auditor of the National Office of the HSU has complied with his obligations under sections 256 and 257 of Part 3 of Chapter 8 of Schedule 1 to the *Workplace Relations Act 1996* in relation to his audit reports in respect of the 2002/03 financial year through to the 2006/07 financial year.

Consistent with the functions and powers conferred on the General Manager of FWA by the RO Act, Mr Nassios' investigation does not extend to considering whether the National Office of the HSU (or any person) may have contravened a Victorian criminal law.

11 Exhibition Street
Melbourne Victoria 3000
GPO Box 1994
Melbourne Victoria 3001

Telephone: +61 3 8661 7855
Facsimile: +61 3 9655 0421
Internet: www.fwa.gov.au



GENERAL MANAGER

It follows from the above analysis that neither I, nor FWA, have power to inquire into, or investigate, nor reach conclusions about whether a reporting unit (or anybody)

may have contravened a Victorian criminal law. Nor do I or FWA have power to refer a 'matter' arising from an inquiry or investigation conducted under sections 330 or 331 of the RO Act to a Victorian law enforcement body such as Victoria Police.

Accordingly I regret to advise that I do not consider it would be appropriate for me, or for any of my staff, to respond to the questions set out in your email of 6 October 2011.

Yours Sincerely

Bernadette O'Neill
Acting General Manager
Fair Work Australia

ATTACHMENT B



VICTORIA POLICE

Crime Department

5/452 Flinders Street
Melbourne 3000
Victoria, Australia
DX 210900
Telephone 9611 8514
Facsimile
Email
www.police.vic.gov.au

22nd March, 2012

Ms Bernadette O'Neill
General Manager
Fair Work Australia
GPO Box 1994
Melbourne Victoria 3001

Dear Ms O'Neill

Re: **National Office of the Health Services Union (HSU)**

I refer to your letter dated 14 October 2011 which was in response to my e-mail to Ailsa Carruthers of your Office dated 6 October 2011. In that e-mail, I formally requested your assistance "to provide material information relating to your investigation into allegations of Craig Thomson's actions by the Health Services Union". I indicated that I required your assistance in order to progress a criminal investigation which I am conducting on behalf of the Victoria Police. You were asked to provide information in relation to a number of specific listed items.

Your response to my request is confusing. Having set out your powers of inquiry and investigation under various pieces of legislation and the scope of your delegate's examination, you make several observations, namely:

- "Mr Nassios' investigation does not extend to considering whether the National Office of the HSU (or any person) may have contravened a Victorian criminal law";
- "Neither I, nor FWA, have power to inquire into, or investigate, nor reach conclusions about whether a reporting unit (or anybody) may have contravened a Victorian criminal law;
- "Nor do I or FWA have power to refer a "matter" arising from an inquiry or investigation conducted under sections 330 or 331 of the RO Act to a law enforcement body such as Victoria Police".

Having regard to the matters set out in the previous paragraph you advised that it would not be appropriate for you or your staff to respond to the questions set out in my e-mail of 6 October 2011.

Whilst not immediately apparent to me, your above-mentioned decision appears to have been based upon the mistaken belief that the Victoria Police were seeking to have the FWA inquiry extended to include a consideration of whether or not a Victorian criminal law may have been contravened or to inquire into or investigate such matters. In order to remove any possible misconception, it was never my intention that you or your Office seek to undertake such an exercise.

Accordingly, I hereby again request delivery to Victoria Police of copies of any and all information collected or obtained by FWA falling within those categories articulated by me in my e-mail to your staff member dated 6 October 2011. The determination as to whether or not that material advances the investigation by the Victoria Police into possible breaches of the criminal law is a matter for Victoria Police. As you will appreciate, the documents being sought are of great importance to our inquiry which is a matter of great public interest. It would be appreciated if you could reconsider my request as a matter of urgency.

Yours truly,



John Tyquin
Detective Sergeant
Fraud and Extortion Squad


ATTACHMENT C

CARRUTHERS, Ailsa

From: WILLIAMS, Doug
Sent: Tuesday, 30 June 2009 12:41 PM
To: NASSIOS, Terry
Cc: CARRUTHERS, Ailsa; SCHULTZ, Andrew; HAGEN, Margot
Subject: HSU Inquiry and Investigation Strategy
Importance: High
Sensitivity: Confidential

Terry,

As discussed by teleconference this morning, this is my view about the state of play and next actions required in relation to the two HSU inquiries (i.e. the national organisation and the Victorian No.1 Branch). This note is not intended to be prescriptive about the scope, detail and timing of matters that deserve consideration and action, but it is intended to be clear about certain actions in my capacity as Industrial Registrar.

1. 
 - a. I concur that the two investigations should proceed,
 - b. Accordingly, the AIR team should proceed to arrange the following:
 - i. A broad strategic plan for conducting the two investigations (which as for the inquiries, should proceed as two separate, but related investigations) should be prepared
 - ii. The principle targets for investigation should be clearly identified (and *inter alia* I would expect to include the national and Victorian No. 1 Branch auditor, the members (past and present) of the two Committees of Management, and any other office bearers and staff that have involvement, particularly in ignoring, facilitating, or obscuring (for example) mis-use of funds, conflicts of interest, or the integrity of organisation rules, delegated authorities and governance arrangements. Such other office bearers and staff are likely *inter alia* to include the Victorian No. 1 Branch Committee Member whose company provided office supplies to the Branch, the Branch Secretary of the Victorian No.1 Branch, the previous National Secretary and the (past and present) bookkeepers for the national office and the Victorian No.1 Branch)
 - iii. The forms of notification to parties of the instigation of the two investigations should be drawn up and issued
 - iv. Instructions to other (non-AIR) members of the investigation team, including the forensic accountant, the AGS and any other investigator should be drawn up and issued
 - v. Sources of facts and documentation to support the investigations should be identified and actions to co-opt documentation from original and other sources taken (*inter alia* such sources should include Pitcher Partners and BDO Nelson)
2. There should be a clear plan to undertake and complete a thorough assessment of the materials provided arising from the inquiries to date, including in relation to the impact on the scope of the investigations
3. There should be a clear plan and actions arising from the outcome of the inquiries to date
 - a. Including *inter alia* any actions and referrals to other authorities (e.g. to the police because of identified malfeasance, or to professional licencing bodies because of inadequate auditing professional standards) which can occur on the strength of discoveries from inquiries which do not require further investigation
 - b. None of this should preclude concluding matters of detail of the inquiries, noting that the ~~HSU~~ National Secretary last week requested an interview as part of the inquiries phase and *prima facie*, there are no obvious grounds to deny that request
 - i. Accordingly, a request for interview, as was made to the auditor, should be drawn up and issued.

30/06/2009

I am happy to discuss these directions, but otherwise anticipate that the actions identified will be implemented expeditiously.

Doug.

D.S. Williams
Industrial Registrar & Chief Executive
Australian Industrial Relations Commission

30/06/2009

APPENDIX 1

Submissions received by the Committee

Submission Number	Submitter
1	Institute of Public Affairs
2	Australian Industry Group
3	Confidential
4	Confidential
5	Master Plumbers' and Mechanical Services Association of Australia
6	Australian Chamber of Commerce and Industry
7	Department of Education, Employment and Workplace Relations
8	Master Builders Australia Ltd
9	AMMA
10	Australian Council of Trade Unions

Additional Information received by the Committee

1	Answers to questions on notice from Department of Education, Employment and Workplace Relations received 24 June, 2012
---	--

APPENDIX 2

Witnesses who appeared before the Committee

Canberra, 22 June 2012

ANDERSON, Ms Kate A/g Principal Government Lawyer, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations

BREEN, Mr Adrian, Acting Senior Executive Lawyer, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations

KOVACIC, Mr John, Deputy Secretary, Workplace Relations, Department of Education, Employment and Workplace Relations

LLOYD, Mr John, Director, Work Reform and Productivity Unit, Institute of Public Affairs

LYONS, Mr Tim, Assistant Secretary, Australian Council of Trade Unions

MAMMONE, Mr Daniel, Director, Workplace Policy and Director, Legal Affairs, Australian Chamber of Commerce and Industry

O'SULLIVAN, Mr Jeremy, Chief Counsel, Workplace Relations Legal Group, Department of Education, Employment and Workplace Relations

SMITH, Mr Stephen, Director, National Workplace Relations, Australian Industry Group