

CHAPTER 2

Coalition policy before the 2013 election

2.1 The committee heard evidence from the Minister and Department that the Coalition's registered organisations policy was released far in advance of the 2013 election, and should not have come as a surprise to officers, employees and volunteers of registered organisations.

2.2 The Minister for Employment, Senator the Hon Eric Abetz, submitted that the Coalition had released its Policy for Greater Accountability and Transparency of Registered Organisations on 30 April 2012, noting that, 'This policy has been well ventilated for some time and the Government has a very clear mandate to implement it as a matter of extreme urgency.'¹

2.3 The Minister contended that the purpose behind the legislation was straightforward, and that while the Government supports the role unions play, it believes that accountability and transparency of registered organisations will be enhanced by the measures in the bill.

Legislation Committee inquiry and recommendations

2.4 The Senate Education and Employment Legislation Committee made numerous recommendations with respect to the bill, as introduced in the House of Representatives on 14 November 2013. The committee specifically recommended that:

- Consistent with the *Corporations Act 2001*, material personal interest disclosures should only be required to be made to those officers whose duties relate to the financial management of the organisation. Such disclosures should be recorded in the minutes of the meetings of those officers and should be made available to members on request;²
- A list of exclusions from the obligations to disclose material personal interests based on section 191(2) of the *Corporations Act 2001* be inserted into the bill. This would narrow the obligation to disclose material personal interests of an officer's relatives, so as to be consistent with the *Corporations Act 2001*;³
- The obligation placed on officers to disclose every payment should be reduced with certain exclusions, including limiting disclosures to payments made above a certain threshold;⁴

1 Minister for Employment, *Submission 1*, p. 1.

2 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, p. vii.

3 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, p. vii.

4 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, p. vii.

- The bill be amended to allow the Commissioner to grant exemption from the training requirements if an individual can demonstrate significant knowledge of the financial obligations specified in the bill; and⁵
- That the bill be passed subject to foregoing recommendations.⁶

Responses to the bill

2.5 The committee heard evidence from submitters and witnesses in relation to the recommendations of the Education and Employment Legislation Committee's (Legislation Committee) report. Some submitters argued that the recommendations did not go far enough to address their concerns. The committee notes that numerous submitters have reused, in whole or in part, the submissions they made to the previous inquiry.

2.6 Recommendations one, two and three seek to ensure that only officers whose duties relate to the financial management of the registered organisation are subject to the material personal interest disclosure requirements. The Legislation Committee recommended the addition of exemption arrangements as per section 191(2) of the *Corporations Act 2001 (Cth)* (the Corporations Act) and the exclusion of some payments from disclosure requirements completely.⁷

2.7 Recommendation four seeks to address criticisms relating to compulsory training for officers with significant experience in financial management. The recommendation would provide the Commissioner with the power to exempt officers with extensive training or experience in financial management from the training requirements proposed in the bill.⁸

2.8 The Minister for Employment, Senator the Hon Eric Abetz, in his submission together with the earlier submission from the Department, notes that while the bill was drafted in such a way as to build on the existing regulatory regime:

The Government is giving active consideration to the issues that have been raised by the Senate Education and Employment Legislation Committee and stakeholders.⁹

2.9 Master Builders Australia (MBA) endorsed the recommendations made by the Legislation Committee in the report tabled on 2 December 2013,¹⁰ expressing its support for any initiatives that deliver improved governance and financial

5 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, p. vii.

6 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, p. vii.

7 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, p. vii.

8 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, p. vii.

9 Department of Employment, *Submission 1*, p. 4.

10 Master Builders Australia, *Submission 2*, p. 1.

transparency with respect to the conduct and management of registered organisations.¹¹ MBA restated its view that the interests of those involved in the building and construction sector are advanced where the industrial relations legislation requires transparency and accountability of registered organisations, without adding unnecessary burdens or costs.¹²

2.10 The National Electrical and Communication Association (NECA) submitted that it also endorsed the recommendations of the Legislation Committee, specifically the establishment of the Commissioner:¹³

For the avoidance of doubt, it should be stated that NECA has no objection to the establishment of the Registered Organisations Commissioner, and the conferral of such powers on that office as proposed by the Bill.¹⁴

2.11 Australian Industry Group (Ai Group) suggested that the Education and Employment References Committee should endorse the Legislation Committee's recommendations, but also suggested that the recommendations do not go far enough to address their other concerns with the bill.¹⁵ Mr Stephen Smith, Director, Ai Group, stated at the public hearing in Sydney that, 'we are here today very much urging this committee to adopt those four recommendations.'¹⁶

2.12 The Master Plumbers & Mechanical Contractors Association of NSW (MPMCANSW) submitted that it needed additional clarification before it could support the recommendations made in the Legislation Committee's report. It suggested that the previous inquiry needed to emphasise the structural and other differences between employer and employee organisations, operating as registered organisations; referring to its submissions to the previous inquiry, the organisation was concerned about:

...equal representative rights afforded to Recognised Organisations, when they are not the subject of the provisions of the amendments to the Act. The recommendations of the Legislation Committee Report embrace the implementation of requirements to bring operational and reporting requirements of Registered Organisations in line with the *Corporations Act 2001*, but the situation still remains that there are two distinctly different organisational structures for organisations who have representation rights before the Fair Work Commission.¹⁷

11 Master Builders Australia, *Submission 2*, Attachment, p. 1.

12 Master Builders Australia, *Submission 2*, Attachment, p. 1.

13 National Electrical and Communications Association, *Submission 10*, p. 6.

14 National Electrical and Communications Association, *Submission 10*, p. 7.

15 Mr Stephen Smith, Director, Ai Group, *Proof Committee Hansard*, p. 10.

16 Mr Stephen Smith, Director, Ai Group, *Proof Committee Hansard*, p. 12.

17 Master Plumbers and Mechanical Contractors Association of New South Wales, *Submission 7*, p.2.

Committee view

2.13 The committee is persuaded by evidence from submitters that the recommendations made by the Legislation Committee are inadequate in addressing the concerns of submitters in relation to the proposed changes to the *Fair Work (Registered Organisations) Act 2009*. The committee believes that even if the recommendations were accepted by the Government, the bill would still cause great disruption and harm to the operations and effectiveness of the administration of registered organisations in Australia. This is due to the significant unintended consequences of the bill and the training and financial burdens proposed by the bill.

General criticism of the Bill

2.14 The Maritime Union of Australia (MUA) criticised the proposed regulatory framework in its submission, stating that:

The principle submission of the MUA is that the changes to the regulatory regime effected by the *Fair Work (Registered Organisations) Amendment Act 2012* (Cth), as amended by the *Fair Work Amendment Act 2013* (Cth), are sufficient to strengthen legislative provisions and Rules of organisations concerning disclosure and transparency of decision making.¹⁸

2.15 The MUA noted the Government's intention to cut \$1 billion in red and green tape each year in a statement made on 13 January 2014 by the Hon Christopher Pyne MP and the Hon Josh Frydenberg MP.¹⁹ The MUA submitted that the provisions of the bill are in direct contravention of the announced objective, and undermine the argument for a separate regulator.²⁰

2.16 NECA submitted that in its view the bill would establish a more onerous regulatory regime than presently operates under the Corporations Act.²¹

2.17 The MPMCANNSW also objected to the increased regulation proposed in the bill, submitting that:

...the issues set out above will add significantly to the red tape requirements of Registered Organisations and will add significant cost pressures to the organisation related to such compliance. The inequity here is that this is not necessarily an impediment to the ability of employees of Registered Organisations to carry out their duties, but more than ever highlights the inequity in the status of Registered Organisations as compared to Recognised Organisations.

2.18 The Motor Trade Association of South Australia (MTA) and NECA both criticised the 'one size fits all' approach proposed by the bill.²² NECA submitted that

18 Maritime Union of Australia, *Submission 4*, p. 2.

19 Maritime Union of Australia, *Submission 4*, p. 2.

20 Maritime Union of Australia, *Submission 4*, p. 2.

21 National Electrical and Communications Association, *Submission 10*, p. 6.

22 Motor Trade Association of South Australia, *Submission 8*, p. 3; National Electrical and Communications Association, *Submission 10*, p. 10.

employees of registered organisations with specialist knowledge are no longer commonly found or recruited and as a consequence registered organisations have become reliant on external legal advisors and consultants:²³

When this factor is combined with the shift to further and stricter regulation of registered organisations, the compliance costs to registered organisations, the compliance costs to registered organisations have increased markedly over the last few years...²⁴

2.19 The South Australian Wine Industry Association (SAWIA) submitted:

SAWIA acknowledges that review and reform of the law governing registered organisations is both necessary and justified from time to time to ensure good governance and accountability. However the unlawful conduct of some officers within one registered organisation does not justify imposing excessive compliance and disproportionate monetary penalties on all registered organisations in a manner contemplated by some of the provisions in the Fair Work (Registered Organisations) Amendment Bill 2013.²⁵

2.20 SAWIA stated that for its purposes, many of its board members were the equivalent of 'officers' for the purposes of the bill, who volunteer their time to attend to the duties required of having been elected to the board:²⁶

Board members provide a great amount of time each year of office to attend to just the basic activities entailed in holding a board position: reading, considering board papers and attending (travelling) regular board meetings held across regional South Australia. This is not to mention the additional work required like key meetings or activities with government bodies or industry stakeholders, consultation.²⁷

2.21 The Australian Council of Trade Unions (ACTU) submitted that officers and employees of registered organisations are principally concerned with work representing that organisation's members, notwithstanding:

The greater emphasis on administrative process to ensure compliance with the new regime may be expected to divert some resources away from the core business of organisations and their branches. This would principally occur during the transition phase (on top of the existing transition phase) with peaks occurring during the ordinary reporting cycle (as filings become due).²⁸

23 National Electrical and Communications Association, *Submission 10*, p. 3.

24 National Electrical and Communications Association, *Submission 10*, p. 3.

25 South Australian Wine Industry Association, *Submission 13*, p. 1.

26 South Australian Wine Industry Association, *Submission 13*, p. 2.

27 South Australian Wine Industry Association, *Submission 13*, p. 2.

28 Australian Council of Trade Unions, *Submission 16*, p. 42.