

CHAPTER 3

Compliance burden and alignment of registered organisations as corporations

Fair Work (Registered Organisations) Amendment Act 2012

3.1 Numerous submitters suggested that the *Fair Work (Registered Organisations) Act 2009* (Cth) (the Act) as amended by the *Fair Work (Registered Organisations) Amendment Act 2012* (Cth) (*2012 Act*) was sufficient in addressing any deficiencies with respect to the financial administration of registered organisations, and that the changes made pursuant to the *2012 Act* ought to be given time to be implemented. Some also suggested that the bill would interfere and impede the abilities of registered organisations to carry out their duties on behalf of their membership in a manner unintended by the legislation.

3.2 The Minister submitted that the recent scandals in registered organisations, including the Health Services Union and the Australian Workers Union demonstrates the 'absolutely necessary' need for a stronger compliance regime and a more powerful regulator.¹

3.3 The Department of Employment (the Department) contends that the bill will address several deficiencies in the *2012 Act*, including:

- Providing greater accountability and transparency with respect to the governance of registered organisations and that the enhanced regulation of the sector;²
- Guaranteeing, through greater regulation, that members of registered organisations can enjoy the same confidence as that enjoyed by shareholders of trading corporations;³ and
- Ensuring officers of registered organisations comply with the regulatory framework, resulting in the best outcome for the organisations' membership.⁴

3.4 The Government's position was broadly supported by a number of organisations and state governments.

3.5 The New South Wales Government submitted that, as a partner in the national workplace relations system it welcomes and supports the reforms proposed in the bill:

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

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

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

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

NSW also supports the specified recommendations of the [Legislation] Committee...

The NSW Government is strongly committed to actions that ensure accountability and transparency in the governance of registered organisations and thereby help safeguard the interests of their members.⁵

3.6 The Queensland Government submitted that it supports the Abbott Government's policy with respect to the regulation of registered organisations, noting that:

The measures included in the Bill are similar to measures introduced in Queensland last year by the Queensland Government in relation to Queensland registered industrial organisations.⁶

3.7 The committee heard evidence from submitters that the changes to the Act made by the *Fair Work (Registered Organisations) Amendment Act 2012* were sufficient in addressing many of the issues raised by the Minister in the second reading speeches.

3.8 The Australian Council of Trade Unions (ACTU) argued that it supported the *2012 Act* because it focused on the issues in an appropriate and balanced manner:

The *2012 Act* tripled the penalties that apply for breaches, introduced new standards in relation to financial management and mandates formal training for officers with financial responsibilities. We also note that the *2012 Act* dealt with all of the issues which were raised by the matters which have come to light in relation to the HSU (including limitations on the powers of the regulators.

The *2012 Act* strikes an appropriate balance. While a post-implementation review after a period of some years of operation may be appropriate, re-visiting these matters now, when no substantive issue with their operation has been identified is inappropriate and unnecessary.⁷

3.9 The Industrial Staff Union (ISU) submitted:

The compliance costs and red tape associated with the *Fair Work (Registered Organisations) Act 2009* is significant. The proposal to increase compliance costs by the *Fair Work (Registered Organisations) Amendment [Bill] 2013* increases the compliance costs, increases the red tape and increases the time required to be spent on compliance.⁸

3.10 The Victorian Automobile Chamber of Commerce, (VACC) submitted that it had reservations as an employer association about any further changes to the *RO Act*:

5 New South Wales Government, *Submission 21*, p. 2.

6 Queensland Government, *Submission 17*, p. 3.

7 Australian Council of Trade Unions, *Submission 16*, p. 6.

8 Industrial Staff Union, *Submission 19*, p. 1.

It is fair to say, that the rights and privileges afforded to registered organisations have reduced significantly (particularly for employer organisations), while obligations imposed by the Act have increased.⁹

3.11 The MUA (Maritime Union of Australia) gave evidence that the bill represents unnecessary reform of registered organisations, and that they have already taken significant steps to meet the increased accountability and transparency measures enacted in 2012:

Mr Neal: ...But this is what strikes me about this legislation: most, if not all, practitioners in the field—from industrial officers through to solicitors, trade union officials and barristers—are slightly dumbfounded as to why this legislation has been introduced. The requirements are already there. They were put through in the *Fair Work (Registered Organisations) Amendment Act 2012*. We all took steps to comply with that. That was amended at the last minute on 29 June last year by the *Fair Work Amendment Act 2013*. We subsequently complied with the requirements of that Act, the deadline for which was 1 January. Now that we have all complied with that and there has been a change of government, it seems that the Commonwealth is now asking us to do a 360 and go through it all again.¹⁰

3.12 The MUA also gave evidence that the amount of effort required in checking internal Rules, protocols and guidelines against the *2012 Act*, as well as the necessity to obtain outside legal advice clearly affected the ability of the MUA to serve the interests of its membership.¹¹ The MUA criticised the placement of the Registered Organisations Commission within the Fair Work Ombudsman for administrative and oversight purposes, submitting that:

[it] will lead to uncertainty and confusion amongst employees and Officials of registered organisations regarding the functions and powers of the Registered Organisations Commission and Commissioner, and will also give rise to concerns regarding the independence of both from the Government of the day.¹²

3.13 The Australian Nursing and Midwifery Federation (ANMF) submitted that the Senate should reject the bill, and that it is 'unnecessary, poorly structured and excessive.'¹³ ANMF particularly criticised further regulation noting:

9 Victorian Automobile Chamber of Commerce, *Submission 12*, p. 3.

10 Mr Aaron Neal, Senior Legal Officer, Maritime Union of Australia, *Proof Committee Hansard*, p. 7.

11 Mr Aaron Neal, Senior Legal Officer, Maritime Union of Australia, *Proof Committee Hansard*, p. 2.

12 Maritime Union of Australia, *Submission 4*, p. 5.

13 Australian Nursing and Midwifery Federation, *Submission 14*, p. 2.

...the Parliament in 2012 enacted the *Fair Work (Registered Organisations) Amendment Act 2012* that largely and adequately dealt with the same issues by introducing enhanced reporting and financial management standards.¹⁴

3.14 The Australian Air Traffic Control Association suggested that the establishment of the Commission effectively disregards all of the processes that they have undertaken to comply with the changes required under the *2012 Act*:

This is actually onerous and can only negatively impact upon the amount of time that we have available to actually undertake the objects of our registered organisation which is, principally, to promote the interests of our members.¹⁵

Committee view

3.15 The Committee is persuaded by evidence that suggest that the penalties, having recently been tripled together with the new disclosure requirements, are adequate in addressing the deficiencies noted by submitters, including the Minister.

3.16 On the balance of evidence presented, the committee accepts that the changes brought about by the *2012 Act* should be fully implemented before any attempt is made to interfere with the governance of registered organisations.

Compliance burden

3.17 The committee heard extensive evidence with respect to the proposed reporting and regulatory framework in the bill, specifically the bill's material personal interest disclosure requirements. The bill proposes to amend the Act to restrict:

officers from taking part in making decisions in relation to matters in which they have a material personal interest, requires the preparation of officer and related party disclosure statements and requires officers to undertake approved training in relation to their financial duties.¹⁶

3.18 Ai Group restated their opposition generally to the proposed material personal interest requirements of the bill:

The provisions of the Bill in this area will operate very unfairly on registered employer organisations and their officer, and it is essential that the Bill is amended. The Bill would impose a far more onerous regime for officers of registered organisations than what applies to directors of public companies. The regime, if enacted, would undoubtedly deter persons from standing for office in employer organisations. In practice the provisions of

14 Australian Nursing and Midwifery Federation, *Submission 14*, p. 2.

15 The Australian Air Traffic Control Association, *Submission 11*, p. 2.

16 Fair Work (Registered Organisations) Bill 2013, clause 239A.

the Bill would seriously impede many organisations from carrying on their daily business operations.¹⁷

3.19 The Australian Privacy Foundation (APF) criticised the proposed disclosure regime, submitting that the provisions of the bill are unnecessary, that they erode privacy protection and are inconsistent with the Government's commitment to respecting traditional freedoms.¹⁸ The APF also submit that the attempts by the Government to justify the erosion of privacy in the bill as either legal or legitimate fail, due to the unnecessary nature of the legislation:

There has been no demonstration that existing law and state/territory levels is inadequate, e.g. that there is serious and pervasive corruption that is not being addressed because investigators and prosecutors lack authority.¹⁹

3.20 Victorian Automobile Chamber of Commerce (VACC) also suggested that to amend their Constitution again, as required by the proposed bill could create member fatigue due to the onerous and drawn out compliance process and therefore could discourage further participation in the management of their organisation.²⁰

3.21 The ACTU also criticised the general effect of the proposed regulatory burden, submitting that:

The Committee should be cognisant of the fact that the burden of this regulation falls not just on the full-time salaried leadership of unions, but on many rank and file members who are elected as unremunerated delegates to governing bodies, which may meet as infrequently as once a year or once every two years.²¹

3.22 ANMF submitted that it:

...prides itself as a union which engages with our membership and nurses generally. We actively seek their involvement in the activities of the union but we are fearful that regulation intended to punish unions for undertaking legitimate activities will dissuade members from participating.

It will be ironic and sad if once enacted the new regulations result in a decrease in the democratic involvement of registered organisations which in turn become more inward looking and secretive.²²

3.23 The Industrial Services Union (ISU) submitted that as an independent association with no employees, its elected officials receive no income for their work done on behalf of ISU membership.²³ The ISU also contended that:

17 Ai Group, *Submission 5*, p. 18.

18 Australian Privacy Foundation, *Submission 18*, p. 1.

19 Australian Privacy Foundation, *Submission 18*, p. 1.

20 Victorian Automobile Chamber of Commerce, *Submission 12*, p. 5.

21 Australian Council of Trade Unions, *Submission 16*, p. 37.

22 Australian Nurses and Midwifery Federation, *Submission 14*, p. 6.

In no way should any reduced regulatory burden result in less accountability or less transparency for registered organisations. However, parliament needs to recognise that small registered organisations have a much higher level of inherent transparency and the impact of regulatory compliance is much higher than for large, well-resourced organisations.²⁴

Minute keeping requirements

3.24 The ANMF specifically argued that the minute keeping requirement was too onerous, was not consistent with good organisational practice and would discourage transparency:

While organisations do keep extensive records of their meetings, it is often the case that they deal with sensitive and confidential issues and do so under an agreement that such matters remain “in house”. Examples of this are in dealing with an organisation’s employees, industrial strategy and commercial issues.

A blanket requirement to record minutes, and for such records to be made public, will only foster and encourage a lack of transparency as organisations respond to this requirement with more “off the record” discussions and more informality and consequently reduced accountability when dealing with issues that are considered sensitive or confidential.²⁵

3.25 The Department submitted that the new accountability measures are meant to increase transparency and accountability, for the betterment of registered organisations and their memberships:

Members will be provided with greater access to information on the operation and internal governance of their organisation. The provision of information to members will also encourage organisations to be proactive in engaging with members about their administration and to create more open and effective governance processes.

Compliance costs and training

3.26 The committee heard evidence from submitters that the compliance burden proposed by the bill, including requirements of officers and/or employees to undertake financial training were significantly onerous. Submitters also argued that the consultation of the compliance regime was rushed, and suggested that the changes made in 2012 should be allowed to be implemented before any further changes are made. Submitters did not generally agree with the Government that the new compliance regime proposed by the bill would be beneficial to registered organisations or their officers, employees and membership.

23 Industrial Services Union, *Submission 19*, p. 1.

24 Industrial Services Union, *Submission 19*, p. 2.

25 Australian Nursing and Midwifery Federation, *Submission 14*, p. 4.

3.27 Ai Group expressed reservations as to how the proposed regime would manage the requirements placed on registered organisations. Specifically, Ai Group raised the development and adoption of training rules required under the 2012 changes, and its associated challenges, submitting that:

For example, there are four organisations—us, the ACTU, the AWU and one other organisation which I cannot recall—that put huge resources into having their officer training programs developed and approved. There is nothing in this legislation that grants automatic approval for those training courses. We have got to again run the gauntlet with the Registered Organisations Commission. So there are some practical things like that that need to be dealt with.²⁶

3.28 Similarly, VACC suggested that the reporting and training requirements in the 2012 Act were rushed,²⁷ and that it is wary of further regulation given the twelve month lag in complying with the changes. VACC also detailed the difficulties it faces in changing its constitution to comply with the 2012 Act, stating that:

The process to draft and file the amendments was onerous, complex and costly. While the Fair Work Commission Regulatory Compliance Branch was helpful, given the complexity of our Constitution, the process required to alter our Constitution, the process required to alter our Constitution and the time constraints faced by both the Commission and ourselves, significant time and direct legal costs was (sic) incurred to draft changes and have them approved by members, which we now expect (and hope) to be acceptable to the General Manager or her delegate.²⁸

3.29 Motor Trade Association of South Australia submitted that it had already made substantial investments in board management training for its officers:²⁹

Accordingly, there needs to be an amendment to the Bill or regulatory capacity for the General Manager of the Registered Organisations Commission (under s 154c) to accredit appropriate prior training of elected officers of registered organisations.³⁰

3.30 The ACTU suggested that unions and their subsidiary branches may be compelled, due to the excessive compliance regime, to employ consultants or experts to ensure their compliance with the proposed changes:

Such specialisation would represent a further departure from the historical model of a union operate solely by rank and file members. Alternately the

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

27 Victorian Automobile Chamber of Commerce, *Submission 12*, p. 3.

28 Victorian Automobile Chamber of Commerce, *Submission 12*, p. 4.

29 Motor Trade Association of South Australia, *Submission 8*, p. 9.

30 Motor Trade Association of South Australia, *Submission 8*, p. 9.

need created by the Bill might be met by increased reliance on external advice, which also increases operating costs.³¹

Committee view

3.31 The committee is persuaded by the evidence presented by submitters and witnesses that the regulatory burden proposed by the bill is excessive and inappropriate. It shares concerns with submitters that the proposed regulatory burden in the bill will necessitate the diversion of significant financial and personnel assets from core member services to compliance and change management.

3.32 The committee believes that the issues raised by the Minister relating to the conduct of officers of one registered organisation have been addressed by the 2012 changes. The committee believes that it is therefore unnecessary to undertake any further regulation of the sector at this time, given the difficulties faced by registered officers implementing those changes.

Alignment of responsibilities of officers of registered organisations to trading corporations

3.33 The issue of the proposed alignment of responsibilities of officers of registered organisations and trading corporations was not generally supported by submitters. The criticism related mostly to the substantial differences between the purposes of corporations, to generate profit for shareholders; and registered organisations, providing services and advice to their membership. Submitters criticised the proposed alignment, suggesting that many smaller registered organisations would be particularly disadvantaged, as they would not meet the equivalent criteria of a medium business enterprise.

3.34 Significant criticism was also made by submitters in relation to the proposed material interest disclosure regime that would require the disclosure of significant material personal interests of officers and their immediate family members. Submitters noted that these disclosures exist in the Corporations Act primarily to provide an opportunity for officers to comply with conflict of interest requirements, and to allow them to absent themselves from decisions of the board of which they may have a significant personal interest. Submitters criticised the proposed regime's application to registered organisations, arguing that it would act as a deterrent to participation, due to the unpaid nature of many roles within registered organisations.

3.35 The Department submitted that the alignment of responsibilities of directors of registered organisations with corporations is appropriate to restore confidence in the management of registered organisations:

The greater alignment of regulation of registered organisations with that of companies, a dedicated and independent regulator and increased penalties

31 Australian Council of Trade Unions, *Submission 16*, pp 42-43.

will ensure that members of registered organisations can have the same confidence in the regulatory framework and oversight of their organisations that is enjoyed by shareholders of companies. Members can also be confident that officers of registered organisations must take their obligations seriously and will be held to account.³²

3.36 The ACTU submitted that given the purpose of corporations is to profit, the duties of directors are of critical importance in ensuring corporations focus on their financial interests and the financial interests of shareholders.³³ The ACTU noted in its submission the discrepancies between the current regulation of corporations and that proposed by the bill:

...the officer disclosure regime set out in the Bill (which applies to all officers in the Registered Organisation and constituent Branches, Divisions etc) far exceeds those applicable to Corporations...³⁴

3.37 The ACTU contended that the majority of branches of registered organisations would meet the 'small proprietary company' test set out in section 45A(2) of the *Corporations Act*. Their evidence suggests that the level of reporting required by the bill would not be required if those registered organisations operated as small proprietary companies,³⁵ undermining the Government's arguments for alignment of responsibilities, given that smaller registered organisations may be exclusively by voluntary officers.

3.38 The MTA also criticised the alignment of directors' duties of corporations with officials in registered organisations, submitting that while many board members of registered organisations elected to voluntary positions have no engagement in the financial affairs of their organisation. However, they noted that:

...there is always a risk that such persons will be implicated in investigation of any potential breaches – and their innocence can only be proven after tortious investigation and assessment.³⁶

3.39 SAWIA criticised the alignment of directors responsibilities, submitting that:

...SAWIA is a not for profit incorporated association and the role of SAWIA's board members cannot be directly compared to listed public companies who are commercial operations with well remunerated directors. Yet in many cases the proposed amendments under the Fair Work (Registered Organisations) Amendment Bill 2013 will result in far greater penalties and requirements being imposed.³⁷

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

33 Australian Council of Trade Unions, *Submission 16*, p. 12.

34 Australian Council of Trade Unions, *Submission 16*, p. 29.

35 Australian Council of Trade Unions, *Submission 16*, p. 29.

36 MTA, *Submission 8*, p. 5.

37 SAWIA, *Submission 13*, p. 2.

3.40 The QNU specifically opposed any additional regulation of registered organisations in a manner similar to trading corporations, suggesting that:

To put this in context, public companies are able to raise billions of dollars every day in international capital markets facilitated by the level of investor and regulator confidence in these standards. It is completely excessive for a federal government to regulate small, not-for-profit entities under disclosure principles similar to public companies.³⁸

3.41 Ai Group suggested that the alignment of disclosure requirements of registered organisations with company directors under the *Corporations Act* was inappropriate.³⁹ Ai Group noted that while clause 290A is based on s184 of the *Corporations Act*, the officers of Ai Group (and many other registered organisations) are unpaid officials. It submitted that many officers have no engagement with the financial management of the registered organisation:⁴⁰

The roles of these employer and worker representatives cannot be readily aligned with those of directors of listed public companies.⁴¹

3.42 Ai Group argued that unless the bill is amended, 'the provisions will operate as a major disincentive to existing officers of registered organisations continuing in their roles, and would deter other people from holding office.'⁴²

Material personal interest disclosure

3.43 Many submitters specifically criticised the proposed material personal interest disclosure provisions of the bill, suggesting that the provisions that have been appropriated from the *Corporations Act* were not an appropriate model for registered organisations, due to the innate differences between corporations and registered organisations. The committee heard extensive evidence that criticised the proposed disclosure regime as unfair, unnecessary and misguided, especially given the purpose of registered organisations is to provide advocacy and support services for their membership.

3.44 The ACTU provided three examples demonstrating reasons for their criticism of the alignment of directors duties, namely:

- Directors' disclosure obligations under the *Corporations Act* regarding material personal interests do not appear to extend to interests held separately by relatives;⁴³

38 Queensland Nurses Union, *Submission 3*, p. 4.

39 Ai Group, *Submission 5*, p. 18.

40 Ai Group, *Submission 5*, p.16.

41 Ai Group, *Submission 5*, p. 16.

42 Ai Group, *Submission 5*, p. 18.

43 *Corporations Act 2001 (Cth)*, s.191, as cited in ACTU, *Submission 16*, p. 29.

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- Disclosures are only required to be made to other directors⁴⁴ (as a mechanism for management of conflicts of interest);⁴⁵ and;
 - Directors are not obliged by the *Corporations Act* to disclose material personal interests relating to dealings that are subject to member approval.⁴⁶

3.45 Ai Group submitted that s191(1) of the *Corporations Act* requires a director to disclose to other directors any material personal interests in a matter that relates to the affairs of the organisation, that the director or specified relatives have or acquire.⁴⁷

Most importantly, the purpose of disclosure under the *Corporations Act* is to provide a mechanism for the director to exit from proceedings involving the interest (conflicts).⁴⁸

3.46 Ai Group was critical because the interests covered by clause 293C are personal interests and that many officers would not be comfortable with their personal financial interests, as well as those of their relatives being provided publicly.⁴⁹ Ai Group noted that:

In contrast, ss. 293 and 293J I would require the material personal interests of directors and their relatives to be distributed to all members of the organisations (many thousands of companies in Ai Group's case) as well as to the ROC.⁵⁰

3.47 VACC also opposed the material personal interest disclosure provisions set out in the bill, suggesting that:

If the interpretation of material personal interest is considered any interest an officer or their relative may have, that is the same benefit accessible by any member of the organisation, the reporting and disclosure obligations will be unworkable.⁵¹

3.48 The Australian Privacy Foundation (APF) submitted that while the bill is redundant and inappropriate, it suggested that the bill may result in people being regarded as suspects and losing their privacy merely because they are immediate family members of officers of registered organisations.⁵²

44 Australian Council of Trade Unions, *Submission 16*, p. 29.

45 Ai Group, *Submission 5*, p. 7.

46 Australian Council of Trade Unions, *Submission 16*, p. 29.

47 Ai Group, *Submission 5*, p. 18.

48 Ai Group, *Submission 5*, p. 18.

49 Ai Group, *Submission 5*, p. 18.

50 Ai Group, *Submission 5*, p. 18.

51 Victorian Automobile Chamber of Commerce, *Submission 12*, p. 6.

52 Australian Privacy Foundation, *Submission 18*, p. 2.

Committee view

3.49 The committee is persuaded by the evidence presented by submitters and witnesses that the proposed material personal interest disclosure regime is inappropriate and wholly unworkable because of the significant obligations that it would place on registered organisations. The committee agrees that the effect of the alignment would be to further dissuade and discourage members of registered organisations from nominating or participating as officers.

3.50 The committee does not accept the evidence presented by the Department, that greater alignment will allow members to have greater faith in their organisation's management. The committee believes that alignment would be detrimental to registered organisations members and management.

3.51 The committee recognises the fundamental differences in responsibilities and goals of trading corporations and registered organisations, in being run for shareholders' profits and for the benefits of membership respectively. However, the committee does not agree with the evidence provided by the Department that officers of registered organisations should be subject to similar or more stringent material personal interest disclosure requirement than those of directors of trading corporations.

Consequences for registered organisations

3.52 The committee heard extensive evidence relating to the potential impact of the amendments to interfere with the operation of registered organisations in Australia, due to the onerous compliance burden proposed by the bill. The committee also heard evidence that the bill could significantly impede the ability of employees or officers (paid or voluntary) of registered organisations to carry out their duties for their members.

3.53 The ACTU submitted that the passage of the bill could result in many employer organisations deregistering as registered organisations and instead, adopting corporate structures. By forming companies limited by guarantees, the organisations could then avoid the disclosure, training and oversight provisions of the bill.⁵³

3.54 The ACTU submitted that the principle of non-interference in employee and employer organisations is central to International Labour Convention 87 (Freedom of Association and the Protection of the Right to Organise).⁵⁴

3.55 Ai Group contended that any laws regulating registered organisations engage the Convention, and that those laws must not inhibit the abilities of workers and employers to join employee and employer groups, nor restrict their right to organise

53 Australian Council of Trade Unions, *Submission 16*, p. 35.

54 Australian Council of Trade Unions, *Submission 16*, p. 37.

the administration of their organisation as they see fit.⁵⁵ Ai Group also submitted that articles one to ten are particularly relevant to the consideration of the bill.⁵⁶

3.56 The Parliamentary Joint Committee on Human Rights found in its inquiry into the *Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012*, that:

The ILO Committee on Freedom of Association has considered the question of the permissibility of regulating the operations of unions and external scrutiny of their finances. While expressing concern about the possibility of government interference in the operations of trade unions, it has also recognised the legitimacy of external scrutiny in order to prevent or detect fraud or embezzlement.⁵⁷

3.57 The ACTU submitted that the inclusion in the bill of the general directions power (clauses 329FA and 329FB of Item 88 in Schedule 1)⁵⁸, is inappropriate, and argued that it could allow the regulatory arm of government to assist the executive government in industrial disputes.⁵⁹

3.58 The Australian Air Traffic Control Association submitted that it was particularly concerned with the effect of the bill on the classification of officers. Specifically, they raised the potential impact of subsection 293BC(2) and whether it would result in the reclassification of employees of organisations as officers. The Association suggested that the intent of the section needs to be further clarified,⁶⁰ given the potential adverse effects for employees in registered organisations.

3.59 The MUA submitted that the alignment of directors duties with those found in the *Corporations Act* would discourage individuals from participating not only as directors but as members of trade unions generally.⁶¹ The ACTU agreed, suggesting that, anecdotally, there already exists a reluctance of rank and file members to participate in governing bodies where they are exposed to large fines:

Many ACTU affiliates (at a branch or national level) have large democratic governing bodies to direct the business of the union, where the delegates are rank and file members of the union.⁶²

55 Australian Industry Group, *Submission 7*, p. 3.

56 Ai Group, *Submission 5*, pp 4–5.

57 Explanatory memorandum, *Fair Work (Registered Organisations) Amendment Bill 2013*, at Statement of Compatibility with Human Rights.

58 Australian Council of Trade Unions, *Submission 16*, p. 37.

59 Australian Council of Trade Unions, *Submission 16*, p. 37.

60 The Australian Air Traffic Control Association, *Submission 11*, p. 2.

61 Mr Aaron Neal, Senior Legal Officer, Maritime Union of Australia, *Proof Committee Hansard*, p. 6.

62 Australian Council of Trade Unions, *Submission 16*, p. 38.

3.60 Ai Group also submitted that the requirements would be a significant disincentive to officers of registered organisations to continue in their roles, and would deter others from participating.⁶³

Committee view

3.61 The committee agrees that on balance, the bill poses a great threat to the ability of registered organisations to provide services for the advancement of their membership if they are occupied with increasing regulation. The committee is particularly persuaded by evidence from submitters that the cost in personnel and consultancies, together with the administrative requirements would result in the diversion of significant resources away from members services to compliance measures.

3.62 The committee accepts the evidence presented by submitters that the bill has the potential to greatly interfere with and impede the abilities of employees of registered organisations, due to the disincentives proposed by the bill namely, the onerous disclosure regime, and the invasive nature of the material personal interest disclosures.

63 Ai Group, *Submission 5*, p. 18.