



Australian
Nursing &
Midwifery
Federation

Submission by the
Australian Nursing and Midwifery Federation

Senate Standing Committee on Education and Employment
Inquiry into
Fair Work (Registered Organisations) Amendment Bill 2013

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ANMF Journals

**Australian Nursing and
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**Australian Journal of
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*The industrial and
professional organisation
for Nurses, Midwives and
Assistants in Nursing
in Australia*



2.

Introduction

The Australian Nursing and Midwifery Federation (ANMF) thank the Senate Standing Committee on Education and Employment (the Committee) for providing this opportunity to comment on the Fair Work (Registered Organisations) Bill 2013 (the Bill).

The ANMF is the national union for nurses, midwives and assistants in nursing with branches in each state and territory of Australia. The ANMF is also the largest professional nursing organisation in Australia. The ANMF's core business is the industrial and professional representation of its members.

As members of the union, the ANMF represents over 240,000 registered nurses, midwives and assistants in nursing nationally. They are employed in a wide range of enterprises in urban, rural and remote locations, in the public, private and aged care sectors including nursing homes, hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, and off-shore territories and industries.

We ask the Committee to read our submission in conjunction with that of our peak body, the Australian Council of Trade Unions.

We also wish to state at the outset that unfortunately without the benefit of a reasonable period of time in which to consider and comment on the Bill, the remarks we make in this submission will necessarily be general and brief.

General comments on the Bill

The Senate should reject the Bill. It is unnecessary, poorly structured and excessive, particularly when 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.



3.

The ANMF questions the need to enact further laws in an attempt to ensure better governance of organisations registered pursuant to the Fair Work Act 2009. The government's public rhetoric of recent examples of alleged financial misconduct of registered organisations as justification of the need to make wholesale changes to the existing regulatory framework is spurious, mischievous and intended to paint unions in particular as organisations that require enhanced scrutiny.

Registered organisations are currently required to meet robust and detailed reporting requirements which are continuously monitored by an independent statutory body. It is the case that very few organisations fail to meet these requirements and are diligent in their reporting responsibilities and transparent in their dealings with members or constituents. The existing regulations are tough and include fiduciary style obligations and duty of care similar to those that apply to directors of corporations.

Despite this history of sound governance, the government now appears to be responding to calls from narrow sectional interests for increased reporting and accountability responsibilities in the absence of any real justification beyond the isolated events of one union.

And while ANMF supports clear and effective regulation of registered organisations the Fair Work (Registered Organisations) Bill 2013 appears to be little more than a vehicle for more prescription, regulation and procedural complexity, which is ironic given the current government's supposedly slavish commitment to a reduction in unnecessary regulation.

Specific comments on the Bill

Schedule 1

Schedule 1 of the Bill establishes the Registered Organisations Commissioner who will acquire a range of responsibilities which previously came within the responsibilities of the General Manager of the Fair Work Commission.

It is worth noting that not all of the all of the functions will be transferred as the General Manager will still retain some responsibility for administering of reporting units.



4.

The ANMF see no good reason to establish a second regulator. It appears to be an inefficient way to administer the Registered Organisations Act and will lead to uncertainty, increased regulation and an increased likelihood of breaches of reporting requirements

Schedule 1 Clause 329

329FA Directions from the Minister

- (1) *The Minister may, by legislative instrument, give written directions 6 to the Commissioner about the performance of the Commissioner's 7 functions. 8*
Note: Section 42 (disallowance) and Part 6 (sun setting) of the Legislative 9 Instruments Act 2003 do not apply to the direction (see sections 44 10 and 54 of that Act). 11
- (2) *The direction must be of a general nature only. 12*
- (3) *The Commissioner must comply with the direction. 13*

329FB Minister may require reports

- (1) *The Minister may, in writing, direct the Commissioner to give the 15 Minister specified reports relating to the Commissioner's 16 functions. 17*
- (2) *The Commissioner must comply with the direction. 18*
- (3) *The direction, or the report (if made in writing), is not a legislative 19 instrument.*

Given the repeated assurances by government of the independence of the Registered Organisations Commissioner, it is not clear why there is a need to include in the Bill sections 329FA and 329FB which provide the Minister with wide powers and control of the activities of the Commissioner. Given the antipathy shown by conservative governments to unions in Australia, the potential for political inference in the role and operations of this new agency is a significant concern to the ANMF.

Schedule 2 Item19

(iia) the keeping of minute books in which are recorded 13 proceedings and resolutions of meetings of committees 14 of management of the organisation and its branches; and



5.

The requirement that registered organisations keep minutes of all meeting of committees of management is too onerous and not consistent with good organisational practice. 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 organisations 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.

Schedule 2 Section 335

The Bill proposes to substantially amend the ROA to provide the Registered Organisations Commissioner with broad powers to undertake investigations. While the ANMF supports the capacity of the Commissioner to undertake legitimate investigations, we are concerned by the disturbing trend to reduce the rights of citizens in these types of investigations.

The powers proposed under clause 335 in relation compelling a person to attend and co-operate in an investigation, the manner in which the person may be represented and powers in relation to documents are very substantial and potentially open to abuse.

The Registered Organisations Commissioner is neither a tribunal nor a court but it is another disturbing example of a government agency being provided with expanded powers at the expense of the citizen.

Increasing penalty units

The proposal to substantially increase financial penalties (sometimes tenfold) is short-sighted and hairy-chested and can only be intended to present the government as a “tough cop on the beat”



6.

The Committee is reminded that the Bill not only covers paid officers and officials of registered organisations but also the many rank and file workplace representatives who play constructive roles within their unions and workplaces.

The ANMF 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.

Concluding comments

The ANMF repeats its disappointment in being denied a reasonable opportunity to consider this Bill further and to put before the Committee and more considered and expansive response than we have been able to in the short time available. We would welcome an opportunity to do so.