



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.html>

10 February 2014

Senator Sue Lines
Chair
Senate Education and Employment References Committee
P.O. Box 6100
Parliament House Canberra ACT 2600
eec.sen@aph.gov.au

Dear Senator Lines

Re: Fair Work (Registered Organisations) Amendment Bill 2013

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

I attach the APF's Submission on the above matter.

Thank you for your consideration.

Yours sincerely

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
(02) 6288 6916 Chair@privacy.org.au

Australian Privacy Foundation
Senate Education and Employment References Committee
Inquiry into the Fair Work (Registered Organisations) Amendment Bill 2013

This submission by the Australian Privacy Foundation responds to the call by Senate Education and Employment References Committee for comment on provisions of the *Fair Work (Registered Organisations) Amendment Bill 2013* (Cth).

The Foundation

The Foundation is Australia's premier civil society organisation concerned with privacy. It is not aligned with any political party or commercial interest. Its members include legal practitioners, academics, information technology specialists and others.

Background information about the Foundation is attached.

Summary

The provisions in the Bill are unnecessary, erode privacy protection and are inconsistent with the Government's commitment to respecting traditional freedoms.

The Bill provides for mandatory disclosure of information about the officers of registered organisations and about the relatives of those individuals.¹ It also provides for the sharing of that information.²

The Government seeks to justify that erosion of privacy on the basis that it would be:

- legal (in essence that it would be passed by the national parliament and not contrary to the national constitution or an international agreement such as the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights) and
- legitimate (ie that it would be proportional, appropriate and necessary).³

Both of those attempted justifications fail.

Additional law is not necessary

It is axiomatic that Australian legislatures should not pass law that is redundant.

Australian law already provides for investigation and prosecution of individuals who have engaged in fraud or otherwise abused positions within corporations, government agencies and not-for-profit entities.

There has been no demonstration that existing law at the national 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.

1 Amendment providing for new s 293C

2 Amendment providing for new s 329G

3 House of Representatives, Explanatory Memorandum: *Fair Work (Registered Organisations) Amendment Bill 2013* (2013) pp 87-90

The proposed law is not legitimate

It is also axiomatic that the legislatures should not pass law that is disproportionate and inappropriate.

The proposed legislation is disproportionate because it is redundant, i.e. investigation and prosecution is already covered under existing law. Further, it encompasses people who are not officers of registered organisations and whose only link to an organisation is their formal relationship with an officer of such an organisation. People should not be regarded as suspects and lose their privacy merely because they are children, siblings, parents or partners.⁴

The proposed legislation is inappropriate because, as indicated above, it is not needed: the Government currently has sufficient authority to deal with misbehaviour.

It is inappropriate because it confuses what is bureaucratically (or politically) convenient with what is necessary. That confusion fosters disrespect for the law and for the Parliament.

More broadly, it fosters misbehaviour by officials. In an environment in which government agencies must be seen to 'perform' in order to retain scarce resources the officials who administer the Act will be conscious that if they are given powers they are expected to use those powers and thereby justify their budgets.

The proposed legislation erodes privacy

The Second Reading Speeches assert that

The only people who have anything to fear are those who do the wrong thing. A rigorous structure and processes will be in place for investigation and prosecution of alleged wrongdoing. Officers who are operating within the law, which is the overwhelming majority of them, will have no reason to fear taking on official responsibilities.⁵

and that

the only people who have anything to fear by these amendments are those who are doing the wrong thing. Anyone in this place who has a regard for the members of registered organisations and their money will support this bill.⁶

Those assertions are flawed.

The presumption of innocence is the basis of traditional civil liberties, protection of rights of the individual, and criminal procedure in Australia. All people have an intrinsic right to be left alone without having to prove they are innocent, face pointless scrutiny or exposure, or make some other sort of special claim.

Many people who have done nothing wrong nevertheless have many aspects of their lives and relationships that they wish and need to keep private. Once that privacy has been breached the damage can often not be readily undone. The suggestion that only wrongdoers need to worry raises serious concerns regarding public shaming, guilt by association or political victimisation. It is not justified by belief in a future legal remedy after a person's reputation has been damaged.

4 The Bill goes well beyond the disclosure provisions in *Corporations Act 2001* (Cth) s 191. The rationale for treating the relatives of registered organisation officers more stringently to relatives of company directors is unclear.

5 Senator Fifield (Assistant Minister for Social Services) 12 December 2013 *Hansard* p 1620

6 Christopher Pyne MP (Minister for Education and Leader of the House) 14 November 2013 House of Representatives *Hansard* p 273

Individuals are able to choose whether or not to become an officer of a registered organisation. Their relatives do not have that choice. Those relatives should not lose their privacy simply because they are relatives. As the Ministers acknowledge, the “overwhelming majority” of officers are operating within the law.⁷ Neither they nor their families should experience the chill that comes from knowing that they are probably being surveilled and that information about them is being shared.

The Foundation believes that the Senators’ own families would be gravely disquieted by knowing that partners, siblings, cousins, ex-partners, parents and children are subject to surveillance merely because they are relatives of a Senator or Member.⁸

Surveillance Creep is contrary to law reform

The Bill is an example of surveillance creep, the one step forward, two steps back, approach to privacy protection.

Next month the amendments to the *Privacy Act 1988* (Cth) come into effect, removing some inconsistencies in that enactment and providing greater coherence.

The Parliament should not be simultaneously weakening privacy protection through new legislation that authorises disregard for privacy on the basis of association with a registered organisation.

The Bill should be rejected

The Foundation has been a strong and consistent supporter of best practice law enforcement throughout the quarter-century it has been advocating the privacy interest. It endorses legislative reforms that are proportionate, reasonable and necessary. This Bill lacks that legitimacy: it is not proportionate, reasonable and necessary. The Bill should not be endorsed by the Committee.

⁷ Given that the Ministers concede an overwhelming majority of people are not breaking the law the need for a draconian amendment is unclear. If essence, if something isn’t broken we shouldn’t rush to fix it.

⁸ Over the past fifty years MPs (including Ministers) in Western Australia, Victoria, New South Wales and Queensland have been investigated and convicted of corruption. The rationale used in justifying the Bill is the same as that could be used to strip the privacy of the families of Commonwealth MPs.

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

The APF's Board, SubCommittees and Reference Groups comprise professionals who bring to their work deep experience in privacy, information technology and the law.

The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>