



Fair Work (Registered Organisations) Amendment Bill 2014 [No. 2]

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**The Australian Chamber of Commerce and Industry
is the leading voice of business in Australia**

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1. INTRODUCTION

On 14 May 2015, the Senate referred the *Fair Work (Registered Organisations) Amendment Bill 2014* [No. 2] to the Senate Education and Employment Legislation Committee (Committee) (Bill) for inquiry and report.

The Australian Chamber of Commerce & Industry (**ACCI**) strongly supports the propositions that employee associations and employer associations registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) (RO Act) and formed to represent the interests of their members should be accountable to those members, should ensure that the expenditure of member funds is appropriate and properly accounted for and that there should be governance measures in place to ensure these outcomes.

ACCI also confirms that it is not a Registered Organisation. ACCI has registered organisations amongst its members, a number of whom will be making submissions to this inquiry. These members are best placed to inform the Committee in relation to the amendments contained within the Bill and issues that would be associated with their implementation and operation as far as employer associations are concerned.

ACCI notes that associations that are registered under the RO Act are already required to comply with detailed regulations in relation to registration, rules, financial reporting, elections, conduct of officers and other matters and the Fair Work Commission (FWC) is responsible for administering the provisions of the RO Act applying to the registered organisations. These responsibilities include the General Manager of the FWC making inquiries, conducting investigations and examining financial reports lodged with the FWC annually.

Recent high profile reports of inappropriate conduct within registered organisations has placed the governance practices of registered organisations squarely in the public domain and has provided the impetus for an examination of the effectiveness of the current statutory framework in ensuring that registered organisations are accountable to their members. In light of this behaviour, it cannot be denied that reform of the current statutory framework to strengthen the financial management and regulation of registered organisations to drive greater accountability to members of those organisations is required.

The Government's *Policy for Better Transparency and Accountability of Registered Organisations* set out its 2013 election commitment to strengthen regulatory oversight of registered organisations and their officers through the imposition of fiduciary and statutory obligations more closely aligned with those of companies and directors under the *Corporations Act 2001* (Cth)(Corporations Act). The Bill seeks to give effect to this commitment by:

- establishing the Registered Organisations Commission (ROC) to monitor and regulate registered organisations with enhanced investigation and information gathering powers;
- amending the requirements on officers' disclosure of material personal interests (and related voting and decision making rights) and changing grounds for disqualification and ineligibility for office;
- changing existing financial accounting, disclosure and transparency obligations under the RO Act and making them enforceable as civil remedy provisions; and
- increasing civil penalties and introducing criminal offences for serious breaches of officers' duties as well as introducing new offences in relation to the conduct of investigations under the RO Act.

ACCI supports the underpinning policy intent. The recent revelations suggest that registered organisations should be held to higher standards of accountability in relation to their conduct and use of members' funds. However in responding to the more notorious and reprehensible conduct, it should not be lost that the vast majority of employees and officers of registered organisations comply with their obligations and work diligently and ethically in advancing the interests of their members. Many office holders of registered organisations commit their time on a voluntary basis and are unpaid, despite taking on significant responsibilities as reflected in detailed regulatory requirements under the RO Act and their organisation's rules. In this respect, the arrangements relating to their engagement are generally distinct from arrangements that would apply to paid directors of publicly listed corporations regulated pursuant to the Corporations Act.

While some registered organisations and their branches have significant financial resources, a significant portion of registered organisations do not. The smaller, less financially strong organisations already face challenges in allocating their scarce resources for the benefit their members (e.g. in their policy and advocacy activities) and these will be impacted if they are required to direct additional resources toward compliance obligations. Employee and employer associations are not able to be registered unless the rules of the association make provision for matters as required by the RO Act. The RO Act already requires the registered organisation to have, for example, rules relating to:

- the powers and duties of office holders, removal from office;
- the manner in which property is controlled and funds invested;
- the conditions under which funds may be spent, the development and implementation of policies relating to expenditure;¹
- the disclosure of remuneration paid to officers;²
- the disclosure of material personal interests of officers and relatives;³
- the disclosure of payments made;⁴

¹ S 142.

² S 148A.

³ S. 148B.

⁴ S. 148C

- approved training for officers.⁵

Given additional regulation requires additional resourcing, it is important that reforms intended to strengthen governance are implemented in a way that is cognisant of the compliance obligations already imposed upon registered organisations, particularly the smaller ones that have not been the subject of recent attention.

ACCI has participated in three previous Senate Committee inquiries into the former Government's *Fair Work (Registered Organisations) Amendment Bill 2012*, the then Opposition's private member's bill, the *Fair Work (Registered Organisations) Amendment [Towards Transparency] Bill 2012* and the Government's *Fair Work (Registered Organisations) Amendment Bill 2013* and ACCI's submissions to those inquiries remain relevant in the context of the current inquiry.

As indicated, ACCI makes this latest submission without prejudice to the interests of our members and anticipates that ACCI members that are registered organisations making submissions will raise technical issues and practical matters relating to implementation. ACCI therefore strongly encourages both the Committee and Government to consider the submissions of ACCI's members in these respects and engage with them as required.

2. THE INTENT OF THE RO ACT

ACCI is broadly supportive of the intent behind the RO Act and would support changes consistent with its intended purpose as expressed in section 5 and that would improve its operation:

- (1) *It is Parliament's intention in enacting this Act to enhance relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation.*
- (2) *Parliament considers that those relations will be enhanced and those adverse effects will be reduced, if associations of employers and employees are required to meet the standards set out in this Act in order to gain the rights and privileges accorded to associations under this Act and the Fair Work Act.*
- (3) *The standards set out in this Act:*
 - (a) *ensure that employer and employee organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and*
 - (b) *encourage members to participate in the affairs of organisations to which they belong; and*

⁵ S. 154D.

- (c) *encourage the efficient management of organisations and high standards of accountability of organisations to their members; and*
 - (d) *provide for the democratic functioning and control of organisations; and*
 - (e) *facilitate the registration of a diverse range of employer and employee organisations.*
- (4) *It is also Parliament's intention in enacting this Act to assist employers and employees to promote and protect their economic and social interests through the formation of employer and employee organisations, by providing for the registration of those associations and according rights and privileges to them once registered.*
- (5) *Parliament recognises and respects the role of employer and employee organisations in facilitating the operation of the workplace relations system.*

The recent findings of inappropriate conduct in some registered organisations indicate there is scope to enhance the statutory framework to better support the intended effect of the RO Act.

3. INCREASING PENALTIES AND CREATING THE REGISTERED ORGANISATIONS COMMISSION

The Bill proposes higher civil penalties and criminal offences to deter non-compliance and which align more closely with penalties under the Corporations Act. Maximum penalties proposed include imprisonment for up to 5 years or 2,000 penalty units (currently \$340,000). These are significantly greater than the maximum penalties that can currently be imposed, which are 300 penalty units for a body corporate (currently \$51,000) and 60 penalty units for an individual (currently \$10,200).

Inappropriate conduct that has occurred in some registered organisations has raised the question as to whether the current penalty structure in the RO Act is serving as an effective deterrent. Questions also arise as to whether enhanced resources are required to properly police even the existing requirements under the RO Act.

The FWC is currently the body responsible for administering the provisions of the RO Act that relate to registered organisations, with these functions being divided between the General Manager of the FWC (in an administrative capacity) and the FWC itself. Under Chapter 11, Part 4 of the RO Act, the General Manager of the FWC may make inquiries and conduct investigations into registered organisations, in addition to the examination of registered organisations' financial reports lodged with the FWC each year. The Bill proposes a new body, the Registered Organisations Commission, with powers to pursue breaches of the RO Act via investigation and

litigation and possessing enhanced investigative and information gathering powers that align with those available to ASIC.

If steps are to be taken to enhance the deterrent effect of the RO Act through a specialist body, they must be accompanied by a commitment to resource it so that it can police the obligations arising under the RO Act. Both the nature of the regulator's activities and the penalty provisions must be appropriately targeted at the inappropriate conduct that gave rise to these amendments in the first place. For example, an officer or employee's deliberate misuse of funds or their position to create a financial gain for themselves or someone else to the detriment of an organisation and its members or wilful non-compliance with a court order should be the focus as opposed to lower end administrative errors.

4. REDUCING RED TAPE FOR REGISTERED ORGANISATIONS

ACCI is encouraged that with its amendments, the Government has turned its attention to reducing red tape for organisations while considering how governance and transparency measures can be strengthened. ACCI supports disclosure obligations where it can be demonstrated they will lead to better outcomes and where they do not impose unduly burdensome regulatory requirements. ACCI also supports proposed s 293M which would provide the proposed regulator with the discretion to grant exemptions to officers of registered organisations from financial duties training requirements where it is clear that they already possess a firm understanding of financial duties by virtue of their professional qualifications and experience. ACCI encourages the Committee to remain open to the suggestions of ACCI members that would minimise additional regulatory requirements without compromising the intended operation and overall purpose of the RO Act.

5. CONCLUSION

The recent, notorious conduct of certain registered organisations has warranted a response from policy makers. It established a case for the enhancement of the regulatory framework to prevent misuse of members' funds, increased accountability and greater transparency. The regulatory response must however be well targeted, adequately resourced and not adversely impact in a disproportionate manner, those registered organisations that do and have done the right thing. ACCI's members that are registered organisations are best placed to provide the Committee with comment in relation to issues relating to the technical operation of the proposed amendments and issues regarding implementation and ACCI commends such member submissions to the Committee.

6. ABOUT ACCI

6.2 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All eight state and territory chambers of commerce
- 29 national industry associations
- Bilateral and multilateral business organisations.

In this way, ACCI provides leadership for more than 300,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia.

6.3 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and globally;
- Business representation on a range of statutory and business boards and committees;

- Representing business in national forums including the Fair Work Commission, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and work, health and safety;
- Representing business in international and global forums including the International Labour Organisation (ILO), International Organisation of Employers (IOE), International Chamber of Commerce (ICC), International Chamber of Commerce and Industry Australia (ICCA) Business and Industry Advisory Committee (BIAC) to the Organisation for Economic Co-operation and Development (OECD), Asia-Pacific Economic Cooperation (APEC) through the Australian ASEAN Business Council, Confederation of Asia-Pacific Chambers of Commerce and Industry (CACCI) and Confederation of Asia-Pacific Employers (CAPE) and Indian Ocean Rim Association (IORA) through the Indian Ocean Business Alliance (IORBA);
- Research and policy development on issues concerning Australian business;
- The publication of leading economic business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of economic and policy reform.

ACCI MEMBERS

ACCI CHAMBER MEMBERS: BUSINESS SA **CANBERRA BUSINESS CHAMBER** CHAMBER OF COMMERCE NORTHERN TERRITORY **CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND** CHAMBER OF COMMERCE & INDUSTRY WESTERN AUSTRALIA **NEW SOUTH WALES BUSINESS CHAMBER** TASMANIAN CHAMBER OF COMMERCE & INDUSTRY **VICTORIAN EMPLOYERS' CHAMBER OF COMMERCE & INDUSTRY** **ACCI MEMBER NATIONAL INDUSTRY ASSOCIATIONS:** ACCORD – HYGIENE, COSMETIC AND SPECIALTY PRODUCTS INDUSTRY **AIR CONDITIONING & MECHANICAL CONTRACTORS' ASSOCIATION** AUSTRALIAN BEVERAGES COUNCIL **AUSTRALIAN DENTAL INDUSTRY ASSOCIATION** AUSTRALIAN FEDERATION OF EMPLOYERS & INDUSTRIES **AUSTRALIAN FOOD & GROCERY COUNCIL ASSOCIATION** AUSTRALIAN HOTELS ASSOCIATION **AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP** AUSTRALIAN MADE CAMPAIGN LIMITED **AUSTRALIAN MINES & METALS ASSOCIATION** AUSTRALIAN PAINT MANUFACTURERS' FEDERATION **AUSTRALIAN RETAILERS' ASSOCIATION** AUSTRALIAN SELF MEDICATION INDUSTRY **BUS INDUSTRY CONFEDERATION** CONSULT AUSTRALIA **HOUSING INDUSTRY ASSOCIATION** LIVE PERFORMANCE AUSTRALIA **MASTER BUILDERS AUSTRALIA** MASTER PLUMBERS' & MECHANICAL SERVICES ASSOCIATION OF AUSTRALIA **NATIONAL ELECTRICAL & COMMUNICATIONS ASSOCIATION** NATIONAL FIRE INDUSTRY ASSOCIATION **NATIONAL RETAIL ASSOCIATION** OIL INDUSTRY INDUSTRIAL ASSOCIATION **PHARMACY GUILD OF AUSTRALIA** PLASTICS & CHEMICALS INDUSTRIES ASSOCIATION **PRINTING INDUSTRIES ASSOCIATION OF AUSTRALIA** RESTAURANT & CATERING AUSTRALIA **VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE**