

LABOR SENATORS' DISSENTING REPORT

Introduction

1.1 Labor Senators do not see merit in this bill and oppose in its entirety without amendment.

1.2 The short period of time given around submissions to this particular inquiry of the committee, which proposes significant changes to the law and to the rights of workers in Australia, was not appropriate and did not allow reasonable time for submissions or appropriate consideration by the committee.

1.3 It is important to recall that when the law in this area was last amended, Coalition Senators were circumspect about the need for immediate reform. In their additional comments to the report of the Education, Employment and Workplace Relations Committee Legislation Committee regarding the Fair Work (Registered Organisations) Amendment Bill 2012, they were critical of the then government, asserting that 'this bill has been rushed together to meet a political end rather dealing with the substantive problems', and they were very critical of the short time frame provided for the Committee process. Coalition Senators suggested that:

...the bill should be delayed from further debate until the August 2012 sittings. This would allow the Minister and the Parliament to benefit from the KPMG review which is scheduled to be concluded by the end of July before making changes to the Act.¹

The bill is unnecessary and political in nature

1.4 The 43rd Parliament considered and adopted a Bill that addresses much of the same ground as the bill in question. The *Fair Work (Registered Organisations) Amendment Act 2012* allowed for a legislative regime that promotes the operation of accountable, democratic and effective trade unions that are member-governed.

1.5 The bill is in opposition to the supposed direction of the 44th Parliament, in that this regulation is unnecessary, duplicates Government responsibility and increases legislative 'red-tape', where the previous changes are still being implemented, adding to further compliance issues. During the hearing, the committee heard:

Senator TILLEM: With the red tape in compliance that you are talking about for small organisations, is that what you are referring to?

Mr Mammone: Indeed, I think some of the most recent changes have caused some issues, with members having to get some external advice as to how to comply. Obviously, rule changes are not that easy, so the previous government's changes are still being implemented. So, before this is enacted, there will still be requirements on those organisations to change their rules. Yes, it is an issue.

1 Senate Education, Employment and Workplace Relations Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2012 [Provisions] Report*, June 2012, p. 23.

Senator TILLEM: Would you agree with the statement that, further, the requirements of this bill add another layer of red tape for those organisations that you deal with and got feedback from? Is that a fair statement?

Mr Mammone: There are elements that compound the existing problems, yes.²

1.6 Labor Senators note that the current Registered Organisations Act already addresses the proposals of the bill to the appropriate extent, as the Act:

- Prohibits money from being used to favour particular candidates in internal elections or campaigns;³
- Gives priority to the determination of criminal proceedings (for example where it is alleged that funds have been stolen or are obtained by fraud);⁴ and
- Ensured that the Fair Work Commission can share information with the police as appropriate.⁵

Trade unions are not corporations and should not be regulated as such

1.7 The bill aims to regulate unions in a similar way to which Australian Corporations are currently regulated. Corporate regulation directed toward the protection of the economic interests of investors and creditors (and, to an extent, consumers), serves an entirely different purpose than the protection of the interests of union members. Trusts, Charities and so on are regulated differently to Corporations, and the regulation that Corporations are subject to differs depending on their size, structure and other factors (such as whether they are publicly listed). Unions should similarly be regulated in a manner that recognises their nature and purpose.

1.8 Unlike corporations, many rank and file members of trade unions are elected as delegates to governing bodies. These members are not full-time salaried leadership of unions, but everyday members who undertake other roles in the community and the industry, and volunteer their time to their union. The Committee should be cognisant of the fact that the burden of this regulation falls not just on the management of the union, but these rank and file members. The bill would result in many dedicated and ethical people refusing to participate in registered organisations due to the onerous unbalanced obligations on them as individuals.

1.9 Labor Senators note the anecdotal evidence provided to the committee that suggests there can be a reluctance of rank and file members to participate in governing bodies where they are (notionally) exposed to extensive public scrutiny and large fines:⁶

2 Mr Daniel Mammone, Director, ACCI, *Proof Committee Hansard*, 26 November 2013, p. 7.

3 *Fair Work (Registered Organisations) Act 2009*, s 190.

4 *Fair Work (Registered Organisations) Act 2009*, s 312.

5 *Fair Work (Registered Organisations) Act 2009*, s 336(2).

6 Mr Stephen Smith, Director, AIG, *Proof Committee Hansard*, 26 November 2013, p. 1.

Senator CAMERON: I want you to expand on the argument about why you should not align the registered organisations accountability with that of the Corporations Act.

Mr Smith: There are two aspects that we are concerned about—the regulatory burden for the organisation and the fairness of the regime for the officers, who in our case are all volunteers. The registered organisation disclosure regime is all about ensuring that the directors on a board disclose their interests to other directors on that small board so that they can exclude themselves from decision making. We have no difficulties with those processes but to publish interests on a public website we think is far beyond the corporations law provisions. We think there are differences but this legislation cannot be looked at as just an implementation of the corporations law provisions, because it is far more onerous than that.⁷

1.10 The bill also shares similarity to the Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012 advanced in the 43rd Parliament on behalf of Senator Abetz. In its submission to a Senate Committee Inquiry concerning that Bill, the Department of Education, Employment and Workplace Relations said:

The policy rationale underpinning the amendments in the Bill is that registered organisations should be regulated in the same manner as corporations. This fails to recognise the differences between registered organisations and corporations.

While there are some similarities, registered organisations are not, for the most part, comparable to corporations. Corporations are designed to generate wealth and protect the financial interests of shareholders. In contrast, registered organisations are established to represent their members in the industrial relation system with special rights under the [Fair Work] Act, including in relation to collective bargaining and right of entry, and are an important element in ensuring the right to freedom of association.

Further, the officers of registered organisations are often individuals who do not perform the role on a full time basis or for remuneration; as opposed to directors of corporations who in most cases are remunerated for their work.

The Department believes that while the key concepts, principles and structures of corporate governance overlap with and provide a useful starting point for regulating registered organisations, rules that account for the unique constitution of registered organisations, including their central purpose and the context in which they operate, is required.⁸

1.11 We respectfully concur with the views then expressed by the (former) Department and note that it is unfortunate that since the election this is no longer the stance of the Department. Labor Senators also note that in evidence provided to the

7 Mr Stephen Smith, Director, AIG, *Proof Committee Hansard*, 26 November 2013, p. 2.

8 Department of Education, Employment and Workplace Relations, *Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012*, ss 36—39.

committee at the hearing that the following point was made with respect to the former Department of Education, Employment and Workplace Relations:

Ms Parker: I would also say that we are now in a different department. That previous department does not exist, and we now have a new government with a stated policy. I think it is a difficult thing to be asking us to answer questions about a previous department, a different bill that is not the same as this bill—and we have a new government. So I am not really in a position—

Senator LINES: Is the department now saying that unions are in fact like corporations?

Ms Parker: I would like to discuss this bill, if that is okay.

Senator LINES: Are you now saying that trade unions are similar to corporations?

Ms Parker: Yes, we are. I am saying that in the context of the issues that are in this particular bill. This bill is designed to do certain things, and we are saying that registered organisations, of which some are unions and some are employer associations, need to be covered by this bill, so in that context it is appropriate for them to be regulated.⁹

1.12 This further demonstrates the political nature of the bill. It is the opinion of the Labor Senators of this committee that this legislation seeks to diminish rank and file participation within the unions, and discourage union activity, which is a solely political act in opposition to the rights of working Australians.

1.13 Increasing restrictions have been imposed on unions through amendments to industrial relations regulation in recent decades, most significantly concerning their setting in the award system. Beyond the award safety net, changes to employment conditions must be negotiated on an enterprise-by-enterprise basis and this occurs without resort to industrial action except where the unions members and the Commission so approve in accordance with legislative provisions that stifle whole of industry standards.

Potential for bias within the Registered Organisations Commission

1.14 Item 88, clause 329EA-329EC of the bill would tie the financial performance of the Registered Organisations Commission to the amount of money it is able to recover as penalties from prosecuting Registered Organisations, creating incentives for the Commission and the Commissioner to act with a particular bias to improve performance.

1.15 Item 88, clause 329FB in effect permits Ministerial interference in the operations of the Registered Organisations Commission, taking away from any true independence the Commission would have, and allowing for political bias to be put

9 Ms Sandra Parker, Deputy Secretary, Department of Employment, *Proof Committee Hansard*, 26 November 2013, p. 22.

upon the decisions of the organisation, resulting in unfair outcomes for alternately politicised Registered Organisations.

Conclusion

1.16 The Labor Senators of the Education and Employment Legislation Committee do not see merit in the Fair Work (Registered Organisations) Amendment Bill 2013 and oppose it in its entirety without amendment.

1.17 It is the opinion of the Labor Senators of this committee that this legislation seeks to diminish rank and file participation within the unions, and discourage union activity, which is a solely political act in opposition to the rights of working Australians.

1.18 The bill is fundamentally misconceived. Any appropriate parallels from the regulation of Corporations have already been adopted, in the main through bi-partisan support.

Recommendation 1

1.19 Labor Senators recommend that the Senate reject the bill.

Senator Sue Lines

Deputy Chair