

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2014-2015

Agency - Fair Work Commission

Department of Employment Question No. EM1607_15

Senator Ruston asked on 23 October 2014 on proof Hansard page 31

Question

FWC - Deregistering of registered organisations

Senator RUSTON: If an organisation was significantly behind in their returns or not compliant, what are the sanctions available to you? For instance, could you take away their tax deductibility or recipient status?

Ms O'Neill: The principal options that are available to me if I am satisfied that there have been contraventions of the reporting obligations go to matters including seeking civil penalty provisions in the Federal Court, issuing rectification orders and things of that nature. They do not go to the power of cancelling a registration of an organisation. That is a power that is exercised by the commission in certain circumstances, but not in those particular circumstances.

Mr Enright: The Regulatory Compliance Branch, in recent times in its proactive role, when it has identified where an organisation is significantly failing to comply and possibly defunct, we put together the information in relation to that and we submit it to the tribunal for it to consider whether the organisation is in fact functioning as a registered organisation. I have not got the statistics in front of me, but over the last around two years there has been somewhere around—and I can provide exact number—12 to 15 registered organisations have been deregistered. There has been a number of those have been referred to the commission who have subsequently been identified as being defunct and deregistered in those circumstances. So they are the really non-compliant organisations.

Answer

The options available to the General Manager if an organisation is not compliant with its financial reporting obligations are set out in section 336 of the *Fair Work (Registered Organisations) Act 2009* (the Act). This section provides that if, at the conclusion of an investigation, the General Manager is satisfied that an organisation has not complied with its financial reporting obligations, the General Manager can, among other things:

- issue a notice requesting specific action (a rectification notice), and/or
- apply to the Federal Court for an order as provided under Part 2, Chapter 10 (penalties, compensation).

The section does not empower the General Manager to cancel the registration of the organisation. However, if a rectification notice is not complied with, the General Manager can apply to the Federal Court for an order to ensure that the organisation complies with the rectification notice (s.336(5)).

Section 28 of the Act sets out grounds in which applications can be made to the Federal Court of Australia for an order cancelling the registration of an organisation. Subsection 1A empowers the General Manager to make such an application on the ground that the organisation has failed to comply with an order made by the Federation Court under section 336(5).

Separately, the Fair Work Commission can cancel the registration of an organisation for the technical grounds set out in section 30 of the Act. The Fair Work Commission can act on its own motion if it is satisfied that the organisation is defunct. An organisation can apply to have its registration cancelled on other technical grounds.

Whilst the technical grounds do not include non-compliance with financial reporting obligations under the Act, the failure of an organisation to comply with financial reporting obligations can indicate that the organisation is defunct. In these circumstances, staff in the Regulatory Compliance branch have both encouraged organisations to apply to have their registration cancelled, and have directly referred such organisations to the Commission to consider whether to cancel their registration. Since 1 July 2012 the Regulatory Compliance branch has referred eight organisations to the Commission, resulting in the cancellation of the registration of six organisations. A further six organisations have been deregistered following an application by the organisation.