



# **The Coalition's Policy** for Better Transparency and Accountability of Registered Organisations

July 2013

## Key Points

The Coalition will take strong action to ensure registered organisations are more transparent and accountable. We will act on this in the first week of a new parliament.

Australians who join trade unions or employer associations deserve to have confidence in the conduct and administration of those organisations. Registered organisations are a central part of the Fair Work regime and they must operate to the highest of standards.

The overwhelming majority of registered organisations already do the right thing. But there is clear evidence that the money paid by members to some registered organisations is being used for personal gain and inappropriate purposes. If elected, a Coalition government will:

- amend the law to ensure that registered organisations and their officials have to play by the same rules as companies and their directors;
- ensure that the penalties for breaking the rules are the same that apply to companies and their directors, as set out in the *Corporations Act 2001*; and
- reform financial disclosure and reporting guidelines under the Registered Organisations laws so that they align more closely with those applicable to companies.

In addition, a Coalition government will establish a new body, the Registered Organisations Commission that will:

- take on the role of registered organisations enforcer and investigator, currently held by the General Manager of the Fair Work Commission;
- provide information to members of registered organisations about their rights and act as the body to receive complaints from their members; and
- educate registered organisations about the obligations that apply to them.

The Registered Organisations Commission will be independent and will operate within the office of the Fair Work Ombudsman. The Registered Organisations Commission will also be required to cooperate with other law enforcement bodies.

A dodgy company director and a dodgy union official who commit the same crime should suffer the same penalties.

The Coalition believes that the members of registered organisations, mainly workers and small businesses, deserve better. They are entitled to the same protections as shareholders of companies.



## Introduction

Revelations surrounding the Health Services Union highlight a failure in Australian laws that apply to those organisations that assist our workplaces.

Many industry associations, such as employer groups and trade unions, are 'registered organisations' whose elected officers are required to comply with obligations set out in the *Fair Work (Registered Organisations) Act 2009*. This registration, amongst other things, helps them to represent members and their industry in workplace relations matters.

These obligations include rules requiring that they act in the best interests of members at all times, do not use their position to seek personal gain, and use members' money appropriately in a way that can be verified through the lodgement of financial returns and related statements to the Fair Work Commission.

The laws applying to these registered organisations are akin to those which apply to companies and their boards of directors. Just as shareholders are entitled to know that the money they have invested is used for proper purposes, members of registered organisations are also entitled to know how and where their membership money is being properly used.

However, unlike companies and their directors, registered organisations and their officials do not face the same consequences for doing the wrong thing.

For example, the lengthy Fair Work investigation relating to the Health Services Union found that officials had:

- used union members' money for personal advantage;
- failed to act in the best interest of members; and
- breached financial management rules.

Had these offences occurred in a company with directors, they would be exposed to criminal penalties including personal fines of up to \$320,000 and up to five years imprisonment. However, under the *Fair Work (Registered Organisations) Act 2009*, registered organisations and their officers are only exposed to civil penalties with the potential for comparatively modest fines of up to \$10,200.

It is now clear to every Australian that the existing laws need to be stronger.

There is clear evidence that the money paid by members to some registered organisations is being used for personal gain and inappropriate purposes.



# The Plan

A Coalition government will, in the first week of a new parliament, give effect to our *Policy for Better Transparency and Accountability of Registered Organisations*.

## 1. Stricter Reporting Rules and Increased Penalties

The Coalition will ensure members of registered organisations enjoy the same protections that exist for everyone else. If elected, a Coalition government will:

- amend the law to ensure that registered organisations and their officials have to play by the same rules as companies and their directors;
- ensure that the penalties for breaking the rules are the same that apply to companies and their directors, as set out in the *Corporations Act 2001*; and
- reform financial disclosure and reporting guidelines under the Registered Organisations laws so that they align more closely with those applicable to companies and that required by the ASX corporate governance rules.

Other rules relating to registered organisations, such as taxation laws, will not be affected by these changes proposed by the Coalition. They will remain the same as those that currently exist.

The overwhelming majority of registered organisations already do the right thing and, in many cases, already comply with higher standards than those that currently apply.

### What does this mean?

The *Fair Work (Registered Organisations) Act 2009* will be improved to require registered organisations and their officers to observe the same fiduciary and statutory duties as companies and their directors as set out in the *Corporations Act 2001*.

This will harmonise obligations and rules as they relate to general duties and obligations, and penalties for non-compliance.

Financial reporting obligations will, as a starting point, also reflect the obligations in the *Corporations Act*.

Consultation will occur with stakeholders to seek their views about how to adapt and apply ASX governance rules.



## 2. A Genuinely Independent Watchdog with Real Powers

It is clear that the current enforcer of the Registered Organisations laws, the Fair Work Commission, needs to be stronger and more efficient.

The three year Fair Work investigation into the Health Services Union simply took too long. Australians have lost the trust and faith needed in an important body like the Fair Work Commission that is supposed to be the watchdog and ensure members of organisations are not ripped off.

The Coalition will improve the Registered Organisations watchdog to ensure that reporting obligations are met and that allegations of wrong-doing are investigated quickly and efficiently. If elected, a Coalition government will:

- establish a new body, to be known as the Registered Organisations Commission. It will enforce and police the expanded reporting and compliance obligations;
- provide information to members of registered organisations about their rights and act as the body to receive complaints from their members;
- educate registered organisations about the new obligations that apply to them; and
- absorb the role of registered organisations enforcer and investigator, currently held by the General Manager of the Fair Work Commission.

The Registered Organisations Commission will be independent and will operate within the office of the Fair Work Ombudsman.

The new watchdog will have greater powers than those available to the current enforcer and will adhere to a strict charter to ensure all members of registered organisations are protected.

The Registered Organisations Commission will also be required, to avoid any doubt, to cooperate with other law enforcement bodies where it is in the public interest to do so.

The first head of the Registered Organisations Commission will be appointed by the Minister but will not be subject to Ministerial direction. The Commission will be required to report to Parliament on a yearly basis.



### What does this mean?

The General Manager of the Fair Work Commission (or a delegate) has current responsibility to enforce the obligations in the *Fair Work (Registered Organisations) Act 2009*. These responsibilities will be transferred to the new Registered Organisations Commission, which will be an independent body, operating away from the Fair Work Commission and become part of (but not responsible to) the Fair Work Ombudsman.

The new watchdog will be required to ensure that registered organisations comply with their improved obligations. It will have the power to investigate complaints and non-compliance quickly and effectively, while having an express obligation to cooperate with other law enforcement agencies.

This will not affect the operation of the Fair Work Commission in any of its other day to day responsibilities, such as the conciliation and arbitration roles.

The Registered Organisations Commission will be independent of government, but will be required to report to Parliament and appear before Senate Estimates. The Commission will have enhanced powers to enforce the law similar to those held by ASIC.

## The Choice

The Coalition will do the right thing by Australian workers who are members of registered organisations. We will ensure that dodgy union officials and dodgy company directors are treated the same and face the same penalties if they do the wrong thing.

Labor has comprehensively failed to stand up for workers, fight for transparency, or promote accountability. They have continued to run a protection racket for union bosses.

Tony Abbott introduced laws to give effect to this Coalition policy into the Parliament and Labor voted against them. Labor chose to keep their union bosses happy as they are always at the beck and call of the faceless factional men. You don't have to look far to see why they did this.

The latest Australian Electoral Commission disclosure data from the 2011-12 financial year showed that unions gave almost \$4 million to the Australian Labor Party. In Parliament, 32 of the total 72 Labor House of Representative MP's who stood for Labor at the last election were ex-union officials. In the Senate, some 21 of the 31 members are ex-union officials. Over 51 per cent of all Labor MP's and Senators were former union officials.



Instead, Minister Shorten promised to “get tough” on those who do the wrong thing and changing the laws to “triple the penalties” in the *Registered Organisations Act*. These changes were a shallow endeavour and an effort to be seen to be doing something.

The reality is that Minister Shorten is a former union boss, creating rules for current union bosses, and is a member of a party where union bosses have the final say.

The \$10,200 slap on the wrist Labor has in place is hardly an effective deterrent when many registered organisations have millions of dollars of members’ money under their control.

The Coalition will stand up for workers and members of registered organisations and do the right thing to protect them and their money.

COALITION	LABOR
\$340,000 maximum fine for individual	\$10,200 maximum fine for an individual
Imprisonment for up to 5 years	No imprisonment
Criminal penalties	Civil penalties only
Compensation for damages	No compensation for damages

Effective from 28 December 2012, the *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012* amended the value of a penalty unit, increasing it from \$110 to \$170 (Crimes Act 1914 (Cth), s 4AA(1)).

Under present arrangements for an individual, penalties increased from \$6,600 to \$10,200. This caused the penalty in this Coalition policy to rise from \$220,000 to \$340,000.

## COST

The cost associated with establishing the Registered Organisations Commission will be met from the associated savings derived from abolishing the existing registered organisations compliance component of the Fair Work Commission.



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For further details of the Coalition's Plan go to  
[www.realsolutions.org.au](http://www.realsolutions.org.au)