

CHAPTER 2

Key issues

Amendments since the previous report

2.1 The bill is largely identical to its predecessors and its underlying purpose remains unchanged. However, there have been four notable changes to the bill since the committee's previous report, each of which was made in response to the recommendations in that report.

Recommendation 1

2.2 The committee recommended that the requirement to disclose material personal interests under proposed new section 293C of the RO Act apply only to officers whose duties are financial in nature.¹ The application of proposed section 293C is now restricted to an officer of an organisation or branch 'whose duties include duties that relate to the financial management of the organisation or branch'.²

2.3 The committee further recommended that such disclosures be recorded in the minutes of relevant meetings and be made available to members on request. This replaces the requirement that disclosures be made to all members of an organisation.³

Recommendation 2

2.4 The committee recommended that a list of exclusions from the obligation to disclose material personal interests, based on subsection 191(2) of the Corporations Act, be inserted into the bill.⁴ Proposed new paragraph 293C(4)(a) of the RO Act provides that disclosures need not be made in respect of certain categories of interest, such as those held in common with the other members of an organisation or branch and those arising in relation to an officer's remuneration.⁵ In addition, the bill no longer imposes an express obligation on officers to disclose any material personal interest in relation to that officer's relatives.⁶

Recommendation 3

2.5 The committee recommended that the obligation to disclose payments made by a registered organisation be subject to certain exclusions and limitations, including

1 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, December 2013, pp 10-11.

2 Proposed subsection 293C(1).

3 Department of Employment, *Submission 2*, p. 3.

4 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, December 2013, p. 11.

5 Proposed subparagraphs 293C(4)(a)(i) and (ii).

6 Department of Employment, *Submission 2*, p. 3.

a minimum payment threshold.⁷ Proposed new section 293G of the RO Act now includes additional exceptions to the obligation to disclose these payments. These exceptions, modelled on similar exceptions in the Corporations Act, include payments made to related parties on 'arm's length' terms or that are less than an amount to be specified in regulations.⁸

Recommendation 4

2.6 The committee recommended that the Commissioner be given authority to grant exemptions from training requirements.⁹ Proposed new section 293M of the RO Act provides for an exemption to mandatory financial management training where the Commissioner is satisfied that an officer has 'a proper understanding' of their financial duties based on relevant experience or qualifications.¹⁰

Responses to the bill

2.7 The majority of submitters reiterated or expanded on their submissions to the previous inquiry. Responses to the bill remain mixed, with supporters and opponents of the bill divided on the necessity for greater oversight of registered organisations, and in particular, oversight of trade unions.

Support for the bill

2.8 Supporters of the bill accept the need for greater oversight and improved governance of registered organisations to provide members with similar protections to those enjoyed by company shareholders.

2.9 The Australian Mines and Metals Association stated that 'more effective regulation of registered organisations and increased penalties are warranted to ensure members' interests are protected to the same extent as are those of shareholders of companies'.¹¹

2.10 The Chamber of Commerce and Industry of Western Australia (CCIWA) emphasised the importance of enshrining the requirement for organisations to act in their members' best interests, noting 'this is especially important given the level of trust members place in these organisations, particularly in the case of trade unions where members are limited in their ability to choose the organisation that suits them'.¹²

2.11 In relation to increased penalties, the Department of Employment noted that the Interim Report of the Royal Commission into Trade Union Governance and

7 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, December 2013, p. 11.

8 Proposed subsections 293G(5A) and (5B).

9 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, December 2013, p. 13.

10 Proposed subsection 293M(2).

11 Australian Mines and Metals Association, *Submission 10*, p. 1.

12 Chamber of Commerce and Industry of Western Australia, *Submission 3*, p. 1.

Corruption (the Royal Commission) found that the current maximum penalties for breaches of financial management duties are too low.¹³ This finding was echoed in Justice North's comment, while hearing *General Manager of Fair Work Australia v Health Services Union*,¹⁴ that the penalties are so low as to be 'beneficial to wrongdoers'.¹⁵ By increasing penalties, 'the interests of members of registered organisations are protected in a similar way as the interest of shareholders of companies'.¹⁶

Criticism of the bill

2.12 Opponents of the bill generally reject the underlying premise that mismanagement and poor governance are widespread amongst registered organisations.

2.13 The Australian Council of Trade Unions (ACTU) contended that the current RO Act provides appropriate regulatory oversight of registered organisations and need not be amended. Similarly, Unions NSW found no evidence to justify changes to the RO Act.¹⁷

2.14 The Victorian Automobile Chamber of Commerce (VACC) was not opposed to increased oversight of registered organisations, but expressed concern that the bill was 'financially costly and administratively unworkable without achieving [its] purported aim'.¹⁸

Responses to the amendments

2.15 Not all submissions directly addressed the amendments, but those that did were generally positive. The CCIWA welcomed the government's willingness to respond to stakeholder concerns,¹⁹ while the Australian Industry Group was pleased that many of its own suggestions had been taken up.²⁰ The Australian Chamber of Commerce and Industry was encouraged that the amendments showed 'a commitment to reducing red tape while strengthening governance and transparency'.²¹

2.16 The Master Plumbers Association of NSW noted that aligning requirements under the RO Act with those in the Corporations Act would succeed in '[creating]

13 Interim Report of the Royal Commission into Trade Union Governance and Corruption, p. 56.

14 [2014] FCA 970.

15 Department of Employment, *Submission 2*, p. 6.

16 Department of Employment, *Submission 2*, p. 1.

17 Unions NSW, *Submission 7*.

18 Victorian Automobile Chamber of Commerce, *Submission 5*, p. 4.

19 Chamber of Commerce and Industry of Western Australia, *Submission 3*.

20 Australian Industry Group, *Submission 4*, p. 4.

21 Australian Chamber of Commerce and Industry, *Submission 8*, p. 8.

transparency and reducing red tape without introducing additional and potentially overlapping requirements'.²²

2.17 However, some submitters expressed reservations about the nature and extent of the changes. The VACC was 'concerned that the current Bill has failed to account for concerns previously raised by VACC and others'.²³ The ACTU, noting the value of 'a uniform minimum standard of knowledge', suggested that exemptions from training requirements 'may dilute the content of the care and diligence duty'.²⁴

Committee view

2.18 Based on the weight of evidence in this and the previous inquiry, the committee is of the view that current arrangements are manifestly inadequate to ensure proper governance of registered organisations and deter improper behaviour by officials. The committee is persuaded that the bill is both necessary and appropriate to ensure the fair representation and protection of members' rights by the organisations to which they belong.

2.19 The committee is pleased to note that its recommendations have been acted upon. The committee is particularly reassured by the closer alignment of the reporting and disclosure obligations with those in the Corporations Act, fulfilling the committee's desire to see 'consistent language and jurisprudence be applied to new legislation'.²⁵ The committee is satisfied that the amendments to the bill have addressed its previous concerns.

Recommendation 1

2.20 The committee recommends that the Senate pass the bill.

Senator Bridget McKenzie
Chair

22 Master Plumbers Association of NSW, *Submission 6*, p. 3.

23 Victorian Automobile Chamber of Commerce, *Submission 5*, p. 4.

24 Australian Council of Trade Unions, *Submission 1*, p. 10.

25 Senate Education and Employment Legislation Committee, *Fair Work (Registered Organisations) Amendment Bill 2013 [Provisions]*, December 2013, p. 15.