

LABOR SENATORS' DISSENTING REPORT

Key Issues

1.1 As the current bill is identical to the Fair Work (Registered Organisations) Amendment Bill 2013 (the previous bill), and the amendments identical to those negated by the Senate in May 2014, Labor Senators again argue that the Fair Work (Registered Organisations) Amendment Bill 2014 should not be passed.

1.2 The Explanatory Memorandum to the current Bill does not materially differ from the Explanatory Memorandum to the previous Bill, and does not contain any of the additional information provided by the Minister in relation to the matters raised by the Labor Senators of the committee.

1.3 Like the Senate Standing Committee on Education and Employment, the Senate Standing Committee for the Scrutiny of Bills (the Scrutiny of Bills committee) reported twice on the previous Bill in 2013 and 2014. The Committee raised a number of concerns, particularly with regard to whether the increase proposed by item 228 (proposed subsection 337(1)) for the offence of failing to comply with a notice to attend or produce to 100 penalty units or imprisonment for two years (or both) is higher than other similar offences, and the justification for the proposed approach.¹ The Committee noted that the provisions mentioned above may be considered to trespass unduly on personal rights and liberties.² Labor Senators support this view and note that changes have not been made to address these concerns.

1.4 The Labor Senators of the committee remind the Government that 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 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.

Evaluation of the current bill by other committees

1.5 The Scrutiny of Bills committee reported on the bill in its Fifth Report of 2015, drawing attention to a number of issues it believed were insufficiently dealt with in the explanatory memorandum.³ In particular, the Scrutiny of Bills committee noted its 'disappointment' with the minister's failure to address these issues for a third time.⁴

¹ Senate Standing Committee for the Scrutiny of Bills, Alert Digest No. 9 of 2013

² Ibid., p. 22

³ Senate Standing Committee for the Scrutiny of Bills, *Fifth Report of 2015*, 13 May 2015, pp 343–354.

⁴ Senate Standing Committee for the Scrutiny of Bills, *Fifth Report of 2015*, 13 May 2015, p. 343.

1.6 The Parliamentary Joint Committee on Human Rights (the Human Rights committee) also reviewed the bill in its Twenty-second report of the 44th Parliament.⁵ The Human Rights committee highlighted the proposed new offence of concealing documents relevant to an investigation as being potentially incompatible with the right to a fair trial and fair hearing. The relevant defence imposes a reverse legal burden of proof on the defendant,⁶ engaging with – and possibly limiting – the defendant's right to the presumption of innocence.⁷

Labor Senators' summary view

1.7 As the bill stands unchanged, the view of the Labor Senators of the Committee remains unchanged. We argue that there is no merit in the Fair Work (Registered Organisations) Amendment Bill 2014 and oppose it in its entirety without amendment.

1.8 We retain the opinion 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.

Recommendation 1

1.9 The Labor Senators recommend that the Senate reject the bill.

**Senator Sue Lines
Deputy Chair**

5 Parliamentary Joint Committee on Human Rights, *Twenty-second report of the 44th Parliament: Human rights scrutiny report*, 13 May 2015, pp 47–52.

6 Proposed new section 337AC(2) provides a defence 'if it is proved that the defendant intended neither to defeat the purposes of the investigation, nor to delay or obstruct the investigation, or any proposed investigation' (emphasis added); the onus is placed on the defendant to prove that they did not possess the requisite intention, rather than on the prosecution to prove that they did.

7 Parliamentary Joint Committee on Human Rights, *Twenty-second report of the 44th Parliament: Human rights scrutiny report*, 13 May 2015, pp 50–52.