



**Treasurer
Minister for
Industrial Relations**

- 8 FEB 2013

NSW IR No: 13DOC0006

Committee Secretary
Senate Standing Committee on Education, Employment and Workplace Relations
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Sir/Madam,

I note that the *Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012* ('the Bill') introduced by Senator Eric Abetz on 27 November 2012 has been referred to the Senate Committee on Education, Employment and Workplace Relations. In the context of the Committee's request for written submissions by 8 February 2013 I am now supplying the following information.

The Bill amends the current *Fair Work (Registered Organisations) Act 2009* ('FW(RO)Act'), which regulates registered organisations. Senator Abetz has stated that the current regulatory scheme for registered organisations under the FW(RO) Act is deficient in terms of maximum penalties for breaches, lax internal management and financial reporting obligations. The need for stronger deterrence arises in the context of numerous scandals involving unions and their officers concerning misuse of members' funds, most notably that concerning the Health Services Union. In light of these concerns, the NSW Government welcomes the introduction of the Bill.

It is understood that the broad intent of the Bill is to provide deterrence against and substantial criminal penalties for reckless and/or intentional misconduct by officials of members' funds, instead of the civil penalties currently in the FW(RO) Act. Under the Bill, maximum criminal penalties would be five years imprisonment and/or \$220,000 in fines. With civil penalties, fines for officers of registered organisations who breach the existing rules will increase from \$6,600 to \$22,000.

Misconduct has always been an offence under the NSW *Industrial Relations Act 1996* (the 'IR Act'). While penalties for such offences under the IR Act are considerably lower than those proposed in the Bill, the NSW Government has proven its willingness to reform such laws when necessary and appropriate. The most recent example of such reform is the passing in May 2012 of the *Industrial Relations Amendment (Industrial Organisations) Act 2012*.

The amendments made by NSW legislation provided the competent authorities in NSW with appropriate investigative and prosecutorial powers to deal with allegations of union misconduct.

The amendment Act inserted the following provisions into the IR Act:

- Section 209B: The power of the Industrial Court to order an administrator for a registered organisation in cases where 'dysfunction' and/or 'misconduct' in such organisations are found to have occurred. This provision ensured that it was possible for the Federal Court to make equivalent orders to deal effectively with dysfunction in both the federal and state registered branches of the Health Services Union.
- Section 290E: The power of the Industrial Registrar (on application by the Minister or a person having a sufficient interest in relation to an organisation) to initiate elections of union officials in a registered organisation.
- Section 290F: Action may be taken against a member of an organisation registered under the FW(RO) Act who is subject to allegations of financial misconduct and who is attempting to obtain a position in this organisation's state branch (registered under the NSW IR Act).
- Section 385: This section expands the powers of industrial inspectors to permit them to enter the premises of registered organisations. Inspectors can require and retain evidence for further investigation and can also question and interview officers of such organisations regarding possible breaches.

It is important for the Commonwealth to be aware of analogous state laws, because many organisations have registration under both federal and state law. Hence it is generally desirable that there be a level of comity between these laws applying to what may, in factual terms, be the same conduct by the same individual.

I trust that this information has been of assistance to the Committee.

Yours sincerely

MIKE BAIRD MP