

Submission to the Senate Education  
and Employment References  
Committee Inquiry into the Fair Work  
(Registered Organisations)  
Amendment Bill 2013

Pirate Party Australia

22 January 2014

## **1 Introduction**

Pirate Party Australia would like to thank the Senate Education and Employment References Committee for the opportunity to submit on the Fair Work (Registered Organisations) Amendment Bill 2013.

### **1.1 About Pirate Party Australia**

Pirate Party Australia is a political party registered under the *Commonwealth Electoral Act 1918*. The Party was founded in late 2008, and contested its first Federal Election in 2013. The Party's main areas of concern are intellectual property rights (predominantly copyright and patents), privacy rights, increased governmental transparency, and opposition to censorship.

Pirate Party Australia is a member of a worldwide movement that began in Sweden in 2006, and has since spread to more than 40 different countries. Pirate Parties have been elected to all levels government — local, state, national and supranational — with 45 state seats in Germany, three seats in the Icelandic Parliament, and two Members of the European Parliament.

## **2 General remarks**

Pirate Party Australia is generally concerned that the proposed Registered Organisations Commission has far too much authority to gather evidence and compel officials to incriminate themselves or provide documents to the Commission where the Commissioner believes necessary. The bulk of the powers are discretionary, and there is little in the way of safeguards against abuses of power. The Pirate Party recommends that safeguards be introduced to provide protection to those under investigation (perhaps by way of an objective test that requires a degree of reasonableness, or similar). However, the Pirate Party opposes the amendments that would create criminal penalties for failing to assist in an investigation, on the grounds that it violates the right against self-incrimination.

Surveillance mechanisms that may be employed by the Registered Organisations Commission are poorly demarcated. Pirate Party Australia opposes potential ‘fishing expeditions’ where a government agency has the power to trawl over enormous amounts of telecommunications data for evidence, as this poses an enormous risk to privacy and data security. Limits on the power of the Commission must be imposed, and the Bill at present is not clear enough. The Pirate Party urges amendments to clarify the surveillance powers of the Commission, particularly in regard to access of telecommunications data, where a warrant should be required to access data, and the data made accessible should be limited to only those persons named in a warrant.

Lastly, Pirate Party Australia recommends stricter controls on information sharing between government agencies to ensure that privacy is protected.

### **3 Division 3—Questioning on oath or affirmation**

Pirate Party Australia recommends extreme caution when placing limits on the right against self-incrimination, particularly imposing criminal penalties for failure to provide information that may be used to prosecute the attendee. The provisions of the proposed sections 335D and 337AA–337AE and the proposed amendments to section 337 severely limit this right beyond reasonable limits. It is illogical to provide such an extreme power to a regulatory body, when not even the Australian Federal Police have the power to compel suspects to incriminate themselves.

The proposed section 335F also appears to provide far too much discretionary power to investigators and is a perversion of justice. The Pirate Party believes it is inappropriate to arbitrarily limit the ability for an attendee and their lawyers to confer, reducing the attendee’s access to adequate legal advice. Although the investigator must, under the proposed section, be of the opinion that the attendee’s lawyer is trying to obstruct questioning by intervening, the Party is not satisfied that this is an appropriate or necessary provision, and is concerned that it has a wide scope

for abuse.

Pirate Party Australia recommends that these proposed amendments be removed from the Bill on the grounds that they needlessly and dangerously infringe on basic rights and freedoms with regard to self-incrimination and access to legal advice.

#### **4 Division 4—Powers in relation to documents**

Apart from concerns similar to those above in regard to criminal penalties for failure to provide documents, Pirate Party Australia submits that the 'search and seizure' provisions are generally suitable and supports the necessity for a warrant to be obtained beforehand, as well as reliance on the Australian Federal Police to conduct the search and seizures. Despite this, the Party is not convinced the amendments are implemented in an appropriate manner.

The ability to search premises for physical documents presents a risk to privacy, and the Pirate Party would like to see it stressed in the Bill that searches should only be undertaken where documents could not be obtained in some other way. There must also be protections for privacy with regard to irrelevant personal information that might be inadvertently collected during a search.

Electronic documents are inadequately addressed under the Bill. Pirate Party Australia recommends that the Bill be amended to detail the procedure with regard to accessing or obtaining electronic documents, particularly ensuring that remote interception or access to computer networks is an unacceptable method of obtaining evidence. The proposed legislation, as it stands, is insufficiently future proof, and should be amended to reasonably anticipate technological changes, as it does not even adequately address current uses of technology.

## 5 Division 6—Offences

This entire division is inappropriate in Pirate Party Australia's view. The most obvious provision that should be removed is 337AD, as it operates to bypass the right against self-incrimination, a key civil liberty addressed in international law (see, for example, the International Covenant on Civil and Political Rights, article 14(3)(g)). The vast majority of the offences under this division appear to hinge on discarding this right and imposing penalties for failing to give evidence, failing to answer questions and interfering with investigations.

Pirate Party Australia suggests that the offences should be reduced in scope somewhat to the following:

1. Intentionally or recklessly misleading an investigation,
2. Intentionally or recklessly destroying or concealing evidence or requested documents, except where the destruction or concealing is in line with privacy policies (as in the routine destruction of personal records for privacy reasons), and
3. Intentionally or recklessly obstructing an investigation.

More detail into what these constitute should be included as necessary. Refusal to answer questions should not be a crime in any way, shape or form, and the search and seizure provisions are suitable for obtaining documents under warrant. Pirate Party Australia believes that intentional or reckless obstruction of an investigation should lead to a penalty but that this should, again, exclude refusal to answer questions or legal advice.