



AUSTRALIAN CHAMBER OF
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22 November 2013

Committee Secretary
Senate Education and Employment Committees
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Dear Committee Secretary,

**Inquiry into the Fair Work (Registered Organisations) Amendment Bill
2013**

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. Our member network has over 350,000 businesses represented through Chambers of Commerce in each State and Territory, and a nationwide network of industry associations.

ACCI welcomes the opportunity to participate in this inquiry which is examining the Fair Work (Registered Organisations) Amendment Bill 2013 (the Bill). ACCI notes that the Bill broadly reflects the Government's pre-election policy titled, "*Better Transparency and Accountability of Registered Organisations*" (July 2013).

ACCI has participated in two previous Senate Committee inquiries into the former Government's Fair Work (Registered Organisations) Amendment Bill 2012 and the then Opposition's private member's bill, Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012. ACCI's submissions to those inquiries are relevant to this current inquiry and are attached.

Within the time available, ACCI has attempted to review the Bill and consulted broadly with its members who are both registered organisations and non-registered organisations. ACCI supports the policy principles which underpin the measures contained in the Bill insofar as it attempts to strengthen the existing regulatory, compliance and accountability framework. It remains unfortunate that the conduct of certain registered organisations has resulted in the need to create higher regulatory burdens and criminal offences to prevent future misconduct of officials and employees of registered organisations. However, it is clear that the existing system requires substantial enhancement to prevent misuse of members' funds and requires organisations to be accountable to its members through greater transparency measures.

ACCI strongly encourages both the Committee and the Government to consider both technical and implementation issues which our registered organisation members will be raising in their written submissions to this inquiry. Any relevant parts of the Bill should be ameliorated and issues addressed prior to the Bill progressing through the normal Parliamentary process. This is particularly germane given that many registered organisations are, in good faith, attempting to be fully compliant with the requirements of the most recent changes.

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ACCI's submission is without prejudice to its members' consideration of the Bill.

Yours sincerely,

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Director of Legal Affairs

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Dear Committee Secretary,

**Inquiry into the Fair Work (Registered Organisations) Amendment
(Towards Transparency) Bill 2012**

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations. Our member network has over 350,000 businesses represented through Chambers of Commerce in each State and Territory, and a nationwide network of industry associations.

ACCI welcomes the opportunity to participate in this inquiry which is examining the Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012.

Yours sincerely,

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ACCI Response
Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012

1. Introduction

The Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2012 (the Bill) was introduced into the Senate by the Leader of the Opposition, the Hon. Senator Eric Abetz on 27 November 2012.

The Bill makes it an offence for a reporting unit not to lodge a compliant full or concise report with Fair Work Commission and increases penalties for officers of registered organisations who do not act in good faith or misuse members' funds to a maximum of imprisonment for 5 years or 2,000 penalty units or both.

ACCI notes that the Parliament has recently made changes to the *(Fair Work Registered Organisations) Act 2009* (RO Act). The Fair Work (Registered Organisations) Amendment Bill 2012 was introduced into House of Representatives on 31 May 2012 and was referred to the Senate Education, Employment and Workplace Relations Legislation Committee for Inquiry and report on 19 June 2012.

ACCI provided a written submission in response to the Fair Work (Registered Organisations) Amendment Bill 2012 and appeared before the Senate Education, Employment and Workplace Relations Legislation Committee. ACCI expressed in-principle support for the Government's amendments.

The *Fair Work (Registered Organisations) Amendment Act 2012* received Royal Assent on 29 June 2012. Schedule 1 Part 1 commenced on 29 June 2012 and Schedule 1 Part 2 will commence upon proclamation.

The Committee should refer to ACCI's submission to the inquiry into the Fair Work (Registered Organisations) Amendment Bill 2012 (attached) which articulates ACCI's position in relation to a number of key issues.

2. Key Issues

ACCI notes that under s 142A and s 148F of the RO Act, as amended by the *Fair Work (Registered Organisations) Amendment Act 2012*, the Minister may issue model rules relating to expenditure and disclosure. Model rules may be adopted by organisations (in whole or in part) and with or without modification.

ACCI has been appointed to a reference group which is drafting the Model rules. The Model rules are yet to be gazetted.

The civil penalties under the RO Act were increased as part of the recent changes to the RO Act. Pursuant to the *Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Act 2012*, penalty units for contravention committed by a body corporate has increased from \$33,000 to \$51,000; penalty units for an individual have increased from \$6,600 to \$10,200.

Further, the Fair Work Commission's powers to investigate and to enforce relevant laws under the RO Act have been strengthened by the recent changes of the RO Act. For example, the General Manager is now able to issue compulsory notices to third parties such as banks or telephone companies compelling them to provide

information or documents to, or to attend before the Fair Work Commission. The General Manager is now also able to refer a matter to the Australian Federal Police or a state/territory police force for action in relation to criminal offences.

ACCI notes that the General Manager has instigated new procedures for investigating and enforcing relevant laws under the RO Act and is publishing details of current inquiries and activities.¹

ACCI further notes that the General Manager of the Fair Work Commission commenced proceedings in the Federal Court of Australia in relation to conduct alleged to have occurred by registered employee organisations and their officials:²

3. Conclusion

As the impact of the recent changes to the RO Act cannot yet be assessed, ACCI does not support further changes to the RO Act at this stage. However, it would support a considered review of the impact of the recent changes and whether further measures or amendments to address deficiencies in the existing regime are necessary, recalling that the allegations which necessitated changes to the RO Act were alleged to have been committed by registered employee organisations and not, to ACCI's knowledge, registered employer organisations.

ACCI would welcome the opportunity to participate in such a review should it occur and will consider proposals which would amend the RO Act within that context.

¹ <http://www.fwc.gov.au/index.cfm?pagename=regorgsinvestigations#current>

² *ibid.*



ACCI SUBMISSION

Senate Education, Employment
and Workplace Relations Legislation Committee

Inquiry into the Fair Work (Registered Organisations)
Amendment Bill 2012

JUNE 2012

Senate Education, Employment and Workplace Relations
Legislation Committee Inquiry – Fair Work (Registered Organisations)
Amendment Bill 2012

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Senate Education, Employment and Workplace Relations
Legislation Committee Inquiry – Fair Work (Registered Organisations)
Amendment Bill 2012

1. ABOUT ACCI

1.1 Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All state and territory chambers of commerce
- 28 national industry associations
- Bilateral and multilateral business organisations

In this way, ACCI provides leadership for more than 350,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia

1.2 What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

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Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including Fair Work Australia, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

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Legislation Committee Inquiry – Fair Work (Registered Organisations)
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2. INTRODUCTION

1. The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide a written submission in relation to the Committee's inquiry into the Fair Work (Registered Organisations) Amendment Bill 2012 (the Bill).
2. ACCI notes that the inquiry takes place against a significantly truncated timetable and does not allow the committee to fully consider the impact on registered employer organisations (REOs).
3. This submission focuses only on the impact of the amendments on ACCI network members who may be REOs.
4. ACCI members who are REOs are under the *Fair Work (Registered Organisations) Act 2009* (the Act), may make submissions to this inquiry. This submission is made without prejudice to ACCI or its members' views.

3. KEY ISSUES

Background

5. The Bill was introduced into the House of Representatives on 31 May. The Bill was referred to this Committee for inquiry on 19 June and required written submissions by 22 June. A report is to be delivered by 25 June. It is regrettable that the timetable does not provide a more fulsome opportunity to consider submissions of REOs who will be affected by the Bill.
6. The Bill makes a number of amendments to the Act which will affect both registered employee and employer organisations.
7. ACCI was consulted on the proposed changes through its membership on the National Workplace Relations Consultative Council (NWRCC). Meetings of the NWRCC are governed by statute and are subject to confidentiality. That process was also regrettably short.
8. A communiqué was released by the Minister for Workplace Relations, Hon. Bill Shorten MP, following the 114th meeting of NWRCC, (held in Canberra on 25 May 2012).¹
9. As indicated in the communiqué:

The Council supports in principle measures to ensure that employer organisations and unions registered under this Act are representative of and accountable to their members, and are able to operate effectively and contribute to the proper function of the workplace relations system.
10. ACCI continues to express in-principle support for the amendments even though issues the amendments seek to address have not arisen, to our knowledge, in the context of REOs. ACCI member REOs who have considered the detail of the amendments, as it would impact them as autonomous not-for-profit organisations registered under the Act, will provide detailed feedback to the Committee. Issues which may be raised concern proposed Division 3A, 154C and 154D (disclosure and training requirements).
11. ACCI generally supports the submissions to be made by ACCI member REOs with respect to specific provisions.

¹ The communiqué can be accessed here:
<http://ministers.deewr.gov.au/shorten/communique-national-workplace-relations-consultative-council>

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Policy Rationale

12. The explanatory memorandum to the Bill indicates that:²

The Fair Work (Registered Organisations) Amendment Bill 2012 (the Bill) will amend the Fair Work (Registered Organisations) Act 2009 (RO Act) to increase the financial and accountability obligations of registered organisations and their office holders, strengthen the investigative powers of Fair Work Australia (FWA) and enhance remedies under the RO Act.

The Bill will:

- require that the rules of all registered organisations deal with disclosure of remuneration, pecuniary and financial interests;
- increase the civil penalties under the RO Act;
- enhance the investigative powers available to FWA under the RO Act; and
- require education and training to be provided to officials of registered organisations about their governance and accounting obligations.

13. The second reading indicates, *inter alia*, “conduct by a small number of officials in some parts of one organisation has dented public confidence in all registered organisations in this county”.³

14. Whilst ACCI believes that the Act, which continues to reflect the former governance and accountability framework, as it was then contained to the *Workplace Relations Act 1996* as Schedule 1 (Registration and Accountability of Organisations) is an appropriate framework to regulate REOs, who are not-for-profit entities, the justification for these amendments is in the general public interest. It is in the public interest to ensure that federally registered trade unions and employer associations meet community standards on matters of financial accountability and transparency.

15. Employers continue to have an indirect interest in ensuring that trade unions they may deal with are properly accountable to their members. Employers who are members of federally registered employer associations have a direct interest in the accountability of their association.

² House of Representatives, Explanatory Memorandum, p.2.

³ Second reading, Hansard (proof), 31 May p.3.

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16. It is in the public interest for the government and Parliament to review the adequacy of the existing framework in the wake of the General Manager's report into the conduct of a registered employee organisation, and apparent shortcomings in the Act, as identified in that report.⁴
17. The General Manager has authorised a review of the FWA investigation to be undertaken by KPMG. The terms of reference for the KPMG are as follows:

Independent review of Fair Work Australia's HSU investigations

The investigation process followed by Fair Work Australia in relation to the investigations into the Victoria No. 1 Branch and National Office of the Health Services Union (HSU) will be reviewed to determine:

- whether the investigations have been conducted appropriately in terms of relevant investigation standards and operating procedures
- whether there are any opportunities for improvement to Fair Work Australia's investigation procedures, and
- whether the investigations have considered all reasonable lines of inquiry.

In considering the above, the review will include but not necessarily be limited to:

- reviewing the investigations' plans and compare to relevant investigation standards and operating procedures
- determining the appropriateness of the investigation teams' skills and whether sufficient people resources were applied to the investigations
- reviewing and assessing the overall quality of the investigations' files
- reviewing the investigations and analysing the cause of any delays in the completion of the investigations and whether such delays could have been avoided
- considering the overall integrity of the investigation process and whether there are any indications of potential interference, and
- reviewing all internal and external communications including, for example, deviations from the investigation plans, and restrictions or limitation that may impact the completion of the investigation plans.

⁴ General Manager, Fair Work Australia, Statement (7 May 2012), <http://www.fwa.gov.au/documents/media/releases/7-May-2012.htm>

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18. It is possible that the KPMG report may lead to further amendments to the existing framework.

ACCI Response

19. It is important that the regulatory compliance framework for REOs is commensurate with their purpose, resources and capacity to effectively function as a not-for-profit industrial association representing the interests of employers (as defined by their rules). ACCI's previous views on reforms to the governance of registered organisations has indicated that financial obligations under corporations law are a relevant factor but have to be applied having regard to the actual circumstances of registered organisations.⁵
20. ACCI believes that the regulation should be balanced and workable and does not make the ordinary operations of an REO unduly difficult or restrictive.
21. ACCI understands that many serving REO officials are volunteers or hold dual roles as employees (first) and as an elected official (second) for the purposes of the Act. To ACCI's knowledge, the amendments proposed in the bill was not and is not targeted to address the conduct of REOs or officials.
22. To reiterate, it is important that any legislative response is targeted to the potential mischief to be cured and that the focus is on protecting members' funds from misuse and increasing probity and transparency in a manner that is workable.
23. ACCI anticipates that many REOs may provide further detail to the committee on the impact of amendments from a technical perspective. It is important to appreciate that REOs are not homogenous and each organisation has, within the required legal framework, adopted its own rules and implemented internal governance frameworks which reflect the particular circumstances of the organisation and its membership. It is not possible to provide specific feedback in relation to the impact of these amendments on individual REOs for that reason given the diversity in rules and structure.
24. Further consideration or clarity as to its intent or effect of certain amendments, may be required as a result of issues raised by REOs.

⁵ ACCI submission to Senate Employment, Workplace Relations, Small Business and Education Inquiry into the Workplace Relations Amendment (Transmission of Business) Bill 2001 and the Workplace Relations (Registered Organisations) Bill 2001.

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25. It is essential that the government and General Manager of FWA works collaboratively with REOs to ensure that any changes are workable in practice and that consultation on model rules and training requirements, for example, are conducted in consultation with REOs and duty holders.
26. It is appropriate that any changes are implemented in a manner whereby REOs:
 - a. are able to implement changes to their own rules to comply with the new requirements without significant increases in costs and time devoted to mandatory changes (particularly where the REO already has its own in-house policies, protocols, procedures);
 - b. are provided with sufficient support from the General Manager of FWA, to assist REOs in understanding their new reporting obligations and training requirements, and to allow sufficient flexibility for REOs to tailor requirements as per the individual circumstances of the REO. This includes allowing Prior Recognition of Learning for training where duty holders already have skills, education or experience to meet new financial training obligations;
 - c. any unintended consequences which are identified is acted upon.

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Legislation Committee Inquiry – Fair Work (Registered Organisations)
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Senate Education, Employment and Workplace Relations
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Amendment Bill 2012

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Senate Education, Employment and Workplace Relations
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