

Master Builders Australia

Submission on the Fair Work (Registered Organisations) Amendment Bill 2012

to the

Senate Education, Employment and Workplace Relations Committee

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1 Introduction

- 1.1 This submission is made by Master Builders Australia Limited (Master Builders).
- 1.2 Master Builders is Australia's peak building and construction industry association, federated on a national basis in 1890. Master Builders' members are the nine Master Builder State and Territory associations. Each of these associations is registered under the provisions of the Fair Work (Registered Organisations) Act 2009 (Cth) (the RO Act) or the State based industrial legislation. Master Builders is not so registered and is incorporated as a company limited by guarantee.
- 1.3 Over the past 120 years the association has grown to represent over 30,000 businesses nationwide. Master Builders is the only industry body that represents all three building and construction sectors: residential, commercial and engineering.

2 Purpose of submission

- 2.1 The Bill was referred to the Committee on 19 June 2012. Participants were notified of the need to make submissions on 20 June 2012. Submissions are due by close of business on 22 June 2012³ with a report date of 25 June 2012. The haste is lamentable.
- 2.2 Master Builders notes that the Bill is a change to the rules of registered organisations arising from the HSU controversy currently playing out in court.¹ We support appropriate corporate governance arrangements for registered organisations and in this submission we set out our specific views on the terms of the Bill.

3 Substance

- 3.1 On 31 May the Government introduced the *Fair Work (Registered Organisations) Amendment Bill 2012* (the Bill) which amends the RO Act. There are four substantive changes. It will:

¹ See for example Paul Bibby *HSU investigation could lay charges against ex officials* Sydney Morning Herald 6 June 2012

- require registered organisations to amend their rules to ensure disclosure of remuneration, pecuniary and financial interests and to require financial management training;
 - increase the civil penalties under the RO Act by three;
 - increase the General Manager’s investigative powers; and
- require officers who have financial duties to undertake training.

3.2 The Bill will not apply to state registered organisations even if they are “transitionally recognised associations” or “recognised state-registered associations”² under the RO Act.

3.3 Generally Master Builders has few concerns with the Bill. However, this submission highlights solutions to perceived ambiguities that may arise in practice in the manner set out below.

4 New rules requirements

4.1 The Bill requires organisations to amend their rules and have the amendments certified by the General Manager of Fair Work Australia. The new rules for organisations and branches would provide that:

- the organisation and each branch must develop and implement policies about its expenditure per new section 141(1)(ca) – we endorse the notion that model rules be issued that satisfy the relevant provision per 142A;
- an officer³ of the organisation or a branch must disclose per proposed s148A remuneration received from:
 - external boards on which they sit by virtue of being an officer, or because nominated by the organisation, branch or a peak organisation
 - related parties to the branch

and identify how the disclosure is to occur;

² Sch 2 to the RO Act provides that a state registered union can apply for “recognition”. If approved they become a “Recognised State-Registered Association” and the demarcation provisions of the RO Act and the FW Act apply to it as if it were a (federally registered) organisation. Sch 1 provides for transitional recognition, and a state registered union which is a “Transitionally Recognised Association” is also subject to the demarcation provisions and the FW Act in the same was as a federally registered organisation. Transitional Registration ceases on 1 January 2016.

³Pursuant to the definition of “officer” in s6 RO Act a person holding an office in the organisation or a branch of it is an officer and includes persons (designated officers) who are undertaking functions required for the organisation or branch to comply with its reporting obligations. See also s9 RO Act for the meaning of “office.”

- the organisation must disclose to its members and branch members the remuneration⁴ of the five most highly paid officers, named, together with any non-cash benefits⁵ they receive;
- a branch must disclose to its members the remuneration of the two most highly paid officers, named, together with any non-cash benefits they receive;
- an officer of the organisation or a branch must disclose any material personal interest (s)he has in a matter, or which a relative of the officer has in it - we note that “material personal interest” is not defined in the Bill;
- the organisation or branch must disclose to its members any disclosed interest;
- the organisation or a branch must disclose to its members any payments made by it to a related party⁶ or declared person or body;⁷
- each officer of the organisation or a branch who has financial duties⁸ must undertake training which is approved by the General Manager and relates to those duties.

4.2 Master Builders is concerned that salaried personnel of organisations may be designated as officers of the registered organisation under the relevant Constitution but are not in fact exercising powers which would attract that status under the RO Act. A Fact Sheet for wide consumption that clarifies this area of the law should be prepared by the Department of Education, Employment and Workplace Relations or by the General Manager. Alternatively, the General Manager should be vested with the power to make a binding determination as to this matter. Where an employee would be required to disclose their remuneration, consideration should be given to

⁴ Remuneration includes pay, wages, salary, fees, allowances, leave, benefits or other entitlements but is not intended to include reasonable reimbursement or payment of expenses associated with undertaking the officer's role,

⁵ Property, services or other non-cash benefit but not including a computer, mobile phone or other electronic device used for mainly work.

⁶ If an organisation controls another entity the entity is a related party unless the entity is a branch or division of the organisation, or a state-registered association which is a counterpart to the organisation. (A counterpart is a state-registered association substantially the same eligibility rules and has a history of integrated operation with the organisation.) Officers, their spouses and their relatives are related parties. An entity controlled by a related party is a related party unless also controlled by the organisation. An entity is a related party if it reasonably believes that it will become one, has been one in the past 6 months or if it acts in concert with the organisation in expectation of financial benefit.

⁷ A person or body to which a declared interest relates.

⁸ Duties which relate to the financial management of the organisation or branch.

aggregation with remuneration of other office bearers. The model adopted in the *Corporations Act, 2001 (Cth)* could be used as a model.

- 4.3 Rule changes to accommodate the substantive changes proposed are required. The publication of model rules to accommodate the changes should be timely and should be attended by the readiness of the office of the General Manager to provide assistance to associations in tailoring the model rules to extant constitutions. In addition, similar material should address the boundaries of what is or is not a material personal interest.

5 Requirement to undertake training

- 5.1 The Bill requires officers with financial duties to undertake training appropriate to their duties per proposed section 154D. The training must be approved by the General Manager. Master Builders reiterates its concern regarding the potential ambiguity of the class of person required to undertake training based on the discussion above relating to the definition of an officer.
- 5.2 This issue is compounded by the amorphous nature of what is meant by “duties relating to the financial management of the organisation” in proposed s154D(1). This is because in essence all officers may be argued to have that duty.
- 5.3 It is also unclear what kind of training would be required or acceptable under proposed s154D(2) and Master Builders suggests that a regulation making power would here assist so that the subordinate legislation clearly articulates the nature and extent of the training rather than the discretion being vested in the General Manager.

6 Conclusion

- 6.1 Master Builders reiterates its concerns about a truncated timetable for the Committee’s processes in considering the Bill.
- 6.2 Master Builders requests that the matters raised in this submission be remedied in the manner we have proposed. We emphasise that the timely preparation of model rules which will facilitate registered organisations making the required changes is critical.
