

3 July 2015

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Email: eec.sen@aph.gov.au

Dear Sir / Madam

Re: Inquiry into the Fair Work (Registered Organisations) Amendment Bill 2014 (No 2)

AMMA welcomes the opportunity to provide feedback in relation to the above Bill.

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes to ensure the Australian resource industry is an attractive place to invest, do business, and create jobs.

AMMA members include companies employing Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to those industries. The resource industry currently employs more than 1.1 million people either directly or indirectly and accounts for 18% of economic activity in Australia¹ (double its share of a decade ago).

AMMA has confined this brief submission to two main features of the Bill:

- The proposed establishment of an independent Registered Organisations Commission (ROC).
- The proposed increase in penalties to bring them closer to those under the *Corporations Act 2001*.

In AMMA's view, more effective regulation of registered organisations and increased penalties are warranted to ensure members' interests are protected to the same extent as are those of shareholders of companies.

¹ Reserve Bank of Australia research discussion paper, *Industry dimensions of the resources boom*, February 2013

AMMA is not a registered organisation

AMMA is incorporated, reports to the Australian Securities and Investments Commission (ASIC) and is of the view that all registered organisations should be subject to the same processes and rules.

The lack of resources and forensic expertise at the Fair Work Commission (FWC), and before it the Australian Industrial Relations Commission (AIRC), has greatly exacerbated the problems with ensuring the transparent and accountable operation of registered organisations.

AMMA and its members benefit from the discipline associated with the higher standards required under the Corporations Act, and all trade union and employer association members should benefit from the oversight of ASIC.

Establishment of a Registered Organisations Commission

The immediate problem, in AMMA's view, is that there is not a dedicated body or sufficient resources to properly police the current requirements for registered organisations under the auspices of the Fair Work Commission (FWC) as it currently stands, let alone more stringent requirements.

Currently, the General Manager of the Fair Work Commission is responsible for administering the obligations and responsibilities imposed on registered organisations under the Fair Work (Registered Organisations) [Act](#) 2009.

This includes ensuring that financial statements and associated reporting requirements are met. The General Manager also has the power to conduct inquiries and investigations into registered organisations that fail to meet the requirements of the Act, as well as the power to investigate allegations of breaches.

It should be noted that under the Workplace Relations Act 1996, an Industrial Registrar was responsible for matters relating to registered organisations, including investigating alleged non-compliance. This was part of the Australian Industrial Registry, which was separate from the Australian Industrial Relations Commission.

The recent investigation into the Health Services Union (HSU) is evidence that the current system and architecture is not fit for purpose. The Fair Work Commission (at the time known as Fair Work Australia) itself admitted that it took an unreasonably long time to conduct the investigation.

Revelations surrounding the HSU and its officers highlight that money paid by members to registered organisations, in this case a trade union, was used for improper purposes.

Requiring unions to operate under the auspices of the Corporations Act would ensure allegations of wrongdoing can be investigated quickly, and transparency brought to bear to keep members and other interests informed, which would be AMMA's preferred outcome.

Schedule 1 of this Bill seeks to establish a Registered Organisations' Commission as a dedicated independent regulator that would continue to monitor and enforce the separate Fair Work (Registered Organisations) Act. The ROC would assume the investigations, enforcement, advice and assistance responsibilities of the General Manager of the Fair Work Commission in relation to registered organisations.

The ROC would be comprised of a commissioner and staff assisting the commissioner. The commissioner would have robust investigation and information gathering powers and would be able to educate and provide advice to registered organisations and their members.

Staff assisting the commissioner would be employed under the Public Service Act [1999](#) within the Office of the Fair Work Ombudsman rather than the Fair Work Commission.

While the ROC would be part of the Office of the Fair Work Ombudsman, it would be expected to have a high degree of independence.

The RO commissioner would also be required to ensure that investigations are completed quickly and efficiently, which would redress a failing of the current system.

While AMMA would primarily like to see unions and employer organisations being responsible to ASIC as is the case for companies, the Bill's establishment of an independent Registered Organisations Commission is supported to the extent that it would harness greater expertise and independence than currently exists within the Fair Work Commission. With that in mind, AMMA supports the Bill's creation of the new commission.

The need for increased penalties

In its [Policy Towards Better Accountability and Transparency of Registered Organisations](#), the government emphasised that the penalties imposed on organisations were not sufficient when compared with those faced by companies, a policy position very much supported by AMMA.

Schedule 2 – Part 1 of the Bill has modelled its proposed penalties on those facing company directors under the Corporations Act, with the government stating it believes there should be alignment between maximum penalties levied against a company director who misuses shareholder funds and the boss of a registered organisation who misuses members' funds.

The Bill proposes to increase civil penalties as well as introduce criminal offences for certain intentional or reckless breaches of officers' duties.

AMMA's 2012 [submission](#) to the Fair Work (Registered Organisations) Amendment Bill 2012 highlighted the manifest inadequacy of penalties for offences such as officers of registered organisations using information to advantage themselves or someone else, or causing detriment to the organisation and its members.

As the table below shows, under [s184](#) of the Corporations Act, such offences attract criminal sanctions and penalties of up to \$200,000 for individuals and / or up to five years' jail.

In contrast, similar offences under [s287](#) and [s288](#) of the current Fair Work (Registered Organisations) Act 2009 would only attract civil penalties of up to \$6,600 for individuals or up to \$33,000 for a body corporate.

Penalties for offences	
Section 184 of the Corporations Act 2001	\$200,000 for individuals and up to five years' jail
Sections 287 and 288 of the Fair Work (Registered Organisations) Act 2009	\$6,600 for individuals \$33,000 for a body corporate (including a trade union)

To the extent that the Bill would introduce penalties for registered organisations commensurate with those applying to companies and directors under the Corporations Act, AMMA supports the Bill.

We hope the preceding assists the Committee's consideration of the Bill.

Yours sincerely

Scott Barklamb
Executive Director - Policy