



**Senate Standing Committee on Education Employment and
Workplace Relations**

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

Submission by the Institute of Public Affairs

**Hon. John Lloyd PSM
Director
Work Reform and Productivity Unit**

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Introduction

1. The Bill is a step in the right direction. However, its reforms are modest and do not go far enough.
2. The result is that the Bill will not give the declining proportion of the Australian workforce that retains union membership confidence that their organisations are properly managed. Further measures should be taken to strengthen the financial management and regulation of registered organisations, commensurate with their considerable financial resources.
3. It should not be forgotten that these amendments come after a protracted investigation by Fair Work Australia (FWA) – an investigation that was criticised by every party and commentator for taking too long. In addition, the handling of the investigation and its report was unorthodox.
4. A number of the provisions of the Bill are welcome as they improve the current system. For too long the oversight of registered organisations has been lenient.
5. The procedures relating to conduct of investigations have been tightened. The clarification of the responsibilities of parties to cooperate with an investigation and the extension to third parties should prove beneficial.
6. The prescription of the obligation to assist police investigations is most welcome. Never again should we witness the unedifying case of a Commonwealth agency refusing to assist a criminal investigation by police.
7. The requirement that the rules of organisations permit disclosure of remuneration, personal interests and payments to related entities is an improvement on the current system, which is characterised by self-regulation and clearly open to exploitation. Members should be better informed in the future.

Proposed Amendments to Improve the Bill

8. The Bill is a modest step to address deep seated problems. Additional measures should be countenanced to ensure the regulation of unions meets community expectations.

Regulation

9. Unions are large financial entities. For example, the 2010 financial report of the Victorian Branch of the CFMEU Construction and General Division reported net assets of \$42 million. In 2011 the ANF Victorian Branch held \$22 million in net assets. The NSW division of United Voice reported \$25 million in net assets in 2011. If these unions were classed as proprietary companies they would be considered large corporations.
10. The public interest in the management of union revenue and assets is significant. Unions enjoy a tax free status on income earned. Also, union membership fees are tax deductible. It follows that transparency and accountability standards that govern how union funds are managed should be rigorous. The public, given the tax revenue foregone, has a right to expect this.
11. This would best be achieved by transferring oversight and regulation of registered organisations' finance and administration requirements to the Australian Securities and Investment Commission. The Bill should be amended to achieve this.
12. The penalties that apply under the *Corporations Act 2001* should apply to registered organisations. The Bill is applauded by some for raising penalties by a factor of three to \$33,000 for an organisation, and \$6,600 for an individual. Penalties at these levels are inadequate. If registered organisations were regulated under corporations' law, they would face maximum penalties of \$200,000 and five years in prison. These levels are commensurate with the seriousness of contraventions involving the mismanagement of union members' funds.
13. Coverage under the corporations' legislation would also involve equating the governance and financial prudential duties of registered organisations' officials with those of company directors. This would improve the standards of governance of unions and employer associations.

Disclosure

14. The disclosure obligations contained in the Bill are an improvement on current arrangements. Organisations will be required to make rules about the disclosure of:
 - a. remuneration paid to officers;
 - b. material personal interests of officers and relatives; and
 - c. payments made to a related party or a declared person or body.
15. These rule changes may not achieve a full disclosure of entities related to unions. A number of unions establish related corporate entities to facilitate the management of their resources. An ASIC database search of the names "ETU" and "Electrical Trades Union" generates a list of numerous corporate organisations. They are registered with ASIC, so the presumption is clearly that they are

legitimate and well-run. Some appear connected to the union, others do not. For example the following organisations appear on the search returns:

- a. ETU Pty Ltd
- b. ETU (Victorian Branch) Pty Ltd
- c. ETU Investments Pty Ltd
- d. ETU Defence Social Club Ltd
- e. Electrical Trades Union Bargaining Unit Pty Ltd
- f. Electrical Trades Union

16. It is likely that a number of these entities have a connection to the union. The disclosure obligations of organisations should ensure transparency in terms of the structure, role and purpose of connected corporate entities. The cross-directorships between senior union officials and directors of related companies should be exposed to members. Also, if funds are transmitted between the unions and such entities, members would have a right to be informed about the nature, size and purpose of such transactions. It is not clear that the Bill's obligations on organisations to disclose information of payments to a related party would capture information about the activities of these and other such corporate entities.

17. The ETU and Electrical Trades Union search documents are at **Attachment A**.

Expenditure Disclosure

18. The financial returns submitted by unions are of varying quality. The FWA annual reports indicate that many of the returns lodged do not satisfy the requirements for processing. It is to be hoped that the Bill improves the quality of information.

19. Disclosure to members of important expenditure should be made explicit. Expenditures that should be divulged include:

- a. contributions to political parties;
- b. contributions to campaigns that require the AEC tag line of speaker and organisation authorisation;
- c. fees paid to peak councils;
- d. expenditure on elections for office bearers of the registered organisation; and
- e. fines paid for contraventions of any workplace relations law.

Comment on Clauses Contained in the Bill

20. **Clause 2 – Commencement:** This clause allows for the proclamation date for Schedule 2 to be extended beyond the normal six months from Royal Assent to 12 months. This is to allow organisations time to put in place the necessary administrative arrangements.
21. The extension is a reflection of the current inadequate standards of governance. The Schedule 2 amendments are not onerous and reflect sound practice. A 12 month extension should not be necessary for well managed organisations.
22. **Item 15 – Conduct of investigations**
Clause 335B – Investigations to be completed as soon as practicable: It is questionable why this clause is necessary. Every investigatory body understands the imperative of completing an investigation as soon as practicable.
23. **Clause 335C – Disclosure of information acquired during an investigation:** This is a most important amendment. The refusal of FWA to assist police during the HSUA investigations was curious and not convincingly explained. It raised acute problems about where a line of cooperation would be drawn. The clarification of this obligation, which many considered to apply in any case, is welcome.
24. **Item 18 – Application – Disclosure of information acquired during an investigation:** The disclosure obligation will apply prospectively. It is difficult to understand why any information, including information acquired previously, could not be disclosed. Surely it is the responsibility of all Commonwealth officers to uphold the law and to assist police investigating criminal activity.
25. This restriction also appears inconsistent with **Items 23 and 24**. Those amendments allow the General Manager, following an investigation, to refer relevant matters to the AFP, state and territory police for action. This applies to investigations begun before or after the commencement of the legislation.
26. **Item 57 – Rules requiring disclosure of remuneration paid to officers**
Clauses 148A (6) and (7): The clauses deal with what the rules of an organisation must authorise about disclosure of relevant remuneration and relevant non-cash benefits. The rules can require disclosure of the actual amount of remuneration, the value or form of non-cash benefits.
27. Alternatively, the clauses allow the rules to authorise disclosure in any other manner that the organisation or branch considers appropriate. The offering of this alternative would need to be tightly controlled; otherwise transparency could be compromised as an organisation sought to devise rules to disguise the true value of the remuneration or benefit. Similarly, the actual recipient could be disguised. Accordingly, this option should be removed from the Bill. Explicit and clear information for members is required.
28. **Clause 148D – Exemption from Rules:** An organisation is allowed to apply for an exemption from complying with the requirements of **Clause 148C – Rules** requiring disclosure of payments made by

an organisation or branch. The offering of an exemption calls into question the value of imposing rules about the disclosure of payments made to related parties and declared persons or bodies. The disclosure represents sound financial practice. Also, members of the organisation have a right to know about the payments; how much, to whom and for what purpose.

29. While an application for an exemption has to be supported by evidence as to why compliance is onerous, this places considerable burden on the General Manager. There is no guarantee that the real reason might be to disguise improper payments in the past or contemplated in the future. If the disclosure rules are sound then there should be no right to gain an exemption.

Attachment A: ETU and Electrical Trades Union Search Documents

ASIC Organisation Name Search - Browse

Your search on "ETU" returned 12 results - of which numbers 1 to 10 are displayed

Extracted from the ASIC database on 22/05/2012 at 12:58

A.C.N./A.R.B.N.	A.B.N.	Name	Extract	Type	Status	Former Name	Doc Listing	State
083341744		<u>ETU PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
120838164		<u>ETU (NATIONAL) PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
M0428409		<u>ETU ATNER</u>	<input type="checkbox"/>	BUSN	DRGD	No		NSW
L1679132		<u>FORBE-E-TU CARPENTRY AND JOINERY</u>	<input type="checkbox"/>	BUSN	RMVD	No		NSW
0127231M		<u>T. TIAINEN IMPORTER, ETU - PRODUCTS</u>	<input type="checkbox"/>	BUSN	DRGD	No		SA
120838173		<u>ETU (SOUTHERN STATES) PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	Yes	List	
000902661		<u>ETU INVESTMENTS PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	NSW
120838173		<u>ETU (VICTORIAN BRANCH) PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
121616091		<u>ETU (DISTRESS, MORTALITY AND TRAINING) PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
154586820		<u>ETU DEFENCE SOCIAL CLUB LTD</u>	<input type="checkbox"/>	APUB	REGD	No	List	

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Your search on "ETU" returned 12 results - of which numbers 11 to 12 are displayed

Extracted from the ASIC database on 22/05/2012 at 12:58

A.C.N./A.R.B.N.	A.B.N.	Name	Extract	Type	Status	Former Name	Doc Listing	State
006300876	33006300876	<u>ETU EGDE PTY. LTD.</u>	<input type="checkbox"/>	APTY	REGD	Yes	<u>List</u>	VIC
L1679132		<u>FORBE-E-TU CARPENTRY AND JOINERY</u>	<input type="checkbox"/>	BUSN	RMVD	Yes		NSW

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ASIC Organisation Name Search - Browse

Your search on "Electrical Trades Union" returned 26 results - of which numbers 1 to 10 are displayed

Extracted from the ASIC database on 22/05/2012 at 13:00

A.C.N./A.R.B.N.	A.B.N.	Name	Extract	Type	Status	Former Name	Doc Listing	State
102319442	28102319442	<u>ELECTRICAL TERMINATIONS & COMPONENTS PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
009800195		<u>ELECTRICAL TRADE SERVICES PTY. LTD.</u>	<input type="checkbox"/>	APTY	DRGD	Yes	List	QLD
152914666		<u>ELECTRICAL TRADES UNION BARGAINING UNIT PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
150939754		<u>ELECTRICAL TRADE SOLUTIONS PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
092917265	75092917265	<u>ELECTRICAL TRADE DEVELOPMENTS PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	
B2154188N		<u>ELECTRICAL TRADES UNION OF AUSTRALIA</u>	<input type="checkbox"/>	BUSN	REGD	No		VIC
BN2249558		<u>THE ELECTRICAL TRADE BARN</u>	<input type="checkbox"/>	BUSN	RMVD	No		QLD
0042145T		<u>ELECTRICAL TRADE SALES (W.A.)</u>	<input type="checkbox"/>	BUSN	DRGD	No		WA
1282150G		<u>ELECTRICAL TRADES UNION</u>	<input type="checkbox"/>	BUSN	RMVD	No		VIC
139715816	73139715816	<u>ELECTRICAL TRAINING COLLEGE PTY LTD</u>	<input type="checkbox"/>	APTY	REGD	No	List	

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Your search on "Electrical Trades Union" returned 26 results - of which numbers 11 to 20 are displayed

Extracted from the ASIC database on 22/05/2012 at 13:00

A.C.N./A.R.B.N.	A.B.N.	Name	Extract	Type	Status	Former Name	Doc Listing	State
BN98148253		<u>ELECTRICAL TRADES INTEGRATION</u>	<input type="checkbox"/>	BUSN	REGD	No		NSW
1282147U		<u>ELECTRICAL TRADES UNION OF AUSTRALIA</u>	<input type="checkbox"/>	BUSN	RMVD	No		VIC
131440894	90131440894	<u>ELECTRICAL TRADE SERVICES PTY LTD</u>	<input checked="" type="checkbox"/>	APTY	REGD	No	List	
1159701D		<u>ELECTRICAL TRADES SERVICES</u>	<input type="checkbox"/>	BUSN	RMVD	No		VIC
K0339519		<u>ELECTRICAL TRADE DEVELOPMENTS</u>	<input type="checkbox"/>	BUSN	RMVD	No		NSW
060682279		<u>ELECTRICAL TRADES PTY. LTD.</u>	<input checked="" type="checkbox"/>	APTY	DRGD	No	List	
146254579	78146254579	<u>ELECTRICAL TRADE SPECIALISTS PTY. LTD.</u>	<input checked="" type="checkbox"/>	APTY	REGD	No	List	
B1415279Z		<u>ELECTRICAL TRADES UNION INSURANCE SERVICES</u>	<input type="checkbox"/>	BUSN	RMVD	No		VIC
BN04689800		<u>ELECTRICAL TRAFFIC MANAGEMENT & SOLUTIONS</u>	<input type="checkbox"/>	BUSN	RMVD	No		SA
0943080Z		<u>ELECTRICALTRONIC, HEALY</u>	<input type="checkbox"/>	BUSN	RMVD	No		VIC

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Extracted from the ASIC database on 22/05/2012 at 13:00

A.C.N./A.R.B.N.	A.B.N.	Name	Extract	Type	Status	Former Name	Doc Listing	State
0213378V		<u>ELECTRICAL TRENCHING SERVICES</u>	<input type="checkbox"/>	BUSN	REGD	No		WA
005521764		<u>ELECTRICAL TROUBLESHOOTING PTY. LTD.</u>	<input checked="" type="checkbox"/>	APTY	DRGD	No	List	VIC
BN21678790		<u>ELECTRICAL TRAINING AUSTRALIA</u>	<input type="checkbox"/>	BUSN	RMVD	No		QLD
1232434R		<u>ELECTRICAL TROUBLESHOOTERS</u>	<input type="checkbox"/>	BUSN	RMVD	No		VIC
BN18728509		<u>ELECTRICAL TRADE SERVICES</u>	<input type="checkbox"/>	BUSN	RMVD	No		QLD
54607B		<u>ELECTRICAL TRADES (E.T.)</u>	<input type="checkbox"/>	BUSN	DRGD	No		TAS

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