

**SUBMISSION TO THE SENATE EDUCATION,
EMPLOYMENT AND WORKPLACE
RELATIONS LEGISLATION COMMITTEE**

**FAIR WORK (REGISTERED ORGANISATIONS)
AMENDMENT BILL 2012**

 AUSTRALIAN INDUSTRY GROUP

21 June 2012

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Ai Group's position on the Bill

Registered organisations of employers and employees play a very important role in Australia, both in representing their Members' interests and in contributing to vital community objectives such as the need to maintain a productive, flexible and fair workplace relations system.

The Senate Committee is well aware of the important role that registered organisations play, for example in analysing the impacts of proposed legislative amendments, writing detailed submissions and appearing at public hearings.

Overwhelmingly the officials and staff of registered organisations of employers and employees are dedicated and ethical people who work very hard for the benefit of their Members, their industries and the broader community. For example, the Chief Executives and other senior executives of large and small Ai Group Member companies who sit on Ai Group's National Executive and State Branch Councils give up a great deal of their time for no remuneration.

It is important that legislation governing registered organisations remains balanced and appropriate and that inappropriate and/or unlawful conduct within one organisation is not used as an excuse to impose unfair laws or an excessive compliance burden upon all registered organisations.

Ai Group's predecessor organisations were first registered in the NSW industrial relations system in 1901 and federally in 1926. We have maintained continuous registration ever since.

The terms of the *Fair Work (Registered Organisations) Act 2009* were agreed upon between the then Coalition Government and the ALP Opposition a decade ago.

Up to 30 June 2009 the provisions were contained within a schedule to the *Workplace Relations Act 1996*. From 1 July 2009, the *Workplace Relations Act 1996* was amended to change its name to the *Fair Work (Registered Organisations) Act 2009* and all former provisions of the Act other than the provisions dealing with the regulation of registered organisations were removed.

The Government's proposed changes to the *Fair Work (Registered Organisations) Act 2009* are balanced and warranted and Ai Group supports the reforms.

The provisions of the *Fair Work (Registered Organisations) Act 2009* have generally operated effectively. However, recent events have highlighted some deficiencies in the current laws.

The Bill triples the current penalties and increases the investigative powers of Fair Work Australia (FWA). This is appropriate given the results of FWA's recent investigation into the Health Services Union.

In the interests of improving transparency and accountability it is also appropriate that there be increased disclosure of payments to officers of registered organisations and of payments to related parties, as provided for in the Bill.

Ai Group has been consulted by the Australian Government in the development of the new laws and the Government has worked hard to ensure that the laws will not impose an unreasonable red-tape burden on registered organisations like Ai Group.

Following the passage of the Bill through Parliament, the Government has undertaken to consult with Ai Group, other registered organisations and peak bodies in developing model rules to facilitate the implementation of the new requirements.

Ai Group also intends to consult with the General Manager of FWA about the training requirements in the Bill, once the Bill has been passed by the Parliament.

Ai Group has not identified any problems with the provisions of the Bill. However, in the event that problems arise, it is important that Parliament remain open to amending the legislation to address them.

Key provisions of the Bill

Structure of the Bill and operative dates

The Bill is in two Parts:

- Part 1 operates from Royal Assent;
- Part 2 commences from a date to be proclaimed (or 12 months after Royal Assent). The Explanatory Memorandum for the Bill specifies that the 12 month period is intended to give the Government time to consult with stakeholders and to give registered organisations time to put the necessary administrative arrangements in place.

Part 1 – Amendments commencing on Royal Assent

Part 1 of the Bill includes provisions dealing with the following matters:

- Empowering the General Manager of FWA to approve training for officers of organisations;
- Higher penalties for breaches of the *Fair Work (Registered Organisations) Act 2009*. (Maximum penalties will be \$33,000 for a body corporate and \$6,600 for an individual. This aligns with the maximum penalties in the *Fair Work Act 2009*);

- Expanding the powers of the General Manager of FWA in relation to the investigation of suspected breaches of the Act;
- Enabling the General Manager of FWA to approve registered organisation rule changes during the transition period (ie. the period between Part 1 commencing operation and Part 2 commencing operation); and
- Enabling an organisation to lodge an early application for an exemption from section 148C (Disclosure of payments made to related parties) which can operate from the time that Part 2 commences.

Part 2 – Amendments commencing on Proclamation

Part 2 includes provisions which will require that the rules of a registered organisation:

- Provide for the disclosure of remuneration, as well as pecuniary and financial interests of officers of the organisation; and
- Require that approved training be provided to officers of the organisation whose duties relate to the financial management of the organisation.

Disclosure of remuneration, pecuniary and financial interests of officers of the organisation

Paragraph 141(1)(c) and section 142A – Policies relating to expenditure

The rules of an organisation must require the organisation and its branches to develop and implement policies relating to the expenditure of the organisation or branch. The Minister may publish model rules dealing with this requirement that an organisation or branch may adopt with or without modification.

Consistent with the provisions of the Bill, it is important that flexibility is provided to registered organisations to modify the model rules to suit the circumstances of the organisation. Registered organisations differ significantly in terms of their size, structure and existing rules. A “one size fits all” approach would not be workable.

Section 148A – Rules to require disclosure of remuneration paid to officers

Section 148A of the Bill requires that the rules of a registered organisation must require:

- Disclosure by each officer of the registered organisation to the organisation of any remuneration:
 - Paid to the officer because the officer was nominated for a Board by the registered organisation; or
 - Paid to the officer by a related party to the registered organisation;
- Disclosure to the members of the registered organisation of:
 - The identity of the 5 highest paid officers of the organisation and the remuneration paid to each officer by the organisation, a related party to the organisation, or a relevant Board in the manner provided for in the Rules of the organisation; and
 - The identity of the 2 highest paid officers of a Branch and the remuneration paid to each officer by the organisation, a related party to the organisation, or a relevant Board in the manner provided for in the Rules of the organisation.
- The rules of the organisation must require the disclosure of the actual amount of the officer’s relevant remuneration or the information specified in the rules as being the information considered by the organisation or branch to be an appropriate disclosure of the officer’s remuneration.

- The rules of the organisation must require the disclosure of the value or form of the officer's non-cash benefits or the information specified in the rules as being the information considered by the organisation or branch to be an appropriate disclosure of the officer's relevant non-cash benefits.
- Remuneration is defined as: *“pay, wages, salary, fees, allowances, leave, benefits or other entitlements, but does not include a non-cash benefit”*.
- Remuneration does not include reimbursement of expenses. The Explanatory Memorandum states:

“Item 49 inserts a new definition of remuneration, which includes pay, wages, salary, fees, allowances, leave, benefits or other entitlements. This is an inclusive definition meaning that the examples provided are not exhaustive of what may be considered to fall within the definition. However, it does not include a non-cash benefit (see item 45) and is not intended to include the reimbursement or payment of reasonable expenses for the costs incurred in the course of the officer carrying out his or her duties.”

Ai Group has not identified any problems with this section of the Bill.

Section 148B – Rules to require disclosure of material personal interests of officers and relatives

The rules of a registered organisation must require disclosure to the organisation of material personal interests of officers and their relatives and then disclosure to members of the registered organisation of the matters disclosed by the officers.

The disclosure to members must be in the manner specified in the rules.

Ai Group has not identified any problems with this section of the Bill.

Section 148C – Rules to require disclosure of payments made by an organisation or a branch

The Rules of the organisation must require disclosure of payments made by an organisation to a ‘related party’ of the organisation. A ‘related party’ is:

- An entity controlled by the organisation;
- Officers of the organisation;
- Spouses of officers of the organisation; and
- Entities controlled by officers or spouses of officers.

Section 148D – Exemption from section 148C

A registered organisation may apply to the General Manager of FWA for an exemption from section 148C. In order to grant an exemption FWA must be satisfied that:

- Special circumstances exist;
- The rules of the organisation provide appropriate transparency and disclosure given the organisation’s special circumstances; and
- The organisation has current and past high standards of financial accountability and control.

This exemption provision is important to avoid unworkable arrangements being imposed on a registered organisation where special circumstances exist. Tight criteria must be met before an exemption can be granted by FWA.

Section 148E – Disclosure period and transitional provisions

The disclosure must be made in relation to a financial year or any shorter period specified in the rules of the organisation.

The initial disclosure must be made in relation to the period from the date of proclamation of the legislation until the end of that financial year (or the end of any shorter period specified in the organisation's rules).

Ai Group has not identified any problems with this section of the Bill.

Section 148F – Model rules

The Minister may publish model rules dealing with ss 148A, 148B and 148C which an organisation or branch may adopt with or without modification.

It is important that flexibility be provided to registered organisations to modify the provisions of the model rules to suit the circumstances of the organisation, as provided for in the Bill.

Section 154D – Rules to require officers to undertake approved training

The rules of a registered organisation must require each officer to undertake training approved by the General Manager of FWA covering the officer's financial duties, within 6 months of the person beginning to hold office.

Existing officers must complete the training within 6 months of Part 2 coming into operation.

The Explanatory Memorandum states:

“New subsection 154C(1) provides that the GM may approve training if he or she is satisfied that the training covers one or more of the duties of officers of organisations and branches of organisations that relate to the financial management of organisations and branches of organisations.

It is intended that under new subsection 154C(1), the GM will be able to approve a range of training of different formats, styles and lengths in recognition of the different significance that financial management duties have to the roles of different officials as well as the backgrounds, experience and qualifications of those officials. Similarly, it is intended that the GM will be able to approve general training that covers a range of financial management duties as well as more specific training that is tailored to a particular area or areas of financial management.

New subsection 154C(1) will require the GM to be satisfied that the training being approved will be provided by an organisation or peak council (as usually defined within the RO Act) or a body or person that the GM is satisfied has appropriate skills and expertise to provide the training, for example, a peak body for a particular industry or a recognised education provider.”

The abovementioned flexible approach is important. Members of Ai Group’s National Executive and Branch Councils are Chief Executives and senior executives of Ai Group Member companies and are typically very busy. Therefore, it is essential that FWA be able to approve training programs of different types and formats to reflect the circumstances.

Conclusion

Ai Group urges the Senate Committee to recommend approval of the Bill without amendment.