

Submission to:

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

Submission by:-

**Master Plumbers & Mechanical Contractors Association of
New South Wales**

17 January 2014

on

Fair Work (Registered Organisations) Amendment Bill 2013

Contact Details:

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Our Ref: AOM-107/28

17 January 2014

Via email as requested to: eec.sen@aph.gov.au

Dear Members,

Provisions of the Fair Work (Registered Organisations) Amendment Bill 2013

1. INTRODUCTION

The Master Plumbers and Mechanical Contractors Association of NSW (MPMCA) is a registered employer organisation providing representation, training and extensive advisory services to a broad base of members in the plumbing, gas and mechanical services sector in NSW and the ACT. The principal activities of the Association are to provide business services, industry representation, training and advice on industrial relations and employment to the membership. Our members range from major contracting companies through to sole traders and are a highly reputable group to lobby government in support of various plumbing, business and environmental reforms and recommendations.

MPMCA has taken the time to peruse the recommendations of the Legislation Committee as presented and sees a need for clarification on some of the issues raised to ensure that there are no unintended consequences from the implementation of the proposed changes.

The first point to be raised from the recommendations of the Legislation Committee Report is to again emphasise that there are major differences between Employer and Employee Registered Organisations, especially in terms of elected officers and their roles. The Association made a submission to the inquiry undertaken by the Senate Education Legislation Committee and that submission is attached as Attachment 1.

That submission detailed the Association's views on the potential impacts of the amendments to the Act as being impediments to efficient operations and the failure to recognise fundamental differences between employee and employer organisations.

Further, in Point 7 of that submission the Association raised its concern in respect of the equal representative rights afforded to Recognised Organisations, when they are not the subject of the provisions of the amendments to the Act. The recommendations of the Legislation Committee Report embrace the implementation of requirements to bring operational and reporting requirements of Registered Organisations in line with the Corporations Act 2001, but the situation still remains that there are two distinctly different organisational structures for organisations who have representation rights before the Fair Work Commission.

2. SUBMISSION

In relation to the two items referred to the Education and Employment Committee for inquiry, the Association would make the following submissions:-

2.1 The Master Plumbers and Mechanical Contractors Association of NSW supports in general terms the amendments to the Fair Work (Registered Organisations) Amendment Bill 2013 as proposed by the recommendations of the Legislation Committee.

2.2 Changes to the Australian Electoral Commission (AEC) requirements for election

MPMCA has recently been made aware of new requirements for the calling of elections. It is noted that in 7 years of operation as a federally registered organisation MPMCA has only had one election for one position. On all other occasions the ballot was declared on the nominations received. The AEC has advised that the process required to be undertaken for future ballots is to become much more onerous. Again all organisations appear to be tarred with the single brush. Traditionally the AEC sets a date for the declaration of a list of members who are financial as of that date.

For the next election will be as follows

- On the agreed date a list of financial members is to be forwarded to the AEC. (This was where the requirements previously stopped)
- Some five weeks later the following is to be advised to the Returning Officer:
 - a list of members who were inadvertently included on the list
 - a list of members inadvertently left off the list
 - a list of members who appeared on the list that are no longer members
 - a list of changed address details for persons on the list.

The simple fact is that on the set date, a person is either a financial member or is not. This added set of tasks simply adds a further level of red tape. The period of financial membership of MPMCA is from 1st January to the 31st December, it is a curious notion that somebody paying membership for the full financial year in January would cease to be a member in February. Equally, either an organisation is sufficiently professional as to have accurate membership records or otherwise additional sanctions could be placed on them alone. To require all organisations to provide additional data sourcing provisions is unreasonable for the majority, especially as it appears that only a minor group of organisations are accused of branch and membership number abnormalities.

2.3 The creation of an extra bureaucratic sub-group

The *Regulatory Compliance Branch of the Fair Work Commission* appears to have replaced the Organisations Section of the Australian Industrial Relations Commission (AIRC) Industrial Registry, a section which had effectively and efficiently conducted the work related to registration of organisations.

We are concerned that this new Fair Work Commission Branch will create a plethora of further red tape thereby further adding to the burden of registered organisations – many of which have operated with honour and integrity for varying periods over the past one hundred years.

By way of example, the Fair Work (Registered Organisations) Amendment Act 2012 requires Registered Organisations to change their rules to allow for processes of disclosure of payments made by organisations and branches to related parties and declared persons concerning remuneration and re-imbursments paid to officers of the organisation or branch. Additionally, there are also requirements to be met in respect of training in financial management and certain officers will need to complete such training within 6 months after the person begins to hold the office.

The obvious next stop in the implementation of these rule changes will be the compliance and reporting issues to the Regulatory Compliance Branch.

If the compliance process becomes a bureaucratic process to justify the very existence of the Regulatory Compliance Branch and its possible expansion in size, how does the Education and Employment Reference Committee intend to monitor the process of such increases in compliance and how will it resolve those concerns in respect of the Governments philosophy of a reduction in red tape.

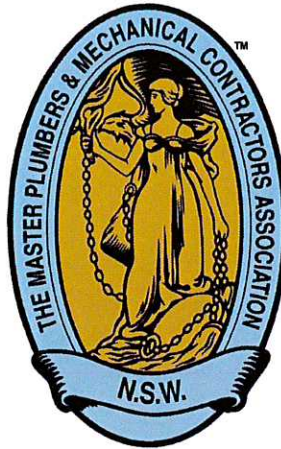
The reporting of compliance issues to meet the requirements on the Regulatory Compliance Branch has all the hallmarks of becoming a red tape nightmare.

The Master Plumbers and Mechanical Contractors Association of NSW believes that the issues set out above will add significantly to the red tape requirements of Registered Organisations and will add significant cost pressures to the organisation related to such compliance. The inequity here is that this is not necessarily an impediment to the ability of employees of Registered Organisations to carry out their duties, but more than ever highlights the inequity in the status of Registered Organisations as compared to Recognised Organisations.

This is the real inequity that needs to be addressed by the Senate and the Government.

Yours sincerely

Paul Naylor
General Manager



Submission to:

**Standing Committee on Education and Employment
Fair Work (Registered Organisations) Amendment Bill
2013**

Submission by:-

**Master Plumbers Association of NSW
22 November 2013**

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Our Ref: AOM-107/28

22 November 2013

Via email as requested to: ewer.sen@aph.gov.au

4 December 2013 – above address is incorrect and submission being re-lodged as per discussion with the Committee Secretary's Office.

To: ewr.sen@aph.gov.au

Dear Members,

Fair Work (Registered Organisations) Amendment Bill 2013

INTRODUCTION

The Master Plumbers and Mechanical Contractors Association of NSW (MPMCA) is a registered employer organisation providing representation, training and extensive advisory services to a broad base of members in the plumbing, gas and mechanical services sector in NSW and the ACT. The principal activities of the Association are to provide business services, industry representation, training and advice on industrial relations and employment to the membership. Our members range from major contracting companies through to sole traders and are a highly reputable group to lobby government in support of various plumbing, business and environmental reforms and recommendations.

MPMCA has taken the time to peruse the drafts as presented and sees a need for clarification on some of the issues raised to ensure that there are no unintended consequences from the implementation of the proposed changes.

The first point to be raised with the Standing Committee is that there are major differences between Employer and Employee Registered Organisations especially in terms of elected Officers and their roles. The following will expand on those differences and the concerns that the proposed legislation will/may have on organisations such as MPMCA:

1. Disclosure of personal interests

Item 19 Clause 150 & 5293D. At this point it is important to raise the role of elected officers and the specific role those officers undertake within MPMCA.

Officers associated with MPMCA are persons elected from within the membership of the Association. All office bearers and committee members are elected accordingly are honorary officials and are unpaid. Unlike officers of employee unions where elected officers take up managerial positions, influence day-to-day operations and are paid salaries for the period of their elected term, honorary officials of MPMCA are not remunerated in any way.

All elected officers of MPMCA are current licensed plumbing contractors who are licensed and regulated to operate and provide services to the public under the jurisdiction of NSW Fair Trading.

It is therefore difficult to perceive what could be seen as a need for "disclosure of material personal interests". Their involvement with the Association is altruistic in

nature and they are “giving back” to the industry and their colleagues within that industry. This has been the situation since 1885 when the Association was founded.

There is a level of disquiet in relation to the interpretation of disclosure of personal interests - that disquiet goes to whether the disclosure of personal interests relates to the honorary official's own business dealings or is it a disclosure of personal interests in relation to their role with the Association. If it is the former, then that is a matter of enormous concern to the Association in respect of its operational structure.

2. Remuneration

Section 293B.

The point for clarification required here is what is meant by remuneration?

For example, MPMCA will meet the cost of travel and reimburse actual costs associated with attending meetings for its honorary officials. Such meetings are attended as a representative of MPMCA and no specific personal benefit is obtained by the member.

The major difference, not apparent from this document, is the fundamental difference between the majority of employee organisations and ourselves is that our officers are proudly honorary officials, they receive no salary or stipend and are not elected to move into managerial positions. Officials of this employer organisation make themselves available for election purely to give back to the industry and are proud to state they contribute their time and considerable expertise without reimbursement and they do it at their own cost.

3. Non CASH benefits

173 & 177

Again it must be stated that all officers of MPMCA are honorary officials and none are paid sitting fees, a salary or a stipend.

This clause goes on to include undefined terms of “value and form of non-cash benefits”. This is an open ended term in the absence of a definition or reference to an external set of parameters.

4. Branches

MPMCA does not have branches as defined in the Act. It maintains an informal system of meeting groups for the purposes of local meetings and professional development. Whilst these are informally referred to as branches, it is important that this custom and practice is now not cancelled/destroyed by the new “branch reporting requirements”. The legislation must ensure that any references to branches is only in relation the formal structure under the Act, which details reporting and other requirements in respect of operational and management rules in the operation of registered organisations.

5. Training

The proposal includes a requirement for an officer “whose duties relate to the financial management of the organisation”. MPMCA has a specific officer responsible for financial reporting to the Executive Committee, this is the Honorary Treasurer. This

person in conjunction with the internal Business & Finance Manager tables reports at meetings. It would be difficult to construe that the Honorary Treasurers does in fact have a role of financial management. At the AGM the Honorary Treasurer simply tables the audited annual reports and financial statements and explains the details to members and answers questions prior to lodgement with the Fair Work Commission.

6. Officers to undertake approved training

Irrespective of the previous concerns as to whether an Honorary Treasurer would be required to participate in training, any approved training should be in a form which aligns to the relevant National Training Package.

If an Honorary Treasurer without management responsibilities is required to undertake training, then such training could be in the form of a formal induction. The relevance of training by "an organisation or peak council" is not clear as historically those named organisations have generally only provided specific guidance on industrial and other issues, and not training on financial matters. At least a formal induction process would be specifically relevant to the organisation and not a general overview of new material from an unrelated external body.

7. Registered and recognised organisations

It is interesting to note that this draft legislation relates only to the 112 registered organisations and not the 86 recognised bodies that became recognised in 2009. Since 2009 both recognised and registered organisations have had equal representative rights before FWC. What this equates to is that of the 198 associations with the ability to appear and operate under FWC, only 56% are covered by these new rules. This also raises the issue as to which organisations could be approved for training as some will not be required to meet the new requirements as they are in most cases limited liability companies covered by ASIC.

In reviewing this document it is apparent that those organisations that have spent large amounts of members' money in order to become a registered organisation would now be better off surrendering that registration, and simply by becoming recognised organisations they would not be required to meet the additional requirements for registered organisations. Is this the reality of an outcome that is being proposed by the legislation?

8. Consistency of reporting requirements

It is a fact that many officials of registered organisations are also directors or equivalent of not for profit organisations and are required to meet the reporting and associated requirements of the Australian Securities and Investment Commission. It does not appear to be efficient to have persons performing apparently similar roles to be required to meet Governmental "red tape" requirements which differ across different jurisdictions. With the Council of Australian Governments moving to a uniform approach of National consistency it would seem highly inappropriate, extremely costly and not be prudent to add another level of reporting which differs from another agency requirement i.e. ASIC.

Yours sincerely

Paul Naylor
General Manager