



*Submission to the Senate Education and
Employment Legislation Committee*

*Fair Work Amendment (Registered
Organisations) Amendment Bill*

September 2016



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 98 years, AMMA's membership spans the entire resource industry value chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA works to ensure Australia's resource industry is an attractive and competitive place to invest, do business, employ people and contribute to our national wellbeing and living standards.

The resource industry is and will remain a major pillar of the national economy and its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resource industry currently directly generates over 8% of Australia's GDP. In 2014-15, the value of Australian resource exports was \$171.9 billion. This is projected to increase to \$256 billion in 2019-20. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Over 50% of the value of all Australian exports are from the resource industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserves.

AMMA members across the resource industry are responsible for significant levels of employment in Australia. The resources extraction and services industry directly employs 219,800 people. Adding resource-related construction and manufacturing, the industry directly accounts for four per cent of total employment in Australia.

Considering the significant flow-on benefits of the sector, an estimated 10 per cent of our national workforce, or 1.1 million Australians, is employed as a result of the resource industry.

First published in 2016 by

AMMA, Australian Mines and Metals Association

Email: policy@amma.org.au

Phone: (03) 9614 4777

Website: www.amma.org.au

ABN: 32 004 078 237

© AMMA 2016

This publication is copyright. Apart from any use permitted under the Copyright Act 1968 (Cth), no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of the Chief Executive, AMMA, GPO Box 2933, BRISBANE QLD 4001

Introduction

1. AMMA welcomes the opportunity to make this brief submission to the Committee supporting passage of the *Fair Work Amendment (Registered Organisations) Amendment Bill* (the ROs Bill).
2. In AMMA's view, more effective regulation of registered organisations' governance and accountability along with increased penalties are warranted to ensure members' interests are adequately protected, and protected to the same extent as those of the shareholders of companies.
3. The Explanatory Memorandum for the ROs Bill sets out at some length the basis on which the government has sought to improve the governance and accountability of Australia's unions and registered employer organisations, and the basis for the *Better Transparency and Accountability of Registered Organisations* policy the Coalition took to the 2013 and 2016 elections.
4. AMMA supports these reasons for change, and as set out further would support bringing the governance of unions and employer organisations even more closely into alignment with duties of corporations.
5. AMMA has confined this brief submission to two main features of the Bill:
 - a. The proposed establishment of an independent Registered Organisations Commission (ROC).
 - b. The proposed increase in penalties to bring them closer to those under the Corporations Act 2001.

AMMA is not a registered organisation

6. In contrast to the union and employer organisations that will be affected by the ROs Bill, AMMA is incorporated as a company, and reports to the Australian Securities and Investments Commission (ASIC).
7. AMMA and its members benefit from the discipline associated with the higher standards required under the Corporations Act, and based on our experience since 1918, all trade union and employer association members should benefit from oversight from ASIC, as it would apply to corporations.

Principles for the proper governance of unions and employers organisations

8. AMMA approaches the governance and accountability of registered industrial organisations to their members and the wider community based on the following principles:

- a. Unions and employer organisations are substantial trading and employing entities, hold significant monies on behalf of their members, and are charged with significant representation responsibilities.
- b. Their members should be entitled to no lesser levels of protection, transparency and accountability than shareholders and others interested in the proper governance and accountability of corporations.
- c. The community's interest in the effective governance and accountability of registered unions and employer organisations is substantial, including in particular risks to employees from improper dealings or corruption.
- d. Whilst unions and employer organisations are democratic organisations, and it is important their members have some determination over the structuring and rules of their organisations as with corporations, the wider public interest demands consistent and properly enforced standards to protect rigor, integrity and accountability.
- e. Registered organisations of both employees (unions) and of employers should be subject to the same rules as apply to corporations. Registered organisations should be made subject to the Corporations Act in full, not specialised legislation for industrial organisations.
- f. Registered unions and employer associations should be accountable to and regulated by ASIC, as are corporations.
- g. The duties, responsibilities and accountabilities of officers of registered organisations should be the same as those required of company directors.
- h. Penalties for abuses or non-compliance with governance and accountability obligations for union and employer organisation officials should be the same as those that would apply to equivalent officers of corporations.
- i. To the extent that the full Corporations Act, and regulation by ASIC, is not applied and bespoke regulation persists, AMMA supports accountability measures, regulation, penalties, etc that are as close as possible to those applying to regulate the conduct of corporations and their officers. This is a principle of equivalence - to the greatest extent possible the duties on unions and registered employer organisations should be aligned with those upon corporations.

Previous AMMA submissions

9. AMMA has consistently supported improved governance and oversight of registered organisations.

10. AMMA has participated in previous inquiries by this Committee into comparable legislation, including most recently [AMMA's Submission](#) to the [2015 inquiry](#) into the Fair Work (Registered Organisations) Amendment Bill 2014 [No. 2].

Establishment of a Registered Organisations Commission

11. Schedule 1 of the current ROs Bill would establish a new watchdog, the Registered Organisations Commission (ROC), to “monitor and regulate registered organisations with enhanced investigation and information gathering powers”.
12. 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 problems with ensuring the transparent and accountable operation of registered organisations. As we have seen, these failures have contributed to unacceptable public scandals that diminish the standing of unions in particular.
13. High-profile cases of union misappropriation and fraud, and further allegations against individuals that remain before the courts, are indicative of an outdated and sub-optimal system of governance and accountability in this area.
14. Concerns also emerge in relation to corporations. However, there are 2,393,568 companies registered in Australia, compared with just 110 organisations registered under the current Fair Work (Registered Organisations) Act 2009.
 - a. Australia needs to do ever better in regulating the conduct of both corporations and industrial organisations.
 - b. Levels of misappropriation and corruption in registered organisations indicate particular failures of governance and oversight in this area.
15. Whilst acknowledging the efforts of the regulators, and intensifying efforts towards proper reporting and accountability, levels of scandals and non-reporting point to an inadequate system of regulation that needs significant, structural improvement. The creation of a new, better empowered regulator will go a significant distance to addressing concerns and protecting both union / employer organisation members and the wider community.
16. AMMA also invites the Committee to recall the paralysis and incapacity of the existing regulator when concerns come to light.
17. The high profile investigation into the Health Services Union (HSU) is evidence that the current system and architecture is not fit for purpose.

18. The 25 months taken to prepare the report into the conduct of the HSUA and Craig Thompson¹, when the whole nation and this Parliament in particular needed clarification of his conduct, points to a regulator (the current arrangement within the Fair Work Commission) that is not sufficiently empowered or effective, and points to a system that needs updating as proposed in the ROs Bill.
19. The Fair Work Commission (at the time known as Fair Work Australia) itself admitted that it took an unreasonably long time to conduct the HSUA / Craig Thompson investigation.
20. Revelations surrounding the HSUA and its officers highlight that money paid by members to registered organisations, in this case a trade union, was used for improper purposes. This is a serious public policy and public interest risk which, through the status quo arrangement, the Parliament is failing to properly address. The ROs Bill will go a substantial distance towards addressing this problem.
21. The immediate concern, in AMMA's view, is that we lack a dedicated body, sufficient powers and sufficient resources to properly police the current requirements for registered organisations, let alone the more stringent requirements necessary to actually protect community and member interests.
22. 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.
23. 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.
24. Requiring unions to operate under the auspices of the Corporations Act would ensure allegations of wrongdoing can be investigated quickly, and transparency is brought to bear to keep members and other interests informed. This remains AMMA's preferred outcome, but the ROs Bill would also represent a significant improvement on the current regulatory arrangements.
25. Schedule 1 of the ROs Bill seeks to establish a Registered Organisations Commission (ROC) as a dedicated independent regulator that would continue to monitor and enforce the separate Fair Work (Registered Organisations) Act.

¹ March 2010 to April 2012, Source: <http://www.heraldsun.com.au/news/national/the-craig-thomson-case/story-fndo48ca-1226502036282>

26. 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.
27. 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.
28. 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.
29. 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.
30. 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 and avoid a repeat of the failure of the current system in the HSUA / Craig Thompson case.
31. While AMMA would primarily like to see unions and employer organisations being responsible to ASIC as is the case for companies, the ROs Bill's proposed 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

32. Schedule 2 of the ROs Bill that is before the Committee will increase disclosure requirements, investigation powers and penalties available to the new ROC compared with those currently available to the General Manager of the Fair Work Commission (and those which failed to discourage the abuses in the HSUA).
33. 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.
34. Schedule 2 – Part 1 of the ROs 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.

35. The Bill proposes to increase civil penalties as well as introduce criminal offences for certain intentional or reckless breaches of officers' duties.
36. 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.
37. As the table below shows, under [s184](#) of the Corporations Act, such offences currently attract criminal sanctions and penalties of up to \$360,000 for individuals (2,000 penalty units) and / or up to five years' jail.
38. 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 \$10,800 for individuals (60 penalty units) or up to \$54,000 for a body corporate (300 penalty units).

Penalties for offences (based on \$180 per penalty unit)	
Section 184 of the Corporations Act 2001	\$360,000 for individuals and up to five years' jail
Sections 287 and 288 of the Fair Work (Registered Organisations) Act 2009	\$10,800 for individuals \$54,000 for a body corporate (including a trade union)

39. To the extent that the ROs Bill will introduce penalties for registered organisations more commensurate with those applying to companies and directors under the Corporations Act, AMMA supports the Bill.
40. AMMA would be happy to provide the committee with further information about any aspect of this submission at any stage.