



Submission to the Senate Education,
Employment and Workplace Relations
Committee

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

By the Australian Mines & Metals
Association (AMMA)

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About AMMA

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for 94 years, AMMA's vast membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as allied suppliers to those industries.

Executive summary

The Federal Government must ensure registered organisations no longer receive special treatment and are subject to the same high standards as organisations operating under the present-day legislation for corporate entities – the Corporations Act 2001.

AMMA is incorporated with the Australian Securities and Investments Commission (ASIC) and is of the view that all registered organisations should be subject to the same process and rules applying to corporations.

AMMA welcomes the proposed new regulations that provide for greater transparency of the financial activities of registered organisations but our view is that the changes the government has proposed are not tough enough to deliver the accountability that the members of those organisations are seeking.

The lack of resources and forensic expertise at Fair Work Australia, and before it the Australian Industrial Relations Commission, has greatly exacerbated the problems surrounding the transparent operation of registered organisations.

AMMA and its members benefit from the discipline associated with the higher standards required under the Corporations Act.

How can any union members in Australia have the same confidence in their administrators if they are not subject to the same stringent regulations and policing processes?

While the government might be seeking more transparent reporting, the more immediate problem is the fact there is not a dedicated body or sufficient resources to properly police those requirements. Increasing the delegation powers to the General Manager of Fair Work Australia will not eradicate improper processes.

AMMA notes the lack of hard reforms contained in the Fair Work (Registered Organisations) Amendment Bill 2012 which is currently before parliament and is the subject of this Senate committee inquiry.

While AMMA welcomes any improved financial disclosure processes and increased penalties for breaches, we are concerned the proposed amendments will not prevent another HSU-style misuse of members' funds.

AMMA is at a loss as to why the government is proposing tougher accountability and transparency measures but is still looking at ways to shield registered employer and union organisations from the processes and rules that apply to corporations.

AMMA would also like the committee to note its concern with the three-day timeframe between this inquiry being announced and the deadline for submissions, which has not inspired confidence that this is a thorough, well-aired inquiry process.

Differences between the Corporations Act and the Fair Work (Registered Organisations) Act

There are some important differences between the obligations on organisations under the Corporations Act and those under the Fair Work (Registered Organisations) Act 2009.

Under s184 of the Corporations Act, the penalty provision for the offence of using information to advantage oneself or someone else, or causing detriment to the organisation, gives rise to a potential criminal offence. Criminal offences attract penalties including fines of up to \$200,000 for individuals and/or up to five years' imprisonment.

The similar obligations under s287 and s288 of the Fair Work (Registered Organisations) Act, i.e. using information for personal advantage or to the detriment of the organisation, are limited to a civil penalty of up to \$2,200 for an individual. There are no criminal penalty provisions.

What is a registered organisation?

The Fair Work (Registered Organisations) Act sets out the statutory obligations and privileges for registered organisations.

In order to represent members, obtain entry permits, investigate breaches of instruments and so forth, organisations must be registered. Registration occurs pursuant to the Act and enables registered organisations to undertake activities as set out in the Fair Work Act 2009. The two types of registration available are:

- Federally registrable employer associations – employer/industry associations;
and
- Federally registrable employee associations – trade unions.

How does the current system work?

The General Manager of Fair Work Australia is responsible for administering the obligations and responsibilities imposed on registered organisations under the Act. 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 do not meet the requirements of the Act and to investigate allegations of breaches.

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 (AIRC). Under the changes introduced by the Rudd/Gillard Government in recent years, the AIRC was replaced by Fair Work Australia and the Industrial Registrar was replaced by the General Manager of Fair Work Australia.

Proposed changes to the Fair Work laws

Minister for Employment and Workplace Relations Bill Shorten took to the National Workplace Relations Consultative Council (NWRCC) meeting on May 25, 2012 a package of proposals to increase the financial accountability, transparency and reporting requirements of registered organisations under the Act, including to:

- Improve financial disclosure;
- Increase financial penalties;
- Empower Fair Work Australia to conduct 'own motion' investigations; and
- Provide an educative role for Fair Work Australia in relation to compliance with financial reporting and other obligations under the Act.

The NWRCC (of which AMMA is a member) was asked to endorse the package so that legislation could be introduced to parliament as soon as possible.

Legislation was introduced on 31 May 2012 and was referred to a Senate inquiry on 19 June with submissions closing on 22 June. The Senate committee will report on 25 June 2012.

Conclusion

The investigation into the HSU is evidence that the current system is simply not working.

Fair Work Australia has itself admitted it took an unreasonably long period of time to conduct the investigation and has initiated what it says is an 'independent external review' of its operation. The Commonwealth Ombudsman is also examining the way in which Fair Work Australia has conducted itself.

Even the Fair Work Australia Annual Report concedes there are issues (see page 20 of the FWA 2010 – 2011 Annual Report):

"Outcomes in relation to processing financial returns fell short of their target, although there was some improvement, with 54 per cent of lodged financial returns being processed within 28 days of receipt (the target is 85 per cent processed, with 43 per cent processed for 2009–10)."

Revelations involving the HSU highlight the issue that money paid by members to registered organisations has been used for improper purposes.

Requiring unions to operate under the auspices of the Corporations legislation will ensure that allegations of wrongdoing can be investigated quickly.

In 2012, and in the wake of the HSU scandal, AMMA is at a loss as to why the Federal Government, while proposing tougher accountability and transparency, still sees the need to look at ways to shield registered employer and union organisations from the same processes and rules that currently apply to corporations.

AMMA is of the view that registered organisations should no longer receive special treatment and should be subject to the same high standards as those under the Corporations Act, with which AMMA has complied for nearly 100 years (including in previous forms of the legislation).

AMMA would be pleased to answer any further queries the committee might have in relation to this issue. Please feel free to contact AMMA director of industry services

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