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Dear Secretary

**RE: Fair Work (Registered Organisations) Amendment Bill 2012**

The Master Plumbers' and Mechanical Services Association of Australia welcomes the opportunity to respond to the proposed *Fair Work (Registered Organisations) Amendment Bill* ("the Bill").

The MPMSAA recognises the Government's intention to improve the accountability, transparency and compliance of registered organisations, particularly in the wake of the publication of a Fair Work Australia General Manager/Delegate's report into misuse of Health Services Union funds by former and serving officials.

It is our further understanding that the Bill is intended to:

- improve financial disclosure by officials of registered organisations, including in relation to the disclosure of remuneration and financial benefits related to their position;
- increase financial penalties for breaching the *Fair Work (Registered Organisations) Act 2009* including in relation to obligations of care and diligence, acting in good faith and improper use of an officials' position or information;
- empower Fair Work Australia to conduct own motion investigations into compliance with reporting and other obligations; and
- provide an educative role for Fair Work Australia in relation to compliance with financial reporting and other obligations under the Act.

It is our understanding that the outcomes of the FWA report into the Health Services Union is an example of poor financial and management systems and failure to comply with the legislative requirements, rather than a failure of the present legislation regulating Registered Organisations.

Having reviewed the Bill it is our view that, with the exception of reinforcing/clarifying the powers and objectives of Fair Work Australia in relation to compliance and education, the Bill will not achieve the objectives sought.

The proposed changes would serve only to:

- create addition bureaucracy and over-complicated administrative processes; and

- create barriers to recruitment and retention of suitably qualified persons to accept nomination for office on the basis of public disclosure of the officer's remuneration, personal affairs and that of the officer's family members.

Please find below a summary of concerns and suggestions for achieving the desired outcome.

### **1. Approved training for officers with financial duties**

The Bill requires each organisation (or branch of organisation) to vary the Rules of the organisation to include the requirement to undertake training that is approved by the General Manager of FWA that covers each of the officer's financial duties.

We give in principle support to the need for appropriate training to relevant officers of registered organisations. Notwithstanding, it is our view that the Bill does not provide sufficient:

- (a) clarity as to which officers will be required to undertake training;
- (b) sufficient detail as to the indicative form, content, standard or otherwise of the training that is likely to be approved by the General Manager FWA; or
- (c) temporary appointment (e.g. in the circumstance of officer resignation/temporary incapacity) and new appointees (e.g. immediately following election of officer) in terms of requirement to undertake training and timeframes for such.

Until such times as this clarity and detail are provided, we are unable to adequately respond, and it would be unfair and unreasonable to proceed with the Bill in its present form.

Failure to provide such clarity would negatively impact on the organisation's capacity to determine the manner in which the Rules of the organisation may need be varied to give effect to the Bill.

Additionally, the Bill does not adequately recognise the time and process constraints associated with varying the organisations rules (see Item 2 below).

It is recommended that:

- the form, content and standard of the training should be specified in the Regulations;
- the requirement for relevant officers to undertake training should be specified in the Regulations rather than the Rules of the organisation;
- further consideration and clarification be given to identifying the relevant officers;
- any regulation or amendment to the Act should adequately accommodate temporary appointment and new appointees in the form of waiver (temporary appointees) and timeframes for undertaking training; and
- reasonable and sufficient time should be given to affect such changes as may be required by regulation or amendment to the Act.

## 2. Requirement to vary Rules of the organisation

The Bill requires each organisation (or branch of organisation) to vary the Rules of the organisation to include specific provisions intended to improve financial accountability of registered organisation including disclosure of financial transactions, development and implementation of policies on expenditure and remuneration disclosure of officers.

It is our view that the Bill fails to adequately recognise the time and process challenges associated with an application to vary the Rules of an organisation arising both as a result of the organisations own rules and the requirements of the Act. This can give rise to considerable delays associated with the adoption of rule changes.

It is our view that the organisation should adopt appropriate policies and practices for the financial management and reporting. Notwithstanding, the inclusion of a requirements to development and implement such policies within the Rules of the organisation will not, in itself, give assurance that the policies are followed.

It is also our view that the inclusion of requirements to development and implement such policies, disclose remuneration and implement training within the Rules of the organisation will not, in itself, give assurance that the policies are followed.

It is our view that the General Manager of Fair Work Australia has sufficient power to require additional information relating to training, financial management practices and disclosure of detailed information in order to ensure compliance with the Act.

It is recommended that:

- the requirements of the organisation in relation to approved training and policies relating to expenditure would be most appropriately addressed through Regulation rather than the Rules of the organisation;
- the General Manager (or Delegate) of Fair Work Australia continues to be sufficiently empowered to investigate compliance and provide education and support to these processes.

## 3. Requirement to disclose information on officers

The Bill requires each organisation (or branch of organisation) to vary the Rules of the organisation to include specific provisions relating to the disclosure of remuneration of its officers. Additionally, the Bill requires officers to disclose "*any material personal interests in a matter that relates to the affairs of the organisation*" including personal acquisition and/or acquisition by a relative of the officer.

We consider the proposed requirements to publically disclose the personal information of an officer and/or the officer's relatives would have significant and adverse outcomes arising from confidentiality and a deterrent to suitably qualified candidates for nomination to the position of officer.

The Bill does not provide sufficient clarity as to the nature of personal interests that "relate to the affairs of the business" and the extent to which this would apply. It is our view that further specificity is required on this matter in order to ensure an appropriate response.

From the outset, it would appear that the Bill is intended:

- (i) to influence the organisation to exercise restraint and responsibility in relation to remuneration and benefits of the officers; and
- (ii) to ensure that officers do not abuse their position within the organisation to the own financial advantage outside of the organisation.

It is our view that the proposed requirements to publically disclosure of remuneration and benefits would have the opposite effect and could cause:

- resignation from office, or failure of suitably qualified candidates to nominate for office, and would result in lower performance of the organisation itself;
- the use of remuneration and benefits for benchmarking and actual inflation of costs in the not-for-profit sector; and
- breach of confidentiality or privacy in relation to the officer or the officer's relatives in relation to legitimate business practices and personal interests.

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It is also our view that the inclusion of requirements to disclose remuneration and within the Rules of the organisation will not, in itself, give assurance that the policies are followed and, that the General Manager of Fair Work Australia has sufficient power to require additional information relating to disclosure remuneration and benefits in order to ensure compliance with the Act.

It is recommended that:

- the requirements of the organisation in relation to disclose remuneration and benefits ("personal interests") should not be addressed in the Rules of the organisation;
- the requirements of the organisation in relation to disclose remuneration and benefits ("personal interests") is already sufficiently addressed through the Act;
- the General Manager (or Delegate) of Fair Work Australia continues to be sufficiently empowered to investigate compliance and provide education and support to these processes; and
- the requirement to disclose remuneration and benefits should be limited to requests by the General Manager (or Delegate) of Fair Work Australia arising from investigation of compliance;
- any information disclosed as part of the investigation process will remain confidential (limited to the parties involved in the investigation) except where those parties are required to disclose such details by law;
- the General Manager (or Delegate) of Fair Work Australia will not have any authority to determine or influence remuneration or benefits of officers.

Ken Gardner  
*Secretary*  
*Master Plumbers' and Mechanical Services Association of Australia*