

Working for business.
Working for Australia



Fair Work (Registered Organisations) Bill 2014

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Chamber of Commerce
and Industry



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1 Submissions

On 1 September 2016 the *Fair Work (Registered Organisations) Bill 2014* (Bill) was referred to the Senate Education and Employment Legislation Committee (Committee) for inquiry.

The Australian Chamber has engaged with inquiries into this Bill undertaken by the Committee's predecessors, and with the earlier iteration of the Bill, the *Fair Work (Registered Organisations) Amendment Bill 2013*, as well as the *Fair Work (Registered Organisations) Bill 2012* which was enacted, and the private member's bill, the *Fair Work Registered Organisations Amendment (Towards Transparency) Bill 2012*.

All these bills had in common the recognition that the supervisory structure and requirements on registered organisations of the time had been found wanting in the face of the practices such as those uncovered in branches of the Heath Services Union. The regulatory system provided inadequate pressure to ensure financial accountability and transparency and there was insufficient capacity in the regulator to adequately investigate.

The Australian Chamber reiterates its strong support for the proposition that organisations that are registered under the *Fair Work (Registered Organisations) Act 2009* (Act) and formed and contributed into by members to represent their legitimate interests should be accountable to those members for their activities, should ensure that their expenditure of members' funds is appropriate and properly accounted for, and should have in place a governance system to support and ensure those outcomes.

Registration under the Act confers a number of privileges. These include incorporation, recognition within the industrial system and the right to be represented by, or represent members with, legally qualified advocates without the need for leave, and for employee organisations, a right of entry which supresses employers' normal property or occupancy rights and default status as members' bargaining representative.

These rights confer great potential power to influence and shape industrial, political and economic outcomes. It is appropriate therefore that the Act which grants these privileges also regulates the governance of organisations that enjoy these privileges.

The Explanatory Memorandum advises that at 3 March 2015 there were 112 organisations registered under the Act, of which 66 were employer organisations and 46 were employee organisations.¹ On the basis of 2012-13 filings with the General Manager Fair Work Australia, the Explanatory Memorandum also advises that 36% of employee organisations at that time and 65% of employer organisations had net assets of less than \$5 million. On the other hand 35% of employee organisations and 7% of employer organisations had net assets of, or in excess of, \$20 million.²

The Act, as amended by the *Fair Work (Registered Organisations) Act 2012*, contains a range of obligations on organisations and their officers with respect to disclosure and training. The

¹ P ix, Explanatory Memorandum, http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5702_ems_3438ef05-bb4a-4e3d-8eca-adc065ce163b/upload_pdf/489532.pdf;fileType=application%2Fpdf accessed 22 September 2016

² P x, Table 1, Explanatory Memorandum, http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r5702_ems_3438ef05-bb4a-4e3d-8eca-adc065ce163b/upload_pdf/489532.pdf;fileType=application%2Fpdf accessed 22 September 2016



amended Act's new provisions require the inclusion in an organisation's rules provisions directed towards improving financial accountability and transparency, imposing a duty on officers to disclose

- material personal interests and those of their relatives;
- remuneration arising from external appointments to boards because of holding an office in the organisation or because nominated to the board by the organisation.

These must in turn be disclosed to members by the organisation (or a branch of it) and it must also disclose payments, excluding remuneration and reimbursements directly made to an officer of the organisation or branch, that it makes to a related party or to an officer with a disclosed material interest.

The organisation must also disclose the remuneration of its five most highly paid officers. Under the Bill this would expand the disclosure obligations for organisations with separate branches from the current two most highly paid officers in each branch to five.

Organisations' rules must also require officers whose duties are or include duties associated with the financial management of the organisation or branch to undertake approved training which covers their financial duties. Approved training must be undertaken within six months of the person commencing in the office. This provision (s 154D of the Act) has proved to contain inflexibilities and impose unnecessary obligations in the case of officers who already possess the knowledge and qualifications required by the approved training or more.

These amendments have not achieved their objective.

The Royal Commission into Trade Union Governance and Corruption, which presented its final report in December 2015, found instances of serious failure of governance and financial management in some unions which included misappropriation of funds, misuse of credit cards and the failure of internal policies or auditing systems to prevent and detect abuses. It also found an absence of functioning policies about financial matters and found instances of bullying, intimidation and victimisation of those raising opposition.³

The Australian Chamber re-confirms to the Committee that although many of its members are registered under the Act the Australian Chamber is not itself a registered organisation.

Chamber members that are registered under the Act have also engaged with previous inquiries into this legislation some may do so again in this inquiry. One of the underlying points which members and the Australian Chamber have made is that the regulation of organisations also needs to be drafted having regard to the nature of organisations. It is noted that the original amending bill, the *Fair Work (Registered Organisations) Bill 2013*, was amended for its successor bill, the *Fair Work (Registered Organisations) Bill 2014*, following an earlier Education and Employment Committee report.

It is also noted that on 14 May 2015 during the term of the last Parliament, the Senate referred the Bill to the previous Senate Education and Employment Legislation Committee for inquiry and report. On 30 June 2015 the Australian Chamber made submissions to that inquiry and those

³ P 43, Vol 5, Royal Commission into Trade Union Governance and Corruption, December 2015.



submissions remain relevant in the context of the current inquiry. As noted in those earlier submissions:

- the Australian Chamber supports the policy intent underpinning the Bill as recent high profile cases of inappropriate conduct by unions suggests that registered organisations should be held to higher standards of accountability in relation to their conduct and use of members' funds;
- in responding to the more notorious and reprehensible conduct, it should not be lost that the vast majority of employees and officers of registered organisations comply with their obligations and work diligently and ethically in advancing the interests of their members;
- office holders in some registered organisations commit their time on a voluntary basis and are unpaid, despite taking on significant responsibilities pursuant to the detailed regulatory requirements under the Act and organisation's rules;
- while some registered organisations and their branches have significant financial resources, a significant portion do not and may feel the regulatory burden more than larger organisations if they are required to direct additional resources toward compliance obligations;
- any reforms intended to strengthen governance obligations should be implemented in a way that is cognisant of the compliance obligations already imposed upon registered organisations, particularly smaller ones that have not been the subject of recent attention.

Enforcement measures relating to any strengthened governance obligations should also be appropriately targeted, adequately resourced and must not adversely impact in a disproportionate manner, those registered organisations that endeavour to do the right thing.

2 About the Australian Chamber

2.1 Who We Are

The Australian Chamber of Commerce and Industry speaks on behalf of Australian business at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

We speak on behalf of the business sector to government and the community, fostering a culture of enterprise and supporting policies that keep Australia competitive.

We also represent Australian business in international forums.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses also get involved through our Business Leaders Council



2.2 What We Do

The Australian Chamber strives to make Australia a great place to do business in order to improve everyone's standard of living. We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.



Australian Chamber Members

AUSTRALIAN CHAMBER MEMBERS: BUSINESS SA CANBERRA BUSINESS CHAMBER CHAMBER OF COMMERCE NORTHERN TERRITORY CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND CHAMBER OF COMMERCE & INDUSTRY WESTERN AUSTRALIA NEW SOUTH WALES BUSINESS CHAMBER TASMANIAN CHAMBER OF COMMERCE & INDUSTRY VICTORIAN' CHAMBER OF COMMERCE & INDUSTRY **MEMBER NATIONAL INDUSTRY ASSOCIATIONS:** ACCORD – HYGIENE, COSMETIC & SPECIALTY PRODUCTS INDUSTRY **AGED AND COMMUNITY SERVICES AUSTRALIA** AIR CONDITIONING & MECHANICAL CONTRACTORS' ASSOCIATION **ASSOCIATION OF FINANCIAL ADVISERS** ASSOCIATION OF INDEPENDENT SCHOOLS OF NSW **AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION** AUSTRALIAN BEVERAGES COUNCIL LIMITED AUSTRALIAN DENTAL ASSOCIATION AUSTRALIAN DENTAL INDUSTRY ASSOCIATION AUSTRALIAN FEDERATION OF EMPLOYERS & INDUSTRIES AUSTRALIAN FEDERATION OF TRAVEL AGENTS **AUSTRALIAN FOOD & GROCERY COUNCIL** AUSTRALIAN HOTELS ASSOCIATION **AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP** AUSTRALIAN MADE CAMPAIGN LIMITED **AUSTRALIAN MINES & METALS ASSOCIATION** AUSTRALIAN PAINT MANUFACTURERS' FEDERATION **AUSTRALIAN RECORDING INDUSTRY ASSOCIATION** AUSTRALIAN RETAILERS' ASSOCIATION AUSTRALIAN SELF MEDICATION INDUSTRY AUSTRALIAN STEEL INSTITUTE **AUSTRALIAN TOURISM AWARDS INC** AUSTRALIAN TOURISM EXPORT COUNCIL **AUSTRALIAN VETERINARY ASSOCIATION** BUS INDUSTRY CONFEDERATION **BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS** CARAVAN INDUSTRY ASSOCIATION OF AUSTRALIA CEMENT CONCRETE AND AGGREGATES AUSTRALIA COMMERCIAL RADIO AUSTRALIA CONSULT AUSTRALIA CUSTOMER OWNED BANKING ASSOCIATION FITNESS AUSTRALIA CRUISE LINES INTERNATIONAL ASSOCIATION DIRECT SELLING ASSOCIATION OF AUSTRALIA EXHIBITION AND EVENT ASSOCIATION OF AUSTRALASIA FITNESS AUSTRALIA **HOUSING INDUSTRY ASSOCIATION** HIRE AND RENTAL INDUSTRY ASSOCIATION LTD. **LARGE FORMAT RETAIL ASSOCIATION** LIVE PERFORMANCE AUSTRALIA **MASTER BUILDERS AUSTRALIA** MASTER PLUMBERS' & MECHANICAL SERVICES ASSOCIATION OF AUSTRALIA **MEDICAL TECHNOLOGY ASSOCIATION OF AUSTRALIA** NATIONAL DISABILITY SERVICES NATIONAL ELECTRICAL & COMMUNICATIONS ASSOCIATION NATIONAL FIRE INDUSTRY ASSOCIATION NATIONAL RETAIL ASSOCIATION NATIONAL ROAD AND MOTORISTS' ASSOCIATION NSW TAXI COUNCIL NATIONAL ONLINE RETAIL ASSOCIATION **OIL INDUSTRY INDUSTRIAL ASSOCIATION** PHARMACY GUILD OF AUSTRALIA **PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA** PLASTICS & CHEMICALS INDUSTRIES ASSOCIATION **RESTAURANT & CATERING AUSTRALIA** SCREEN PRODUCERS AUSTRALIA **VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE**