

22 June 2012

Senate Standing Committees on Education, Employment and Workplace Relations
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Chairman,

**Re: Senate Committee Hearing into the Fair Work (Registered Organisations)
Amendment Bill 2012**

I refer to the public hearings conducted by the Education, Employment and Workplace Relations Legislation Committee in relation the Fair Work (Registered Organisations) Amendment Bill 2012 earlier today.

The ACTU wishes to thank the Committee for the opportunity to make oral submissions regarding the Bill. The attached written submissions supplement the evidence that we provided at the public hearing.

We trust this information is of assistance to the Committee.

Yours sincerely,

Tim Lyons
Assistant Secretary

**ACTU Supplementary Submissions:
Fair Work (Registered Organisations) Amendment Bill 2012**

1. The ACTU supports the Fair Work (Registered Organisations) Amendment Bill 2012 in principle. The ACTU supports a legislative regime that promotes the operation of accountable, democratic and effective trade unions that are member-governed. The provisions of this Bill are consistent with that objective.
2. Public commentary on the affairs of the HSU, one of the 119 organisations registered under the *Fair Work (Registered Organisations) Act*, has resulted in significant public interest in the governance of registered organisations. In our view, the provisions of this Bill have the potential to assist in altering any perception that poor standards of governance are widespread amongst registered organisations providing for greater transparency. The provisions do not prejudice the effective operation of unions, and impose no unreasonable regulatory burden on them.
3. The most direct regulatory effects of this Bill on the organisations we represent will be:
 - to require persons involved in the financial management of unions to receive approved training relevant to that role;
 - to require unions to develop and implement policies regarding their expenditure
 - to require officers of unions to disclose their remuneration and their material interests and interests of those of their family and spouses (such as that the own or operate a business that union might contract with)
 - to require the disclosure of payments made by the union to persons or bodies in which the officers of the union (or their relatives or spouses) have an interest; and
 - to require the disclosure of payments made by the union to related parties.
4. None of these requirements impose any unreasonable burden on unions. We note that the Bill makes provision for model rules or guidelines in respect of many of these obligations and we would be pleased to consult with government as to their terms. Many unions are already be making the disclosures referred to above in some form and already have robust policies and procedures relating to their financial management, however the model provisions may lead to more uniform practices so that members can better understand the rules under which their union functions, even if they change jobs and become a member of another union.
5. We note that the disclosures required by the Bill are cast such that they can be co-ordinated with existing reporting obligations in Division 5 of Part 3 of Chapter 8 of the Act. This ensures that when union members attend their union meetings to discuss the financial report, auditing report and operating report they will also be able to review the disclosed information and ask questions in relation to it. As democratic organisations, we support such accountability and transparency.
6. In respect of the penalty and enforcement mechanisms, the ACTU is on record as having a zero tolerance approach to corruption. Union members deserve better. In that regard, we equally support the enhanced penalty, investigative and enforcement provisions proposed by the Bill.
7. The framework of obligations on officers of registered organisations, including as proposed to be amended by the Bill, is comprehensive. As well as the specific commands in relation to financial management, disclosure and record keeping, there

are general duties regarding care and diligence, good faith, misuse of position and misuse of information. Contraventions of the penalty provisions need only be proved to the standard of the balance of probabilities. Where contraventions are proved, not only are civil penalty orders available, but uncapped compensation is available and the court is free to make any order it considers appropriate. Court orders are backed by the ordinary enforcement mechanism that sees non-compliance an offence of contempt, and enables the execution of judgements upon the personal assets of a judgment debtor. More broadly, the criminal law (for example offences of fraud or obtaining property/financial advantage by deception) applies.

8. The increase in civil penalty amounts proposed by the Bill adds to the deterrent effect of these provisions. The maximum penalties for contraventions of all current Civil Penalties constitute a threefold increase for body corporates (including unions) and individuals. Employee and employer organisations are directly funded by membership fees and serve a very different purpose to companies engaged in commercial activities. It is therefore appropriate that the Bill provides a separate penalty regime for registered organisations that is consistent with the penalties contained in the Fair Work Act.
9. The enhancement to the investigative provisions will enable the regulator to cast a wider net in terms of the persons it may compel to produce information or attend for questioning, while ensuring that those individuals have the appropriate rights and protections associated with participation in those processes. The Bill also ensures that the regulator can release relevant information obtained during an investigation to other regulators or police to assist law enforcement. We support these measures.