



MASTER BUILDERS
A U S T R A L I A

Submission to
Senate Standing Committee on Economics
Inquiry into the Disclosure regimes for charities and
not-for profit organisations

September 2008

Master Builders Australia Inc ABN 701 134 221 001

building australia



© Master Builders Australia Inc, 2008

This publication is copyright and all rights are reserved. No part of it may be reproduced, stored, transmitted or otherwise distributed, in any form or by any means without the prior written permission of the copyright holder.

1 Introduction

- 1.1 This submission is made by Master Builders Australia Inc (Master Builders).
- 1.2 Master Builders represents the interest of all sectors of the building and construction industry. The association consists of nine State and Territory builders' associations with over 31,000 members.
- 1.3 Master Builders members are industrially registered organisations with most registered under the *Workplace Relations Act, 1996* (Cth) (WRA). Master Builders is currently incorporated as an incorporated association under the *Associations Incorporation Act, 1985* (SA) but has recently instituted procedures to become a company limited by guarantee.

2 Purpose of this Submission

- 2.1 On 18 June 2008, the Senate referred the matter of an inquiry into the Disclosure regimes for Charities and not-for-profit organisations to the Senate Standing Committee on Economics to examine:
 - (a) the relevance and appropriateness of current disclosure regimes for charities and all other not-for-profit organisations;
 - (b) models of regulation and legal forms that would improve governance and management of charities and not-for-profit organisations and cater for emerging social enterprises; and
 - (c) other measures that can be taken by government and the not-for profit sector to assist the sector to improve governance, standards, accountability and transparency in its use of public and government funds.
- 2.2 Master Builders makes this submission in order to distinguish the regulation of industrial organisations from the other regimes that apply to not for profit organisations, arguing that measures in place should remain separate and distinct for such organisations.

3 Background on Master Builders Australia Member Associations – Industrially Registered Organisations

- 3.1 As indicated in paragraph 1.3 of this submission, Master Builders' association members are registered under the WRA or are in the process of moving from State industrial registration to federal registration. The WRA has substantial reporting and disclosure requirements which are set out in Schedule 1 to the WRA entitled Registration and Accountability of Organisations (it was

renumbered as Schedule 1 following the commencement of Schedule 5 of the *Workplace Relations Amendment (Work Choices) Act 2005* which commenced from 27 March 2006). The Schedule is comprehensive in its terms and provides an appropriate regime for the regulation of industrial organisations, including requirements about disclosure. The amending legislation¹ that introduced the Schedule 1 provisions had support from all political parties.² The details of the disclosure regime are set out in the next section of this submission.

3.2 The Act introducing Schedule 1 achieved the following:

- regulated the rules of the relevant organisations;
- improved the democratic control of organisations by regulating the conduct of elections for positions in organisations, and provided criteria for disqualification from office in an organisation;
- improved the accountability of registered organisations by modernising the requirements for record-keeping, financial reporting, and access to financial records (discussed in section 4 of this submission);
- set out regulation of the conduct of officers and employees of registered organisations; and
- provided for penalties, including civil penalties and civil compensation, with respect to breaches of the provisions of the Act.

3.3 In accordance with the general principles in *Bohemians Club v Acting FCT*³ the principle of mutuality governs the operations of registered industrial organisations which are established to represent the industrial interests of their members. Mutual receipts are not income because a taxpayer does not derive income from payments made to him or herself. As Chief Justice Griffith said in the *Bohemians* case, “A man is not the source of his own income.”⁴ The Full Federal Court decision of *Coleambally Irrigation Mutual Co-operative Limited v FCT*⁵ decided that the mutuality principle did not apply when the members of the relevant mutual entity were not entitled to receive a distribution of profits on the winding-up of the entity. The High Court refused leave to appeal the matter. However, the Commonwealth Government reinforced that the mutuality principle would be

¹ *Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002 (Cth)* which received Royal Assent on 14 November 2002 and commenced on 12 May 2003.

² See J Riley *Industrial Legislation in 2002* Journal of Industrial Relations 2003 Vol 45 Issue 2 p151

³ (1918) 24 CLR 334

⁴ Id at 337

⁵ [2004] FCAFC 250

applied in Australia and passed legislation to ensure that the fundamental basis upon which member organisations operated were reinforced.⁶ This is the current law in Australia and Master Builders submits that it should not be disturbed, particularly in relation to industrially registered organisations.

- 3.4 The underlying notion of mutuality has been given recognition in the statutory context concerning taxation. Section 50-15 *Income Tax Assessment Act, 2007 (Cth)* stipulates that the total ordinary income and statutory income of employer associations and trade unions is exempt from income tax. This exemption is subject to two conditions for employer associations. The association must be registered under the WRA or an industrial law relating to the settlement of industrial disputes and must be located in Australia where it must principally pursue its objectives.
- 3.5 Having regard to the functions of registered industrial organisations and their centrality to the functioning of the workplace relations system in Australia, Master Builders commends the current laws as shortly summarised in this submission and submits that these rules should not be affected by any proposals that seek to regularise the disclosure regimes of entities regulated by the many available forms of incorporation that exist outside of the industrial relations framework such as incorporated association, company limited by guarantee, proprietary company, trust, cooperatives, Royal Charter, special Act of Parliament, aboriginal corporations etc. These are matters that should be separately considered from the regulation of industrial entities.
- 3.6 Stewart has identified the advantages associated with registration under the WRA in the current regulatory environment as follows:

- *Incorporation as a separate legal entity, thus making it easier to hold property and enter into transactions;*
- *Automatic 'standing' to appear in tribunal proceedings and represent the interests of their members or potential members, without having to seek formal permission; and*
- *The capacity to object to the registration (and hence formal recognition) of any competing association, on the basis that the members of that association could more 'conveniently belong' to the body already registered.⁷*

⁶ *Tax Laws Amendment (2005 Measures No. 6) Act 2005 (Cth)*

⁷ A Stewart, The Federation Press 2008, *Stewart's Guide to Employment Law*, p. 15

4 Disclosure Regime for Industrial Relations Organisations

- 4.1 As indicated earlier, Schedule 1 WRA imposes record keeping and account keeping obligations on organisations. These are set out in Chapter 8. Division 3, section 252 imposes an obligation on organisations or branches (referred to in the Act as a 'reporting unit') to keep proper financial records.
- 4.2 At the end of each financial year, the organisation or branch must prepare a general purpose financial report including a profit and loss statement, a balance sheet, a statement of cash flows and any other statements required by the Australian Accounting Standards (section 253). These must give a true and fair view of the financial position and performance of the organisation or branch. The organisation or branch must also prepare an operating report (s254). Section 255 contains a number of further reporting guidelines.
- 4.3 Division 5 provides that the organisation or branch must then provide free of charge to its members a full report by an auditor of those financial records for the financial year, and a copy of the general purpose and operating reports to which the auditor's report relates (section 265). The auditor's report must also be presented to a general meeting of members, and the report must be lodged in the Industrial Registry. Members also have rights to access the financial records of the organisation generally (Division 7).
- 4.4 The Schedule also requires organisations to disclose the particulars of loans, grants or donations it makes to others (over a specified amount), during the financial year (s237). This ensures the transparency of matters such as political donations.

5 Conclusion

- 5.1 The development of industrial law in Australia has been the subject of intense and divisive conflicts. It is therefore an extraordinary achievement that the internal regulation of industrial organisations should be the subject of multi-party approval, as reflected in the current law. But that is the case.
- 5.2 Master Builders would counsel that the Committee not recommend a regime for harmonising the structure of regulation for not for profit and charitable organisations that would affect the manner in which industrially registered organisations are presently regulated. There is no good or sufficient reason to do so.