Fair Work (Registered Organisations) Amendment Bill 2012

Steve O’Neill
Economics Section

Contents

Purpose ............................................................................................................................................... 3
Background ......................................................................................................................................... 3
  Registration of unions and employer associations as a requirement of conciliation
  and arbitration ............................................................................................................................... 3
  Registration under the Workplace Relations and Fair Work schemes ..................................... 4
  Registration requirements........................................................................................................ 6
Basis of policy commitment................................................................................................................ 7
Policy position of non-government parties/independents .............................................................. 8
Position of major interest groups ....................................................................................................... 9
Financial implications........................................................................................................................ 11
Main issues ....................................................................................................................................... 11
Key provisions ................................................................................................................................... 13
Schedule 1—Amendments ............................................................................................................... 13
Fair Work (Registered Organisations) Act 2009 ............................................................................... 13
  Overview ...................................................................................................................................... 13
  Part 1—Amendments commencing on Royal Assent ................................................................. 13
    Approved training ......................................................................................................................... 13
    Penalties ...................................................................................................................................... 13
  Investigations and power to require information .................................................................. 14
  Part 2—Amendments commencing on Proclamation ................................................................. 15
    Definitions ................................................................................................................................... 15
Fair Work (Registered Organisations) Amendment Bill 2012

Date introduced: 31 May 2012
House: House of Representatives
Portfolio: Education, Employment and Workplace Relations
Commencement: Schedule 1 Part 1, commences on Royal Assent; Schedule 1 Part 2 commences 12 months from the date of Royal Assent or earlier by Proclamation.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The Bill will amend the Fair Work (Registered Organisations) Act 2009 (FWRO Act) to require the rules of all registered organisations to:

- provide for policies about financial expenditure and accountability within the organisation
- deal with disclosure of remuneration paid to the five highest paid officials in the organisation
- deal with the disclosure to the organisation of other pecuniary and financial interests including Board fees obtained by an official
- deal with the disclosure of information about transactions with related parties, and
- require officials to undertake training about their governance and accounting obligations.

Also, the investigative powers available to Fair Work Australia (FWA) under the FWRO Act will be enhanced. Amongst other things, the amendments will require all investigations be concluded as soon as practicable and will give the FWA General Manager the express power to provide information to bodies such as federal or state police and regulatory agencies.

Background

Registration of unions and employer associations as a requirement of conciliation and arbitration

Historically the registration of employer associations and unions under state and/or federal conciliation and arbitration systems, or state wages boards at the beginning of the 20th century gave these entities recognition by employers and the state for the purposes of bargaining. Unions and employer associations thus sought to become registered organisations. Importantly for unions, registration under labour law conferred corporate status on the entity, allowing the union to sue in its own right (and be sued) and to enjoy perpetual succession in the control of its assets. For members, the contract of membership limited their liability to annual membership fees and any

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
special levies. From 1904, in order to come within the jurisdiction of the Commonwealth Court of Conciliation and Arbitration\(^1\), unions needed to register with the Court and provide to the Court the objects and purposes of their organisation. These were expressed in the form of a constitution which would outline the organisation’s membership coverage. Also, the objects outlined in union rules such as protecting members’ interests, raising their status and conditions and raising funds for the furtherance of such objects, have been viewed by the High Court since the late 1950s as sufficient to justify the raising of levies to assist a political party committed to support such interests.\(^2\)

**Registration under the Workplace Relations and Fair Work schemes**

The scheme for the registration of unions and employer associations remained in place for most of the twentieth century; however Professor Ron McCallum observes four periods when Parliament increased the provisions relating to organisations’ accountability: 1928-30, 1949-52 and 1975-77.\(^3\) Additional accountability provisions were made by the Fraser Government in response to findings of the Winneke Royal Commission into the Builders Labourers’ Federation in 1982.\(^4\) A separate legislative scheme to the then principal federal labour law, the *Workplace Relations Act 1996* (WR Act), was canvassed by the former Minister Employment, Workplace Relations and Small Business, Peter Reith at the end of 1999; and the Registered Organisations Bill 2000 was put forth for public comment as an exposure draft.\(^5\) A Bill dealing with organisation registration was put to Parliament in 2001 but the Bill lapsed when Parliament was prorogued later that year for the 2001 federal election. Two registration Bills were introduced in 2002, with the intent evident in earlier versions, that the registration of organisations would be excised from the WR Act.\(^6\)

The then Labor Opposition agreed to the passage of the Bills on the proviso that registration provisions remain attached to the WR Act, taking the form of a schedule to the Act.\(^7\) The registration provisions continued to be attached to the WR Act as a schedule following the Work Choices

---

1. Later, the Australian Conciliation and Arbitration Commission, then the Australian Industrial Relations Commission and currently Fair Work Australia.

*Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.*
amendments. These amendments amongst other things moved the constitutional basis of the national labour law from the Australian Constitution’s conciliation and arbitration power (section 51 (xxxv)) to the corporations power (section 51 (xx)). The High Court upheld the Work Choices amendments in 2006 following constitutional challenge from the States, with the majority decision noting with respect to the registration provisions:

... if it is within the corporations power for the Parliament to regulate employer-employee relationships and to set up a framework for this to be achieved, then it also is within power to authorise registered bodies to perform certain functions within that scheme of regulation.

The amended WR Act facilitated representation of those employer associations and unions (and enterprise associations) which followed their members into the federal jurisdiction under the new constitutional arrangements. Such entities were referred to as transitionally registered organisations. These organisations were in addition to those which were already registered under the WR Act and which also had a substantial number of their members whose employers came under the expanded federal system, that is, by constitutional corporations (in the main).

Under the Labor Government’s Fair Work system, the FWRO Act retains the WR Act’s registration and accountability schedule and the WR Act’s schedule pertaining to the registration of transitionally registered organisations. The FWRO Act continues to register what are now called ‘transitionally recognised organisations’ at least until the expiry of the five-year anniversary of the commencement of the Fair Work (Transitional and Consequential Amendments) Act 2009 (FWTCA Act) in 2014. At the end of this period a transitionally recognised organisation must either gain full registration, or become a ‘recognised state registered association’ under the FWRO Act or, if it has a federal counterpart, arrange responsibilities so that the federal counterpart (a registered organisation) will represent members in the federal system. Accordingly at June 2012, registered organisations numbered 119 under the FWRO Act (45 unions and 74 employer associations) with another 89 transitionally recognised organisations (60 unions and 29 employer associations). No recognised state registered associations have so far been registered.

---

10. Workplace Relations Act, Schedule 1—Registration and Accountability of Organisations.
11. Workplace Relations Act, Schedule 10—Transitionally registered associations

**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Registration requirements

The registration requirements which have been enacted under successive statutes have come to be quite extensive. Provisions of the FWRO Act which registered organisations are subject to include (but are not limited to) the following:

- an organisation must have rules (section 140)
- rules must conform to the requirements of the FW Act for an organisation to be registered (section 142)
- rules cannot be contrary to law, nor oppressive or unjust (section 142)
- a registered organisation must have an eligibility rule specifying who can become a member (section 141)

Rules must specify:
- the conditions for spending funds (section 252)
- the audit of those accounts (sections 256 to 258)
- the maintenance of the membership list (section 230)
- the organisation of branches and other matters (section 154A)

Also
- elections for office are specified (section 143)
- where rules provide for direct elections, they must be conducted by secret ballot (section 144)
- terms of office must be specified (section 145)
- the rules must authorise the making of grants, donations and loans (section 149)
- FWA may alter rules of organisations to bring them into conformity with the requirements of the FW Act (section 156)
- a member of an organisation may make an application to the Federal Court for the performance of the rules (section 164)
- elections must be conducted by the Australian Electoral Commission unless an exemption has been granted (section 182)
- an allegation of an election irregularity may be pursued by a member (section 200)
- the Federal Court may declare a finding of an irregularity in the conduct of an election after conducting a hearing (section 206)
- the membership register can be inspected by a person authorised by FWA and details of the membership must be forwarded in an annual return to FWA (section 233)
- details of any loans (including the beneficiary), grants or donations must be recorded annually (section 237)
- entitlement to membership of an organisation is provided for, subject to the person paying membership fees and that the person is eligible to become a member under the organisation’s eligibility rules (section 166)
- rules must address an organisation’s accounts and related requirements (section 141)
- the role of the auditor to the accounts is specified (sections 256 to 264) and
- members may request access to financial records of the organisation (section 272).

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Basis of policy commitment

In his second reading speech, Minister Shorten acknowledges indirectly the impact of the FWA reports into the Health Services Union (HSU) being the basis for the Bill’s introduction:

The government believes that the Fair Work (Registered Organisations) Amendment Bill 2012 will improve financial transparency and disclosure by registered organisations to their members.
In recent weeks and months conduct by a small number of officials in some parts of one organisation has dented public confidence in all registered organisations in this country ... In addition to this bill, this government has taken the unusual action in respect of some parts of one union by applying to the Federal Court for the appointment of an administrator. 13

This statement is a reference to the inquiries and subsequent investigations by FWA into the financial accounts of the HSU Victoria No.1 Branch and the HSU National Office which commenced in January 2009. 14 The report into the HSU Victoria No.1 Branch, conducted pursuant to section 330 of the FWRO Act, found 25 contraventions of the registration and accountability of organisations schedule of the Act (and its predecessor) and/or the rules of the HSU relating to the keeping and lodgement of required financial records and general duties in relation to the financial management of organisations. 15 The report was received by the General Manager of FWA on 9 January 2012. On 23 May 2012 the FWA General Manager announced that proceedings in the Federal Court would commence in relation to the HSU Victorian No.1 Branch. 16

FWA completed an 1100 page report into the finances of the HSU National Office on 28 March 2012 (the HSU National Office report). 17 It was conducted pursuant to section 331 of the FWRO Act. 18 On 7 May 2012 the FWA General Manager issued a statement in relation to the HSU National Office report which found 181 breaches of the FWRO Act (and its predecessor). FWA indicated that proceedings against national officials would be considered providing there was a reasonable chance

---

18. Ibid.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
of success. FWA also acknowledged the tardiness of its HSU investigations and commissioned accountancy firm KPMG to review the adequacy of the investigations, the basis for any delay, the integrity of the investigation and whether there are any indications of interference. Lawyers were subsequently instructed by FWA to prepare claims to be lodged in the Federal Court.

Committee consideration

The provisions of the Bill were referred to the Senate Education, Employment and Workplace Relations Legislation Committee for inquiry and report by 25 June 2012.

Policy position of non-government parties/independents

In the wake of the HSU controversy, the Opposition argues that the provisions of the Bill represent a ‘band-aid’ solution. The Opposition also has released an election policy document on organisations’ registration and accountability. It notes:

... the Fair Work Australia investigation into the Health Services Union in Victoria found that HSU officials had used union members’ money for personal advantage, failed to act in the best interest of members, and breached financial management rules.

The policy also proposes to increase penalties substantially and provide for imprisonment for convictions. It proposes to align the regulation of registered organisations with the regulation of companies under the Corporations Act. The $2200 maximum personal fine under section 306 of the FWRO Act is proposed to increase to $200,000.

The FWRO Act’s financial disclosure and reporting guidelines would be aligned more closely with those applicable to companies and registered organisations and their officers would be required to observe the same fiduciary obligations as companies and their directors as set out in the.

---

20. Ibid.
23. ‘Changes don’t go far enough: Abetz’, Workforce, No 18235, 1 June 2012, p. 4.
25. Ibid.
Corporations Act.\(^{26}\) The Opposition proposes to shift enforcement and investigations from FWA to a new commission within the Fair Work Ombudsman, a Registered Organisations Commission.

**Position of major interest groups**

Minister Shorten has noted that the reform proposals of the Bill were discussed and approved at the 25 May 2012 meeting of the National Workplace Relations Consultative Council (NWRCC) which comprises seven representatives each of peak employer and union bodies. The NWRCC noted that the changes proposed would significantly improve the financial reporting framework, governance and accountability for registered organisations without generating any significant compliance burden.\(^{27}\)

However one NWRCC participant, the Australian Metals and Minerals Association (AMMA), has argued separately that both the Opposition and the Government should look at registration options other than those available under the FWRO Act.

AMMA has chosen not to be a registered organisation under the FWRO Act (and its predecessors, as has the Australian Chamber of Commerce and Industry). Under the pre-Work Choices regime non-registration enabled AMMA members to maintain direct employment relationships with employees and so avoid award respondency\(^{28}\) which generally flowed from membership of a registered employer organisation.\(^{29}\) The shift of constitutional power underpinning labour law since 2006 however has brought large corporate members of AMMA squarely within the Fair Work legislation, as ‘national system employers’.

AMMA chief executive Mr Steve Knott is reported as saying it is time to end arrangements that treat employer organisations and unions as some sort of ‘special species’ when it comes to financial accountability and disclosure. Rather, the Australian Securities and Investment Commission (ASIC) and corporations law currently set appropriate standards that reflect strict obligations on directors, executives and corporations; standards appropriate to ensure members monies are properly accounted for, expended and reported.\(^{30}\) That said, the same ASIC regime did not prevent fraud perpetrated by a trusted employee of ING Holdings. The fraud committed over seven years amounted to a loss of $45 million to the company and has resulted in a seven year prison term for

---

\(^{26}\) Sections 180 to 184, 189 to 190, 191 to 195, 198D, 208 to 210, 285 to 318 and 588G of the Corporations Act.


\(^{28}\) Under the conciliation and arbitration system, a registered union would serve a log of claims on employers (respondents to the claim) and a resulting award would bound the employer to meet pay and conditions standards of the award.


\(^{30}\) Ibid.

**Warning:** All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
the employee from 2012. The case raises questions about the effectiveness of increased regulatory control to curb fraud.

The employer association, the Australian Industry Group, which is registered under the FWRO Act also believes that the Bill’s reforms are warranted. According to its chief executive Innes Willox:

Ai Group has been consulted in the development of the new laws and Government has worked hard to ensure that the laws will not impose unreasonable red-tape burden on registered organisations such as ours.

The ACTU Congress of 2012 resolved to engage an expert panel to propose corporate governance models for financial operation of affiliates following the FWA reports on the HSU. The terms of reference provide that the panel will make recommendations on matters including:

- comparative good governance standards in the not-for-profit/NGO sectors (and corporate Australia where relevant) and global standards for trade union governance
- transparency and accountability of finances (including remuneration) and risk management (including management of conflicts of interest)
- financial controls and procedures (including income, membership systems, expenditure, procurement, investments & audits)
- procedures for contacting members, handling complaints, dealing with grievances and disputes
- governance training standards and programs for officers (including management committee members) and
- the roles played by the ACTU, state union peak bodies and individual unions’ national offices and branches.

ACTU secretary David Oliver stated that unions could not tolerate the sorts of things revealed in the Fair Work report into the HSU; that that kind of behaviour was not acceptable, and that there was no place in the union movement:

for $360,000 salaries to be paid to any union official.

Professor John Buchannan of the Workplace Research Centre has argued that with the emergence of superannuation funds there is now a career path for union people into the superannuation industry. Consequently, finance sector values and finance notions of which investments constitute legitimate

34. ‘Former judge to head union governance panel’, workplace express.com, 16 May 2012.
35. Ibid.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
investment are starting to pervade the union movement. He argues that as a highly federated union, the New South Wales (NSW) base of the HSU has had a very strong attachment to Young Labor and the ALP political machine and the defining value of that loyalty may help explain approaches to union governance and/or malfeasance. On the other hand, he argues that HSU branches in Western Australia, South Australia and Tasmania are highly respected and play leadership roles (to their members).  

Importantly, UnionsNSW (formerly the NSW Labor Council) suspended the affiliation of the HSU East Branch on 12 April 2012, as this Branch comprising members in New South Wales, Australian Capital Territory and Victoria is registered under the NSW industrial system (and federally as a transitionally recognised organisation). HSU East Branch is the branch subject to administration proceedings in the Federal Court which Minister Shorten, with the agreement of the NSW Government, has initiated with the intent of separating into the three component branches, which the Federal Court has determined. In any case, the action by UnionsNSW suggests a complimentary approach to union governance reform in NSW to that outlined by the ACTU.

Financial implications

The Bill’s Explanatory Memorandum states that there are no financial impacts arising from the Bill.

Main issues

Both the Government and Opposition can be seen to have put union members’ interests first by proposing toughening the current organisation accountability requirements. The issue becomes one of the best means to protect members’ interests, and the standards required. It is difficult to find comparable registration schemes in the federal jurisdiction for not for profit entities such as federally registered organisations which have an accountability requirement to members. However the registration and financial disclosure requirements for federally registered political parties appear less stringent than those required of registered organisations under the FWRO Act. In the Commonwealth Electoral Act 1918 registration of political parties is dealt with under Part X, sections 123 to 141. The Act’s provisions for financial disclosure include the submission to the Electoral Commission, by political parties, of an annual return to the Electoral Commission (not to party members) disclosing the total amounts for its receipts, payments and debts and only details of


37. Brown v Health Services Union [2012] FCA 644


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
amounts greater than the threshold of $11,500.\textsuperscript{40} In addition, parties do not have to submit election returns although candidates do.\textsuperscript{41}

Far from statutory requirements for rules, elections, accounts, audits and presentation of these to the membership backed up with Federal Court proceedings for breaches, the electoral law primarily deals with donations and disclosure for the funding of elections.\textsuperscript{42} Yet for a member of a registered political party, federal and state elections tend to occur twice in a three to four year cycle and questions may arise as to health and use of finances outside elections. A report on the 2010 federal election to the federal Liberal Party argued that the federal executive needed to demand ‘proper financial reporting’ and for the party’s federal executive to be able to peruse the accounts and balance sheets.\textsuperscript{43} Such criticisms put calls for registered organisations to be subject to ASIC scrutiny and corporations law standards into some perspective. Should malfeasance of the sort alleged to have occurred in the HSU taken place in a federally registered political party it is doubtful that there would be sufficient disclosure mechanisms for it to be revealed.

The ACTU proposes standards for accountability for affiliates to meet, however those standards will be determined in reference to the standards which apply to similar not for profit entities to unions. AMMA, on the other hand, suggests jettisoning the FWRO Act entirely and instead using the reporting and accountability standards available under the corporations law with ASIC being the regulator.

In this light, a compromise arrangement might be regulation of the internal affairs of employer associations and unions under the proposed Australian Charities and Not for Profit Commission (ACNC) which is likely to operate in parallel with ASIC. The proposed statutory regime would rely on the Commonwealth’s constitutional power for the regulation of corporations\textsuperscript{44} as its base but also require considerable state and territory co-operation. An exposure draft of the Bill establishing this commission has included Fair Work (FW) registered employer and employee associations as entities eligible to apply for registration, providing other criteria are satisfied.\textsuperscript{45} However no Bill on the scheme has been presented to Parliament, but its arrival is likely to raise the issues of the level of appropriate accountability, scrutiny and investigation of the entities proposed to be regulated under it.

\textsuperscript{40} Commonwealth Electoral Act section 314AB.
\textsuperscript{42} Ibid.
\textsuperscript{44} In this case, Not for Profit entities operating as companies which are limited by guarantee.
\textsuperscript{45} The Australian Charities and Not for Profits Commission Bill 2012 Exposure Draft section 5-10. The Bill with links to consultations is available at: http://archive.treasury.gov.au/contentitem.asp?Navid=&ContentID=2263
Key provisions

Schedule 1—Amendments

Fair Work (Registered Organisations) Act 2009

Overview

Schedule 1 of the Bill is divided into two parts:

- Part 1 sets out the provisions of the Bill that will commence on Royal Assent. In general, these provisions relate to FWA’s role in approving training, in improving the conduct of investigations and inquiries and in certifying alterations to rules. Part 1 also sets out increased maximum penalties for breaches of the civil penalty provisions.46
- Part 2 sets out the provisions of the Bill that will commence on Proclamation or twelve months after the day of Royal Assent, whichever is the sooner. In general, these provisions relate to new requirements in relation to the rules of organisations.47 The stated rationale for the 12 month delayed commencement of Part 2 is to provide stakeholders with sufficient time to implement the necessary administrative arrangements.48

Part 1—Amendments commencing on Royal Assent

Approved training

Item 3 inserts new Subdivision BB into Division 4 of Part 2 of Chapter 5 of the FWRO Act and deals with approved training. The new subdivision contains only one provision, proposed section 154C. It authorises the FWA General Manager to approve training in the financial management duties of officers of registered organisations and their branches, where the training is provided by an organisation, a peak council or a body or person which the General Manager believes has the requisite skills and expertise.

Note that a further amendment contained in Part 2 of Schedule 1 of the Bill requires that the rules of registered organisation contain obligations on officers whose duties relate to financial management to undertake training in financial duties (item 59, proposed section 154D described below).

Penalties

Section 306 of the FWRO Act deals with the pecuniary penalty orders that the Federal Court may make. Items 7 and 8 amend subsection 306(1) of the FWRO Act to increase the pecuniary penalty orders that may be imposed by the Federal Court for contravention of a civil penalty provision from:

---

46. Explanatory Memorandum, p. 8.
47. Ibid.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
• 100 to 300 penalty units for breaches by corporations and
• 20 to 60 penalty units in any other case.

These penalties are consistent with equivalent provisions in the FW Act.

Item 9 also amends section 306 and inserts proposed subsection 306(1A) which provides that the Federal Court may make an order imposing a penalty of up to 50 penalty units for a body corporate, and 30 penalty units in any other case for contraventions of subsections 337AA(1), (2) or (3) of the FWRO Act (see item 29 below).

Investigations and power to require information

Item 15 inserts proposed sections 335A, 335B and 335C which deal with the information gathering powers of the FWA General Manager

Existing section 335 provides that the General Manager has power to require a person (including former officers and employees of registered organisations as well as auditors) to provide information or documents or to attend FWA inquiries to give evidence in relation to FWA investigations following inspection of financial records of registered organisations and a referral under section 278. Proposed subsection 335A(2) would extend this power so that the General Manager could obtain such information or evidence from third parties. This additional power is only exercisable where the General Manager is first unable to obtain the information from current and former officers and employers of registered organisation (proposed subsection 335A(1)).

Proposed section 335B requires the General Manager to complete an investigation as soon as practicable. Proposed section 335C allows the General Manager to disclose information obtained during an investigation where he/she reasonably believes:

• it is necessary or appropriate in exercising or performing his/her powers and functions, or
• the disclosure is likely to assist in the administration or enforcement of a Commonwealth, state or territory law.

The civil penalty provisions in relation to breaches of proposed section 335A are set out in proposed section 337AA (item 29). They include for example:

• a person must comply with a requirement made under proposed subsection 335A(2) unless the person can show reasonable excuse for not complying
• a person must not give information or produce a document or oral/written statement if the person knows or is reckless as to whether the information is false or misleading, and

49. That is from $11 000 to $33 000.
50. That is from $3200 to $6600.
52. The Explanatory Memorandum cites banks and telephone companies as examples of possible third parties, p. 11.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
• self-incrimination is no excuse for non-compliance, although information or documents given would not be admissible in criminal proceeding or in civil proceeding (other than those arising out of proposed subsections 337A(2) or (3)).

Section 336 of the FWROA Act relates to the actions of the FWA following an investigation. In particular subsection 336(1) deals with the General Manager’s responsibility to report errors to the reporting unit of a registered organisation. Item 20 inserts proposed subsection 336(1A) which requires the General Manager to make follow-up inquiries with the reporting unit within the next twelve months to see that matters raised have been corrected or acted on by the organisation.

Item 23 amends paragraph 336(2)(c) to provide that the General Manager may refer the results of an investigation to the Australian Federal Police or a state or territory police force. This is in addition to the existing ability to refer matters to the Commonwealth Director of Public Prosecution.

Section 337 of the FWROA Act relates to offences in relation to investigations by the FWA General Manager. Item 27 repeals and replaces subsections 337(4) and (5), the effect being to prevent a person from withholding information, documents or evidence on the grounds of self-incrimination. Where an individual provides information, documents or evidence, these will not be admissible as evidence in criminal proceedings (unless provided recklessly) or in civil penalty proceedings.

Delegation of functions and powers of the FWA General Manager

Items 30 to 36 amend section 343A of the FWROA Act, the provision that provides for delegation by the FWA General Manager.

Currently subsection 343A(3) provides that certain inquiry and investigative functions may only be delegated to SES or acting SES staff at FWA. Item 36 inserts proposed subsection 343A(3A) to extend this power of delegation more broadly to any person or body that the General Manager is satisfied has skills in accounting, auditing, financial reporting, conducting compliance investigations, or a field prescribed by the regulations.

Existing subsection 343A(2) lists the provisions under which General Manager may not delegate his functions or powers. The effect of the amendments in items 32 and 33 is to add to this list powers and functions of the General Manager under section 335, proposed section 335A, proposed subsection 335C(2) and proposed subsections 336(1), (2), (3) or (5).

Part 2—Amendments commencing on Proclamation

Definitions

Items 40 to 52 insert definitions of the following into section 6 of the FWRO Act: child, control, de facto partner, disclosure period, entity, non-cash benefit, parent, related party, relative, remuneration, spouse, stepchild, step-parent. Item 53 inserts proposed section 7 which defines the relationship of a child to another person.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Definition of ‘related party’

Item 54 inserts proposed section 9B which defines the meaning of related party. Related parties of an organisation are any of the following:

- an entity controlled by an organisation (apart from branches or divisions of the organisation and state or territory counterparts to the federal organisation)
- officers of the organisation and their spouses
- relatives of the officers and spouses
- entities controlled by any of the above related parties

Related parties can also assume that status in the following circumstances:

- in the previous six months where any of the above conditions apply
- where the entity has reasonable grounds to believe that it is likely to become a related party in the future, and
- where the entity acts in concert with a related party of the organisation on the understanding that the related party will receive a financial benefit if the organisation gives the party a financial benefit.

The meaning of a related party of a branch of an organisation also relies on this definition in section 9B (proposed subsection 9B(8)).

Rules of organisations

Section 141 of the FWRO Act stipulates matters that the rules of organisations must provide. Item 55 amends section 141 by inserting proposed paragraph 141(1)(ca) to stipulate that rules of registered organisations must require the organisation and branches to develop and implement policies relating to their expenditures.53

Item 56 inserts proposed section 142A. It will provide that the Minister for Education, Employment and Workplace Relations may publish in the Commonwealth Gazette guidelines containing one or more sets of model rules dealing with the matters referred to in new paragraph 141(1)(ca).

Organisation rules relating to disclosure

Item 57 is a central amendment. It inserts a new Division 3A into Part 2 of Chapter 5 of the FWRO Act. It deals with rules relating to disclosure and contains proposed sections 148A to 148F. These sections are described below.


Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
Proposed section 148A deals with the rules that relate to disclosure of remuneration paid to officers of an organisation. Proposed subsection 148A(1) requires the rules of an organisation to require the disclosure by each of its officers of any remuneration paid to the officer due to his or her membership of a Board, or paid to the officer by a related party. Proposed subsection 148A(2) imposes a similar obligation in relation to branch rules. Proposed subsection 148A(3) requires the rules on officers’ disclosure to determine the manner of disclosure and to require that the disclosure be made as soon as practicable after the payment. Proposed subsection 148A(4) requires the rules to require the disclosure of the identity of the top five officers (in respect of remuneration) to the members and branches. For each of those five officers the rules must require the disclosure of information relating to remuneration including any non-cash benefits. Proposed subsection 148A(5) applies to the rules of a branch of an organisation and imposes the same obligations as outlined in proposed subsection 148A(4) on the top two branch officials in respect of remuneration. Proposed subsection 148A(6) takes disclosure of relevant remuneration to mean the actual amount of the officer’s relevant remuneration or what is specified in the rules as being the appropriate disclosure of remuneration. Proposed subsection 148A(7) requires the disclosure rules to specify either the value or form of officers’ non-cash benefits, or whatever is specified in the rules as being the appropriate disclosure for non-cash benefits. Proposed subsection 148A(8) requires the disclosure rules to specify that disclosures shall be made each financial year, or lesser period, and within six months of the end of the financial year (or shorter period) or within a longer period where the FWA General Manager allows.

Proposed section 148B deals with rules relating to the disclosure of material personal interests of officers and relatives. Proposed subsection 148B(1) provides that organisations’ rules are to require the disclosure of any material personal interests in a matter that relates to the affairs of the organisation that an officer or a relative acquires. Proposed subsection 148B(2) is the equivalent provision in relation to branch rules. Proposed subsection 148B(3) requires the rules to determine the manner of disclosure and to require that the disclosure be made as soon as practicable after the payment. Proposed subsection 148B(4) requires organisations’ rules to require disclosure of personal interests of officials to member and branches during the disclosure period. Proposed subsection 148B(5) is the equivalent obligation in relation to branch rules. Proposed subsection 148B(6) requires the disclosure rules to specify that disclosures shall be made each financial year, or lesser period, and within six months of the end of the financial year (or shorter period) or within a longer period where the FWA General Manager allows.

Proposed section 148C deals with rules relating to the disclosure of certain payments made by an organisation or a branch. Proposed subsection 148C(1) requires organisations’ rules to require disclosure to members and branches of each payment made by the organisation to a related party of
the organisation or a branch, or to a declared person or body[^54], where such payments were made during the disclosure period. **Proposed subsection 148C(2)** is an equivalent provision dealing with branch rules. **Proposed subsection 148C(3)** specifies that these requirements do not apply where a payment to a related party is deducted from remuneration payable to officers or employees. Under **proposed subsection 148C(4)** disclosure rules relating to these payments made to related parties must specify that disclosures shall be made each financial year, or lesser period, and within six months of the end of the financial year (or shorter period) or within a longer period where the FWA General Manager allows.

**Proposed section 148D** provides for exemptions from the disclosure rules dealt with in proposed section 148C. **Proposed subsection 148D(1)** allows an organisation which has a disclosure rule in relation to related party payments but considers that the rule is too onerous to lodge a request for an exemption from section 148C with FWA. **Proposed subsection 148D(2)** requires such an application to be accompanied by a statement setting out:

- the special circumstances
- proposed alterations to the rules to provide for disclosure that will better suit the organisation’s special circumstances while maintaining transparency, and
- evidence of the organisation’s high standards in respect of financial accountability and control.

**Proposed subsection 148D(3)** allows the FWA General Manager to grant an exemption from section 148C taking together the supplied evidence and other relevant considerations about the proposed alternative arrangement under the rules. Exemption decisions of the FWA General Manager under this section cannot be appealed (**proposed subsection 148D(10)**). **Proposed subsections 148D(4) to (9)** deal with dates of effect concerning exemptions, alternative rules and revocations. **Proposed subsection 148D(11)** provides that section 148D also has effect for branches of organisations.

**Proposed section 148E** defines a disclosure period referred to in the rules made under new Division 3A as either the financial year or a shorter period.

**Proposed section 148F** allows the Minister to issue by notice in the Commonwealth Gazette guidelines containing model disclosure rules dealing with matters referred to under this new Division 3A.

**Item 58** provides transitional arrangements for the operation of proposed Division 3A.

**Item 59** inserts **proposed section 154D** which requires rules of organisations to require each officer including branch officers whose duties include financial management duties to undertake approved training in financial duties.

[^54]: A declared person or body is defined in **proposed subsection 148C(5)**.

*Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.*
Concluding comments

In 1980 Professor Ron McCallum noted that controls over the internal affairs of Australian unions were greater than in comparable countries:

Australia had the most thorough controls on the internal affairs of trade unions of any comparable country in the western world. Our controls were tighter and went much further than did the Landrum-Griffin Act of the United States and much further than comparable British and Canadian legislation ... the Conciliation and Arbitration Act gave any interested union member a bulging quiver of remedies so that she or he could ensure that her or his union was administered fairly and democratically.\(^55\)

The collective reforms to the registered organisations provisions over the past decade have turned the quiver into an arsenal. The Bill will add corporations law concepts such as disclosure of related party relationships as well as remuneration to the provisions of the FWRO Act. The Bill will also add to the FW General Manager’s options for pursuing perceived malfeasance, requiring this to be rectified as well as expediting the process for any inquiry instigated under the Bill’s provisions, including through the preparation of a brief of evidence, if required. The existing FWRO Act provisions together with those of this Bill appear far more stringent and transparent than equivalent provisions applicable to the financial reporting of federally registered political parties, which arguably are on common ground in terms of turnover and duties to memberships and very likely ahead of accountability standards applying to equivalent not for profit entities. The Bill adds further layers of accountability to registered organisations, and in addition, provides for the grounds for prosecution to be widened and the penalties for breaches to be increased.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2463.