Fair Work (Registered Organisations) Amendment Bill 2014 [No. 2]

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This Bills Digest is an update of Bills Digest no. 98 of 2013–14, which in turn was based on Bills Digest no. 24 of 2013–14, which dealt with an earlier version of this Bill.

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Date introduced: 19 March 2015
House: House of Representatives
Portfolio: Employment
Commencement: Schedule 1 commences on a day to be fixed by Proclamation, or immediately before Schedule 2 commences; Schedule 2 commences 1 July 2014.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
History of the Bill

The Fair Work (Registered Organisations) Amendment Bill 2014 [No. 2] (the current Bill) is virtually identical to the Fair Work (Registered Organisations) Amendment Bill 2014 (the previous Bill) with the Government amendments which were agreed to in the House of Representatives.¹ The previous Bill was negatived in the Senate on 2 March 2015. (Of the cross-bench Senators, Senators Day, Leyonhjelm and Xenophon voted with the Government.)² That Bill in turn was similar to the Fair Work (Registered Organisations) Amendment Bill 2013 together with Government amendments which were tabled (the original Bill).³

For background commentary (including a summary of consideration of the Bill by committees) and detailed consideration of the provisions in the Bill the reader should refer to the two earlier Bills digests.⁴

Double dissolution election trigger

If the current Bill is passed by the House of Representatives and rejected by the Senate, it could constitute grounds for dissolution of both houses and a general election.⁵

The following outline of the double dissolution process is taken from the bills digest for the Minerals Resource Rent Tax Repeal and Other Measures Bill 2013 [No. 2].⁶

Section 57 of the Constitution⁷ provides that each of the following steps must be satisfied for a Bill to be a double dissolution trigger:

- step 1: the House of Representatives passes a proposed law
- step 2: the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree
- step 3: after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate
- step 4: the Senate rejects or fails to pass the law, or passes it with amendments to which the House of Representatives will not agree and
- step 5: the Governor-General may dissolve the Senate and the House of Representatives simultaneously; a step that would, by convention, normally be taken only on the advice of the Prime Minister.

A Bill must fail twice in the Senate to become a ‘trigger’ for a possible double dissolution election. It may be re-introduced at any time within a Parliamentary term, but there must be a minimum interval of three months between the first failure in the Senate and the passage of the Bill in the House of Representatives the second time.⁸

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¹ In his second reading speech, the Minister for Education said that he was reintroducing the Bill: see C Pyne, *Second reading speech: Fair Work (Registered Organisations) Amendment Bill 2014 [No. 2]*, House of Representatives, Debates, 19 March 2015, p. 2907, accessed 16 April 2015.


⁵ The Senate, *Bills laid aside or negatived, their history and status as possibly meeting the requirements of section 57 of the Constitution [44th Parliament]*, as at 19 March 2015, Australian Parliament website, accessed 17 April 2015.


What the current Bill does

The current Bill (like the previous Bill and the original Bill) creates a Registered Organisations Commissioner, and a Registered Organisations Commission, within (but independent of) the Office of the Fair Work Ombudsman. The Commissioner will supervise the conduct of employer and employee organisations registered under the Fair Work Act 2009. It also provides for:

- increased disclosure requirements for both registered organisations and their officers (including new related party disclosure requirements)
- stronger coercive investigatory powers for the Commissioner (with fewer limitations on their use) and
- increased penalties, including criminal penalties.

The case for passing the previous Bill

Government members argued that the previous Bill should be passed because:

A member of a registered organisation that has paid fees to somebody else to advocate on their behalf should have complete confidence that those people are using that money to fight for the things which they were employed to do.9

The Government considered that examples of corruption and fraud which had been established in the courts (including cases involving the Health Services Union and particularly Craig Thomson) demonstrated the need for tighter regulation.10 Government members also pointed out that some of the provisions in the previous Bill were directed at fixing onerous disclosure requirements introduced by the Labor Government.11 The Coalition had gone to the election with the policy embodied in the Bill, and it had been endorsed by voters.12

Independent Senator Nick Xenophon noted that union officials had raised with him the need for stronger measures against corruption in unions; that ‘union members should have even greater protections than shareholders because the duty their union owes to them … goes much further than a financial return’; and that ‘this Bill strikes a reasonable balance between scrutiny and freedom of association’.13

Why the previous Bill was rejected

Labor members argued that the evils which the Bill was supposed to address had in fact been addressed in the Fair Work (Registered Organisations) Amendment Act 2012, and that legislation was hardly bedded down.14 Labor considered that the Bill imposed an unacceptable regulatory burden, partly because it cut across the earlier Act.15 The proposal to regulate registered organisations like corporations did not make sense because the two kinds of organisation were fundamentally different. Further, the penalties in the Bill in fact exceeded those for officers of corporations. The provisions of the Bill would make it very hard to recruit people to positions, often voluntary, in registered organisations.16

Australian Greens Senators argued that the purposes of corporations were different from the purposes of registered organisations:

11. Ibid.
12. Ibid.
Corporations law requires directors to act in the best interests of their shareholders and to continue to make a profit. Unions, on the other hand, exist to advance the interests of the people they represent.\textsuperscript{17}

Independent Senator Jacqui Lambie pointed out that corruption in corporations might be a higher priority for the Government, and that the Bill pre-empted the Royal Commission into Trade Union Governance and Corruption. She expressed concerns about the limitation on the right to silence imposed by the Bill.\textsuperscript{18}


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