



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**HOUSE OF REPRESENTATIVES**

**BILLS**

**Fair Work (Registered  
Organisations) Amendment Bill 2013**

**Second Reading**

**SPEECH**

**Thursday, 14 November 2013**

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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## SPEECH

**Date** Thursday, 14 November 2013  
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**Questioner**  
**Speaker** Pyne, Christopher, MP

**Source** House  
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**Responder**  
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**Mr PYNE** (Sturt—Minister for Education and Leader of the House) (10:33): I move:

That this bill be now read a second time.

### Introduction

The government is committed to improving the Fair Work laws so that we can build a more stable, fair and prosperous future for Australia's workers, businesses and the economy.

Unions and employer associations who operate in the workplace relations field play a critical role in workplaces and the economy, and their members invest a great deal of trust in them. The community expectation is that these registered organisations must operate to the highest of standards. These organisations are given special legislated rights. With rights come responsibilities.

The government believes that the majority of registered organisations do the right thing and in many cases maintain higher standards than those that are currently required. However, the recent investigations into the Health Services Union illustrate that, unfortunately, financial impropriety can occur under the current governance regime for registered organisations.

The charges and allegations against former ALP member of parliament, Craig Thomson, and former ALP national president, Michael Williamson, in their capacity as officers of the Health Services Union are shocking and unacceptable. Mr Thomson was arrested in respect of more than 150 fraud related criminal charges and is facing allegations that his 2007 federal election campaign was partly funded by siphoning union money without authorisation. Mr Williamson has pleaded guilty to misusing almost \$1 million of Health Services Union members' funds. Mr Williamson has also been accused of destroying documents and hindering investigations. Members of the Health Services Union are asking how this gross breach of trust could happen. Questions have also arisen with numerous other registered organisations. Members of registered organisations are asking whether this could happen in their organisation.

The government believes the Fair Work (Registered Organisations) Amendment Bill will provide the certainty and high standards of operation that members of registered organisations are entitled to expect.

The bill introduces a suite of legislative measures designed to see governance of registered organisations lifted to a consistently high standard across the board. A more robust compliance regime will deter wrongdoing and promote first-class governance of registered organisations.

The recent HSU scandals also revealed that the current processes for investigating wrongdoing and ensuring accountability are clearly inadequate. The Fair Work Australia investigations into the Health Services Union took far too long and the ensuing legal proceedings remain ongoing. A KPMG review into Fair Work Australia's investigations into the Health Services Union identified shortcomings in the conduct of those investigations. Members of the union and the community not only want a strong regulatory regime to give them confidence in their registered organisations but also want swift action taken when standards are breached. In order to do this, it is necessary to have a robust regulator in place with appropriate powers and resources, together with meaningful sanctions that can be applied when wrongdoing is revealed.

To improve oversight of registered organisations, the bill will establish a dedicated independent watchdog, the Registered Organisations Commission to monitor and regulate registered organisations and provide it with enhanced investigation and information-gathering powers.

The new commission will have the necessary independence and the powers it needs to regulate registered organisations effectively, efficiently and transparently.

The commission will be headed by the Registered Organisations Commissioner (the commissioner), who will be appointed by the minister.

The commission will have stronger investigation and information-gathering powers than those that currently apply. These will be modelled on those available to the Australian Securities and Investments Commission, which will further enhance the ability of the commissioner to provide strong and efficient regulation of unions and employer associations. The commission will have the power to commence legal proceedings and refer possible criminal offences to the Director of Public Prosecutions or law enforcement agencies.

The bill also ensures that there are appropriate sanctions against efforts to hinder or mislead investigations. This will give all members confidence that, should they make a complaint to the commission about a registered organisation, that organisation and its officials must comply with the requirements of the investigation process or face sanctions. Members can also have confidence in the fact that, under the new legislation, a person convicted of particular offences will not be eligible to be an officer of an organisation or to stand for election to office.

The commission will also educate, assist and advise registered organisations and their members in relation to the new obligations and ensure members are aware of their rights.

The commission will be established within the Office of the Fair Work Ombudsman.

While located within the Office of the Fair Work Ombudsman, the commissioner will have independence in the exercise of the relevant functions and powers under the law, and the authority to direct staff in relation to the performance of those functions.

A special financial account will also be established for the commission to ensure financial independence, and the commissioner will have responsibility for day-to-day management of the account.

The commission will be required to report to the Minister for Employment annually on its activities, and that report will be tabled in parliament. The commissioner will appear at Senate estimates.

The activities of the commission will also be subject to the same oversight by the Commonwealth Ombudsman as Commonwealth agencies. This will ensure the appropriate level of transparency and public accountability.

As is common with statutory office holders, the minister will be able to give directions of a general nature to the commissioner. These directions must be in writing and will be disallowable instruments. For the avoidance of any doubt, I want to be absolutely clear that the minister will not have any powers to give directions as to a particular matter or investigation.

The bill also provides for information sharing between the Fair Work Commission and the Registered Organisations Commission to the extent that is required for both organisations to do their job effectively and efficiently. This is required, as several administrative tasks relating to registered organisations will continue to be the responsibility of the General Manager of the Fair Work Commission.

Transitional arrangements have been included in the bill to ensure any ongoing matters being dealt with by the Fair Work Commission relating to registered organisations can be dealt with by the Registered Organisations Commission.

As well as establishing a strong, independent regulator, the bill introduces reporting and disclosure requirements and enhanced penalties for wrongdoing.

Many registered organisations control assets worth millions of dollars—they are effectively dealing with the cash flow and investments similar to those of large businesses.

That is why the bill introduces financial and operational reporting requirements for registered organisations that align with those in the Corporations Act. This will strengthen existing financial reporting, disclosure and transparency obligations for registered organisations and officers.

It is entirely appropriate to expect a high standard of financial reporting from our registered organisations, given the trust members place in their unions and employer associations to operate honestly and to use the funds derived from their membership fees to represent their interests rather than for ulterior purposes. Registered organisations

have substantial economic, legal and political influence. It is clearly inconsistent with community expectations for such organisations to operate to lower standards than those that apply to corporations or other comparable bodies.

Registered organisations will need to disclose remuneration paid to their top five officers in the head office and any branches. Officers will be required to disclose their material personal interests to all members. This means disclosing the personal interests of officers and their relatives, and declaring any payments made to persons or entities in which an officer has declared an interest. This aims to prevent individuals from improperly benefiting from their role in the organisation—for example, by an officer procuring goods or services from a company they hold some interest in without disclosing that interest and an appropriate and transparent process not being followed.

Registered organisations will be required to provide a summary of this information to members in an 'officer and related party disclosure statement' and lodge it with the commission.

While the Corporations Act only requires directors to disclose conflicts of interest to their fellow directors, the government believes that officers of registered organisations should be required to disclose such matters to members, as they are elected by members to represent their interests. Members deserve to know who is in control of their money and where any conflicts might exist.

Mr Thomson and Mr Williamson have shown us that the existing regulation does not sufficiently protect members' interests. Unfortunately, there will always be less scrupulous individuals who will seek to take advantage of their positions when standards of accountability and the risk of getting caught are low.

In the face of this kind of behaviour, a strong message needs to be sent to discourage wrongdoing by officers and to rebuild the confidence of members and the community. Enhanced reporting and disclosure requirements and a strong and efficient regulator will have little impact if the penalties for wrongdoing are not high enough to act as a deterrent.

Currently, registered organisations and officers do not face the same consequences as companies and directors for wrongdoing. That is why the government is introducing significantly higher civil penalties and a range of criminal penalties for those registered organisations and officials who do the wrong thing. These penalties are in line with those facing companies and directors who break the law.

In relation to civil penalty breaches, the maximum penalty for serious contraventions will be 1,200 penalty units for an individual or 6,000 penalty units for a body corporate. This will apply to serious contraventions. What will constitute a serious contravention is defined in the bill. Other breaches will be exposed to a maximum civil penalty of 100 penalty units for an individual or 500 for a body corporate. By way of comparison, the current maximum penalties for even the worst misbehaviour are only 60 penalty units for individuals. The Federal Court will also have the power to disqualify an officer from holding office where a civil penalty provision has been contravened and the court is satisfied that disqualification is justified.

Criminal penalties are being introduced for serious breaches of officers' duties as well as offences in relation to the conduct of investigations under the Registered Organisations Act. The maximum penalties in these areas are 2,000 penalty units or five years imprisonment or both.

Broadly, these offences relate to officers and employees of registered organisations who fail to exercise their powers or discharge duties in good faith and for a proper purpose. It also applies where an officer uses their position to gain advantage for themselves or someone else or uses information gained while an officer or employee to gain an advantage for themselves or someone else.

Criminal sanctions will also apply where an officer does not comply with the Commissioner's new investigation powers. These sanctions align with the penalties that apply to noncompliance with an ASIC investigation and will ensure that officers of registered organisations take their obligations and the directions of the commissioner seriously.

Some registered organisations have indicated concern that the new penalties will mean that they will have difficulty persuading people to take on official responsibilities. The government does not agree.

The only people who have anything to fear are those who do the wrong thing. A rigorous structure and processes will be in place for investigation and prosecution of alleged wrongdoing. Officers who are operating within the law, which is the overwhelming majority of them, will have no reason to fear taking on official responsibilities. The overwhelming number of officers who are already doing the right thing should be comforted in knowing that the unlawful behaviour will be dealt with, thus ensuring ongoing member confidence in registered organisations as a whole.

The coalition government firmly believes that there should be no difference between the penalties levied against a company director who misuses shareholders' funds and a registered organisations boss who misuses members' money.

I recognise the broad community consensus for the government's amendments, including from one of Australia's most prominent union bosses, Mr Paul Howes of the Australian Workers Union, who told the ABC on 26 November 2012:

I actually believe there is a higher responsibility for us as guardians of workers' money to protect that money and to act diligently and honestly.

The reality is I do not have any issue with increasing the level of requirements and penalties on trade unions for breaching basic ethics like misappropriation of funds.

That was what Paul Howes said.

The government's intention is to see the Registered Organisations Commission begin operation from early 2014, with new disclosure and reporting obligations, higher civil penalties and new criminal sanctions coming into effect from 1 July 2014.

This timing aligns with the reporting obligations on a financial year basis and will provide registered organisations and officers with time to become familiar with the new obligations and the penalties associated with those obligations.

In developing the bill, the government consulted with National Workplace Relations Consultative Council members through the Committee on Industrial Legislation, including employer and employee associations. The government made a number of key changes to the bill, as well as several minor and technical amendments, in response to the feedback we received. The government thanks these committee members for taking the time to review the draft legislation.

I understand that some members suggested that the bill should be delayed. The government believes there is no time to lose in implementing these important safeguards for the operation of registered organisations and their members.

Again, the only people who have anything to fear by these amendments are those who are doing the wrong thing. Anyone in this place who has a regard for the members of registered organisations and their money will support this bill.

Any political party that refuses to support this greater accountability and transparency for registered organisations is voting to give the green light to more of the same behaviour that we have seen from Mr Michael Williamson and Mr Craig Thomson. It is simply no longer tenable to argue that the present system is adequate to deal with or discourage this kind of behaviour.

The government believes the bill sets a suitably high standard for the governance and regulation of registered organisations. It responds to the legitimate concerns of members of registered organisations and the community as a result of the shocking behaviour of certain Health Services Union officials. Only those officers who do the wrong thing have anything to lose from these changes. Members of registered organisations and the community have everything to gain. I commend the bill to the House.

Debate adjourned.