



**Submission by the
Australian Nursing and Midwifery Federation**

**Senate Education and Employment References Committee
Inquiry into the Provisions of the
Fair Work (Registered Organisations) Amendment Bill 2013**

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Canberra Office

Unit 3, or PO Box 4239
28 Eyre Street
Kingston ACT 2604
Australia

T +612 6232 6533
F +612 6232 6610
E anmfcanberra@anmf.org.au
W www.anmf.org.au

Melbourne Office

Level 1, 365 Queen Street
Melbourne VIC 3000
Australia

T +613 9602 8500
F +613 9602 8567
E anmfmelbourne@anmf.org.au
W www.anmf.org.au

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Midwifery Journal**
E anmj@anmf.org.au

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E ajan@anmf.org.au

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Introduction

The Australian Nursing and Midwifery Federation (ANMF) thanks the Senate Education and Employment References Committee (the Committee) for providing this opportunity to comment on the provisions of the *Fair Work (Registered Organisations) Amendment Bill 2013* (the Bill).

The ANMF is the national union for nurses, midwives and assistants in nursing with branches in each state and territory of Australia. The ANMF is also the largest professional nursing organisation in Australia. The ANMF's core business is the industrial and professional representation of its members.

As members of the union, the ANMF represents over 240,000 registered nurses, midwives and assistants in nursing nationally. They are employed in a wide range of enterprises in urban, rural and remote locations, in the public, private and aged care sectors including nursing homes, hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, and off-shore territories and industries.

We ask the Committee to read our submission in conjunction with that of our peak body, the Australian Council of Trade Unions, and the submission of the Queensland Nurses' Union (ANMF Queensland Branch).

General comments on the Bill

The Senate should reject the Bill. It is unnecessary, poorly structured and excessive, particularly when the Parliament in 2012 enacted the *Fair Work (Registered Organisations) Amendment Act 2012* that largely and adequately dealt with the same issues by introducing enhanced reporting and financial management standards.

The ANMF questions the need to enact further laws in an attempt to ensure better governance of organisations registered pursuant to the *Fair Work Act 2009*. The government's public rhetoric of recent examples of alleged financial misconduct of registered organisations as justification of the need to make wholesale changes to the existing regulatory framework is spurious, mischievous and intended to paint unions in particular as organisations that require enhanced scrutiny.



3.

Registered organisations are currently required to meet robust and detailed reporting requirements which are continuously monitored by an independent statutory body (Fair Work Commission). It is the case that very few organisations fail to meet these requirements; rather, organisations are diligent in their reporting responsibilities and transparent in their dealings with members or constituents. The existing regulations are tough and include fiduciary style obligations and duties of care similar to those that apply to directors of corporations.

Despite this history of sound governance, the government now appears to be responding to calls from narrow sectional interests for increased reporting and accountability responsibilities in the absence of any real justification beyond the isolated events of one union.

While the ANMF supports clear and effective regulation of registered organisations, the *Fair Work (Registered Organisations) Amendment Bill 2013* appears to be little more than a vehicle for more prescription, regulation and procedural complexity, which is ironic given the current government's supposedly slavish commitment to a reduction in unnecessary regulation.

Specific comments on the Bill

Schedule 1

Schedule 1 of the Bill establishes the Registered Organisations Commissioner who will acquire a range of responsibilities which previously came within the responsibilities of the General Manager of the Fair Work Commission.

It is worth noting that not all of the functions will be transferred as the General Manager will still retain some responsibility for administering reporting units.

The ANMF sees no good reason to establish a second regulator. It is an inefficient way to administer the *Registered Organisations Act* and will lead to uncertainty, increased regulation and an increased likelihood of breaches of reporting requirements.



Proposed clauses 329FA-FB

329FA Directions from the Minister

- (1) *The Minister may, by legislative instrument, give written directions to the Commissioner about the performance of the Commissioner's functions.*

Note: Section 42 (disallowance) and Part 6 (sun setting) of the Legislative Instruments Act 2003 do not apply to the direction (see sections 44 and 54 of that Act).

- (2) *The direction must be of a general nature only.*
- (3) *The Commissioner must comply with the direction.*

329FB Minister may require reports

- (1) *The Minister may, in writing, direct the Commissioner to give the Minister specified reports relating to the Commissioner's functions.*
- (2) *The Commissioner must comply with the direction.*
- (3) *The direction, or the report (if made in writing), is not a legislative instrument.*

Given the repeated assurances by government of the independence of the Registered Organisations Commissioner, it is not clear why there is a need to include in the Bill sections 329FA and 329FB which provide the Minister with wide powers and control of the activities of the Commissioner. Given the antipathy shown by conservative governments to unions in Australia, the potential for political interference in the role and operations of this new agency is a significant concern to the ANMF.

Schedule 2

Item 19

(iia) the keeping of minute books in which are recorded proceedings and resolutions of meetings of committees of management of the organisation and its branches; and

The Explanatory Memorandum states (at [150]) that '[t]his amendment is intended to ensure that disclosures of material personal interest of officers of registered organisations under new section 293D and resolutions passed by committees of management in accordance with new subsection 293F(4) are appropriately recorded.' The wording of the proposed paragraph goes well beyond the stated intention, seemingly requiring the recording of *any* resolutions.



The requirement that registered organisations keep minutes of all meetings of committees of management is too onerous and not consistent with good organisational practice. While organisations do keep extensive records of their meetings, it is often the case that they deal with sensitive and confidential issues and do so under an agreement that such matters remain “in house”. Examples of this are in dealing with an organisation’s employees, industrial strategy and commercial issues.

A blanket requirement to record minutes, and for such records to be made public, will only foster and encourage a lack of transparency as organisations respond to this requirement with more “off the record” discussions and more informality and consequently reduced accountability when dealing with issues that are considered sensitive or confidential.

Items 215-230

The Bill proposes to substantially amend the ROA to provide the Registered Organisations Commissioner with broad powers to undertake investigations. While the ANMF supports the capacity of the Commissioner to undertake legitimate investigations, we are concerned by the disturbing trend to reduce the rights of citizens in these types of investigations.

The powers proposed in relation to compelling a person to attend and cooperate in an investigation, the manner in which the person may be represented, and powers in relation to documents are very substantial and potentially open to abuse.

As one example, the ANMF has concerns with proposed paragraph 335G(2)(a), which states that if a written record is made, then the investigator may require the attendee to sign it. The note to the section states that a failure to comply with a requirement is an offence. Further, subsection 337AF(3) provides that a signed statement is prima facie evidence of the statements it records (see also Explanatory Memorandum at paragraph [318]). Presumably the intention is that an attendee would not be required to sign a record which the attendee considered contained inaccurate statements made during questioning, however the wording of paragraph 335G(2)(a) does not make this clear.



The Registered Organisations Commissioner is neither a tribunal nor a court but it is another disturbing example of a government agency being provided with expanded powers at the expense of the citizen.

Increasing penalty units

The proposal to substantially increase financial penalties (sometimes tenfold) is short-sighted and hairy-chested and can only be intended to present the government as a “tough cop on the beat”.

The Committee is reminded that the Bill not only covers paid officers and officials of registered organisations but also the many rank and file workplace representatives who play constructive roles within their unions and workplaces.

The ANMF prides itself as a union which engages with our membership and nurses generally. We actively seek their involvement in the activities of the union but we are fearful that regulation intended to punish unions for undertaking legitimate activities will dissuade members from participating.

It will be ironic and sad if once enacted the new regulations result in a decrease in the democratic involvement of registered organisations which in turn become more inward looking and secretive.

Concluding comments

The ANMF supports the conclusions of the Labor Senators’ Dissenting Report to the Senate Education and Employment Legislation Committee’s December 2013 Report regarding the same Bill being considered by this Committee, ie. ‘that this legislation seeks to diminish rank and file participation with the unions, and discourage union activity, which is a solely political act in opposition to the rights of working Australians.’

As such, the ANMF recommends that the Bill be rejected in its entirety.