FAIR WORK COMMISSION

Fact Sheet

Fair Work (Registered Organisations) Amendment Act 2012

The *Fair Work (Registered Organisations) Amendment Act 2012* (the Amendment Act) received Royal Assent on 29 June 2012.

The Amendment Act amends the *Fair Work (Registered Organisations) Act 2009* (the RO Act) in order to increase the financial accountability of registered organisations and their office holders, to strengthen the investigative powers of the Fair Work Commission and to increase penalties under the RO Act.

Schedule 1 to the Amendment Act is divided into two parts:

- Part 1 sets out provisions of the Amendment Act that commenced on Royal Assent (29 June 2012);
- Part 2 sets out provisions of the Amendment Act that will commence on Proclamation. If a day is not proclaimed, they will commence 12 months from the date on which the Bill received Royal Assent - that is, on 29 June 2013. For ease of reference, this fact sheet refers to the commencement date of Part 2 as being 'on Proclamation'.

The purpose of this fact sheet is to provide information about the Amendment Act and to assist registered organisations in understanding their obligations and the timeframes within which they must meet these obligations.

Part 1: Summary of key amendments commencing on Royal Assent

The amendments to the RO Act that are set out in this part are now in force.

Strengthening of penalties—section 306

The maximum penalties that can be imposed by the Federal Court upon bodies corporate (including registered organisations) and individuals for contraventions of civil penalty provisions of the RO Act have been tripled. The new maximum penalties are:

- 300 penalty units for a body corporate (currently equivalent to $33,000);
- 60 penalty units for an individual (currently equivalent to $6,600).

These new penalties mirror penalties in relation to breaches of civil penalty provisions of the *Fair Work Act 2009*.

Strengthening of investigative powers of General Manager—section 335A

The Amendment Act strengthens the Fair Work Commission's investigative powers. The General Manager is now able to issue compulsory notices to third parties such as banks or telephone companies compelling them to provide information or documents to, or to attend before the Fair Work Commission. Previously this power was limited to registered organisations, their current and former officers and employees and auditors. It is an offence for a third party not to comply (section 337AA).

Under a new provision of the RO Act, the General Manager must complete an investigation 'as soon as practicable' (section 335B). In addition, once an investigation has been completed the General Manager must conduct a further inquiry under section 330 of the RO Act within 12 months as part of the continuing monitoring of organisations which have previously been found to have contravened the RO Act (section 336(1A)).

In addition to being able to refer matters to the Commonwealth Director of Public Prosecutions at the conclusion of an investigation, the General Manager is now also able to refer a matter to the Australian Federal Police or a state/territory police force for action in relation to criminal offences (section 336(2)(c)). The General Manager also has a new express power to disclose information that is acquired in the course of an investigation to third parties where such disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a state or a territory (section 335C). This is consistent with powers of the Fair Work Ombudsman to disclose information under the *Fair Work Act 2009*.

Approval of training

Information is set out below in Part 2 regarding training which must be undertaken by each officer of an organisation or branch who has financial duties.

While officers are not required to undertake training before Proclamation, the General Manager must approve training prior to that date covering all of the duties of officers of organisations and branches that relate to their financial management (see Item 4 of Schedule 1 to the Amendment Act). This will allow officers to undertake training as soon as the relevant provisions commence.

Training may be provided by:

- a registered organisation;
- a peak council; or
- another body or person with skills and expertise to provide training - such as a peak body for a particular industry or a recognised education provider.

The General Manager can approve a range of training of different formats, styles and lengths in recognition of the different significance that financial management duties have to the roles of different officers as well as the backgrounds, experience and qualification of officers. Similarly, the General Manager can approve general training that covers a range of financial management duties as well as more specific training that is tailored to a particular area or areas of financial management.

Commencing in August 2012, the delegate of the General Manager will be engaged in discussions with peak councils regarding the process for approval of training by peak councils, where appropriate. Any registered organisation wishing to seek approval of its own training should contact one of the following leaders in the Regulatory Compliance Branch at the Fair Work Commission as soon as possible:

Capacity to alter rules prior to their commencement

The Amendment Act requires each registered organisation and its branches to alter its rules under section 159 of the RO Act to make provision for:

- rules relating to the development and implementation of policies relating to expenditure—paragraph 141(1)(ca);
- rules relating to disclosure—Division 3A of Part 2 of Chapter 5; and
- rules relating to officers undertaking approved training—Subdivision BB of Division 4 of Part 2 of Chapter 5.

Organisations are not required to alter their rules to include these provisions until Proclamation (see Part 2 below).

Although rules generally commence on the day on which they are certified (section 159), transitional provisions in the Amendment Act (see Item 38 of Schedule 1 to the Amendment Act) allow organisations to make, and the Fair Work Commission to approve, amendments to rules about the matters listed above before Proclamation. The new rules will not commence operation, however, until the date on which they are certified or Proclamation, whichever is later.

Part 2: Summary of key amendments commencing on Proclamation

From Proclamation, the rules of all registered organisations must provide for the following.

Training regarding financial management—s.154D

The rules of an organisation or branch must require each officer whose duties include duties relating to the financial management of the organisation or branch to undertake approved training covering each of the officer's financial duties.

The rules must require that training is undertaken within six months of the person assuming office. Where a person already holds office at Proclamation, training must be undertaken within six months of Proclamation (see Item 60 of Schedule 1 to the Amendment Act).

Policies relating to expenditure—section 141(1)(ca)

The rules of an organisation must require the organisation and each of its branches to develop and implement policies relating to the expenditure of the organisation or branch.

Rules relating to disclosure—Division 3A of Part 2 of Chapter 5

Division 3A establishes new requirements regarding disclosures which will promote financial accountability and transparency. The rules of organisations and branches must provide as follows.

Remuneration paid to officers—section 148A

Rules must require officers of an organisation and its branches to disclose to the organisation/branch, as soon as practicable after its receipt, any remuneration that is paid to the officer:

- because the officer is a member of a board and they hold that position only because of their position as an officer or because they were nominated for the position on the board by the organisation, a branch or a peak council; or
- by a related party to the organisation or branch in connection with the performance of the officer's duties.

'Related party' is defined in section 9B.

Rules must also require disclosure to members of an organisation/branch, within a maximum of six months of the end of each financial year and with respect to each financial year, of the identity, relevant remuneration and relevant non cash benefits of:

- the five highest paid officers of an organisation;
- the two highest paid officers of a branch.

Disclosure requirements regarding 'relevant remuneration' (which is defined in section148A(9)) are set out in further detail in section 148A(6). Disclosure requirements regarding 'relevant non-cash benefits' (which is defined in section148A(10)) are set out in further detail in section 148A(7).

Material personal interests of officers and relatives—section 148B

Rules must require officers of an organisation and its branches to disclose to the organisation/branch any 'material personal interest' in a matter that the officer or a relative of the officer has or acquires that relates to the affairs of the organisation/branch. Such disclosure must be made as soon as practicable after the interest is acquired.

Rules must also require disclosure to members of an organisation/branch, within a maximum of six months of the end of each financial year and with respect to each financial year, of any material personal interests that have been disclosed by officers to the organisation/branch.

The expression 'material personal interest' is not defined in the RO Act. While the same expression is also used in the Corporations Act, it is not defined in that legislation either.

Payments made by an organisation or branch— section 148C

Rules of an organisation/branch must require the disclosure to members, within a maximum of six months of the end of each financial year and with respect to each financial year, of either or both of:

- each payment that has been made during the financial year (or shorter period):
- to a related party of the organisation/branch (such as officers or their family members); or
- to a 'declared person or body' of the organisation/branch; and
- the total of the payments made by the organisation/branch during the financial year (or shorter period) to:
- each related party of the organisation/branch; and
- each 'declared person or body' of the organisation/branch.

A 'declared person or body' is defined in section 148C(5) to mean any person or body in which an officer has declared a material personal interest under the rules of the organisation/branch, as required by section 148B. The term 'related party' is defined in section 9B.

An exemption from the requirements of section 148C can be granted by the General Manager, but only where the organisation/branch already has a rule that complies with section 148C and where compliance with that rule would be too onerous (see section 148D). Application for an exemption from section 148C can be made before Proclamation (see transitional provisions in Item 39 of Schedule 1 to the Amendment Act).

Model rules relating to expenditure and disclosure

The Minister may, by notice published in the Commonwealth of Australia Gazette, issue guidelines containing one or more sets of model rules dealing with policies relating to expenditure and

disclosure. Model rules may be adopted by organisations (in whole or in part) and with or without modification (sections 142A and 148F of the RO Act respectively).

New definitions

New definitions of the following have been inserted into section 6 of the RO Act:

> *child, control, de facto partner, disclosure period, entity, evidential burden, non-cash benefit, parent, related party, relative, remuneration, spouse, stepchild and step parent.*

Further, new section 7, which deals with relationships, defines the relationship of a child to another person and section 9B defines the meaning of related party.

Actions required of organisations

The Fair Work Commission strongly encourages all registered organisations to become familiar with the changes introduced by the Amendment Act. A copy of the Amendment Act is available on the ComLaw website at www.comlaw.gov.au/Details/C2012A00093 and its Explanatory Memorandum is available at www.comlaw.gov.au/Details/C2012B00113/Explanatory%20Memorandum/Text.

Organisations are also strongly encouraged to use the transitional provisions in the Amendment Act to apply for certification of alterations to their rules under section 159 of the RO Act prior to Proclamation.

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This fact sheet is not intended to be comprehensive. The Fair Work Commission does not provide legal advice. Users must rely upon the relevant legislation, which is set out in the *Fair Work Registered Organisations) Act 2009*, the *Fair Work Act 2009*, the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* and the Fair Work (Registered Organisations) Regulations 2009.