

Royal Commission into Trade Union Governance and Corruption
Final Report (December 2015)

Extracts from Volume 5

Volume 5 of the six-volume Final Report of the Royal Commission addresses Law Reform and Policy. The extracts included in this agenda paper are from the following parts of Volume 5:

- Chapter 2, Regulation of Unions – Part D, Financial Accountability
- Chapter 5, Regulation of Relevant Entities – Part B, Disclosure of Financial Relationships Between Unions and Relevant Entities

The extensive, numbered footnotes in the Final Report have been omitted here, and several explanatory footnotes added for members' information. Double border lines have been added (left and right, as here) to highlight the paragraphs of most relevance.

CHAPTER 2 REGULATION OF UNIONS

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D – FINANCIAL ACCOUNTABILITY

62. This part of the Chapter considers a range of possible reforms to assist in improving the financial accountability of registered organisations. The Discussion Paper raised a number of questions about this topic and the Commission received a broad range of submissions in response.

Training of officers and employees

[paragraphs 63 – 72]

Requirements to have financial policies

[paragraphs 73 – 80]

Financial disclosure requirements by organisations and branches

81. Another measure to improve financial accountability is to increase the disclosure of financial information to members and the public. For example, if members of the New South Wales branch of the NUW had known that hundreds of thousands of dollars were being spent annually on credit cards, it may have prompted more questions to be asked.

82. At present, the FW(RO) Act* achieves financial disclosure in three main ways.

* *Fair Work (Registered Organisations) Act 2009 (Cth)*

83. The *first* way is through ‘s 237 statements’. Section 237(1) of the FW(RO) Act obliges organisations (and branches of organisations, where an organisation is made up of branches) to lodge with the Fair Work Commission (within 90 days of the end of each financial year or such longer period as the General Manager[†] allows) a statement that identifies relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by an organisation. The s 237 statement must be signed by an officer of the organisation or branch. The statement is not publicly available, but may be inspected by a member of the organisation or branch concerned during office hours.
84. The *second* way is through annual financial reports.
85. Part 3 of chapter 8 of the FW(RO) Act provides for a number of obligations on ‘reporting units’ in relation to financial records, accounting and auditing. Where an organisation is not divided into branches, the reporting unit is the whole of the organisation. Where an organisation is divided into branches, each branch is a reporting unit.
86. At present, reporting units are required to prepare a general purpose financial report annually. The report must be prepared in accordance with the Australian Accounting Standards and reporting guidelines issued by the General Manager under s 255. Currently, pursuant to the reporting guidelines all reporting units are required to apply the Tier 1 reporting requirements. Further, the current reporting guidelines require that the report must contain certain declarations by the committee of management and must be signed by a ‘designated officer’ within the meaning of s 243 of the FW(RO) Act.
87. In addition to the general purpose financial report, the committee of management must prepare an operating report. The financial report must be audited by an ‘approved auditor’. Following the audit, the reporting unit must provide a full report to members free of charge consisting of the auditor’s report, the financial report and the operating report, or provide a concise report in accordance with s 265 of the FW(RO) Act. The full report must also be presented to a general meeting of members of the reporting unit and subsequently be lodged with the Fair Work Commission.
88. The *third* way is through a number of provisions requiring organisations and branches to have rules requiring the organisation and branch to disclose certain information to their members. These provisions were introduced by the *Fair Work (Registered Organisations) Amendment Act 2012* (Cth) and commenced operation on 1 January 2014. In summary:
- (a) Section 148A(4) requires organisations to have rules requiring the disclosure to members of the organisation of the identity of the five officers who have the largest ‘relevant remuneration’. For each of those officers, the rules must also require the disclosure of (a) either the actual amount of the officer’s relevant remuneration *or the information specified in the rules* as being ‘considered by the organisation’ to be an appropriate disclosure and (b) certain information in relation to non-cash benefits provided to the officer.

[†] The General Manager of the Fair Work Commission, who is the principal regulator under the FW(RO) Act.

- (b) Section 148A(5) requires branches of organisations to have similar rules, but they need only identify the two officers who have the largest ‘relevant remuneration’. The information that must be disclosed is the same as in the case of organisations.
 - (c) Section 148B requires organisations and branches to have rules requiring the disclosure to members of the organisation and its branches of material personal interests disclosed by the officers. Those obligations are examined in Chapter 3 of this Volume.
 - (d) Section 148C requires organisations and branches to have rules requiring the organisation or branch to disclose payments made by the organisation or branch to a related party.[‡] Those obligations are examined in Chapter 5 of this Volume.
89. Apart from issues that arise in relation to ss 148B and 148C (which are considered in Chapters 3 and 5 of this Volume respectively), there are a number of problematic issues with the present financial disclosure regime.
90. *First*, s 237 statements, the apparent purpose of which is to provide more detailed information concerning loans, grants and donations than appears in the annual reports are only available to a member upon request to the General Manager. In contrast, the annual reports are freely available online.
91. *Secondly*, there is no requirement that s 237 statements be audited. Nor is there any requirement that the s 237 statements be approved by the committee of management, although that may occur in practice.
92. *Thirdly*, understanding union accounts requires a high degree of financial literacy. Further, most union accounts are very lengthy and complex. Disclosures of financial remuneration and related party transactions are invariably buried deep within the document. Accordingly, they are of limited value.
93. *Fourthly*, s 148A has a number of problems:
- (a) It does not actually require the rules to disclose the remuneration of the relevant officers, but permits a rule that allows for disclosure of information that the branch considers appropriate disclosure.
 - (b) Most unions and branches satisfy the current requirement by including a note to the annual financial statements. However, the Commission observed numerous financial reports for the 2014 financial year which simply did not include the disclosure required by the rules.
 - (c) The only consequence of an organisation or branch failing to include the required disclosure is that the General Manager may, ultimately, issue a notice to the relevant organisation or branch to comply with the rule. If the branch or organisation fails to comply, the General Manager can commence action in the

[‡] Section 9B of the FW(RO) Act provides the meaning of ‘related party’. The term covers entities controlled by an organisation (but excluding its branches), officers, spouses and their relatives, entities controlled by those entities or people, entities that were a related party within the previous 6 months, entities that believe they are likely to become a related party in the future, and entities acting in concert with a related party (on the understanding of mutual financial benefits).

Federal Court to make orders to require the branch or organisation to comply. However, such proceedings are expensive, and in all likelihood time consuming, and there is no civil penalty for failing to comply.

- (d) The obligation of the organisation or branch to disclose ‘relevant remuneration’ depends on the obligation of the officer under the rules required by ss 148A(1) and 148A(2) to disclose remuneration received from related parties and others. As has been previously discussed, the General Manager presently has no ability to enforce the rules made in accordance with those subsections as they are rules requiring a person other than a ‘reporting unit’ to do something.

94. *Fifthly*, the scope of the financial disclosures is limited. The legislation in Queensland provides a useful comparison. ...

95. ...

Internal compliance and audit

[paragraphs 102 – 109]

External auditing

[paragraphs 110 – 131]

CHAPTER 5 REGULATION OF RELEVANT ENTITIES[§]

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B – DISCLOSURE OF FINANCIAL RELATIONSHIPS BETWEEN UNIONS AND RELEVANT ENTITIES

7. Problems can arise when unions, or particular union officials, operate accounts or entities separate from the union. One problem is the potential for misappropriation of funds. A good example of this occurring is the payment of funds from the Health Services Union to the National Health Development Account by Katherine Jackson. Another problem is that, unless there is proper disclosure, the existence of relevant entities reduces the accountability and transparency of the union’s finances, and has the potential to concentrate power in the hands of a few union officials at the expense of the committee of management.
8. Some provisions in the *Fair Work (Registered Organisations) Act 2009 (Cth) (FW(RO) Act)* seek to ensure proper accountability and transparency of related party transactions.
9. The first provision is s 253. It requires that the general purpose financial accounts prepared by reporting units must comply with the Australian Accounting Standards. Those standards include standards requiring:

§ In broad terms, ‘relevant entities’ are entities separate from a union, such as a fund, organisation, account or financial arrangement, established by a union or union officials for a particular industrial purpose or for the welfare of persons including members of the union [based on paragraph 1 in Chapter 5].

- (a) the preparation of consolidated financial statements;
 - (b) the disclosure of interests in other entities; and
 - (c) related party disclosures.
10. One problem revealed by the financial reports considered during the course of public hearings was that many were not prepared on a consolidated basis. They provided only the most basic of information about related party transactions. Often the relationships between a union and trusts controlled by the union were not disclosed at all. The income from the trust was simply included in miscellaneous income.
11. To ensure that the financial reports are as useful as possible, it is recommended that consideration be given, in consultation with the Australian Accounting Standards Board, to amending the FW(RO) Act to require:
- (a) reporting units to prepare their financial reports on a consolidated basis (i.e. the reporting unit report on a consolidated basis including its controlled entities); and
 - (b) reporting units to prepare separate financial statements for their controlled entities.
12. The second measure in the FW(RO) Act that seeks to ensure proper accountability and transparency of related party transactions is s 148C, which was introduced in 2012. It requires the rules of an organisation and branch to require disclosure to the members of either or both of the following:
- (a) the amount of each payment made by the organisation or branch to a ‘related party’ or a ‘declared person or body’; or
 - (b) the total amount of the payments made by the organisation or branch to a ‘related party’ or a ‘declared person or body’.
13. As a practical matter, most reporting units will comply with these obligations by including the relevant related party disclosures in their annual financial reports. As a result, there appears to be considerable overlap between the requirements of the accounting standards and s 148C. Further, breach of the rules required by s 148C has no financial consequence. In contrast, failure by a reporting unit to prepare its general purpose financial report in accordance with the accounting standards as required by s 253 is a civil penalty provision. Accordingly, there would seem to be little point to s 148C. To the extent that it were thought that the Australian Accounting Standards were inadequate, the General Manager is empowered to issue reporting guidelines specifying information that must be contained in the financial reports. It may be appropriate for s 148C of the FW(RO) Act to be repealed.

Recommendation 42

Consideration be given, in consultation with the Australian Accounting Standards Board, to amending the *Fair Work (Registered Organisations) Act 2009 (Cth)* to require reporting units to prepare consolidated financial statements, as well as separate financial statements for the reporting unit’s controlled entities. Consideration also be given to repealing s 148C of the *Fair Work (Registered Organisations) Act 2009 (Cth)*.