

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

**Industrial Relations
(Transparency & Accountability
of Industrial Organisations)
Submission 004**

Dear Sir/Madam

Response to the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013

We refer to the letter from Mr Ian Berry MP dated 1 May 2013 and thank you for the opportunity for the Australian Dental Association (Queensland Branch) Union of Employers to make a submission on the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013.

Our comments relate specifically to the following objective of the Bill, namely:

- Improve the financial accountability and transparency of industrial organisations and their office holders and provide a proper deterrent for officers abusing their position.

No comment is offered on other objectives of the Bill.

Financial accountability and transparency of industrial organisations and their office holders

The Association notes the above objective is intended to improve the accountability and transparency of industrial organisations registered in the state industrial relations system and, as a concept, such issues are supported.

As stated by Attorney-General and Minister for Justice, Hon. JP Bleijie, on 30 April, 'officials of industrial organisations that are elected by members of the organisations who deserve to have confidence in the stewardship and financial management of their organisation and its leadership', and it is agreed that 'concerns about the governance and financial accountability of industrial organisations have increasingly become a focus of community concern.'

The Minister's intent that 'elected officials of industrial organisations registered in Queensland will be required to meet the same standards of accountability and transparency demanded of elected public officials and local government officials in Queensland' is also supported.

However, it is submitted that the intent of the Bill is already achieved for organisations registered under the Corporations Act 2001 (Cth). This Act imposes extensive legal obligations upon directors in relation to their powers, discharge of duties, disclosure, and accountability and financial and other reporting such that they are at least on a par, if not more onerous than those of elected public officials, as is intended by the Bill.

Directors of non listed public companies have both common law duties and statutory duties under the Corporations Act 2001 (Cth). These are well documented in legislation and other sources, for example at http://www.pwc.com.au/legal/assets/GuideDirectors_Apr08.pdf

Common law duties include:

- Duty to act bona fide in the interests of the company as a whole
- Duty not to act for an improper purpose
- Duties of care and diligence
- Duty to retain discretion
- Duty to avoid conflicts of interest
- Duty not to disclose confidential information
- Duty not to abuse corporate opportunities

Statutory duties under the Corporations Act 2001 include:

- Duty of care and diligence and the business judgment rule (Section 180)
- Duty of good faith (Section 181)
- Duty not to make improper use of position (Section 182)
- Duty not to make improper use of information (Section 183)
- Criminal offences (Section 184)
- Duty not to trade while insolvent (Section 588G)
- Disclosure of material personal interests (Section 191-195)
- Financial benefits to related parties of public companies (Section 208-210)
- Financial reporting (Section 285-318)


Further, substantial penalties apply with offences attracting criminal penalties of a fine of \$200,000 and/or up to five years imprisonment (Corporations Act 2001 Schedule C), and include automatic disqualification from managing a corporation (Corporations Act 2001 Section 206B).

In view of the existing accountability and transparency provisions afforded by the Corporations Act 2001, and noting that, under the Industrial Relations Act 1999, Section 590 (Page 453), an employer organisation that is a corporation may apply to the registrar for an exemption from the whole or part of certain accounting obligations, it is suggested that employer organisations that are also corporations be able under the proposed legislative amendment to apply to the registrar for an exemption from the following proposals of the new law:

- public disclosures by way of maintaining up-to-date and publicly available disclosure registers
- annual reporting and filing obligations of industrial organisations to include financial disclosure statements detailing all expenditure directed to political objects as well as all procurement and contract related expenditures greater than \$5000;
- financial management policies (including in relation to credit card issuance and use, contracting activities and gifts and donations) as well, as governance and financial accountability training;

Thank you for the opportunity to comment on this proposed legislation.

Yours faithfully



Paul Andrews
Chief Executive Officer and Company Secretary