

Industrial Relations
(Transparency & Accountability
of Industrial Organisations)
Submission 018-supplementary

Our ref: 336-14

24 May 2013

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

By Post and Email to: lacsc@parliament.qld.gov.au ; ipswich@parliament.qld.gov.au

Dear Mr Berry MP

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

I write further to the Society's recent submission to the Inquiry into the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013* ('the Bill').

The Society is aware of significant stakeholder concern in relation to clause 29 of the Bill, and specifically, as to the proposed insertion of a new chapter 12, part 12, division 1B of the Act.

The Society notes that proposed section 553D would provide:

553D Particular spending for political purposes must be authorised by ballot

(1) This section applies if—

(a) an organisation intends to spend an amount for a political purpose in a financial year; and

*(b) the organisation has spent or, if the amount is spent, the organisation will have spent, in the financial year, more than \$10000 for **the political purpose for the same political object.***

...

(3) The organisation may spend the amount for the political purpose only if the spending is authorised by a ballot conducted under this division (an expenditure ballot).

Maximum penalty—85 penalty units.

(4) The spending of an amount for a political purpose is authorised by an expenditure ballot if—

- (a) the spending was the subject of the expenditure ballot; and
- (b) at least 50% of the members on the roll of voters for the ballot voted; and
- (c) more than 50% of the valid votes cast authorised the spending.

(emphasis added)

Proposed section 553C would provide:

553C When does an organisation spend money for a political purpose

(1) An organisation spends money for a political purpose if it spends money for, or by the way of, any of the following—

...

(c) publication or distribution in any way, including through advertising, of material about a political matter;

(d) an activity other than an activity mentioned in paragraph (a), (b) or (c) if the activity is able to, or intended to—

(i) influence a person's opinion about a political matter; or

(ii) ascertain a person's opinion about a political matter, including, for example, by opinion polling;

...

(2) In this section—

political matter means—

...

(c) a matter that a reasonable person would associate with a political object.

political object means—

...

(b) a political cause or belief.

...”

The Society expresses the same concern about those provisions as is reflected in the explanatory notes to the Bill, viz.:

*“Third, the Bill requires that industrial organisations ballot members prior to significant expenditure on public advertising and related political activities and also to require industrial organisations to identify political party affiliations in political advertising material. The proposal is that balloting would need to be conducted through the Electoral Commission Queensland at the expense of the industrial organisation. The proposal raises the issue of whether the legislation has sufficient regard to the rights and liberties of individuals and whether there is **a breach of the implied doctrine of***

freedom of political communication and association. *The public interest in the transparency and accountability of industrial organisations is seen to override this concern.*”

(emphasis added)

The Society’s concern arises in light of the following. Having regard to the provisions set out above, the effect of the legislation appears to be that an organisation of employees or employers registered under the *Industrial Relations Act* would be required to conduct a ballot of the type described, before spending more than \$10,000 on publishing material about a matter that a reasonable person would associate with a political cause or belief.

As the legislation appears intended to apply to the expenditure of \$10,000 for a particular political purpose, the need for the ballot would arise in respect of each discrete political purpose.

“Political purpose”, “political matter” and “political object” are all broadly defined. As a result, inclusion of an article about the change to the definition of “worker” in workers’ compensation legislation in an organisational journal or newsletter may be sufficient to attract operation of the ballot provision. The Society is concerned that the definition is so broad as to make proper definition of its boundaries difficult. This is likely to be a significant issue, particularly for any court tasked with interpretation.

In addition, the proposed provisions have the very real potential to impose practical impediments to fair expression:

- By forcing organisations to incur significant balloting costs involving relatively low proposed expenditure.
- By requiring a 50 per cent plus one ‘voter turnout’, in a non-compulsory ballot. It is unrealistic to expect any organisation to achieve such turnout figures.
- As stated, the ballot authorisation process appears to apply to publications totalling more than \$10,000 in any one year for each discrete political purpose, so there may well be the need for multiple ballots

The proposed provisions also discriminate, without an identified rationale, between the same class of corporate entities, that is entities which are constituted by and accountable to members. Under the proposed provisions, registered industrial organisations will be subject to a compulsory balloting process that will not apply to other member constituted entities, such as those established under the *Associations Incorporation Act*, which may have analogous “political” objects and engage in analogous representative and “political” activities as those of industrial organisations.

The Society is concerned that the combined effect of these practical impediments will be to unreasonably restrain a broad range of activities and communications of a select group of corporate entities, not all of which will be able to be described as overtly “political” in nature.

The Society has and continues to express concern about any measure which restricts the ability of individuals or organisations to inform the Government or the public on the impacts of policies, especially those organisations best placed to express those views.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Ian Brown', written in a cursive style.

Ian Brown
Vice President