BRIEFING NOTE

FROM	**Office of Industrial Relations**				
FOR	**Minister for Employment and Industrial Relations, Minister for Racing and Minister for Multicultural Affairs**				
SUBJECT	**Trade Union Royal Commission – Increased Penalties Recommendations**				
Contact Officer:	Luci Yarrington, OIR, 3235 4669	Record No	3126269	Approval Required	22/01/2016
Requested by:	Minister's Office	Reason	To brief the Minister on the matter as soon as possible		

KEY POINTS

1. The Royal Commission into Trade Union corruption and governance (the Royal Commission) has made a number of recommendations regarding the imposition or increase of civil and criminal penalties in response to matters raised during the Royal Commission.

2. While there is some support for measures increasing the civil penalties for serious transgressions by offices of registered organisations that are akin to those penalties that apply to corporations, other recommendations have been criticised as unduly or unfairly onerous on employee organisations and officials.

BACKGROUND AND ISSUES

3. The final report of the Royal Commission (the Report) was released on 31 December 2015. The report contains recommendations for reform of the *Fair Work (Registered Organisations) Act 2009* (Cth) and other legislation.

4. Volume 5 of the Report deals with policy and law reform issues and is divided into 10 Chapters with 79 recommendations. These include the regulation of unions, regulation of union officials, corrupting benefits, regulations of relevant entities, enterprise agreements, competition issues, building and construction industry, and right of entry.

5. The Royal Commission allegations against individuals appearing before the inquiry involve financial misconduct, misappropriation of union funds, fraudulent behaviour, breaches of confidential matters and privacy, as well as abusive behaviour, blackmail, coercion and bribery. As a result the current penalty regime is examined and its effectiveness questioned.

6. Revision of the penalty regime has been a common theme in past reviews of the regulation of trade unions. This has seen successive moves, at both the state and federal level, to bring the regulation of trade unions more in line with the regulation of corporations and its penalty regime.

7. The Royal Commission has reported that the maximum penalties that may be imposed on registered organisations are currently grossly deficient and do not deter behaviour. In particular, the Report notes instances where officers of the Construction, Forestry, Mining and Energy Union (CFMEU) have deliberately defied orders of the Fair Work Commission in full knowledge of the likely penalties that will apply. The Report recommends that penalties should be substantially increased.

8. The report makes 22 recommendations that deal with increasing, introducing or amending penalty provisions in relevant legislation. These are detailed in full in the attached table (**Attachment 1**) which looks at:

   - Financial Management – Civil Penalties - for breaches of financial management obligations to ensure that registered organisations, their officers and employees, focused on financial decision-making, receipting of money, authorisation of expenditure, credit cards, procurement, hospitality, gifts, and the governance of related entities are held accountable;
   - Union Officials – Criminal Penalties - imposed on officers that dishonestly or recklessly breach statutory duties. The definition of prescribed offences is recommended to be significantly widened and attract a mix of penalty units and jail time;

- Corruption – Criminal Penalties - for soliciting, giving and receiving corrupting benefits both for union officials and employer companies;
- Competition Law – Civil Penalties
- Right of Entry – Civil Penalties
- Other Penalties

9. The Report also recommends that unions be prohibited from indemnifying, paying or reimbursing any union official for any fine or civil penalty imposed on the official for conduct in connection with the organisation. It is also recommended that officials who breach the *Fair Work Act 2009* be liable for disqualification from holding office.

10. In Queensland, amendments (Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013) were introduced to:

    - provide new penalties for dishonesty including imprisonment - maximum penalty – 3,091 penalty units (currently equivalent to $340,010) and/or five years imprisonment. This penalty was modelled on a similar penalty in the *Corporations Act 2001 (Cth)*;
    - require an organisation to have particular financial policies (financial decision-making, receipting of money, authorisation of expenditure and associated delegations, travel and accommodation, credit cards, procurement, hospitality, gifts, and the governance of related entities, and complaint management. Breach of the obligation is an offence carrying a maximum penalty of 85 penalty units (currently equivalent to $10,013);
    - an obligation to keep registers for the disclosure of gifts, benefits, loans and other expenditures, including political spending. The requirement to publish credit card and cab charge statements applies to unions only. Additionally, annual and mid-year financial disclosure statements, which cover a range of matters including remuneration and benefits to officials, and political party affiliation fees are required (Part 12 Divisions 2, 2A and 2B). The maximum penalty for breach is generally 40 penalty units.

11. Labour law expert and former dean of law at the University of Sydney, Ron McCallum has criticised the recommendation to prohibit unions from indemnifying, paying or reimbursing fines or civil penalties imposed on unions officials claiming that it would place a greater burden on union officials than on company directors, despite the government's insistence that legislation will bring them into line.

12. Under Australian Consumer Law (ACL) a company cannot indemnify its directors and officers for pecuniary penalties and legal costs, if they are found personally liable for contraventions of consumer protection provisions in the Australian Consumer Law. As a result, Directors of companies rely on insurance policies that cover them against liabilities for breaches of the consumer protection provision and associated legal defence costs.

13. McCallum said that "Trade union officials aren't like company directors. They're much more hands-on and direct". McCallum acknowledged that directors could not use their company's money to pay a fine but said disqualifying trade union officials from holding office was more of a problem.

14. The Federal Opposition's "Better Union Governance" was released prior to the Royal Commission's final report at a press conference by opposition leader Mr Bill Shorten MP (**Attachment 2**). A number of its proposals are reflected in the final report recommendations. These are noted on the summary table at **Attachment 1**.

15. The Australian Labor Party (ALP) has broadly endorsed increasing the civil penalties for serious transgressions by offices of registered organisations that are akin to those penalties that apply to corporations.

16. The ALP has also supported increased penalties for auditors including in the most extreme cases imprisonment if those auditors chose not to report malfeasance, criminal misconduct and conduct similar to that. The ALP also supported auditor rotation and extending whistle-blower protections to registered organisations including unions and the private sector.

17. The ALP has also committed to looking at empowering the current Commonwealth statutory agency, the Australian Securities and Investments Commission, which examines the conduct of directors of corporations, to broaden its powers in order for them to examine and investigate serious contraventions by registered organisations officers, including unions.

18. The ALP has also recommended increased transparency in all elections and has called on the Turnbull Government to reduce the disclosure threshold from $13,000 to $1,000.

RECOMMENDATION

19. It is recommended that you **note** the contents of this brief that the Royal Commission into Trade Union corruption and governance has made a number of recommendations regarding the imposition or increase of civil and criminal penalties in response to matters raised during the Royal Commission.

Tony James
A/Deputy Director-General
Office of Industrial Relations 15 /01/2016

☐ Approved	☐ Not approved	☑ Noted
Comments		
HON. GRACE GRACE MP Minister for Employment and Industrial Relations Minister for Racing Minister for Multicultural Affairs		
18/1/2016		

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ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND CORRUPTION

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
CHAPTER 2: REGULATION OF UNIONS				
1	Commonwealth and State governments give consideration to adopting a national approach to the registration, deregistration and regulation of employee and employer organisations, with a single regulator overseeing all such organisations throughout Australia.	The Commission identifies an overarching issue affecting the regulation of unions as the existence of multiple State and Commonwealth regulatory regimes. (para 7) This complexity is illustrated with reference to the case study of the NUW, New South Wales Branch (para 9) The Commission foresees a considerably reduced role for many State-registered organisations with a federal counterpart in representing the industrial interests of members (especially from 1 January 2019)(para 12). Provides only limited recognition of the ongoing role of unions in representing workers in the State industrial relations systems. The Commission identifies issues of administrative complexity and inefficiency arising from dual registration but does not suggest that this has been related to problems with governance and corruption.	Currently FW Act allows for recognition of state-registered industrial organisations. Transitional recognition expires on 1 January 2017, although it can be extended by up to two years in certain circumstances. State-registered organisations can apply for permanent recognition as a 'recognised State-registered association' but only if they do not have a 'federal counterpart'.	The recent review of Queensland industrial relations laws and tribunals by the Industrial Relations Legislation Review Reference Group (Qld IR Review) recommended that the reporting, accountability and training requirements for State system registered industrial organisations be consistent with the reporting, accountability and training requirements in the (existing) FW(RO) Act. Harmonising the registration, deregistration and regulation of employee and employer organisations would address some of the problems of administrative complexity raised by the Commission and identified in the Qld IR review. The Commission states a preference for the referral of powers to allow the Commonwealth to regulate all trade unions. However, arguably the Commission understates the importance of industrial organisations in representing the interests of their members employed in the State industrial relations systems i.e state public servants and most local governments. Harmonisation of regulation would allow the concerns raised by the Commission to be addressed while allowing for the engagement of industrial parties in State industrial systems (governed by separate legislation and tribunals).

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2	State governments give consideration to the recommendations concerning the *Fair Work (Registered Organisations) Act 2009 (Cth)* with a view to implementing, where appropriate, those recommendations in State legislation governing State-registered organisations.	The Report of the Commission focuses on the governance and regulation of organisations registered under the FW (RO) Act but notes that "many of the recommendations have equal force and application to the regulation of State-registered organisations". The Commission also notes that "... apart from perhaps the Industrial Relations Act 1999 (Qld), the FW(RO) Act is the most comprehensive". (para 21)	The former LNP Government passed the *Industrial Relations (Transparency and Accountability) and other Legislation Amendment Act 2013* which introduced significant measures for the regulation of industrial organisations, with particular emphasis on employee organisations. The recent review by the Queensland IR Review challenged the efficacy of many of the measures. It recommended that employer and employee organisations be treated equally and that the reporting, accountability and training requirements for State system registered industrial organisations be consistent with the reporting, accountability and training requirements in the (existing) FW(RO) Act.	The Commission final report was released after the finalisation of the Queensland IR Review and report. The focus of the recommendations in the Queensland IR Review report were on equal treatment of employer and employee organisations; and simplifying and streamlining reporting arrangements for industrial organisations to eliminate unnecessary red tape and duplication. The Queensland Government in considering the recommendations of the Qld IR Review will need to consider which of the recommendations of the Commission are appropriate to include in any change to the State IR legislation.
3	All regulatory functions of the General Manager of the Fair Work Commission and the Fair Work Commission insofar as they apply to registered organisations under the *Fair Work (Registered Organisations) Act 2009 (Cth)* be transferred to a new Registered Organisations Commission. The Registered Organisations Commission should be an independent stand-alone regulator. The structure of the Australian Securities and Investments Commission may provide a useful legislative model.	Reasons given why the FWC is not the appropriate body to manage the regulatory regime are: • there is no connection between administrative and regulatory functions of GM of FWC; • there is confusion about role of FWC which is essentially adjudicative; • as regulation of ROs is only one of other tasks may be given lesser priority (which occurred prior to high profile cases); • conduct of inquiries and investigations costly and resource intensive - requires separate budget; • regulation of ROs requires expertise and therefore dedicated staff; • appointments to the FWC are regularly claimed to be biased. The current position whereby the President may give the General Manager a direction, including a direction in relation to a	The proposal for separate Registered Organisations Commission in Federal Registered Organisations Bill has been voted down by the federal Parliament 3 times. The Fair Work (Registered Organisations) Amendment Bill 2014 [No 2] (Cth) was last defeated in the Senate on 17 August 2015. The Bill is based on the policy document 'Better Transparency and Accountability of Registered Organisations'. That document proposes that the "first head of the Registered Organisations Commission will be appointed by the Minister but will not be subject to Ministerial direction". The federal government has committed to pursue the current proposed changes to ROs and to incorporate some recommendations from the Commission.	There is not a strong argument for the requirement of a separate Registered Organisations Commission. This is noted by the Royal Commission itself; and made by the Commonwealth Opposition with its proposed regulatory model detailed in its 'Fact Sheet: Better Union Governance'. The Opposition supports the General Manager of the Fair Work Commission (FWC) retaining the role as the regulator, with ASIC having the power to investigate serious contraventions of the FW (RO) Act. It is not clear that the current arrangement does not have the necessary focus, expertise and resources to undertake the tasks required. A case could be made for increased resources if these are currently lacking. The proposed Registered Organisations Commission raises additional concerns

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		particular case, is accordingly not appropriate. The regulator should be free of the suggestion of political bias.(paras 34- 39) The Commission accepts that a good argument against a separate body is that the registration of ROs would remain with FWC meaning that there would be 2 bodies involved in the regulation of ROs. The Commission does not support transferring responsibility to ASIC.		about possible politicisation of appointments to the role of regulator.
4	The Commonwealth government ensure that the registered organisations regulator is properly resourced to carry out its functions, with a separate budget for which it is accountable.	Subsequent recommendations refer to the generic registered organisations regulator, rather than the Registered Organisations Commission. This is to emphasise that the subsequent recommendations are not dependent on the acceptance of Recommendation 3. (para 48)	The federal government proposal is that "[T]he cost associated with establishing the Registered Organisations Commission will be met from the associated savings derived from abolishing the existing registered organisations compliance component of the Fair Work Commission". The Commonwealth Opposition proposal provides an additional $4.5 million over four years to monitor ROs.	Adequate resourcing is critically important to ensuring appropriate monitoring and compliance activities are able to be undertaken.
5	Sections 330 and 331 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to allow the registered organisations regulator to make inquiries and conduct investigations as to whether criminal offences contrary to the *Fair Work (Registered Organisations) Act 2009 (Cth)* have occurred. The meaning of the 'rules of a reporting unit relating to its finances or financial administration' be clarified to include any rules concerning officers or employees that may have a direct or indirect effect on the finances or financial administration of a reporting unit.	Recommendations 5.6 and 7 are related. The current powers of the GM in relation to conducting investigations and inquiries are set out in Part 4 Chapter 11 of the FW (RO) Act. The Commission considers these powers are confined in a number of significant respects: • limited investigative powers - to specific provision of the FW(RO) Act, no general power to inspect books and cannot seize books and documents;	Currently under the FW(RO) Act (s336), the GM may take action themselves, apply to the Federal Court for an order or 'take other action' (which includes referring the matter to the DPP, the AFP or State police). Chapter 12 Part 11 Division 5 of the IR Act deals with the Registrar's audit and investigation powers. Chapter 12 Part 15A deals with 'complaints, investigations and the appointment of an administrator'. Under the IR Act, there are similar powers for the Registrar to conduct investigations with similar limitations. However, the Registrar must report results of any	While The Commission has set out why current powers of GM are insufficient, it neglects to provide its examination of the efficacy of the other actions that the GM can take in addressing irregularities. The proposal for the GM of the FWC to retain role as the regulator with ASIC having the power to investigate serious contraventions of the FW (RO) Act provides a sensible middle ground. The retention of the GMs current powers to conduct investigations and inquiries would preserve the ability for the regulator to work with ROs to resolve minor compliance issues. However, the GM will be able to share information with

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		• the FW(RO) creates a broad immunity in relation to books and documents provided; • limited enforcement powers particularly in relation to individuals (para 51 - 57); • GM cannot seek an 'enforceable undertaking'. ASIC has the power to accept an 'enforceable undertaking' from a person in relation to any of ASIC's powers or functions. Breach of the undertaking allows ASIC to apply to a Court for immediate relief. These recommendations increase powers of the regulator to investigate and attain information from individuals. The Commission argues that currently the FW(RO) Act particularly limits actions in respect of individuals and that the application of ASIC type provisions would increase enforcement powers.	investigation to the Chief Executive of the relevant Govt Dept including any suspected offence and whether it should be referred to the Police.	ASIC and ASIC would have the power to investigate serious contraventions of the FW (RO) Act. The proposal also allows for a separation of powers and reduces the risk of political interference. The possibility for political appointments to a separate RO commission would create heightened concerns about increased and potentially unfettered powers. The Queensland IR Review makes recommendations regarding the appropriate arrangements for monitoring registered organisations (10.5). The Queensland IR Review has recommended the removal of the power of the Chief executive to refer potential criminal matters in favour of the Registrar having such power (as is the case in other jurisdictions). The Commonwealth Opposition has indicated that it supports empowering ASIC to investigate serious contraventions by officers of registered industrial organisations. The Commonwealth Opposition proposal supports the GM of the FWC to retain role as the regulator, with its current powers to conduct investigations and inquiries. This is considered to preserve the ability for the regulator to work with ROs to resolve minor compliance issues. However, the GM will be able to share information with ASIC and ASIC would have the power to investigate serious contraventions of the FW (RO) Act.
6	The registered organisations regulator have information-gathering and investigative powers similar to those conferred on the Australian Securities and Investments Commission. In particular, the registered organisations regulator be given a general power to inspect the books and records of an organisation for the purpose of ensuring compliance with the *Fair Work (Registered Organisations) Act 2009 (Cth)*.		The Fair Work (Registered Organisations) Amendment Bill 2014 [No 2] (Cth) provided for information-gathering and investigatory powers to be given to the proposed Registered Organisations Commission based on the powers conferred on ASIC under Part 3 of the Australian Securities and Investments Commission Act *2001 (Cth)*. These powers include being able to inspect books and seek warrants to seize books and documents.	
7	Amendments be made to the *Fair Work (Registered Organisations) Act 2009 (Cth)* to amplify the existing enforcement powers of the registered organisations regulator. In particular: (a) ss 336(1) and 336(2)(a) be amended to clarify that the registered organisations regulator may take action in relation to breaches of rules by persons other than a reporting unit; and (b) the registered organisations regulator have a power to accept an enforceable undertaking.			

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				The ACTU has strongly opposed the regulator having powers similar to ASIC
8	Section 154D of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be repealed and replaced with a statutory provision requiring: (a) all members of the committee of management of an organisation or branch, and all officers whose duties relate to the financial management of the organisation or branch, to undertake approved training; and (b) the Secretary of an organisation or branch to ensure that employees of the organisation or branch involved with the finances or financial administration of the organisation or branch complete approved training. The registered organisations regulator's power to conduct inquiries and investigations should include contraventions of this statutory provision. Contravention by a person of the statutory obligations should entitle the registered organisation regulator to disqualify the person from acting as an officer of an organisation or branch for a period of up to two years.	The Commission supports the intent of s 154D but notes some limitations: • it imposes no direct obligation. It only creates a requirement as to the content of the rules. The General Manager's powers to enforce the rules are limited. • it does not apply to any employees of the union. As the case study concerning the NUW, New South Wales Branch illustrates, employees of an organisation can have a significant degree of control over union finances. • it is not clear that s 154D applies to all members of the committee of management of an organisation or branch. The Commission does not suggest penalties for breach but rather that failure to comply should lead to the disqualification of the person and/or of the Secretary of the organisation.	S 553B of the IR Act provides specifically that each of an organisations financial officers be required to undertake financial management training. Financial management officer is defined broadly as an officer who holds an office that includes performing functions or exercising powers relating to the organisation's financial management. The maximum penalty is 40 penalty units.	The report of the Queensland IR Review draws attention to the need to recognise the qualifications and experience of the financial management officer and where that may exceed that of the training being provided. Additionally, the Queensland IR Review notes the importance of applying the obligation for financial management training appropriately (i.e. not to apply to those local or sub-branch officers whose roles do not involve management of affairs of the organisation or control of finances).
9	Section 141(1)(ca) of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be repealed. A new civil penalty provision be introduced requiring organisations and branches to adopt, in accordance with their rules, policies binding on all officers and employees concerning financial management and accountability. The required policies should include policies concerning financial decision-making, receipting of money, levels of authorisation of expenditure, credit cards, procurement, hospitality and gifts, the establishment, operation and governance of related entities	The Commission supported the intent of s 141(1)(ca) but considered it had limited effectiveness. The Commission considered that the law in Queensland provides a useful comparison to the FW(RO) Act. Section 553A of the Industrial Relations Act 1999 (Qld) imposes a statutory obligation on Queensland-registered organisations to have a policy, complying with the requirements prescribed in regulations, in relation to a number of specific topics. (para 78) Breach of the obligation is an offence carrying a maximum penalty of 85 penalty units	Chapter 12 Part 12 deals with Finances and Accountability' of registered industrial organisations. Section 553A of the Industrial Relations Act 1999 (Qld) was introduced under the LNP Government. The provision requires an organisation to have particular financial policies (financial decision-making, receipting of money, authorisation of expenditure and associated delegations, travel and accommodation, credit cards, procurement, hospitality, gifts, and the governance of related entities, and complaint management.	The Queensland IR Review emphasises the importance of promoting democratic control and good governance, through genuine accountability to members and timely and relevant reporting, however, notes the submissions from parties that this must be balanced with ensuring the administrative burden, compliance costs and complexity are reduced. Further, the Queensland IR Review considered there should be equal treatment i.e. employee organisations should not be burdened beyond the requirements that otherwise apply to employer organisations. To this

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	and any other matter prescribed by regulations. Organisations or branches should be required to review their policies every four years and to lodge a copy of their current policies with the registered organisations regulator.	(currently equivalent to $10,013). (para 79) The Commission, having regard to the importance of organisations adopting proper financial policies, recommended that the Queensland legislative model be adopted and adapted to organisations and branches or organisations registered under the FW(RO) Act. (para 80). The Commission considered that adoption of the 'Queensland Model' would ensure that organisations have proper financial management policies in place and that they are adhered to. The Commission considers that contravention should attract a civil penalty, rather than be a criminal offence.	S557U requires these policies be referenced in the Annual financial disclosure, including when the policy was last reviewed. Breach of the obligation is an offence carrying a maximum penalty of 85 penalty units (currently equivalent to $10,013). S570A provides that the Industrial Registry investigates and monitors compliance with the requirements of Chapter 12 Part 12	end the Queensland IR Review found some measures introduced by the former LNP Government (e.g., the publication of credit card statement by employee organisations only) do not meet this standard and are ineffective. The Queensland IR Review has recommended reporting, accountability and training requirements be consistent with the Fair Work (Registered Organisations) Act 2009 (FWRO Act) It is noted that the Queensland IR Review made its recommendations prior to the release of the TURC recommendations,
10	A new division dealing with financial disclosures by 'reporting units' to their members be introduced to Part 3 of Chapter 8 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* to replace and strengthen existing provisions concerning financial disclosure. The regime would require 'reporting units' to lodge audited financial disclosure statements with the registered organisations regulator on discrete topics, including: (a) loans, grants and donations by the reporting unit; (b) remuneration of officers and (c) credit card expenditure. Civil penalties should apply to reporting units that fail to comply with their obligations under the regime. Further, civil penalties should also apply to officers who knowingly or recklessly make a false statement in a financial disclosure statement.	The Commission saw increasing the disclosure of financial information to members and the public as an important means to improving financial accountability. It provides the example of the New South Wales branch of the NUW, where had it been known that hundreds of thousands of dollars were being spent annually on credit cards, it may have prompted more questions to be asked. (para 81) The Commission sees the problems of the current provision being that the requirements for disclosure are too loose and that financial records of unions are complex and it can be easy to 'bury' information in such reports. The Commission sees the legislation in Queensland as providing a useful	Division 2A of Part 12 of Chapter 12 of the Industrial Relations Act 1999 (Qld) deals with Financial Registers. The LNP Government amended this section to include requirements to maintain particular registers, some of which are only applicable to employee associations (e.g. credit card and cab charge statements). S570A provides that the Industrial Registry investigates and monitors compliance with the requirements of Chapter 12 Part 12 The proposed model includes a requirement that financial disclosure statements include statements in relation to loans, grants and donations, remuneration of the highest paid officers and credit card and charge card	The application of the disclosure requirements only to employee organisations was singled out for criticism by the Queensland IR Review. The Industrial Registry is charged with a duty to monitor compliance with the various disclosure and reporting requirements. The monitoring of the credit card statements of industrial organisations is a very time and resource intensive exercise. The benefit of which may need to be measured against the alternative of ensuring effective audit procedures. In Qld, the proposal to declare remuneration and credit card expenditure drew considerable criticism from employer organisations and is the subject

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11	Officers with responsibility for ensuring compliance by a reporting unit with its financial obligations under the *Fair Work (Registered Organisations) Act 2009 (Cth)* be subject to civil penalties if they fail to take all reasonable steps to ensure the reporting unit complies with its financial obligations.	comparison. Division 2A of Part 12 of Chapter 12 of the *Industrial Relations Act 1999 (Qld)* requires Queensland registered industrial organisations to keep a number of 'registers'. (para 94) The Commission recommends that a self-contained financial disclosure regime be introduced to the FW(RO) Act as a new division of Part 3 of chapter 8. (para 97) To ensure members have easy access to this information, the financial disclosure statements should be publicly available on the Regulator's website. (para 101) As is currently the position in relation to s 237, failure to lodge the financial disclosure statements within the prescribed period should be a civil penalty provision. Civil penalties should also apply to designated officers who knowingly or recklessly make a false statement in a financial disclosure statement. (para 98) Recommendations 11 and 12 are related. The Commission identified that a particular problem in the case studies concerning the HSU and the NUW was the lack of any officer at the union, other than the Secretary, who was responsible for ensuring that the finances of the union were being managed in accordance with the law and the rules and policies of the union. (para 102)	expenditure of officers (including the credit card statements themselves). In Qld, the requirement to provide details of credit card expenditure including credit card statements applies only to trade unions and not other industrial organisations. Under the Corporations Act, corporations are obliged only to provide annual financial reports. No disclosure of remuneration, credit card expenditure etc. is required.	of such commentary in the IR Review report (Chapter 10)
12	All reporting units be required to appoint a financial compliance officer with responsibility for ensuring compliance by the reporting unit with its financial obligations under the *Fair Work (Registered Organisations) Act 2009*	The Commission considers that proper internal compliance and financial controls are critical to preventing corruption and misappropriation of funds.	There is no obligation under the IR Act for the appointment of a finance compliance officer however Chapter 12 Part 12 Division 3 – s558 provides obligations regarding the appointment of an auditor	The role of financial compliance officer would appear to hold a considerable level of responsibility and be subject to considerable personal liability. It may well be that in small organisations where such

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	(Cth), regulations and reporting guidelines and the reporting unit's financial policies and rules concerning finances. The financial compliance officer must be separate and independent from the Secretary. The compliance officer be subject to a statutory obligation to report any reasonably suspected breaches to the committee of management.	Given the varying sizes of registered organisations and the fact that some organisations are run largely by volunteers, it is not appropriate to mandate legislatively any minimum qualification or training, or that the person holding office be an employed officer. (para 107) The object of this proposal is to ensure that there is at least one officer of the reporting unit in addition to, and sufficiently independent of, the Secretary who is aware of and responsible for financial management. The Commission consider that it is critical that the financial compliance officer be different from the Secretary to avoid a repeat of the situation that arose in the operation of the HSU and the NUW, New South Wales branch whereby the Secretary was effectively solely in charge of the finances. (para 108)	to inspect and audit the organisations accounts and report. Part 2M.3, Divisions 1-2 of the Corporations Act require company Directors, and the chief executive officers and chief financial officers of listed companies, to sign declarations that the annual and mid-year financial reports represent a true and fair view of the company's financial state at the time.	positions are generally filled by volunteers it may be difficult to get people to continue to fill those positions.
13	Auditors of reporting units be required to be registered with the registered organisations regulator. A person be entitled to be registered if the person is either: (a) a registered company auditor or (b) if the registered organisations regulator is satisfied that the person has the required accounting qualifications and is a fit and proper person. The registered organisations regulator be empowered to suspend or cancel registration if satisfied that the person is (a) not a fit and proper person; or	The Commission notes that the failure of the auditors to detect the substantial misappropriation of funds in the HSU Vic No 3 Branch and the NUW, New South Wales branch raises a number of questions about the efficacy of the existing system (para 110). The Commission notes the current lack of stringent auditor independence requirements in the FW(RO) Act. The Commission considers the option of requiring that all auditors be registered company auditors (as required by ASIC)	Section 558 of the IR Act requires that a 'competent person' be appointed as an auditor. A competent person is defined as a person who is— (a) a registered company auditor under the Corporations Act, section 9, definition registered company auditor; and (b) not an officer or a member of the organisation; and (c) not employed by the organisation, other than as its auditor.	Although the Commission notes that the increased demand for registered auditors may increase the costs of compliance for organisations, the Queensland Industrial Registry has not identified any compliance issues with relation to s 558. The Commonwealth Opposition has proposed that auditors of reporting units should be registered with the FWC or be a registered auditor.

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	(b)has failed to comply with the duties of an auditor under the *Fair Work (Registered Organisations) Act 2009 (Cth)*.	but notes that this may increase the cost of compliance for organisations. The Commission considers that the registered organisations regulator should have a power to prevent inappropriate persons from auditing reporting units (for example persons who are not fit and proper or have failed to carry out the duties of an auditor (para 118)		
14	In order to improve auditor independence: (a)The definition of 'excluded auditor' be expanded to include a broad class of individuals who may lack independence including any person in a 'conflict of interest situation'. (b)The auditor rotation requirements of the *Corporations Act 2001 (Cth)* be applied to auditors of all reporting units.	The Commission also noted the auditor rotation requirements in the Corporations Act which are intended to promote greater auditor independence. On balance, it is recommended that the existing auditor rotation requirements for listed companies be applied to all reporting units, irrespective of size. (para 127)	The IR Act does not include provisions for auditor rotation.	
15	The existing civil penalty provisions for contraventions by auditors be retained. However, the maximum penalty for an individual be increased from 60 penalty units to 200 penalty units, with the maximum penalty for a body corporate being 1,000 penalty units.	The Commission notes that, in terms of monetary penalties, the existing penalties under the FW(RO) Act are *higher* than those under the Corporations Act *2001 (Cth)*. Further, because the penalties under the FW(RO) Act are civil penalties rather than criminal offences they are easier to obtain in court. Accordingly, The Commission does not recommended that the existing civil penalties under the FW(RO) Act be made into criminal offences. The Commission notes that its reason for the recommended increase is that the existing penalties appear to have had little effect on encouraging auditors to perform their functions. Further, a maximum fine of $10,800 for an auditor is, objectively, very low. The Commission states that	Under ss 561-562 of the IR Act, an auditor must not be knowingly false or misleading and must notify registrar of contravention. The maximum penalty is 40 penalty units.	The Commonwealth Opposition has announced its support for increased penalties for auditors. In particular, if they chose not to report malfeasance, criminal misconduct and conduct similar to that. The Federal Opposition also supports auditor rotation and extending whistle-blower protections to registered organisations including unions and the private sector.

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		consideration should be given to increasing the penalties under the Corporations Act *2001 (Cth)*. (para 131)		
16	A new civil penalty provision be introduced to the *Fair Work (Registered Organisations) Act 2009 (Cth)* requiring organisations and branches to make and keep minutes recording the proceedings and resolutions of committee of management meetings. Documents and papers that are necessary to refer to in order to understand the effect of the minutes also be kept. The documents be retained for a minimum of 7 years. The minutes and associated documents be available upon request by members of the organisation free of charge.	The Commission noted that although registered organisations are required to keep a number of records, including its membership register and financial records for a minimum period of seven years, there is no requirement in relation to the keeping of minutes. Nor is there any requirement in s 141 of the FW(RO) Act that the rules of an organisation must require minute books to be kept. (para 133) The Commission also noted that a theme to emerge from the Commission's inquiries, particularly in relation to the HSU and the NSW Branch of the Electrical Trades Union (ETU) was that few minutes were kept and there was little consistency in relation to witness accounts of what occurred at key meetings.	Section 251A of the Corporations Act requires the keeping of minutes of proceedings and resolutions of members and directors, whether or not they stem from a meeting. Section 251B requires that these records be made available to members free of charge. No provisions exist in relation to meeting minutes in the IR Act. Section 567 & 568 provide the requirement for Auditors to be advised of and have the option to attend general meetings.	This is properly an operational matter which may be best provided for in the rules of the organisations.
17	The obligation to keep financial records in s 252 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to be made a civil penalty provision.	Currently, s 252 of the FW(RO) Act requires reporting units to keep certain financial records for a minimum period of seven years. However, there are no consequences for a reporting unit that fails to comply with these obligations. (para 145)	Section 557H of the IR Act requires that financial registers be kept for a period of 7 years. The maximum penalty is 40 penalty units ($4,712).	This would bring the FW(RO) Act roughly in line with Queensland legislation, depending on the penalty adopted in the legislation. The Queensland IR Review has recommended penalties for breaches of financial accountability obligations be increased from 40 penalty units to 100 units.
18	The categories of persons who can make a protected disclosure under s 337A(a) of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be expanded to include: (a)a former officer, employee or member of an organisation or branch; and	The Commission considers that a substantial impediment to preventing corruption in many unions is the culture of intimidation and bullying that exists in relation to whistle blowers. Those who report corruption and illegality are ruthlessly vilified and attacked.	Part 4A of Chap 11 of the FW(RO) Act provides for the protection of whistle blowers. Currently, the list of persons who may make a protected disclosure is restricted to officers, employees or members of an organisation or branch.	The Commonwealth Opposition has proposed to extend the existing protections so that whistleblowers will be protected from adverse action if they disclose 'to any third party (including the media), as long as they first raised the

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	(b) a person contracting for the supply of goods or services, or otherwise dealing with an organisation or branch of an organisation (or an officer or employee of an organisation or branch on behalf of the organisation or branch); and (c) an officer of employee of a person mentioned in (b).	The Commission believes the current provisions are deficient because: • the class of persons who can make a protected disclosure is too narrow; • the person entitled to receive a disclosure should be broadened; • penalties are too low.	No provisions are made for protected disclosure in the IR Act. Under the *Public Interest Disclosure Act 2010,* persons who are not employees of public agencies may make public interest disclosures. However, breaches of industrial legislation are not captured by the provisions of the PID Act.	matter with one of the Fair Work Regulators and the union itself'.
19	The *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to require the regulatory authorities entitled to receive a protected disclosure to investigate the disclosure within a specified period.	A particular issue about which the Commission received conflicting submissions is whether State or Federal police officers should be entitled to receive a protected disclosure, or at least some protected disclosures. (paragraph 165) The Australia Labor Party has announced that, in relation to registered organisations, it proposes to extend the existing protections so that whistleblowers will be protected from adverse action if they disclose 'to any third party (including the media), as long as they first raised the matter with one of the Fair Work Regulators and the union itself. The Commission considers that to limit whistleblower protections to situations where the whistleblower is first required to notify the union would deprive the whistleblower provisions of any real value. (paragraph 171)		
20	Section 337C of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be repealed and replaced with a provision in similar terms to s 19 of the *Public Interest Disclosure Act 2013 (Cth)* prohibiting reprisal action against whistleblowers. This would lead to an increase in the existing maximum penalty for reprisal to	There are a number of defects with the existing remedies available for adverse action taken against whistleblowers. (paragraph 175) First, despite submissions to the contrary from the Ai Group and Master Builders	The current provisions in the FW(RO) Act provide for a fine of up to 25 penalty units ($4,500), imprisonment for up to six months, or both. Adopting the recommendation would increase the maximum fine to $21,600.	The Commonwealth Opposition has announced its support for extending whistleblower protections to registered industrial organisations.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	two years' imprisonment, or a fine of 120 penalty units, or both.	Australia, the criminal penalties for breach of s 337C are too low. The Australian Labor Party has proposed to increase the penalties under the FW(RO) Act to match the penalties available under the Public Interest Disclosure Act 2013 (Cth) (paragraph 176)	The Queensland PID Act provides for fines of up to 167 penalty units ($19,672.60), imprisonment for up to two years, or both. Similar provisions to the Public Interest Disclosure Act 2013 also exist in Queensland for public officers. Section 42 provides that reprisal is an indictable office under the Whistleblowers Protection Act 1994. Maximum penalty is 167 penalty unit or 2 years imprisonment. S337C protects employees from victimisation subject to their making a disclosure (i.e. whistle-blower disclosure).	
21	The definition of 'prescribed offence' in s 212 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended so that a person convicted of an offence against s 337C is automatically disqualified from holding office in an organisation or branch.	The offence under s 337C of the FW(RO) Act (and also the *Corporations Act 2001 (Cth)*) is considerably narrower in scope than the offence of taking or threatening reprisal action under the *Public Interest Disclosure Act 2013 (Cth)*. Section 337C should be replaced with the broader offence of taking or threating reprisal action.	No comparable provisions exist in Queensland legislation. Disqualifications from candidature or holding office are at Chapter 12 Part 9 (s 516 – 519) of the IR Act; a disqualifying offence is defined at s514 but does not include that type of victimisation offence. Section 52 of the Queensland PID Act allows the QIRC or Supreme Court to make an injunction requiring an offender to take any action stated in the injunction in order to rectify harm suffered. This would include an apology or reinstatement.	
22	Provisions similar to ss 15 and 16 of the *Public Interest Disclosure Act 2013 (Cth)* be enacted to enable a whistleblower who is the victim of reprisal action to obtain a mandatory	Through a complex set of provisions of the FW Act, a person whose employment was terminated as a result of making a protected disclosure may be entitled to seek a remedy under the general	Section 52 of the Queensland PID Act allows the QIRC or Supreme Court to make an injunction requiring an offender to take any action stated in the injunction in order to rectify harm suffered. This	The Commonwealth Opposition has announced its support for extending whistleblower protections to registered industrial organisations. This would presumably include extending the

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	injunction, an apology or an order of reinstatement to employment.	provisions of the FW Act concerning 'adverse action', including reinstatement. However, it is recommended to put the issue beyond any doubt. (paragraph 179)	would include an apology or reinstatement. The provisions of Chapter 4 of the IR Act provide a similar remedy for persons who have been terminated, disadvantaged or injured by their employer (including an industrial organisation) for making a complaint to a regulator or complying with an ongoing investigation.	injunction and reinstatement provisions of the Commonwealth PID Act to whistleblowers from industrial organisations.
23	Section 190 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to prohibit an organisation or branch using, or allowing to be used, its property or resources to help a candidate in an election for office in any registered organisation or branch. This recommendation is reflected in the model legislative provisions in Appendix 1 of Volume 5 of the Report.	The ability of a union Secretary to promote his or her own personal causes through the use of union funds – for example, by carrying on defamation proceedings against a challenger, donating funds to a faction in another union, or by donating funds to a political party – is another matter which can contribute to corruption and anti-democratic outcomes within unions. (paragraph 180) As currently drafted, it is unclear whether s 190 prohibits the use of organisational funds in that organisation's elections, or in those of any other organisation.	Section 491 of the IR Act contains a similar prohibition.	The legislative fix proposed may not be effective as it may be circumvented by setting up a different type of entity separate to the political process to hide a transaction. See also recommendations 42 and 44.
24	No recommendation is made to repeal ss 182(2), 183–186 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* at this time. On the assumption that those sections remain, that Act be amended to require an organisation or branch that has an exemption under s 186 to lodge a report with the registered organisations regulator after the completion of an election conducted pursuant to the exemption. The report should include details about how the election was conducted, whether any complaints were received and how those complaints have been addressed.	If the exemption in s 186 is to remain it is desirable that the FW(RO) Act be amended to require an organisation or branch that has been granted an exemption to lodge a report with the Registered Organisations Commission, similar to the report required to be lodged by the Australian Electoral Commission under s 197. This will at least ensure that there is some oversight of elections conducted by organisations and branches.	Section 182 of the FW(RO) Act requires each election for an office in an organisation or branch to be conducted by the Australian Electoral Commission, unless an exemption is in force under ss 182(2), 183 and 186. Pursuant to s 186 of the FW(RO) Act an organisation may apply to the General Manager for an exemption. Section 600 of the IR Act requires an organisation or branch with an exemption from conduct of an election by the Electoral Commission of Queensland to notify the Registrar within 14 days of the result of the election being known.	Queensland CFMEU whistleblower Stuart Vaccaneo raised the issue of how unions dealt with complaints about the conduct of election when there was an exemption in place. This matter has since been resolved by the FWC revoking an exemption granted to the CFMEU as a result of the issues raised at the royal commission. The decision was appealed by the CFMEU but was upheld by a full bench of the FWC (12/1/16).

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
CHAPTER 3: REGULATION OF UNION OFFICIALS				
25	The definition of 'office' in s 9 of *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to include, in addition: (a) an office of financial compliance officer of the organisation or branch; (b) an office of a person who makes, or participates in making, decisions that affect the whole or a substantial part, of the organisation or branch; (c) an office of a person who has the capacity to affect significantly the financial standing of the organisation or branch; and (d) an office of a person in accordance with whose instructions or wishes (d)the members of the committee of management of the organisation or branch are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the organisation or branch).	It is important to capture in the definition of 'office' those senior employees who ... have management roles and decision-making responsibilities ... and thus to ensure that they are also held to the same levels of accountability as elected officers. (para 47)	Section 9 of the Corporations Act specifies certain positions (e.g. Director or Secretary), but also encompasses any person: (a) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or (b) who has the capacity to affect significantly the corporation's financial standing; or (c) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation). At s409 of the IR Act, officer is defined as "an officer of an organisation, branch or applicant for registration means a person who holds an office in the organisation or branch or in the applicant association or corporation".	This broadens the definition currently existing in the FW(RO) Act to include all (or nearly all) persons who typically make decisions affecting the industrial, financial or political actions of the organisation. The Queensland IR review noted that the current definition of officer in the IR Act captured a large number of positions in industrial organisations and that this did not reflect the intent of the legislation and recommended that the definition be truncated.
26	Section 283 of *Fair Work (Registered Organisations) Act 2009 (Cth)* be repealed to align the statutory duties of officers of registered organisations with their general law duties.	The Commission does not consider s 283 to serve any legitimate purpose. (para 56) Conduct by officers which may have no direct relation to the financial management of the organisation may have a very significant effect on its financial position. (para 60) Conduct by officers which has no relation to the financial management of the union may be such an egregious breach of	Section 283 of the FW(RO) Act currently limits the application of statutory duties under the Act to decisions relating to financial management of the organisation. No equivalent to s 283 exists in the IR Act however Officers' duties are prescribed at Chapter 12 - Division 3 (ss526 – 530) and require an officer to observe a duty of honesty, good faith and proper purpose, and with diligence and reasonable care. Significant penalties apply (3091 penalty	Adopting this recommendation will significantly increase the number of day-to-day decisions to which the statutory duties in the Act apply. The Commonwealth Opposition has endorsed this approach in broad terms (to the extent that it aligns the FW(RO) Act and the Corporations Act).

LAW REFORM RECOMMENDATIONS		Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
		fiduciary duty that there is a public interest in the officer being liable to pay a penalty so as to deter future wrongdoing. (para 61)	units - $340,000 and/or 5 years imprisonment).	
27	Section 286(1)(a) of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended by inserting the words 'honestly and reasonably' before the word 'believes'.	[Balancing] the need to avoid a purely subjective standard at the same [time] as recognising the difficulties of a court imposing what it thinks to be in the best interests of the organisation is to require the officer's belief to be held honestly and reasonably. (para 75)	Section 527 of the IR Act requires officers to act: (a)honestly; and (b)in good faith in the best interests of the organisation. S 528 imposes a duty of care and diligence.	This is an objective standard equivalent to that in the Corporations Act.
28	The civil penalties for contravention of ss 285-288 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be substantially increased. A distinction should be drawn between a 'serious contravention' and other contraventions. The maximum penalty for a 'serious contravention' should be 1,200 penalty units (currently $216,000) with no penalty for a contravention that is not a 'serious contravention'. No distinction should be drawn between paid officers and volunteers. 'Serious contravention' should be defined as proposed in the *Fair Work (Registered Organisations) Amendment Bill 2014 [No 2] (Cth).* Consideration should also be given to amending the *Corporations Act 2001 (Cth)* to specify the maximum penalty for breaches of directors' duties by reference to 1,200 penalty units rather than the fixed amount of $200,000.	Put shortly, the existing civil penalties under the FW(RO) Act for breaches of ss 285-288 of the FW(RO) Act are manifestly inadequate to act as an effective deterrent. They are manifestly inadequate to protect members of organisations from improper conduct by officers. They are manifestly inadequate to mark society's disapproval of the conduct concerned. They are utterly derisory. They should be increased. It must be remembered that the present suggestion is only that the maximum possible penalty be increased. The amount of penalty actually awarded in each case will be determined by a court after close consideration of all relevant facts. (para 89)	The maximum penalty for breach of statutory duties under ss 527-528 of the IR Act is five years imprisonment or 3,091 penalty units (currently $340,010). The maximum penalty under s 1317G(1) of the Corporations Act is $200,000. It is worth noting that the Commission has recommended that the penalties be reformed to be expressed in terms of penalty units. The Corporations Act maximum penalty is 2000 Penalty Units ($360,000) or five years imprisonment. The recent FW(RO) Amendment Bill contained provisions which would increase the maximum penalties to the recommended amounts.	The Commonwealth Opposition has stated its support for "civil penalties that are akin to those penalties that apply to corporations." However, it should be noted that it does not support the application of those penalties to officers serving in a voluntary capacity (for whom the existing penalty regime should be retained).
29	The *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended by introducing a new s 290A that imposes criminal liability on officers of registered organisations or branches who dishonestly or recklessly breach the statutory duties imposed on them by ss 286-288 of the	A further important difference between the duties under the FW(RO) Act and the *Corporations Act 2001 (Cth)* relates to the sanctions for breach of these duties. Unlike the position under s 184 of the *Corporations Act 2001 (Cth)*, there are no	The maximum penalty for an officer who is convicted of an offence under s 184 of the Corporations Act is five years imprisonment or 2,000 penalty units ($360,000) or both.	The Commonwealth Opposition has stated its intention to double the existing criminal penalties in the FW(RO) Act. However, it has made no mention of broadening the number of offences to which criminal liability applies.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	Fair Work Registered Organisations Act 2009 (Cth). The section be modelled principally on s 184 of the *Corporations Act 2001 (Cth)*, except that the reference in s 184(1) to 'intentionally dishonest' should be replaced by 'dishonest'. The maximum penalty should be the same as that under the *Corporations Act 2001 (Cth)*, being 2,000 penalty units ($360,000) or five years' imprisonment, or both.	provisions in the FW(RO) Act that make dishonest or reckless breaches of ss 286, 287 or 288 of the FW(RO) Act a criminal offence. (para 112)	The IR Act at Section 527 of the IR Act requires officers to act: (c) honestly; and (d)in good faith in the best interests of the organisation. S 528 imposes a duty of care and diligence. The maximum penalty for breach of statutory duties under ss 527-528 of the IR Act is five years imprisonment or 3,091 penalty units (currently $340,010).	The penalty for breach of duty under the IR Act is similar to that under the Corporations Act.
30	New s 293A be introduced to the *Fair Work (Registered Organisations) Act 2009 (Cth)* prohibiting an organisation or a branch of an organisation (or any related entity of the organisation or branch including any State registered organisation or branch) from indemnifying, paying or reimbursing an officer of the organisation or branch for any fine or civil penalty imposed on the officer for conduct in connection with the organisation or branch. The provision may usefully be based on ss 199A-199C of the *Corporations Act 2001 (Cth)*. Contravention should be a criminal offence of strict liability. An organisation that contravenes the provision should be subject to a maximum penalty of 500 penalty units ($90,000) and every officer involved in a contravention should be subject to a maximum penalty of 100 penalty units ($18,000). Consideration should be given to reviewing the penalties under ss 199A and 199B of the *Corporations Act 2001 (Cth)*.	If an officer of a registered organisation subject to a civil penalty for contravention of a provision of the FW Act or the FW(RO) Act can have the benefit of an indemnity, the deterrent effect of the penalty is substantially lessened if not extinguished. Similarly, if an official fined for contempt is indemnified by the union no consequences are felt personally by the official. More generally, members' funds should not be used, whether directly or indirectly, to pay for breaches of the law by union officials. (para 138)	The relevant provisions of the Corporations Act prohibit the indemnification of officers or auditors of a company for liability for pecuniary penalties or for liability to third parties arising from bad-faith conduct. The IR Act does not address indemnity or reimbursement of civil penalties applied to individual members of organisations.	The Commonwealth Opposition has endorsed this approach in broad terms (to the extent that it aligns the FW(RO) Act and the Corporations Act).
31	Section 148B of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be repealed and replaced with a civil penalty regime that, broadly speaking, requires officers of	The disclosure obligations are broader in the FW(RO) Act than in the Corporations Act. Disclosure must be made to both the organisation and its members. Office	Section 529 of the IR Act requires disclosure of material personal interests (of any officer). The maximum penalty is 3,091 penalty units or five years	Adopting this recommendation would require redrafting of the current version of the FW(RO) Amendment Bill, which limits disclosure duty to officers having

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	registered organisations and branches of registered organisations to disclose material personal interests that they, or their relatives, have or acquire in relation to the affairs of the organisation or branch. Key features of a suggested regime are set out in the body of the report. Consideration should also be given to increasing the penalty for contravention of s 191 of the *Corporations Act 2001 (Cth)*.	holders are required to disclose interests of family members. The requirements are undermined by ineffective enforcement mechanisms. (para 143) Suggested regime set out in paras 148(a)-(e).	imprisonment. Chapter 12, Part 9 Divisions 4-5 mandate a set of 'standing disclosures' Notably, the Commission found that the penalties in the FW(RO) Amendment Bill were excessive, and has recommended that they be reduced to 100 penalty units (significantly lower than those incurred under the IR Act). Section 529 of the IR Act requires disclosure of material personal interests (of any officer). Significant penalties apply (3091 penalty units – 5 years imprisonment). s530D requires an officer to file a statement of interests within one month of election. Penalty 85 penalty units.	financial management responsibilities and contains exceptions based on the Corporations Act. Disclosure of relatives' interests is also not required. The Queensland IR Review considered submissions and accepted that the provisions relating to the statement of material interests did not have the 'right balance' between achieving transparency and respecting an individual's privacy. The provision captures persons the Qld IR Review considered to be beyond what is required.
32	A provision similar to s 195 of the *Corporations Act 2001 (Cth)* be introduced to the Fair Work (Registered Organisations) Act 2009 that, in broad terms, prevents officers of an organisation or branch who have a disclosable material interest in a matter from being present during any deliberation, or being involved in any decision, about the matter. The provision should be a civil penalty provision with a maximum penalty of 100 penalty units.	Section 195(1) of the Corporations Act seeks to protect the members of a public company by seeking to ensure that those directors who have a potential relevant conflict of interest in a matter are not involved in decision-making. The same rationale applies in respect of employer and employee organisations. (para 150)	The recommendation mirrors the contents of the FW(RO) Amendment Bill in everything except the proposed penalties. The Commission considers the Bill's proposal of a maximum 1,200 penalty units to be excessive, hence the recommendation of a lower maximum. s529 of the IR Act provides for officers with material personal interest and their dealing with financial management or procurement activities, wherein the officer must provide a disclosure notice and is prohibited from voting or being present during discussions in some circumstances. Significant penalties apply (3091 penalty units – 5 years imprisonment).	To the extent that it mirrors the requirements and penalties of the Corporations Act, the Commonwealth Opposition appears to support this recommendation.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
33	New provisions, modelled on ss 236-242 of the *Corporations Act 2001 (Cth)*, be introduced to the *Fair Work (Registered Organisations) Act 2009 (Cth)* allowing a current or former member or current or former officer of a registered organisation or branch of the organisation to apply to a State Supreme Court or the Federal Court for leave to bring, or intervene in, a proceeding on behalf of a registered organisation.	[M]embers of registered organisations have extremely limited avenues of recovering from the organisation compensation for breaches of officers' duties. The absence of a mechanism by which members can take action on behalf of a registered organisation has an undesirable consequence ... that even if a powerful officer of an organisation (for example, the secretary) may breach his or her duty to the registered organisation, no action may be taken against that officer, either at all or not until a long time after the conduct occurred when it will be more difficult to establish what occurred. (para 155)	No comparable provision exists in Chapter 14 of the IR Act.	The Commonwealth Opposition has not indicated its position on this recommendation.
34	The provisions in Part 3 of Chapter 9 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* (ss 297-303A) concerning breach of orders be amended to include orders made by the Federal Circuit Court.	[T] he provisions [of Chapter 9, Part 3 of the FW(RO) Act] ... do not capture orders made by the Federal Circuit Court, which is empowered to grant a variety of orders under the FW Act. (para 165)	This will allow the relevant provisions of the FW(RO) Act to operate as originally intended.	This is a technical recommendation for closing an unanticipated loophole.
35	The maximum penalty for breach of the provisions in Part 3 of Chapter 9 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* concerning breach of court orders by officers and employees of registered organisations or branches be increased to 1,200 penalty units.	It is fundamental to Australia's legal system that court orders be obeyed. The obvious purpose of Part 3 of Chapter 9 of the FW (RO) Act is to penalise officers and employees who fail to obey court orders, and to deter future breaches. (para 166)	The current maximum penalty for individuals (set out in s 306(1) of the FW(RO) Act) is 60 penalty units.	This would align the penalties for non-compliance with the recommendations for penalties elsewhere in the report.
36	The definition of 'prescribed offence' in s 212 of the *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to include an offence under a law of the Commonwealth, a State or Territory, or another country, which is punishable on conviction by a maximum penalty of imprisonment for life or 5 years or more.	[T]he list of prescribed offences is relatively narrow, with the result that officers of registered organisations who have committed significant criminal offences can still continue to hold office. For example, the definition of 'prescribed offence' does not include: (a) contempt of court or other administration of justice offences; (b) the offence of trespass to land or any other offences relating to entry onto premises;	Sections 212-213A and 215 of the FW(RO) Act automatically disqualify persons from holding office in a registered organisation convicted of offences: (a) involving fraud or dishonesty; (b) related to elections for organisational office; (c) related to the formation, registration, or management of an organisation; or (d) involving intentional violence or destruction of property.	There appears to be little issue with the drafting of these provisions. Neither the Queensland IR Review nor the Inquiry into the Workplace Relations Framework by the Productivity Commission found fault with the existing legislation. The Brooklyn on Brooks case study, however, demonstrates that officers can suffer very little effective penalty from offences not included in the current provisions, and consequently may give them scant regard.

LAW REFORM RECOMMENDATIONS		Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
		(c) indictable offences not involving dishonesty, for example the cartel provisions in the *Competition and Consumer Act* (2010) (Cth) or obstructing a Commonwealth public official under s 149.1 of the *Criminal Code* (Cth); or (d) blackmail or extortion offences under State law, which do not necessarily involve fraud or dishonesty. (para 173)	Under ss 514-15 and 517-18 of the IR Act, a person is disqualified from seeking or holding office in an industrial organisation if they have been convicted of an offence: (a) against an Act or a law of the State or another jurisdiction, involving fraud or dishonesty punishable ... by imprisonment for 3 months or more; or (b) against this chapter involving a failure to keep ballot records, comply with a direction or give information or documents for an election or ballot; or (c) against section 492 [obstructing an election], 627 [interfering with an amalgamation or withdrawal ballot], 656 or 657 [falsely obtaining or wrongfully using an organisation's property]; or (d) involving the formation, registration or management of an association, corporation or organisation; or (e) that is a violent offence [i.e. involving intentional violence, or causing death, injury or destruction of property].	The Commonwealth Opposition has not stated its position on this issue.
37	The *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to make it a criminal offence for a person who is disqualified from holding office in a registered organisation to continue to hold an office. The offence should be an offence of strict liability with a maximum penalty of 100 penalty units or imprisonment for two years, or both.	One obvious lacuna in the current provisions in the FW(RO) Act is that there is no prescribed consequence for a person who continues in an office after disqualification. (para 171)	Section 206A of the Corporations Act makes it an offence for any person disqualified from acting as a Director to be involved in the decision-making process within a company. The current maximum penalty is 50 penalty units, imprisonment for a year, or both. However, the Commission has informally recommended that this be increased to match the recommended penalty for officers of registered organisations. Under ss 514-15 and 517-18 of the IR Act, a person is disqualified from seeking or holding office in an industrial organisation if they have been convicted of an offence,	The Commonwealth Opposition has endorsed this approach in broad terms (to the extent that it aligns the FW(RO) Act and the Corporations Act).

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
			subject to certain exemptions (e.g. 5 years has elapsed since the conviction or release from prison. Section 518 of the IR Act automatically removes a person convicted of a disqualifying offence from office 28 days after their conviction (unless leave to continue holding office is granted).	
38	The *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended by inserting a new provision giving the Federal Court jurisdiction, upon the application of the registered organisations regulator, to disqualify a person from holding any office in a registered organisation for a period of time the court considers appropriate. The court should be permitted to make such an order if: (a)the person: i. has, or has been found to have, contravened a civil remedy provision of the *Fair Work Act 2009 (Cth)*, or a civil penalty provision of the *Fair Work (Registered Organisations) Act 2009 (Cth)* or the Work Health and Safety Act 2011 (Cth); ii. has been found liable for contempt; iii. has been at least twice an officer of a registered organisation that has, (c)or has been found to have, contravened a provision of the *Fair Work Act 2009 (Cth)* or the *Fair Work (Registered Organisations) Act 2009 (Cth)* or has been found liable for contempt while the person was an officer and each time the person failed to take reasonable steps to prevent the contravention or the contempt;	Subject to specific situations where the registered organisations regulator should be entitled to disqualify an officer because of certain easily verifiable objective matters, it is preferable that the power to ban be conferred on a court. (para 189)	This mirrors the powers conferred on ASIC by ss 206C – 206EEA of the Corporations Act. No comparable power exists under the IR Act.	The Commonwealth Opposition has endorsed this approach in broad terms (to the extent that it aligns the FW(RO) Act and the Corporations Act).

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	iv. has, or has been found to have, at least twice contravened a provision (d)of the *Fair Work Act 2009 (Cth)* or the *Fair Work (Registered Organisations) Act 2009 (Cth)*; or v. is otherwise not a fit and proper person to hold office within a (e)registered organisation or branch; and (b)the Court is satisfied that the disqualification is justified.			
	CHAPTER 4: CORRUPTING BENEFITS			
39	The *Fair Work (Registered Organisations) Act 2009 (Cth)* be amended to require reporting units to lodge an audited financial disclosure statement (see Recommendation 10) providing details in respect of (a)loans, grants and donations (including in-kind donations) made to reporting units in excess of $1,000; and (b)other payments made to reporting units in excess of $10,000.	Union representatives would be less likely to suggest or promise that industrial unrest or some other adverse consequence would be averted if a 'donation' is made to the union if they know that such donations must be included in statements of the organisation that might be scrutinised by a third party. Clients and contractors would be more likely to resist inappropriate demands for payments if they know that such payments will come to the attention of a regulatory body. (para 44) [T]he obvious difficulty with any proposal to limit disclosure to donations only is that, as various case studies considered by the Commission demonstrate, unions and employers have a proclivity to disguise what are truly donations as membership payments ... or payments for services that are never provided or that are provided at an inflated price or that are undesired. (para 50)	The Qld IR Act provides for the maintenance, publication and inspection of financial registers for gifts and benefits, political spending, credut and cab charges (union only), loans, grants and donations (s557A-s557I). The Act also provides (s557j-557Z) for the filing of mid- year and annual financial statements that include reference to those registers, as well as all spending for political purposes and political party affiliation fees.	The Commonwealth Opposition's Better Union Governance policy supports greater transparency for union election funding (e.g. reducing the anonymous donation threshold to $50 and the reportable threshold to $1,000 – see below). However, it has not indicated a position on reporting of donations outside of the context of an election.
40	Legislation be enacted amending the *Fair Work Act 2009 (Cth)* to include a provision criminalising the giving or receiving of corrupting benefits in relation to officers of	Given the widely varying State criminal laws concerning secret commissions, and the potential complexities identified with applying those laws to officers of	The giving and receipt of secret commissions is prohibited by sch 1, ss 442B-C of the *Criminal Code Act 1899*. The maximum penalty under the Criminal	While the Commonwealth Opposition has indicated support for increased civil penalties for paid officers (see above), it

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	registered organisations, with a maximum term of imprisonment of ten years.	registered organisations, it is recommended that the Federal Parliament enact a standalone corrupting benefits provision in the *Fair Work Act* 2009 *(Cth)* ... The provision would ensure that there is a uniform, clear and relatively simple regime applying throughout Australia. (para 54) What penalty for contravention would act as an effective deterrent? Having regard to the size of some of the companies involved in making corrupting payments, it would have to be substantial. (para 55)	Code is seven years imprisonment (or 3,400 penalty units, for a corporation). No provisions exist in the IR Act specifically criminalising particular types of payments to employee organisations by employers. State criminal laws vary significantly. The Commission has identified that case law in Victoria and Queensland is currently opposed to NSW and Western Australia with regard to the meaning of 'corruptly'. Any proposed legislation should avoid the term. This recommendation is reflected in the model legislative provisions in Appendix 1 to Volume 5 of the Report.	has not indicated a position on additional criminal penalties.
41	Legislation be enacted amending the *Fair Work Act 2009 (Cth)* making it a criminal offence for an employer to provide, offer or promise to provide any payment or benefit to an employee organisation or its officials. Certain legitimate categories of payment should be permitted, subject to strict safeguards. An equivalent criminal offence should apply to any person soliciting, receiving or agreeing to receive a prohibited payment or benefit. A two year maximum term of imprisonment should apply to the commission of these offences.	Seeking simply to prohibit payments made or received with a particular intention has consequent difficulties of investigation and proof. Instead it is recommended that, subject to certain exceptions, all payments by employers to a relevant union or officials of that union be outlawed. (para 60) It is recommended that the prohibition be a criminal offence, albeit with a lower penalty than the corrupting benefits offence. ... The prohibition on employer payments would not require any proof of an intention to bribe. Accordingly, a lower penalty is appropriate. (para 62)		
CHAPTER 5: REGULATION OF RELEVANT ENTITIES				
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	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. (paragraph 7) One problem revealed by the financial reports considered during the course of public hearings was that many were not	Mid Year and annual financial disclosure reporting is dealt with at Chapter 12 Part 12 of the IR Act however these do not extend to an organisations' controlled entities.	The Commonwealth Opposition has not stated a position on this issue.

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	to repealing s 148C of the *Fair Work (Registered Organisations) Act 2009 (Cth)*.	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. (paragraph 10)		
43	The *Fair Work Act 2009 (Cth)* be amended to prohibit any term of a modern award, enterprise agreement or contract of employment permitting an employer to deduct, or requiring an employee to pay, from an employee's salary an amount to be paid towards an election fund.	The Commission examined a number of election funds in a range of unions throughout 2014 and 2015. In 2014, Chapter 4 of the Interim Report was devoted to seven different election funds in a range of unions. (paragraph 18) The election fund operated in connection with the NUW NSW Branch12 provides a useful example of the problems. (paragraph 21)	Section 71NE of the IR Act permits certified agreements to cover "the employment relationship." It does not specifically address whether this could include payments to election funds. However, s 391A prohibits payroll deductions for membership of industrial organisations. In light of this, it is extremely unlikely that election fund deductions would currently be permitted. Importantly, the QUEENSLAND IR REVIEW has recommended that s 391A be repealed.	While the Commonwealth Opposition has not advocated the banning of industrial agreement terms requiring or allowing payments to election funds, it is worth noting that disclosure of the number, sum and sources of such donations would be required under its proposal. The Queensland IR Review has recommended that the ban on payroll deductions be lifted.
44	Provisions be introduced into the *Fair Work (Registered Organisations) Act 2009 (Cth)* concerning the registration of election funds in relation to elections for office in registered organisations or their branches. In order to be registered, election funds should be required to meet certain minimum governance standards, operate a separate bank account for election donations and expenditures, and report annually in relation to the operation of that account. Unregistered election funds should not be permitted to receive election donations or make electoral expenditures in connection with elections for office in any registered organisation or branch.	Not all of these requirements are appropriate in respect of elections for officers in registered organisations. On the present evidence, there is no obvious need for caps on the amounts of donations and expenditures. However, some of the measures, with adaptations, would assist in tackling the various issues identified above. (paragraph 35)	Until relatively recently, Part 11 of the *Electoral Act 1992* contained detailed election funding laws, but these were substantially repealed under the former Government. Chapter 12, Parts 4 of the IR Act contains detailed requirements for the rules governing the conduct of elections, but does not impose requirements relating to electoral funds.	The Commonwealth Opposition has stated that it will require "[a]ny entity, however constituted, associated with candidates" to disclose the total annual value of its debts, receipts and payments, and to disclose particulars of debts and donations over $1,000. However, it has not indicated a position on registration of election funds, or on additional governance arrangements applying to registered funds.

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	This recommendation is reflected in model legislative provisions in Appendix 1 to Volume 5 of the Report.			
45	Legislation, either standalone or amending the *Corporations Act 2001 (Cth)*, be enacted dealing comprehensively with the governance, financial reporting and financial disclosures required by worker entitlement funds. The legislation should provide for registration of worker entitlement funds with the Australian Securities and Investments Commission, and contain a prohibition on any person carrying on or operating an unregistered worker entitlement fund above a certain minimum number of persons. Key recommended features of the legislative scheme are explained at paragraphs 93 and 95 of Volume 5, Chapter 5 of the Report.	There is no requirement on worker entitlement funds to disclose the commissions and other payments made by the fund to unions and employer organisations. There is no required disclosure of the amounts deducted by the funds by way of fees and charges. There is no requirement to explain to workers the circumstances in which they will, or will not, be entitled to a payment from the fund. (para 64) Further, there is no statutory requirement on worker entitlement funds to provide annual reports or accounts to persons with an interest in the fund. (para 65) The BERT case study illustrates the potential for worker entitlement funds under current law to give preferential treatment to union members over non-union members with the aim of generating union membership. (para 66) [A]lthough ... worker entitlement funds are not permitted to distribute income to persons other than to the employers who make contributions and the employees on whose behalf those contributions are made, many 'approved worker entitlement funds' avoid this limitation in practice. (para 73)	ASIC Class Order [CO 02/314] exempts workers' entitlement funds from sections of the Corporations Act, including: (a) the requirement to hold an Australian Financial Services Licence; (b) capital and audit requirements; (c) requirements to ensure that Directors are competent, and of good character; (d) prohibitions on selling certain types of financial products; and (e) the requirement to provide a Product Disclosure Statement to persons considering joining a fund. The class order is due to terminate on 1 October 2016. Recently, ASIC released a consultation paper indicating that it proposed to remake Class Order [CO 02/314] to extend its relief until 1 October 2017 pending the release of this Final Report.	These funds receive contributions from employers as set out in industrial agreements, and provide benefits to workers when certain conditions are met. For example, in Queensland the Building Employees Redundancy Trust (BERT) and Building Employees Welfare Trust (BEWT) provide: • redundancy payments; • training grants; • a suicide prevention program; • counselling payments; • financial planning; • dental benefits; and • funeral benefits. The cessation of the Class Order would impose additional requirements on entitlement funds. This would be unlikely to affect the functioning of BERT and BEWT in any significant way, but could affect the viability of smaller funds.
46	In consequence of the enactment of the legislation recommended by Recommendation 45, Class Order [CO 02/314] not be extended. In further consequence, s 58PB of the *Fringe Benefits Tax Assessment Act 1986 (Cth)* be repealed and the fringe benefits tax exemption in s 58PA(a) be amended to refer to registered worker entitlement funds.		Section 58PA of the *Fringe Benefits Tax Assessment Act 1986* provides that an employer contribution will be exempt from fringe benefits tax if the contribution is made to an 'approved worker entitlement fund'. Approval is granted by the Commissioner of Taxation subject to basic governance requirements being met, and the uses of a fund's income being limited by its constituting documents.	The proposed reform of The FBT Assessment Act will remove the current situation where entitlement funds are only indirectly regulated. It is not recommended that this be supported in the absence of support for recommendation 45, as this would remove all governance requirements from entitlement funds.
47	Amendments be made to Chapter 7 of the *Corporations Act 2001 (Cth)*, or relevant regulations, requiring specific disclosure by registered organisations of the direct and indirect pecuniary benefits obtained by them	[T]he significant issue exposed by the evidence is that the unions involved in the income protection insurance schemes examined by the Commission often received very substantial commissions	Chapter 7 of the Corporations Act imposes requirements on employee insurance providers, particularly with regard to the provision of financial advice and managed investment schemes.	Worker entitlement funds (such as BERT) commonly receive payments from employers under industrial agreements for the provision of insurance to employees. The insurance is usually

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	in connection with employee insurance products. The detail and mechanism should be a matter of consultation. In broad terms, the provisions should require: (a) a branch of a registered organisation, and an officer of a branch of a registered organisation, (b) that arranges or promotes a particular insurance product providing cover for employees of an employer, or refers an employer to a person who arranges or provides such a product (whether in enterprise bargaining or otherwise), (c) to disclose in writing to the employer in no more than two pages the nature and quantum of all direct and indirect pecuniary benefits that the branch or any related entity receives or expects to receive, or which are available only to the branch's members, from the issuer of the product, or any arranger or promoter, or any related entity.	that were not disclosed properly, if at all, to the participants (both employers and employees) involved in the schemes. (paragraph 98)	As is the case in relation to worker entitlement funds, there is a class order, [CO 08/1], exempting group purchasing bodies from this regulation provided that: (a) the provider is independent of the recipient and received no financial benefit for providing insurance; or (b) arranging insurance was incidental to a more significant relationship between the provider and the recipient; and (c) any payments to be received by the provider from the insurer or the recipient are disclosed to the recipient prior to the provision of any financial service.	provided by an insurance firm as a policy covering all employees declared by participating employers.
CHAPTER 6: ENTERPRISE AGREEMENTS				
48	The *Fair Work Act 2009 (Cth)* be amended to require an organisation that is a bargaining representative to disclose all financial benefits, whether direct or indirect, that would or could reasonably be expected to be derived by the organisation, an officer of the organisation or a related entity as a direct or indirect consequence of the operation of the terms of a proposed enterprise agreement. A short, simple and clear disclosure document should be provided to all employees before they vote for an enterprise agreement.	The income that flows to unions from the operation of these terms has several potential consequences, including: (a) actual or potential conflict of interest, or breaches of fiduciary duty by union officials; (b) potentially inducing a union to engage in coercive conduct to compel employers to contribute to a fund from which the union derives a benefit; and (c) diminishing competition among providers of financial services to workers. Disclosure is a basic first step to avoid conflicts of interest.		The Commonwealth Opposition has not indicated its position on any proposed reform of the enterprise bargaining process. This recommendation echoes one of the 2003 Cole Royal Commission, though the recommendation was not reflected in the *Building and Construction Industry Improvement Act 2005*.
49	Section 194 of the *Fair Work Act 2009 (Cth)* be amended to make unlawful any term of an enterprise agreement requiring or permitting contributions for the benefit of an employee to be made to any fund (other than a		The IR Act currently allows industrial instruments to specify approved superannuation funds for employer contributions, but does not otherwise	

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	superannuation fund) providing for, or for the payment of, employee entitlements, training or welfare unless the fund is: (a)a registered worker entitlement fund (see Recommendation 45); or (b)a registered charity.		address the issue of employer contributions to benefit funds or charities.	
50	A new civil remedy provision be added to the *Fair Work Act 2009 (Cth)* prohibiting a person from organising or taking (or threatening to organise or take) any action, other than protected industrial action, with intent to coerce an employer to pay amounts to a particular employee benefit fund, superannuation fund or employee insurance scheme.	It is questionable whether action taken outside an enterprise bargaining process, for example, as part of seeking to come to a 'side deal' between employer and union, would be caught by the current provisions.	Section 343 of the FW Act currently prohibits action done with an intent to coerce a person to exercise a 'workplace right' in a particular way. This includes the process of making an enterprise agreement. Section 185 of the IR Act currently only prohibits industrial action for the purpose of coercing a party to make, amend, extend or terminate an agreement. It is silent on the subject of benefit funds.	The Commission has not established that there is a significant problem with unions coercing contributions to particular funds outside of the enterprise bargaining process. This recommendation appears to have been included on the basis of a single submission (the AiG).
51	Sections 32C(6), (6A), (6B), (7) and (8) of the *Superannuation Guarantee (Administration) Act 1992 (Cth)* be repealed, and all other necessary amendments be adopted to ensure all employees have freedom of choice of superannuation fund.	Employees in Australia are generally entitled to choose their superannuation fund. Under collective agreements, however, employees do not always have a choice. This gives rise to the potential for coercive conduct and conflicts of interest. The TWU Super and LUCRF case studies (detailed in the Interim Report) provide examples of this.	Sections 32C(6)-(8) of the *Superannuation Guarantee (Administration) Act 1992* currently permit the restriction of employees' freedom of choice by industrial instruments. The Final Report of the Financial System Inquiry recommended that the provisions of s 32C, and others that deny employees the ability to have a choice of fund, be repealed. The Government has supported this recommendation.	The Commission has adopted an ideological position on this matter, leaving the burden of proof with parties advocating for restriction of choice. However, the consistency with the overall policy of both the Government and Opposition makes this a valid approach. The fact that only two submissions spoke out in favour of restriction shows that this is not an area in which the union movement sees a need to expend its energies.
CHAPTER 7: COMPETITION ISSUES				
52	The *Competition and Consumer Act 2010 (Cth)* be amended so that the penalties for breaches of ss 45D, 45DB, 45E and 45EA are the same as those that apply to other provisions of Part IV of that Act.	The Boral and Universal Cranes case studies (in the Interim Report) raised a number of issues concerning the scope and effectiveness of the current provisions preventing secondary boycotts and conduct that indirectly leads to a secondary boycott, being ss 45D and 45E	Section 45DC prohibits action being taken against individual officers of an incorporated organisation for breaches. The Competition Policy Review has recommended the inclusion of a new offence of concerted practice for the purpose, or with the effect or likely effect,	The Competition Policy Review stated in its final report that there was no reason for the penalties for breaches of ss 45D-E to be any lower than for other breaches of competition law. The Productivity Commission investigated the matter during its Inquiry into the

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		of the *Competition and Consumer Act 2010 (Cth)* respectively. (paragraph 5)	of reducing competition into the Competition and Consumer Act. This would be a civil offence, rather than a criminal offence (as cartel conduct is). The Review also recommended extensive reforms to the current cartel provisions in order to reduce confusion regarding their operation.	Workplace Relations Framework. However, it did not recommend any changes to penalties, instead considering that the key issue for enforcement agencies was obtaining sufficient evidence to allow a successful prosecution. The Queensland Government did not support the industry specific regulation of workplace issues (in the construction industry) as recommended in that PC report
53	The *Competition and Consumer Act 2010 (Cth)* be amended to clarify that to prove the existence of an arrangement or understanding, it is not necessary to establish that there be communication between each of the parties to the arrangement or understanding, merely that they hold the same understanding.			
54	Sections 45D(1)(b), 45DA(1)(b) and 45DB(1) of the *Competition and Consumer Act 2010 (Cth)* be amended to provide that those sections are contravened where the conduct is engaged in for the purpose, or would have or be likely to have the effect, of causing the consequence identified in those sections.			The Competition Policy Review came to the conclusion that the cartel provisions should operate in cases of collusion between ostensible competitors, not when the party engaging in 'cartel conduct' is not a participant in the market.
55	The *Competition and Consumer Act 2010 (Cth)* be amended to provide that a person in competition with the fourth person referred to in ss 45D or 45DA must not knowingly engage in supply or acquisition of services to or from any third persons referred to in those sections with knowledge of the contravention by the first and second persons without first notifying the Australian Competition and Consumer Commission. Contravention of the provision should be a civil penalty provision.	On one view, there is nothing wrong with competitors of a target taking advantage of the target's disadvantaged position caused by the boycott. Provided the target's competitors do nothing to encourage or facilitate the boycott, they should be at liberty to take advantage of their competitor's disadvantage. However, to require a competitor with knowledge of the existence of a boycott to notify the relevant regulator before trading brings clear investigative benefits. Additionally, the knowledge that the	Arguably, this type of conduct is already covered by s 75B of *the Competition and Consumer Act.* The section states that any reference in Part VI (enforcement and remedies) to a person in breach of the restrictive trade practices provisions in Part IV is taken to also refer to a person aiding, abetting or otherwise becoming a party to the contravention.	Adopting this recommendation will increase the amount of second-hand testimony available to the ACCC, but this may not solve the problem of securing testimony from the parties involved.

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		competitor must notify before there can be any supply or acquisition offers protection against any reprisals for reporting the conduct.		
56	The Australian Competition and Consumer Commission give consideration to whether its immunity policy in respect of the cartel provisions could usefully be extended to secondary boycott conduct and conduct indirectly leading to a secondary boycott.	It is not recommended that a general obligation to report secondary boycott activity be imposed because: (a) the obligation is likely to be ignored by persons already involved in the conduct (though an immunity provision may provide an incentive to comply); (b) imposing a penalty for non-disclosure on persons aware of, but not involved in, the conduct is disproportionate and unfair; and (c) competitors aware of a secondary boycott have already been addressed by the previous recommendation.	The ACCC Immunity and Cooperation Policy for Cartel Conduct allows individuals corporations to apply for immunity from civil prosecution in cases where: (a) the party admits that they are participating, or have participated, in conduct contrary to the relevant provisions; (b) the party has not coerced the participation of any other party; (c) the party indicates that they will cease their involvement in the cartel; (d) the party agrees to full disclosure and cooperation with the ABCC; (e) the party is the first to apply to the ABCC for immunity; and (f) the ABCC has not received legal advice that it has reasonable grounds to commence enforcement proceedings against the party for the relevant conduct. Immunity from criminal prosecution can be provided at the joint discretion of the ABCC and the Commonwealth Director of Public Prosecutions.	These issues have recently be reviewed by the Competition Policy review and the ACCA is considering the secondary boycott issue.
57	The building and construction industry regulator have concurrent power with the Australian Competition and Consumer Commission to investigate and enforce secondary boycott conduct, and conduct indirectly leading to a secondary boycott, in contravention of the *Competition and Consumer Act 2010 (Cth)*.	There is evidence that the building and construction industry requires more active regulation in relation to secondary boycotts, as it does in relation to many other instances of unlawful conduct. The ACCC does not appear to be well resourced to address secondary boycott	Violations of the Competition and Consumer Act are not currently captured within the functions of the Director of FWBC set out in s 10 of the FW(BI) Act, which refers only to 'building laws and the Building Code'.	This approach was recommended by the Productivity Commission Inquiry into the Workplace Relations Framework. The PC considered that, given its power to compel testimony (which is not shared by the ACCC), FWBC may have more success in obtaining sufficient evidence to allow a successful prosecution.

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58	The Australian Competition and Consumer Commission and the building and construction industry regulator report to the responsible Minister and publish the results of all complaints and investigations made concerning, and all proceedings to enforce, the secondary boycott provisions on an annual basis.	conduct. Much of the impediment appears to arise from there being very few reports of boycott conduct made to the ACCC, and difficulties in investigation. The ABCC would be well placed to deal with boycott conduct that occurs primarily in the building and construction industry, because of its specialist involvement in that industry, and because boycott conduct often involves, or is accompanied by, conduct that contravenes the FW Act and other related legislation that is not within the jurisdiction of the ACCC.	Section 45 of the *Fair Work (Building Industry) Act 2012* currently allows FWBC to apply to a presidential Member of the Administrative Appeals Tribunal for an examination notice. An examination notice may compel the production of information or documents, or attendance before the Director of FWBC to answer questions relating to an investigation. This section will cease operation on 1 June 2017.	The Queensland Government did not support the industry specific regulation of workplace issues (in the construction industry) as recommended in that PC report.
59	The *Competition and Consumer Act 2010 (Cth)* be amended to make explicit that: (a) an enterprise agreement under the *Fair Work Act 2009 (Cth)* is a contract, arrangement or understanding for the purposes of the *Competition and Consumer Act 2010 (Cth)*; and (b) an enterprise agreement that applies to an employer and an employee organisation under the *Fair Work Act 2009 (Cth)* is a contract, arrangement or understanding that an employer has with the organisation of employees for the purposes of s 45E of the *Competition and Consumer Act 2010 (Cth)*.	A great deal of that uncertainty has been created by the decision of the Federal Court that an enterprise agreement is not a contract, arrangement or understanding within the meaning of the Competition and Consumer Act, and therefore is not capable of offending s 45E of the Act. The simplest solution is simply to reverse the effect of the decision, and to amend the legislation.	Employment conditions and hours of work provisions in industrial agreements are exempt from the provisions of Part IV of the Competition and Consumer Act by s 51(2)(a) of the Act. Case law regarding this provision has added significant confusion, particularly the decision in *Australian Industry Group v Fair Work Australia* (2012) 205 FCR 339 that enterprise agreements are not a 'contract, arrangement or understanding' for the purposes of the Act, and cannot offend against the anti-competitive conduct provisions.	s 45E of the *Competition and Consumer Act 2010 (Cth)* deals with Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services. Submissions on this issue have focused almost entirely on provisions in EBAs restricting the use of labour hire firms, independent contractors and casual labour. The Competition Policy Review recommended that ss 45E and 45EA should be amended so that they expressly apply to awards and industrial agreements, except to the extent they deal with the remuneration, conditions of employment, hours of work or working conditions of employees. The Productivity Commission Inquiry into the Workplace Relations Framework considered the same issue, but concluded that it was better to amend s 194 of the FW Act to make provisions restricting the

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				use of alternative labour arrangements unlawful. Nonetheless, the Commission's reasoning that adopting this recommendation will clarify the interaction between competition and industrial law has merit.
CHAPTER 8: BUILDING AND CONSTRUCTION INDUSTRY				
60	For the purpose of seeking to combat the culture of disregard for the law within the Construction, Forestry, Mining and Energy Union, consideration be given to the enactment of special legislation disqualifying those officers of the Construction, Forestry, Mining and Energy Union that Parliament considers are not fit and proper persons from holding office in any registered organisation or branch for a specified period.	A great deal of the evidence before the Commission concerned the activities of unions with coverage of workers in the building and construction industry, and in particular the CFMEU. The conduct that has emerged discloses systemic corruption and unlawful conduct, including corrupt payments, physical and verbal violence, threats, intimidation, abuse of right of entry permits, secondary boycotts, breaches of fiduciary duty and contempt of court. Documents provided by FWBC and other parties show a record of such conduct on the part of various branches across Australia, and from senior officials down to organisers on the ground, stretching back to at least 1999. There is a longstanding malignancy or disease within the CFMEU. One way of combatting the disease would be to deregister the organisation. This is not recommended, on the grounds that: (a) the fault lies with the officers of the CFMEU, not its rank and file membership; (b) the deregistration process under the FW(RO) Act is both lengthy and costly; (c) if the CFMEU and Maritime Union of Australia proceed with their stated plan	Sections 212-213A and 215 of the FW(RO) Act automatically disqualify persons convicted of certain offences from holding office in a registered organisation (see recommendation 36, above). This disqualification lasts for five years in the absence of an order from the Federal Court setting out a reduced exclusion period. Under ss 514-15 and 517-18 of the IR Act, a person is disqualified from seeking or holding office in an industrial organisation if they have been convicted of an offence: (f) against an Act or a law of the State or another jurisdiction, involving fraud or dishonesty punishable ... by imprisonment for 3 months or more; or (g) against this chapter involving a failure to keep ballot records, comply with a direction or give information or documents for an election or ballot; or (h) against section 492 [obstructing an election], 627 [interfering with an amalgamation or withdrawal ballot], 656 or 657 [falsely obtaining or wrongfully using an organisation's property]; or (i) involving the formation, registration or management of an association, corporation or organisation; or	Any Bill along these lines would have to be very carefully drafted to ensure the appropriate persons were captured by its provisions while excluding all others. There is a particular danger that officers of other organisations may fall within the category of persons to be disqualified.

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		to amalgamate, deregistration proceedings will be forestalled as the CFMEU will cease to exist as a registered organisation. Any targeted action to combat the culture of the CFMEU should focus on the officials of the union.	(j) that is a violent offence [i.e. involving intentional violence, or causing death, injury or destruction of property]. The disqualification period lasts for five years, unless a court fixes a shorter period, and the disqualified person must apply to the Industrial Court for permission to stand for, or hold office.	
61	There should continue to be a building and construction industry regulator, separate from the Office of the Fair Work Ombudsman, with the role of investigating and enforcing the *Fair Work Act 2009 (Cth)* and other relevant industrial laws in connection with building industry participants.	Both major parties support the concept of a regulator with specific coverage of the building and construction industry. The areas of disagreement centre on its constitution (and independence from the FWC), jurisdiction and powers.	The Federal Government introduced the *Building and Construction Industry (Improving Productivity) Bill 2013* in November 2013. The Bill passed the House of Representatives but was rejected by the Senate on 17 August 2015	The Commonwealth Government has committed to the reintroduction of the ABCC as an election issue. The Opposition will not support the reintroduction of the ABCC. The Bill to re-introduce the ABCC has been rejected by the Commonwealth Parliament.
62	Legislation be enacted conferring the building and construction industry regulator with compulsory investigatory and information gathering powers equivalent to those possessed by other civil regulators. The powers set out in the *Building and Construction Industry (Improving Productivity) Bill 2013 (Cth)* appear appropriate in this regard.	The material available in relation to the degree of lawlessness in the building and construction industry and the material put forward in the submissions provide a strong case for the building industry regulator to have information gathering powers that are equal to those of other major statutory regulators.	Section 45 of the *Fair Work (Building Industry) Act 2012* currently allows FWBC to apply to a presidential Member of the Administrative Appeals Tribunal for an examination notice. An examination notice may compel the production of information or documents, or attendance before the Director of FWBC to answer questions relating to an investigation. This section will cease operation on 1 June 2017.	These regulations deal with the oversight of the regulator. Rec 63 proposes to shift oversight of the regulator from the AAT to the Commonwealth Ombudsman (reactive oversight). The decision to issue an examination notice may already be challenged under the *Administrative Decisions (Judicial Review) Act 1977*. The Oppositions has indicated it does not support a separate set of rules singling out construction workers.
63	There should be oversight by the Commonwealth Ombudsman of the powers exercised by the building and construction regulator in the manner provided for in the *Building and Construction Industry (Improving Productivity) Bill 2013 (Cth).*	An appropriate control for the exercise of compulsory examination powers is to continue oversight of the issue of notices by the Ombudsman. This is consistent with the position in relation to the powers of other regulators.		
64	Consideration be given to redrafting the use/derivative use immunity provisions in clauses 102 and 104 of the *Building and Construction Industry (Improving Productivity) Bill 2013 (Cth)* to provide protections equivalent to those available in relation to the	Cognate provisions in relation to the compulsory powers of ASIC and the ACCC limit the immunity conferred so that they apply only to the answers given or information provided in response to notices.	Section 68 of the *Australian Securities and Investments Commission Act 2001 (Cth)* makes statements and records provided to ASIC inadmissible in court proceedings (other than those alleging false statements or records) where the person	In comparison to the BCI(IP) Bill, adopting this recommendation would keep the powers of the ABCC comparable to those of other regulators.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	powers exercised by the Australian Securities and Investments Commission.		claims that the information provided may tend to incriminate them or make them liable for a civil penalty prior to providing the information. Section 155(7) of the Competition and Consumer Act automatically renders information obtained under the ACCC's compulsory powers inadmissible (except in proceedings relating to that section). Neither Act bestows derivative immunity (i.e. renders inadmissible information obtained as a result of information provided to the regulator).	
65	The building and construction industry regulator continue to investigate and enforce the *Fair Work Act 2009 (Cth)* and other existing designated building laws. The power of the building and construction industry regulator to commence and maintain enforcement proceedings should not be constrained according to whether any other proceedings in respect of the same conduct have been settled. Accordingly, ss 73 and 73A of the *Fair Work (Building Industry) Act 2012 (Cth)* should be repealed.	The building specific industrial laws proposed in the *Building and Construction Industry (Improving Productivity) Bill 2013 (Cth)* are very similar to those established by the FW Act. This suggests that rather than having separate legislation governing building industry participants, the provisions of the FW Act should apply to building industry participants, but that amendments to the FW Act are necessary to deter unlawful conduct within the building and construction industry.	The relevant sections prohibit FWBC from either joining or commencing court proceedings with regard to matters where the other parties have settled and notice has been given to the court discontinuing the action. No comparable limitation applies to Industrial Inspectors under the IR Act.	The Commission identifies value in uniform industrial laws. The case for industry-specific legislation appears to concentrate on the application of higher penalties to the building and construction industry. This has already been addressed by recommendations 28 (see above) and 66 (below). The Oppositions has indicated it does not support a separate set of rules singling out construction workers.
66	The *Fair Work Act 2009 (Cth)* be amended: (a)to increase the maximum penalties for contraventions of ss 343(1), 348 (a)and 355 (coercion) and ss 417(1) and 421(1) (prohibited industrial action) to 1,000 penalty units for a contravention by a body corporate and 200 penalty units otherwise; and (b)to provide that picketing by employees or employee associations is 'industrial action', and to deal specifically with the consequences of industrially motivated pickets.	It is apparent ... that the present penalties are an ineffective deterrent to unlawful conduct on the part of the construction unions, and judicial officers have noted that the CFMEU appears to regard financial penalties as simply a business cost like any other. Higher maximum penalties could not be considered disproportionate to the harm caused by unlawful industrial action and coercion, particularly when subject to the usual judicial discretion.	Sections 539 and 546(2) of the FW Act currently impose a maximum penalty of 60 penalty units ($10,800) for an individual, and 300 penalty units ($540,000) for a body corporate, for coercion or prohibited industrial action. Sections 182-183 of the IR Act impose maximum penalties of 27 penalty units ($3,180.60) for individuals and 135 penalty units ($15,903) for bodies corporate.	The Commonwealth Opposition has indicated its support for increasing the penalties applying to both individuals and organisations (see recommendation 28, above). However, in the absence of any comparable offences or penalties under the Corporations Act, it is difficult to discern its policy position.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
CHAPTER 9: RIGHTS OF ENTRY				
67	The civil penalties for contravention of Part 3-4 of the *Fair Work Act 2009 (Cth)* be increased. The maximum penalty be increased to 1,000 penalty units (currently $180,000). The maximum penalty for contravention of Part 7 of the Work Health and Safety Act 2011 (Cth) be set at $180,000. Consideration also be given to expressing penalties in the Work Health and Safety Act 2011 (Cth) in terms of penalty units rather than dollar amounts.	The existing law is not a sufficient deterrent to right-of-entry abuses. In particular, evidence exists that right-of-entry provisions under the *Work Health and Safety Act 2011* (WHS Act) are being used to apply industrial pressure and control worksites rather than to resolve safety concerns.	Currently an offence as an individual, a person conducting a business or undertaking (PCBU) or an officer is a maximum of 1000 penalty units or $100 000. The current penalty for contravening a WHS entry permit condition is 100 penalty units. The proposed penalty amount is consistent with the former *Building and Construction Industry Improvement Act* 2005 (Cth) for offences related to unlawful industrial action and to coercion related to enterprise agreements, superannuation and discrimination against an employer in relation to industrial instruments. This is the maximum penalty under the 2005 Act for a 'Grade A' civil penalty provision. In 2015, amendments to the *Work Health and Safety Act 2011* (Qld) reduced the maximum penalty amounts from 200 ($20,000) to 100 ($10,000) penalty units for breaches of the entry permit provisions. This reversed amendments made by the previous government in 2014. The argument for reversing the penalty amount was based on the view that the most effective way to manage right-of-entry abuses was not higher penalty amounts but the removal of the right-of-entry permit which prohibits a permit holder to undertake their official duties.	Due to the different nature of these offences their comparability in penalty levels is problematic. The suggested penalty increase means the penalty for contravening a WHS entry permit condition would exceed that of a category 3 offence (i.e. for a failure to comply with a health and safety duty by a PCBU or officer) under the Queensland WHS Act. In relation to the second part of the recommendation, the Queensland WHS Act already expresses penalties in penalty units rather than dollar amounts.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
			Under section 138 of the WHS Act, an application can be made to the QIRC to revoke a WHS entry permit by the regulator, PCBU or any other person affected by the exercise of the right-of-entry.	
68	Section 513 of the *Fair Work Act 2009 (Cth)* be amended to include additional permit qualification matters. The additional permit qualification matters are set out in the model legislative provisions in Appendix 1 to Volume 5 of the Report.	Section 513 of the FW Act omits numerous categories of conduct which are highly relevant to an assessment of whether a person is a fit and proper person to hold a permit. These include convictions for indictable offences not involving dishonesty, findings of contempt of court or breach of court or tribunal orders, convictions for offences for hindering or obstructing public officials in the performance of their functions, orders to pay damages or compensation and other matters. These additional permit qualifications aim to eliminate the various types of abusive conduct by union officials identified in the Inquiry.	An applicant for a WHS entry permit must hold or will hold an entry permit under the FW Act. Therefore the eligibility criteria for a WHS entry permit is contingent upon the applicant meeting the conditions imposed by the FW Act..	The eligibility criteria for a WHS entry permit is contingent upon the applicant meeting the conditions imposed by the FW Act in relation to whether the applicant has been convicted of offences under certain laws and other permit qualification matters. Recommendation 68 does not indicate that an amendment to the WHS Act is required to reflect the additional permit qualifications proposed.
69	A new provision be inserted into *Fair Work Act 2009 (Cth)* which requires permit holders to complete approved right of entry training annually in relation to the rights and responsibilities of permit holder. This recommendation is reflected in the model legislative provisions in Appendix 1 to Volume 5 of the Report.	Although 'appropriate training' is a permit qualification matter under section 513 of the FWA, there is no specification in relation to the content or frequency of such training. Judgements on right-of-entry abuses suggest that the existing training is inadequate in clarifying obligations of permit holders under the FW Act. Additional training for permit holders is likely to increase compliance with right of entry laws by increasing awareness of the relevant provisions, rights and obligations. The training be approved by the FWC to ensure satisfactory minimum standard of	The WHS Act (section 133) provides that a WHS entry permit cannot be issued unless the applicant has (amongst other things) satisfactorily completed the prescribed training. Prescribed training must cover certain elements such as WHS right of entry requirements and the relationship between the WHS Act, the WHS Regulation and the FW Act.	The origin of the prescribed training requirement (developed nationally) was that such training would enhance the ability of union officials to contribute to workplace consultation arrangements through advice to workers and assist in compliance activities through the investigation of suspected breaches under the Act. However, there is no requirement under the WHS Act to renew this training annually or to undertake the course again when applying to renew the WHS entry permit.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
		training that adequately addresses the rights and obligations of the permit holders.		The effect of recommendation 69 would mean that applicants for a WHS entry permit will be required to complete two sets of training, one to gain their entry permit under the FW Act and the other to complete the existing prescribed training under the WHS Act.
70	A new provision 512A be inserted into the *Fair Work Act 2009 (Cth)* which creates an obligation on both a registered organisation and an applicant for a right of entry permit to disclose the permit qualification matters. Significant penalties should be imposed for failing to comply with this section. This recommendation is reflected in the model legislative provisions in Appendix 1 to Volume 5 of the Report.	There is currently no penalty for failing to disclose a matter which the FWC must take into account under s 513 of the FW Act. There is a need for ongoing assessment of fitness and propriety. Permits are issued for three year periods. If permit qualification matters arise during that three year period which have the result that the person is not a fit and proper person to hold a permit, then there is no good reason that person should continue to hold a permit. Without an express obligation to disclose, practical difficulties in ensuring compliance arise. For example, in order for a prosecution of that offence to succeed, a prosecutor must demonstrate that the person knew that the matter ought to have been disclosed or was recklessly indifferent to that. A clear obligation to disclose avoids this potential complexity.	There is no provision in the WHS Act which requires the relevant union to report any matter affecting the eligibility of the WHS entry permit holder after the permit is issued unless the permit holder ceases to be an official of the union or the union ceases to be a registered organisation under the FW(RO) Act.	Since these recommendations only relate to the FW Act, no amendment to the WHS Act is proposed. However, the requirement to hold an entry permit under the FW Act may make such amendments unnecessary.
71	Section 510 of the *Fair Work Act 2009 (Cth)* be amended so that it requires a right of entry permit to be suspended or revoked by the Fair Work Commission if: (a) an official has failed to complete approved training; or (b) a new permit qualification matter has arisen which means the official is no longer a fit and proper person.	This is a consequential amendment to recommendations 69 and 70 which requires the Fair Work Commission to suspend or revoke an entry permit where there is a failure to complete the annual training or events have occurred since the permit was first issued that mean that the permit holder is no longer a fit and proper person to hold an entry permit.	As noted above, in order to be eligible to apply for a WHS entry permit the applicant must hold or will hold an entry permit under the Fair Work Act 2009 (FWA). However under section 138 of the WHS Act, the regulator, relevant PCBU or any other person affected by the exercise of a	

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	This recommendation is reflected in the model legislative provisions in Appendix 1 to Volume 5 of the Report.		right-of-entry permit can apply to the QIRC to revoke the right of entry permit on a number of grounds including: (a) that the permit holder no longer satisfies the eligibility criteria for a WHS entry permit or an entry permit under a corresponding WHS law, or the FW Act or the Workplace Relations Act 1996 of the Commonwealth or for an industrial officer authority; or (b) that the permit holder has contravened any condition of the WHS entry permit; or (c) that the permit holder has acted or purported to act in an improper way in the exercise of any right under this Act; or (d) in exercising or purporting to exercise a right under this part, that the permit holder has intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace. These grounds would include the failure of a WHS entry permit holder to complete the prescribed training.	
72	Section 515 of the *Fair Work Act 2009 (Cth)* be amended by inserting at the end of subsection (1) the words 'to a fit and proper person'.	Recommendation 72 was made to reverse a common law decision that allows the FWC to grant a permit to a person who is not fit and proper by imposing a condition on the permit that would allow them to become fit and proper.	An applicant for a WHS entry permit must hold or will hold an entry permit under the FW Act. Therefore the eligibility criteria for a WHS entry permit is contingent upon the applicant meeting the conditions imposed by the FW Act in relation to whether the applicant is a fit and proper person. Section 135 of the WHS Act provides that the industrial registrar may impose conditions on a WHS entry permit, however as there is no requirement for a	No amendments are recommended to this section of the WHS Act.

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
			person to be considered fit and proper to hold a WHS entry permit.	
73	Section 119 of the Work Health and Safety Act 2011 (Cth) and the equivalent provisions of the equivalent State Acts be repealed and replaced with new ss 119 and 119A which provide that prior written notice of entry is to be provided except where the permit holder has a reasonable concern that: (a)there has been or is contravention of the Act and (b)that contravention gives rise to a 'serious risk to the health or safety of a person emanating from an immediate or imminent exposure to a hazard'. This recommendation is reflected in the model legislative provisions in Appendix 1 to Volume 5 of the Report.	Section 117 of the WHS Act is the only right of entry that can be exercised without prior notice providing an element of surprise that makes it a powerful industrial tool, open to the abuse of using safety for an industrial tool. It is not difficult to form a suspicion that a breach is occurring, particularly on busy construction sites. Also as section 117 relates to past breaches as well as current breaches a union official can save up breaches and exercise right of entry when it is most disruptive to the work place. The report makes the point that the requirement of a reasonable concern that workers are exposed to a serious risk to health and safety from an imminent or immediate exposure to a hazard already exists in the WHS Act as the requirement to be satisfied in order to cease work and for an inspector to issue a prohibition notice.	Under the WHS Act, WHS entry permit holders may immediately enter a workplace to inquire into a suspected contravention providing they reasonably suspect that a contravention has occurred or is occurring. They must give notice of entry as soon as is reasonably practicable unless it would defeat the purpose of the entry or cause unreasonably delay in urgent situations. (The requirement to provide 24 hours' notice that was introduced by the previous government was removed in October 2015.)	WHS entry permit holders have a number of powers that they can exercise at the workplace when inquiring into a suspected contravention. This includes warning any person they believe is exposed to a serious risk to health and safety from an immediate or imminent exposure to a hazard. This enables them to act immediately they see a dangerous situation. To restrict immediate access to a workplace by WHS entry permit holders to circumstances where there is a reasonable concern about a contravention that poses a serious risk to health and safety from an immediate or imminent exposure to a hazard limits their effectiveness in these situations due to the inherent time delay in accessing the workplace once they have been advised of a dangerous situation. It would also restrict the ability of WHS entry permit holders to play a proactive role in ensuring health and safety at workplaces and limit their ability to assist in addressing contraventions before they become a serious risk. Allowing WHS entry permit holders immediate access to a workplace where they suspect a safety contravention is occurring provides a protection for workers. The 2009 national review on the national model work health and safety laws found that there was considerable evidence that WHS entry permit holders play a valuable role in securing improved work health and

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
				safety outcomes and provide substantial support to elected workers representatives at the workplace. In addition a number of international studies have linked better health and safety outcomes and lower injury rates to workplaces where there is worker representation and high levels of management commitment to health and safety. This is acknowledged in the objects of the WHS Act which includes encouraging unions and employer organisations to take a constructive role in promoting improvements in work health and safety practices and assisting persons conducting businesses or undertakings and workers to achieve a healthier and safer working environment. Queensland experienced 92 right of entry disputes during the twelve months that 24 hours' notice of entry for suspected contravention was in place compared with only 57 disputes in the two year period between 2011-12 and 2012-13, when there was immediate access for suspected contraventions.
74	The Work Health and Safety Act 2011 (Cth) be amended so as to make it clear that the burden of proving that a permit holder has a suspicion that is reasonable for the purposes of s 117(2) or a concern that is reasonable for the purposes of s 119A lies with the person asserting that fact.	The recommendation will make the WHS Act consistent with section 481 (3) of the FW Act which provides that the burden of proving that the permit holder has a suspicion of a contravention lies with the person asserting that fact.	The onus of proof for the majority of offences under the WHS Act is on the regulator. The only exception is criminal proceedings for discriminatory conduct where, under section 110(2), the defendant must prove on the balance of probabilities that the prohibited reason was not the dominant reason for the conduct.	Even if the burden of proof is on the entry permit holder requiring there to be an imminent or immediate serious risk before allowing immediate access to a workplace, this would remain a subjective test that could unnecessarily tie up regulator resources in dealing with union right of entry disputes.
75	The *Fair Work Act 2009 (Cth)* and Work Health and Safety Act 2011 (Cth) and the equivalent	The report found that access by two officials to a site at any one time is	This is new matter has not been previously considered at a national level	There may be instances where multiple suspected contraventions at a workplace

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	State Acts be amended to prohibit the exercise of rights of entry by more than two permit holders of the same organisation on the one workplace at the same time.	sufficient to investigate a suspected contravention. There is no need for more than two officials to attend, other than to apply industrial pressure and exploit a loophole in the legislation.	or within Queensland. The WHS Act does not prescribe any limits on the number of entry permit holders that may enter a workplace at the same time.	are reported to a union at the same time for further investigation. It may be less disruptive to the workplace to have more than two permit holders with different specialities on site investigating multiple contraventions at once and complete the investigations in a shorter timeframe than to have only two permit holders attend and spend longer at the workplace.
76	The *Fair Work Act 2009 (Cth)* be amended so that permit holders exercising rights under s 482 or s 483 of that Act must leave a site within a reasonable time if requested to do so by a Fair Work Inspector or Fair Work Building Industry Inspector who is on the site. Further, the *Work Health and Safety Act 2011 (Cth)* and equivalent State Acts be amended so that permit holders exercising rights under those Acts must leave a site within a reasonable time if requested to do so by an inspector who is on the site. Consequential amendments be made to: (a) confer powers on Fair Work Inspectors, Fair Work Building Industry Inspectors and inspectors under the *Work Health and Safety Act 2011 (Cth)* to make the above requests; and (b) create civil penalty offences for failure to comply with such requests.	This recommendation is intended to prevent confrontations, improve safety and reduce the capacity for the right of entry to be misused. Inspectors have more extensive investigative powers than union officials do and are better placed to assess whether there has been a breach of health or safety requirements. The presence of a permit holder on site may hinder the performance of their duties.	Under the WHS Act, an inspector will assist in the resolution of the dispute between the parties but cannot make a binding decision and has no legislative power to remove parties from a workplace. It is also important to note the various dispute resolution mechanisms under the WHS Act to address disputes such as: • seeking assistance from the Work Health and Safety Regulator i.e. an inspector to the workplace to assist in resolving the dispute; or • applying directly to the Queensland Industrial Relations Commission to deal with the dispute (who can deal with the matter by mediation, conciliation or arbitration); or • applying to the Commission for the revocation of the WHS entry holder's permit (grounds include a permit holder has intentionally hindered or obstructed an employer or workers at a workplace when exercising, or purporting to exercise, a right of entry).	As relevant workplace parties could potentially be removed from the dispute resolution process, the unintended consequence of this may be further confrontations. More importantly this could result in the inspectors' role becoming more adversarial rather than focussing on the safety issues at hand.
CHAPTER 10: ROYAL COMMISSIONS ACT 1902 (CTH)				
77	The *Royal Commissions Act 1902 (Cth)* be amended to dispense with the requirement for		N/A	N/A

	LAW REFORM RECOMMENDATIONS	Royal Commission Commentary	Relevance to State and Commonwealth Legislation – existing or proposed	Additional Comment
	personal service of a summons or notice to produce in circumstances where: (a) a solicitor accepts service on behalf of the addressee; (b) the addressee agrees to an alternative method of service; or (c) (in relation to a notice to produce only) the addressee has been served with a notice to produce previously by the Royal Commission in question, whether that notice was effected personally or otherwise.			
78	The *Royal Commissions Act 1902 (Cth)* be amended to increase the penalties for a failure to comply with a summons to attend, a failure to comply with a notice to produce, a failure to be sworn or answer questions, and a failure or refusal to provide documents to at least a maximum penalty of two years' imprisonment or a fine of 120 penalty units, or both.		N/A	N/A
79	The provisions relating to the reception and use of surveillance device evidence in the *Surveillance Devices Act 2004 (Cth)* in relation to Royal Commissions be reviewed.		N/A	N/A

Question on Notice

No. 988

Asked on 23 August 2018

MR M BOOTHMAN ASKED MINISTER FOR EDUCATION AND MINISTER FOR INDUSTRIAL RELATIONS (HON G GRACE)—

QUESTION:

Will the Minister advise how many recommendations from the Royal Commission into Trade Union Governance and Corruption have been implemented by the Palaszczuk Labor Government?

ANSWER:

I thank the Member for his question.

The Royal Commission made 79 law reform recommendations, the vast majority of which related exclusively to the Commonwealth Government or its agencies. Only five of the 79 recommendations refer to state governments or state laws.

The Queensland Government has considered the specific state-related recommendations and is of the view that the issues they raise are adequately dealt with under current government policies and state legislation and there is no further action required. There are no recommendations outstanding.