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Final Report – Royal Commission into Trade Union Governance and Corruption

SUMMARY

The final report of the Royal Commission into Trade Union Governance and Corruption was publicly released in late December 2015. The report recommends a wide range of legislative and other changes.

During the Royal Commission, Ai Group argued strongly for changes to the law to stop millions of dollars each year being transferred to unions from some construction industry redundancy funds and from insurance companies which offer overpriced income protection insurance and pay hefty commissions to unions. The Royal Commission has adopted several Ai Group proposals to address these problems within its recommendations.

The Government is currently consulting with Ai Group and other parties ahead of announcing its views on the Royal Commission's recommendations.

Overview

The Royal Commission into Trade Union Governance and Corruption was established in March 2014 and continued until the end of 2015. There were 189 hearing days with evidence obtained from over 500 witnesses.

The [final report](#) was publicly released on 30 December 2015. It contains [79 recommendations](#) for legislative and other changes.

Approximately 40 individuals and 7 organisations have been referred to the police, directors of public prosecutions, the Fair Work Commission (FWC), Fair Work Building and Construction, the Taxation Commissioner and other authorities for consideration of whether proceedings should be instituted against them.

In his report, Royal Commissioner Dyson Heydon AC QC said:

“These aberrations cannot be regarded as isolated. They are not the work of a few rogue unions, or a few rogue officials. The misconduct exhibits great variety. It is widespread. It is deep-seated.

Nor can the list be regarded as complete. It would be utterly naïve to think that what has been uncovered is anything other than the small tip of an enormous iceberg.”

Ai Group has expressed the view publicly that the Royal Commission's final report demonstrates that the case for change is irrefutable and that any view that the existing laws are working effectively is simply unsustainable.

Ai Group's involvement and influence

Ai Group was heavily involved in the Royal Commission on behalf of Members. We made submissions on all the issues papers released by the Royal Commission.

Amongst other matters, Ai Group's submissions focused on the millions of dollars of inappropriate revenue which flow to unions each year from some construction industry redundancy funds and from insurance companies which offer overpriced income protection insurance and pay hefty commissions to unions.

As union membership revenue has declined, these lucrative and inappropriate revenue streams have become central to union finances. The revenue streams no doubt result in the fines which militant unions regularly incur for unlawful conduct having a significantly reduced impact on their operations.

Consistent with Ai Group's proposals, the Royal Commission has recommended:

- Legislation dealing comprehensively with the governance, financial reporting and financial disclosures required by worker entitlement funds (e.g. construction industry redundancy funds) including registration of these funds. (Recommendations 45-46).
- A statutory requirement that unions disclose to employers the direct and indirect pecuniary benefits obtained by them in connection with employee insurance products. (Recommendation 47).
- Amendments to the *Fair Work Act 2009* (FW Act) requiring union bargaining representatives to disclose in writing to employees before they vote on an enterprise agreement all direct and indirect financial benefits that would be derived by the union, union officers or a related entity as a consequence of the terms of the proposed enterprise agreement. (Recommendation 48).
- An amendment to section 194 of the FW Act to make it unlawful to include any term in an enterprise agreement that requires or permits contributions to a worker entitlement fund (other than a superannuation fund) unless the fund is a registered worker entitlement fund or a registered charity. (Recommendation 49).
- A new civil remedy provision in the FW Act prohibiting a person from organising or taking 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. (Recommendation 50).

- Amendments to the *Competition and Consumer Act 2010* to outlaw enterprise agreement clauses that impose restrictions on the supply or acquisition of goods and services, e.g. clauses which restrict the engagement of contractors. This recommendation addresses the problematic decision of the Full Federal Court in *Australian Industry Group v Fair Work Australia* [2012] FCAFC 108 ("The ADJ Contracting Case"). (Recommendation 59).

Some other recommendations of the Royal Commission

In addition to those recommendations outlined above, the Royal Commission has made recommendations in the following areas:

- Strengthening the provisions of the *Fair Work (Registered Organisations) Act 2009* to establish a new Registered Organisations Commission, to clarify and expand the duties of union officers, to increase penalties and disclosure obligations, and to provide for the disqualification of union officers who breach their duties. (Recommendations 1-39, 42-44).
- Amending the FW Act to criminalise the giving or receiving of "corrupting benefits" to union officers, with a maximum term of imprisonment of 10 years. (Recommendation 40)
- Amending the FW Act to make it a criminal offence for an employer to provide, offer or promise to provide any payment of benefit to a union or union official, subject to a small number of identified exclusions (e.g. union dues that an employer deducts from an employee's wages and passes on to the union). A two year maximum term of imprisonment would apply. The same penalty would apply to any person, soliciting, receiving or agreeing to receive a prohibited payment or benefit. (Recommendation 41).
- Amending the Superannuation Guarantee Legislation to prohibit enterprise agreement clauses which prevent employees selecting a superannuation fund of their own choice. (Recommendation 51).

- Strengthening the provisions of the *Competition and Consumer Act 2010* regarding secondary boycotts and other industrial conduct. (Recommendations 52-58).
- Enacting special legislation to disqualify for a period those officers of the Construction, Forestry, Mining and Energy Union that the Parliament considers are not fit and proper persons to hold office in a union, given their culture of disregard for the law. (Recommendation 60).
- Supporting key provisions of the Government's *Building and Construction Industry (Improving Productivity) Bill 2013*. (Recommendations 61-66).
- Tightening union right of entry provisions, including:
 - Requiring a union official to give written notice of entry when exercising a right of entry under work health and safety laws except where there is a reasonable concern that there has been a contravention of the laws and the contravention gives rise to a serious risk to the health and safety of a person; and
 - Prohibiting more than two officials of the same union entering one workplace at the same time.

(Recommendations 67-76).

Further advice or feedback

For further information or assistance, please contact the **Ai Group Workplace Advice Line** on 1300 55 66 77.

To provide feedback to Ai Group on the Royal Commission's recommendations or any other workplace relations policy matters, please contact Stephen Smith, Head of National Workplace Relations Policy of Ai Group on stephen.smith@aigroup.com.au or 02 9466 5521.

Should you require any detailed advice on union issues, enterprise agreements, contracts of employment or employment policies, the team of professional workplace relations advisers and lawyers at [Ai Group](#) and [Ai Group Workplace Lawyers](#) are available to assist you.



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