

**Opening Statement by Ai Group's Head National Workplace Relations,
Stephen Smith, to the Senate Committee Inquiry into the *Fair Work
(Registered Organisations) Amendment (Ensuring Integrity) Bill 2017***

28 September 2017

Ai Group welcomes the opportunity to appear at the hearing today.

We have filed a written submission in this inquiry expressing our views on the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2017*.

The Bill would make important amendments to the *Fair Work (Registered Organisations) Act 2009*.

As a registered organisation under the Registered Organisations Act, Ai Group is well-placed to express its views on the Bill.

Schedule 1 of the Bill

Schedule 1 of the Bill would implement recommendations 36, 37 and 38 of the Heydon Royal Commission. The amendments would vary the Registered Organisations Act to:

1. Introduce a measured and appropriate expansion to the categories of 'prescribed offence' for the purposes of the automatic disqualification regime which prohibits a person from acting as an official of a registered organisation;
2. Give the Federal Court of Australia the power to prohibit officials from holding office in defined and limited circumstances; and
3. Make it an offence for a person to continue to act as an official or in a way that influences the affairs of an organisation once they have been disqualified.

The reasons why the provisions have merit are set out very persuasively in the Final Report of the Heydon Royal Commission. A relevant extract from the Final Report is reproduced in our submission

Registered organisation officers have very important duties to the members of the organisation. A registered organisation exists to represent the collective interests of its members, who have paid membership subscriptions to the organisation for representation of their interests. These days many registered organisations have large financial and other resources, and it is essential that the officers are fit and proper persons to hold office.

Persons who are convicted of serious criminal offences are not fit and proper persons to be officers of registered organisations, and should be automatically disqualified.

Also, registered organisation officers who repeatedly contravene industrial and/or other relevant laws are not fit and proper persons to remain officers of registered organisations, and the Federal Court should have the power to disqualify them from holding office.

Schedule 2 of the Bill

Schedule 2 of the Bill would vary the Registered Organisations Act to:

1. Allow the Federal Court to cancel the registration of an organisation in limited and serious circumstances including corrupt conduct by officials and repeated breaches of industrial laws by the organisation; and
2. Allow applications to be made to the Federal Court for various other orders.

Registered organisations enjoy many rights and privileges under industrial laws. Along with these rights and privileges comes the responsibility for registered organisations to comply with the law.

Many (but not all) rights and privileges of unions and employer organisations under industrial laws are derived from a union or employer organisation's status as a registered organisation under the Registered Organisations Act.

Where a registered organisation repeatedly breaches industrial laws, it is appropriate that the organisation is exposed to the potential loss of the rights and privileges that it enjoys under the industrial laws. Otherwise there is little incentive to comply with the laws, particularly if the registered organisation has sufficient revenue to readily pay fines that are imposed by Courts for unlawful conduct.

The main mechanism for removing the rights and privileges of a registered organisation under industrial laws (either for a period of time or permanently) is the suspension or cancellation of registration under the Registered Organisations Act.

Giving the Federal Court the powers contained within Schedule 2 of the Bill, would give those unions that are currently regularly breaking the law a strong incentive to stop their law-breaking. This is obviously in the community's interests.

Each registered organisation is readily able to implement the necessary systems to ensure that its organisation, its officers and its staff comply with the law. Therefore, each registered organisation is able to readily remove the risk of having its registration suspended or cancelled. All that is required is that the registered organisation comply with the law, as every other organisation and Australian citizen is rightly expected to do.

The provisions in the Bill would give the Federal Court considerable flexibility in determining what orders are appropriate in any particular case. For example, the Court would be able to make orders relating to particular divisions and branches of unions.

Schedule 4 of the Bill

Schedule 4 of the Bill would vary the Registered Organisations Act to introduce a public interest test for amalgamations of registered organisations.

The provisions would allow the Fair Work Commission to take the public interest into account when an application is received from two or more registered organisations to amalgamate, including each organisation's record of compliance with industrial laws.

A registered organisation's record of compliance with industrial laws, is a relevant factor that the Commission should be able to take into account in assessing whether or not it would be in the public interest for the organisation to amalgamate with another registered organisation, for the reasons set out in our written submission. For example, the Commission might logically decide that it is not in the public interest for an amalgamation of two unions to occur if both organisations have a record of non-compliance with industrial laws, because the creation of a larger, law-breaking organisation would most likely inflict more harm and damage upon businesses, the economy and the community, than two smaller law-breaking organisations.

For over 100 years, the Commission and its predecessors have applied a public interest test when exercising many of their powers. A public interest test still applies under numerous provision of the *Fair Work Act*. For example, our written submission identifies 15 sections of the *Fair Work Act*, where the Commission is required to apply a public interest test.

The implementation of a public interest test for amalgamations of registered organisations would be a logical and fair change to the Registered Organisations Act.

In conclusion, the Bill contains fair and sensible reforms that would apply equally to unions and registered employer associations. We urge the Committee to recommend that the Bill is passed without delay.