



# Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019

**Submission to Senate Committee for  
Education and Employment Legislation**

**August 2019**

*Commercial in confidence*



## About AMMA

AMMA is Australia's resources and energy industry group and has provided a unified voice for employers on workforce and other industry matters for 100 years.

AMMA's membership spans the entire resources and energy industry supply chain, including exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to these sectors.

AMMA works to ensure Australia's resources and energy industry is an attractive and competitive place to invest and do business, employ people and contribute to our national well-being and living standards.

AMMA members across the resources and energy industry are responsible for a significant level of Australian employment, with an estimated 10% of our national workforce, or 1.1 million Australians, employed directly and indirectly as a result of the resources industry.

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## Executive Summary

Australian Resources and Energy Group AMMA welcomes the opportunity to make this submission on the provisions of the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* (**the EI Bill**) referred to the Senate Education and Employment Legislation Committee for inquiry (**the Inquiry**).

The EI Bill is a necessary step to restore regulatory balance and, in turn, regenerate public confidence in relation to the conduct and operation of registered trade union and employer organisations (**Registered Organisations**) in Australia. It is consistent with a number of salient recommendations arising in the Final Report of the 2015 Royal Commission into Trade Union Governance and Corruption (**Royal Commission**).

Registered Organisations are trading and employing entities, holding significant monies on behalf of their members and enjoy special rights and privileges under Australia's workplace and taxation laws. It is therefore in the national interest to ensure the governance and transparency standards to which they are held are closer aligned to the much stricter standards applied to corporations.

Ensuring transparency and accountability of Registered Organisations and officers who hold positions of privilege within these organisations protects the best interests of their members and the wider community. Failure to demonstrate effective accountability within Registered Organisations, which can be highly influential, damages Australia's reputation as a place to invest and do business.

The EI Bill contains four main measures aimed at ensuring all Registered Organisations and their officials act in accordance with the law and exhibit behaviour and accountability that their members and the broader community are entitled to expect. These measures include:

- a. increasing the powers of the Federal Court to disqualify an official of a Registered Organisation for repeated breaches of workplace laws and making it an offence for a disqualified person to continue to act as an official;
- b. providing the Federal Court powers to cancel the registration of a Registered Organisation for repeated breaches of workplace laws;
- c. allowing the Federal Court to declare a Registered Organisation to be 'dysfunctional' or incapable of functioning effectively and appointing an administrator; and
- d. reintroducing a public interest test for proposed amalgamations of Registered Organisations.

It is clear these measures are necessary to restore the public's confidence and trust in the regulation of Australian Registered Organisations.

The pecuniary penalties available to the Courts under current provisions of the *Fair Work (Registered Organisations) Act 2009* (**RO Act**) have not been effective in deterring the well-known and widespread recidivist lawbreaking behaviour of some Registered Organisations and their officials. This has led to extraordinary instances where judicial members have publicly expressed their frustration at repeated lawbreaking by the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) in particular.

The long history of unlawful behaviour of some unions such as the CFMMEU continues unabated to this day. Examples include the action commenced against the CFMMEU and three of its representatives concerning alleged contraventions of the unlawful picketing provisions relating to an alleged blockade of two Melbourne sites in May 2017. In another matter, the CFMMEU and one of its officials were fined \$51,300 for abusing and threatening construction workers on the Gorgon LNG Project in Western Australia, pursuant to a Federal Court judgment handed down on 14 June 2018.

As noted by the Minister for Industrial Relations, as at July 2019 the CFMMEU had reached an unprecedented level of penalties - \$16 million for more than 2000 contraventions of industrial relations laws in recent years. At present there are around 80 officials before the courts on some 37 separate matters brought by the Australian Building and Construction Commission (**ABCC**) for about 800 separate alleged contraventions of workplace laws. That the CFMMEU has reached this extraordinary level of penalties and continues to regularly break the law demonstrates a clear need for further protections to protect both members of its union and the broader community.

The current iteration of the EI Bill does include balanced protections for officers accused of poor behaviour and facing disqualification, in so far as that disqualification can only be ordered where misconduct relates specifically to their duties as an officer of a Registered Organisation. The Courts are still required to consider the best interests of members as a whole when determining whether cancellation of registration is appropriate. These amendments highlight the EI Bill's objective to protect the interest of members and restore public confidence that Registered Organisations are operating lawfully and to standards that are expected by the broader community.

AMMA submits the Australian Parliament must support passage of the measures within the EI Bill to protect everyday Australians from corruption and unlawful conduct by those they entrust to represent their interests. The Australian Government has committed to ensuring greater compliance and lawfulness among all Registered Organisations and this Bill is the first step towards achieving this commitment.

Those Registered Organisations capable of functioning within the parameters of the law should have no issue with these measures being introduced that protect the rights and interests of members and the wider community.

In addition to recommending passage of the EI Bill, AMMA submits the Senate Committee investigate and recommend further measures to address an emerging strategy whereby trade unions are using formal "alliances" to circumvent some of the measures within the EI Bill. While the existing measures in the EI Bill provide effective legislative deterrent to unlawful conduct, they do not address this new tactic allowing trade unions in some sectors to manipulate current workplace regulation and advance their own industrial, political and representational interests. The Committee must recommend the Government consider further regulation in this area to ensure the provisions of the EI Bill cannot be undermined or circumvented.

## 1. Introduction

1. Australian Resources and Energy Group AMMA welcomes the opportunity to make this submission on the provisions of the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Bill 2019* (**the EI Bill**) referred to the Senate Education and Employment Legislation Committee for inquiry (**the Inquiry**).
2. AMMA is the national employer group for the resources and energy industry, and has a particular expertise in industrial relations matters. For more than 10 years AMMA has worked closely with national policy makers in support of our vision for Australia to be an attractive place for resources and energy employers to invest, do business and contribute to the national wellbeing. AMMA often works closely with other peak industry bodies to provide this specific expertise, and to ensure consistency of approach across shared members and the broader business community.
3. The EI Bill is a necessary step to restore regulatory balance and, in turn, regenerate public confidence in relation to the conduct and operation of registered trade union and employer organisations (**Registered Organisations**) in Australia. It is consistent with a number of salient recommendations arising in the Final Report of the 2015 Royal Commission into Trade Union Governance and Corruption (**Royal Commission**).
4. The EI Bill will ensure adequate transparency and accountability of Registered Organisations and their officers who hold a position of privilege. It also guarantees the democratic function of Registered Organisations, by ensuring the leadership of Registered Organisations act lawfully, with integrity and in the interests of its members.
5. The provisions of the EI Bill protect the best interests of Registered Organisation members, Australian employers and employees, as well as the wider national interest, by ensuring Australia's reputation as a place to invest and do business is not damaged by repeated unlawful or anti-competitive behaviour of influential Registered Organisations.
6. It is important to recognise that the measures within the EI Bill apply equally to all Registered Organisations in Australia – including both trade unions and employer groups.

### Registered Organisations in Australia

7. Registered Organisations enjoy special rights and privileges under Australia's workplace and taxation laws. It is therefore in the national interest to ensure the governance and transparency standards to which they are held are closer aligned to the much stricter standards applied to corporations. Ensuring transparency and accountability of Registered Organisations and officers who hold positions of privilege within these organisations protects the best interests of their members and the wider community.
8. Key reasons why AMMA considers the standards of governance and accountability of Registered Organisations (and their officials) to be critically important include:
  - a. Registered Organisations are trading and employing entities, holding significant monies on behalf of their members and receiving substantial tax concessions;
  - b. community interest in the effective governance and accountability of Registered Organisations is substantial;

- c. providing the individual members of Registered Organisations with strong determination and influence of the structuring and rules of their organisations ensures consistency, rigour, integrity and accountability; and
  - d. a failure to demonstrate effective accountability within Registered Organisations, which can be highly influential, damages Australia's reputation as a place to invest and do business.
9. It is for these reasons that AMMA believes the measures within the EI Bill are balanced, reasonable and necessary steps to begin to lift the standards and accountability of all Registered Organisations closer to community expectations.
10. In contrast to Registered Organisations that are currently subject to lower governance and reporting standards as companies, AMMA is incorporated as a company and is regulated by the Australian Securities and Investments Commission (**ASIC**). AMMA and its members benefit from the greater discipline associated with the much higher governance and reporting standards required under the *Corporations Act 2001*.
11. Based on experiences since 1918, it is AMMA's view that all Registered Organisations and their members would greatly benefit from higher governance and reporting standards starting with the measures included in the EI Bill.

### **Important measures the Bill introduces**

12. The EI Bill contains four key measures to improve the governance and conduct of Registered Organisations which:
- a. increase the powers of the Federal Court to disqualify an officer of a Registered Organisation from office and establish an offence to continue to act as an official once disqualified;
  - b. provide the Federal Court powers to cancel the registration of a Registered Organisation for repeated breaches of workplace laws;
  - c. allow the Federal Court to declare a Registered Organisation to be dysfunctional and appoint an administrator;
  - d. reinstates a public interest test for proposed amalgamations of Registered Organisations.
13. Importantly, while the first three measures provide capacity for various parties to apply for orders, it would remain entirely within the jurisdiction of the Federal Court (an impartial and independent judicial body) to rule on such matters based on the evidence before it. This would avoid any risk of excessive or arbitrary interference in the free and democratic functioning of Registered Organisations.
14. The merits of each of the four key measures contained in the EI Bill, supported by the evidence-based business case, are detailed in this submission.
15. Further, AMMA proposes additional measures are necessary to address the emergence of a new strategy whereby trade unions are using formal "alliances" to potentially circumvent some of the measures within the EI Bill. The concerns of AMMA members regarding this new union strategy and recommendations the Committee should consider to address this issue are outlined in Section 6 of this submission.

## 2. Disqualification from office

16. Schedule 1 of the Bill adopts recommendations made by the Royal Commission that:
- a. include serious criminal offences punishable by five or more years' imprisonment as a new category of 'prescribed offence' for the purposes of the automatic disqualification regime which prohibits a person from acting as an official of a Registered Organisation.
  - b. make it an offence for a person to continue to act as an official or in a way that influences the affairs of a Registered Organisation once they have been disqualified.
  - c. include a discretionary regime that allows the Federal Court to disqualify officials from holding office in certain circumstances, including for contraventions of a range of industrial laws, repeatedly failing to take reasonable steps to stop their organisation from breaking the law, or where they are otherwise not a fit and proper person to hold office in a registered organisation.
17. The threat of potential disqualification from office, or at the very least the prospect of having to defend their actions before a Federal Court, could provide an important safeguard ensuring individuals in privileged official positions are incentivised to demonstrate a level of appropriate behaviour and accountability that their members and the broader community are entitled to expect.
18. Unfortunately, under the current laws, officials of some Registered Organisations have repeatedly and without remorse breached the industrial laws of the land. Most notably, to the Construction, Forestry, Maritime, Mining and Energy Union (**CFMMEU**) and its officials, it is abundantly clear that the millions of dollars in fines that have been issued have been no deterrent to recidivist, lawbreaking and thuggish behaviour. The CFMMEU considers such fines a simple "cost of doing business" and nonchalantly absorb the fines and penalties accrued by officers in the course of lawbreaking behaviour.
19. The engrained culture of lawbreaking, thuggery, intimidation, violence and unproductive conduct within the rank and file of the CFMMEU is evident by the large volume of prosecutions and penalties against its officials for repeated breaches of industrial relations laws. Some recent examples of this include:
- a. **21 June 2019:** \$119,300 in penalties handed down against the CFMMEU and two of its officials for unlawful entries and making threats after being asked to produce permits. In response to the request to produce an entry permit the official said "*we are not going down that path, are we? ... Even if I've got a permit, that's our policy that we don't show it.*" The site manager advised he would call the police to which the official responded "*You ... don't want to be the dog who calls the cops on a union official ... [W]e won't forget this low act. We won't forget that you did this.*"
  - b. **9 April 2019:** legal proceedings commenced against the CFMMEU and one of its officials for allegedly racially abusing and threatening a safety supervisor at a Perth construction site. The official exercised his right to enter to investigate a safety issue. In the statement of claim filed in the Federal Court it is alleged when discussing housekeeping standards on the site the official made racially abusive comments towards the supervisor: "*Don't touch me c\*\*t, you're a third world joker and this is f\*\*\*ing Australia. Do it, what I say.*" "*You f\*\*k off c\*\*t from this place.*"

- c. **4 March 2019:** legal proceedings commenced against the CFMMEU and two of its officials engaged in coercion, adverse action and organised unlawful industrial action. It is alleged the site's CFMMEU delegate abused the site's health and safety advisor, moved into his personal space and asked him to "*come out on the street and sort it out.*"
  - d. **15 January 2019:** legal proceedings commenced in pursuit of a CFMMEU official for allegedly obstructing and hindering a Queensland Work Health and Safety officer from undertaking his lawful duties at the \$71 million Cairns Performing Arts Centre project. The union official is alleged to have put his face a matter of centimetres away from the WHS officer and repeatedly shouted "*you're a f\*\*\*ing dog!*"
  - e. **7 December 2018:** \$294,000 in penalties handed down against the CFMMEU and its official Joseph Myles after he threatened to blockade and organised industrial action at the Springvale Level Crossing site in Melbourne. Mr Myles was ordered to personally pay \$44,000 in penalties – the second personal payment order made against Mr Myles and the largest personal payment order made by the Court in litigation involving the Australian Building and Construction Commission (**ABCC**).
  - f. **16 August 2018:** \$245,500 in penalties handed down for two cases in Tasmania involving the CFMMEU and its official Richard Hassett. Both cases relate to contraventions of right of entry laws by Mr Hassett on the \$21.8 million Brooker Highway Project. When illegally entering the worksite, Mr Hassett used abusive language, calling a human resource manager a "*f\*\*king incompetent c\*nt*" and threatening to close the site down.
20. It is not in the interests of members of Registered Organisations that individuals retain the right to hold office in circumstances where they do not meet a reasonable standard of behaviour. It also falls short of community expectations about who should hold positions of influence and control within organisations who enjoy special rights and privileges under Australian industrial law.
21. The EI Bill does include balanced protections for officers accused of poor behaviour and facing disqualification, in so far as that disqualification can only be ordered where misconduct relates specifically to their duties as an officer of a Registered Organisation. These protections are a result of amended provisions in the current iteration of the Bill and include:
- a. offences and contraventions that are grounds for disqualification of an official are restricted to core workplace laws such as *Fair Work Act 2009 (FW Act)*, work health and safety legislation and building industry legislation.
  - b. the concept of "wider criminal findings" as grounds for disqualifications by the court has been removed.
22. The speculation that the introduction of measures that allow for the disqualification of officers of Registered Organisations is targeted towards employee representatives is not accurate. Not only do the provisions of the EI Bill apply equally to both trade unions and employer groups, there are a range of positions in Australia that are subject to statute-based expectations regarding their occupational conduct and provide reasons for disqualification including company directors, financial planners, education providers and other professional occupations.
23. There is no rationale that supports the exemption of officials of Registered Organisations from similar rules of governance and conduct in relation to the rights and privileges they hold in the course of their duties as an officer of those organisations.

### 3. Cancellation of registration and alternative orders

24. Schedule 2 of the EI Bill introduces further grounds where the Federal Court may cancel the registration of or otherwise sanction a Registered Organisation where the organisation or its officials or members have a record of not complying with industrial relations laws. These new grounds include:
- certain conduct of the affairs of the organisation, or part of the organisation;
  - serious breaches of criminal laws by the organisation; and
  - multiple findings against a substantial number of members.
25. The EI Bill seeks to ensure that Registered Organisations and their members adhere to a reasonable standard of behaviour as expected by the wider Australian community. It would, for example, provide that repeated failure to adhere to Australia's workplace laws may see a Registered Organisation faced with an application to have its registered status cancelled if the Federal Court judges the evidence to warrant such action.
26. Under the current *Fair Work (Registered Organisations) Act 2009 (RO Act)*, cancellation of the registration of an organisation, regardless of its compliance record, is a lengthy and costly process.<sup>1</sup> This has led to extraordinary instances where judicial members have publicly expressed their frustration at the repeated lawbreaking of the CFMMEU in particular and the ineffectiveness of the pecuniary penalties currently available to the Courts in deterring such behaviours.
27. Examples include a Federal Circuit Court judge condemning the behaviour of the then Construction, Forestry, Mining and Energy Union (**CFMEU**) in a judgement related to breaches of the FW Act. Judge Vasta said:
- "It beggars belief that the CFMEU believe that they can act in a manner where they are the ones who dictate who can or cannot work on a construction site. The Parliament is the only entity that sets the law in this country and the Parliament is directly responsible to the people of this country. It seems that the CFMEU feel that they can usurp Parliament and that they can set the law in this country. There is no place for such an attitude in Australian society."<sup>2</sup>*
28. Another example of senior judicial officials publicly expressing their frustration came in June this year in a judgement related to unlawful entries and making threats on construction sites. Justice Bromberg said:

*"The CFMMEU, and in particular the Divisional Branch, has an appallingly long history of prior contraventions of industrial laws.*

*"There is no evidence before me of the CFMMEU taking any compliance action to counsel, educate or inform its officials in order to prevent the reoccurrence of contravening conduct by them in the future. Nor is there any evidence before me of any compliance regime ever put in place by the CFMMEU to address its long history of prior contraventions."<sup>3</sup>*

<sup>1</sup> Final Report of Royal Commission into Trade Union Governance and Corruption, Volume 5, Chapter 8, para 35.

<sup>2</sup> Australian Building and Construction Commissioner v Dig It Landscapes & Ors [2017] FCCA 2128 para 55-56.

<sup>3</sup> Australian Building and Construction Commissioner v Construction, Forestry, Maritime, Mining and Energy Union (The Laverton North and Cheltenham Premises Case) (No 2) [2019] FCA 973 para 76-77.

29. The long history of unlawful behaviour of some unions such as the CFMMEU continues unabated to this day. Examples include the action commenced against the CFMMEU and three of its representatives concerning alleged contraventions of the unlawful picketing provisions relating to an alleged blockade of two Melbourne sites in May 2017. In another matter, the CFMMEU and one of its officials were fined \$51,300 for abusing and threatening construction workers on the Gorgon LNG Project in Western Australia, pursuant to a Federal Court judgment handed down on 14 June 2018.
30. The Minister for Industrial Relations noted that as at July 2019, the CFMMEU has reached the concerning milestone of having been penalised more than \$16 million on more than 2000 contraventions of industrial laws in recent years. At present there are around 80 officials before the courts on some 37 separate matters brought by the ABCC for about 800 separate alleged contraventions of workplace laws. That the CFMMEU has reached this amount of penalties and remains undeterred demonstrates a clear need for further protections to be in place to effectively deter militant and unlawful behaviour that impacts not only members of its union but the broader community.
31. The provisions of the EI Bill achieve a balance between the necessity of sanctioning officials for lawbreaking behaviour and adversely impacting members of the Registered Organisation who may not have been involved in the activities which may form the grounds for cancellation. The capacity of the Federal Court to make alternative orders where it considers the cancellation of registration would be unjust, strikes this balance. Such alternative orders include:
  - a. disqualification of certain officers;
  - b. exclusion of certain members;
  - c. suspension of rights and privileges of the Registered Organisation.
32. The EI Bill ensures appropriate remedial action in relation to conduct which would be grounds for deregistering a Registered Organisation, while not disproportionately affecting members, officials or parts of the organisation not involved in the relevant activity. This is addressed through amended provisions in the current iteration of the EI Bill that provides the Federal Court powers to make alternative orders that target a particular part of a Registered Organisation, where a ground for cancellation is established based on the behaviour of officers or members in a particular branch or division of that organisation.
33. The Courts are still required to consider the best interests of members as a whole when determining whether cancellation of registration is appropriate. This amendment highlights the EI Bill's objective to protect the interests of members and restore public confidence that Registered Organisations are operating lawfully and to standards that are expected by the broader community.
34. Where Registered Organisations are not operating consistent with the objective of this EI Bill it is appropriate there are effective sanctions available so as not to undermine the value of having a system of registration for these types of organisations. The measures in the EI Bill seek to ensure improved and lawful conduct and governance of Registered Organisations through observance of industrial laws rather than the cancellation of registration.
35. Registered Organisations which abide by the law and do not consider to be above the law should not be concerned about the possibility of being deregistered. Rather than being

engrossed by the potential consequences the EI Bill seeks to introduce, Registered Organisations should focus on ensuring their standards and accountability meet community expectations. Those Registered Organisations capable of functioning within the parameters of the law should have no issue with these measures being introduced that protect the rights and interests of members and the wider community.

## 4. Administration of dysfunctional organisations

36. Schedule 3 of the EI Bill would allow the Federal Court to declare a Registered Organisation to be dysfunctional or otherwise incapable of functioning effectively and in the interest of its members, and to place the organisation into effective administration. These measures seek to address public concern over cases of financial mismanagement and fraud by Registered Organisations.
37. Registered Organisations enjoy the privileged position of being exempt from income tax by virtue of their status. That there have been examples of significant and in some cases highly fraudulent financial mismanagement, such as in the Health Services Union case, played out largely in the media, is disturbing to say the least.
38. The provisions in the EI Bill afford Registered Organisations the opportunity to rectify issues caused by misconduct of their officials relating to the declaration with the Federal Court having oversight of these activities. Again, there is an effort to find a balance between ensuring legitimate governance and transparency for member protection and the continued operation of an organisation for its stated purpose.
39. As with corporations, where an independent arbiter can no longer be satisfied those charged with the oversight of an organisation established to pursue the interests of its membership and funded from the pockets of such members, it is a community expectation that steps be taken to protect the interests and financial contributions of such members.
40. The amendments in the EI Bill seek to more closely align the governance arrangements of Registered Organisations with those of corporations. Further changes to the EI Bill since the previous version include:
  - a. expanded grounds that the Federal Court can approve remediation of any dysfunctional and unlawful conduct by a Registered Organisation;
  - b. amended powers of the Federal Court to appoint an administrator and clearly set out the functions of the administrator;
  - c. harmonising criminal penalties failing to assist an administrator with the relevant provisions under the *Corporations Act 2001*.
41. Registered Organisations are significant business undertakings, some with annual turnovers in excess of \$50 million. Members of Registered Organisations place a high level of trust and confidence in their officials to manage funds for appropriate purposes and in the best interests of members. The measures in the EI Bill would bring the accountability of Registered Organisations closer to the provisions under the *Corporations Act 2001*.
42. Registered Organisations operate legitimate business models with organisational structures in place and should therefore be regulated just as corporations are, regardless of the political, industrial and representational activities being undertaken. This measure provides a

safeguard for Registered Organisations, their members and the wider community to ensure proper management and administration of these organisations that protect the interests and financial contributions of those it serves.

43. This measure provides a framework for appropriate management and administration of Registered Organisations by highlighting what are acceptable standards of governance and conduct. It is more than reasonable for members to expect an industrial organisation charged with acting in their best interests to operate with high standards of professionalism and accountability and in accordance with the law.
44. The public perception of significant amounts of members' money being used for purposes other than their effective representation is damaging to all Registered Organisations and Australia's reputation as a good place to invest.
45. There is no sound reason why Registered Organisations should be exempt from proper governance and standards of accountability that incorporated entities are subject to under the *Corporations Act 2001* given the significance of the financial dues they are responsible for and the trust their members place on them.

## 5. Public interest test for amalgamation

46. Schedule 4 of the EI Bill relates to reinstating a public interest test for all proposed mergers of Registered Organisations in Australia. Of the four key measures included in the EI Bill, this particular measure has received the greatest attention among the Parliament, media and broader community due to implications it would have had, if passed before 27 March 2018, for the merger of Australia's self-proclaimed most militant, lawless trade unions.
47. Unfortunately, the previous EI Bill did not pass in time for appropriate consideration of the Australian public interest to apply to the formation of the now CFMMEU – a highly militant union with more than \$300 million in combined assets and \$146 million in annual revenues.
48. It is AMMA's strong view that this must not be allowed to occur again. That there is currently no capacity for the interest of the Australian public to be considered over proposed amalgamations of highly-influential Registered Organisations – some of which turn over the type of revenues, hold the type of asset bases, and exact the type of market power more commonly associated with large companies – is a blight on Australia's otherwise free, transparent and democratic society.
49. It should be noted that consideration of the Australian public interest commonly exists in most areas of Australia's legal system. Indeed, the Australian public interest was relevant to Registered Organisation mergers for decades prior to its express removal by the Rudd Government. The public interest test in the EI Bill would apply to all Registered Organisations, trade union and employer organisations alike, and would have the immediate impact of:
  - a. balancing the freedom of Registered Organisations to operate without unnecessary interference with consideration of the legitimate interests of the Australian public;
  - b. safeguarding the Australian public against mergers of Registered Organisations that would threaten the community, Australia's economy and living standards;
  - c. incentivising compliance with Australian workplace laws as a pre-condition of expanded power and influence; and

- d. clarifying that disruption, militancy and lawlessness is not tolerated within the Australian workplace relations landscape.
- 50. The consequences of unlawful behaviour which disrupts industry is magnified in industries like the resources and energy sector where major project sites are often targeted due to time-critical targets, and industrial might is exercised irrespective of whether it is lawful.<sup>4</sup> The impact that this unlawful behaviour has on the Australian community, economy and citizens is absolutely relevant to whether Registered Organisations should be permitted to effectively monopolise across multiple industries and in the process potentially impact significant market sectors. We expect no less from corporations.
- 51. Law-abiding Registered Organisations would have no difficulty complying with a public interest test. This measure like all provisions of the EI Bill is critical to regenerating public confidence in the conduct and operation of Registered Organisations in Australia, and providing our courts and regulators with the tools and powers necessary for appropriate and effective regulation of all such organisations, which play an important and at times very powerful role in the nation's economic and social development.

## 6. Additional measures

- 52. AMMA and its members are of the view that the EI Bill does not address emerging concerns regarding a new strategy whereby trade unions are using formal “alliances” to work around coverage and eligibility rules and potentially even breach provisions of the RO Act. This tactic is being used by trade unions to expand their coverage and representational agenda and could allow them to circumvent measures of the EI Bill that would require any potential mergers to satisfy a public interest test.
- 53. The emergence of such strategic alliances is most notable in the Western Australian resources industry, where the CFMMEU and Australian Workers’ Union (**AWU**) have aligned to form the Western Mine Workers’ Alliance (primarily targeting the Pilbara iron ore sector) and the Offshore Alliance targeting hydrocarbons project operators.
- 54. The Offshore Alliance is an especially significant development and is of considerable concern to the offshore industry. This alliance is seeking to be involved in representing a very broad range of workers engaged in the offshore oil and gas industry, including workers engaged in offshore operations, maintenance, drilling and construction.
- 55. In the past these workers have predominantly been represented by the AWU, and for particular trades and related classifications, the Australian Manufacturing Workers’ Union and the Electrical Trades Union. The two main unions that make up the now-merged CFMMEU – the former CFMEU and Maritime Union of Australia (**MUA**) – have traditionally had a limited role in offshore industrial relations, largely due to their limited coverage.
- 56. Given the prominence of CFMMEU officials in promoting the Offshore Alliance, and its emergence coming immediately after the merger between the CFMEU and MUA, it is clear that the Offshore Alliance is part of an overall strategy on the part of the CFMMEU to extend its influence into areas in which it does not have coverage under its eligibility rules. In particular, the CFMMEU is seeking to extend its influence over operations, maintenance, drilling and construction workers in the offshore industry, who are eligible to be members of the AWU, but not the CFMMEU.

<sup>4</sup> See, for example, dispute in relation to Pluto LNG project; CFMEU agreed penalties. *Woodside Burrup Pty Ltd v Construction, Forestry, Mining & Energy Union [2001] FCA 949.*

57. Specific activities of the Offshore Alliance which warrant the concern of employers in the offshore resources industry include:
  - a. offshore resources workers being invited to join both the AWU and CFMMEU (Maritime Division) using a single application form, authorised by the WA Secretaries of both unions.
  - b. the AWU and CFMMEU agreeing to share membership dues, and both supplying organisers to work in relation to the Offshore Alliance.
  - c. elected officials of the CFMMEU having right of entry permits applied for and provided under the FW Act by the AWU, given the latter has coverage over offshore facilities and the former does not.
  - d. elected officials of the CFMMEU seeking to be involved in enterprise bargaining where the employees to be covered by the proposed enterprise agreement were only eligible to be members of the AWU, and the AWU was a bargaining representative.
58. There is a very real concern that the CFMMEU's militant approach and significant resources, combined with the broad coverage rules of the AWU, has the potential to create greater disruption in the offshore industry, most notably in the form of increased right of entry visits and CFMMEU involvement in bargaining. This disruption is likely to adversely impact nationally important and critical resources and energy projects.
59. AMMA is also concerned that certain activities of the Offshore Alliance are potentially unlawful or inconsistent with the current regime of rights and responsibilities of Registered Organisations, including attempts by officials and/or employees of the CFMMEU to exercise rights of entry and become involved in formal bargaining in relation to employees who are eligible to be members of the AWU, but not the CFMMEU.
60. Finally, employers are concerned that the emergence of strategic alliances between unions with very different historic eligibility and coverage rules would provide militant and recidivist law-breaking unions such as the CFMMEU a vehicle to continue to expand their influence while escaping measures of the EI Bill such as the public interest test that would apply to future union amalgamations.
61. The measures in the current iteration of the EI Bill only go so far to improving the governance and accountability of Registered Organisations. However, the amended provisions do not go far enough to address the new tactics of Registered Organisations manipulating current workplace regulation to expand their representational reach and causing disruption across Australian workplaces.

## 7. Conclusion

62. AMMA's position is that the 46<sup>th</sup> Parliament of Australia must support passage of the EI Bill to protect everyday Australians from corruption and unlawful conduct by those they entrust to represent their interests. The Australian Government has committed to ensuring greater compliance and lawfulness among all Registered Organisations and this Bill is the first step towards achieving this commitment.
63. AMMA and its members have long supported the measures within the EI Bill as necessary to disincentivise law-breaking and remove recidivist offenders from holding positions of office

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within Registered Organisations, including both trade unions and employer groups. Registered Organisations should be regulated by Australia's corporate laws under the watchful eye of ASIC, just as AMMA is as an incorporated entity.

64. More broadly, the measures would ensure influential Registered Organisations' repeated unlawful or anti-competitive behaviour does not damage Australia's reputation as a place to invest, do business and employ people.
65. **AMMA supports the passage of all the measures within the EI Bill as a matter of urgency for the 46<sup>th</sup> Parliament of Australia. This is a critical first step for the Parliament to ensure legitimate governance and transparency of Registered Organisations in Australia that provides members with necessary protection and the continued operation of these organisations for their stated purpose.**
66. **In addition to recommending urgent passage of the EI Bill, AMMA urges the Senate Committee to investigate, consider and recommend additional measures to address the emergence of formal trade union alliances. AMMA submits the Senate Committee recommends the Government consider regulation to ensure such alliances will not circumvent provisions of the EI Bill. This should include allowing union officials to hold right of entry permits for only one Registered Organisation at a time.**