

**Senate Education and
Employment Legislation
Committee Inquiry into
Fair Work
(Registered
Organisations)
Amendment Bill 2014**

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Senator Bridget McKenzie
Chair of the Senate Education and Employment Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator McKenzie,

Re: Senate Education and Employment Legislation Committee Inquiry into the Fair Work (Registered Organisations) Amendment Bill

Thank you for the opportunity to provide comment to the Senate Education and Employment Legislation Committee Inquiry into the Fair Work (Registered Organisations) Amendment Bill 2014, referred on 1 September 2016. Whilst we are grateful for the opportunity to express our support for this critical piece of legislation, we also note the short timeframe in which to respond diminishes our ability to more comprehensively submit a response.

The National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contracting industry that employs more than 145,000 workers with an annual turnover in excess of \$23 billion. We are a key component of the nation's economic fabric. Our 4,000 members operate businesses throughout Australia, across the building, infrastructure and commercial construction sectors including the provision of these services to all areas of Local, State and Federal Government.

Additionally, NECA through its Group Training and Registered Training Organisations maintains a significant presence within the industry training space, maintaining responsibility for the employment, learning and skilling of more than 5,000 apprentices who will develop into future electricians and contractors.

As the peak representative body for electrical contractors, NECA is well qualified to provide background input into this inquiry, given our strong credentials and the critical importance of this legislation for our membership, across Australia.

NECA supports the passage of the *Fair Work (Registered Organisations) Amendment Bill 2014* (the Bill) which will amend the *Fair Work (Registered Organisations) Act 2009 (RO Act)* and the *Fair Work Act 2009* as we believe that this legislation is not only in the best interests of the construction sector, but also the national interest. Following the former Senate's rejection of this Bill and the *Building and Construction Industry (Improving Productivity) Bill 2013* on two separate

occasions, the Federal Government used Section 57 of the Australian Constitution to call a Double Dissolution of both houses of Parliament with a subsequent election held on July 2nd, 2016.

The Bill seeks to establish an independent watchdog known as the Registered Organisations Commission (the Commission) to monitor and regulate a registered organisation with stronger investigative and information gathering ability, amends and strengthens the registered officer's disclosure requirements and grounds for disqualification and office ineligibility, improves financial accounting, disclosure and transparency obligations under the Act whilst it increases civil penalties and introduces criminal offences for serious breaches of an officers' duties.

Whilst the result of this election was close, the Government was re-elected and given the election was established and fought under the trigger of the Senate's rejection of this bill, we strongly believe that the Government has a mandate to see the RO Act supported in the Senate, enabling the establishment of the Registered Organisations Commission.

Additionally, we argue that the findings of the Royal Commission into Trade Union Governance and Corruption (TURC) provide further, undeniable evidence of the urgent need for reforms, greater transparency and a stronger independent watchdog with a greater oversight of registered organisations and their obligations under the Act.

Why the Registered Organisations (RO Act) should be passed

NECA has been a long term advocate of reform across the Building and Construction Sector. In particular, we have made many calls for the return of the Australian Building and Construction Commission (ABCC). We strongly believe that the reinstatement of this body, removed by the introduction of the Fair Work (Building Industry) Act 2012, is in the national interest¹ and will be a positive catalyst for change, accountability and transparency.

In addition, NECA argues that the conduct of officials and members from a number of registered organisations, including the widespread theft and misuse of members' funds arising from the Health Services Union inquiry and the recommendations stemming from the Royal Commission into Trade Union Governance and Corruption (TURC) makes it clear that measures to improve transparency and governance are necessary and long overdue.

¹ <http://neca.asn.au/content/reinstating-abcc-national-interest>

Section 5 of the RO Act outlines Parliament's intention that "recognises and respects the role of employer and employee associations in facilitating the operation of the workplace relations system". Employee and Employer associations are formed to represent the interests of their members and may apply to the Fair Work Commission (FWC) for registration under the RO Act to gain access to rights and privileges under this Act and Fair Work Act 2009, allowing them to more forcefully represent members' interests in workplace matters such as workplace right of entry, assisting members at FWC proceedings such as unfair dismissal hearings or through modern award negotiations or variations.

However, to access these rights and privileges, registered organisations must comply with regulations concerning registration, rules, financial reporting, elections and officer conduct. The FWC maintains responsibility for the provisions of the RO Act that relate to registered organisations and its General Manager may make inquiries and conduct investigations, in addition to the examination of a registered organisation's financial records. Whilst investigative powers were strengthened and penalties were increased by the previous Government with its *Fair Work (Registered Organisations) Amendment Act 2012* (RO Amendment), concerns were raised by some stakeholder groups at the time that the amendments did not go far enough in order to deliver an acceptable level of accountability for member organisations.

At the 2013 Federal Election, the Government proposed measures to further strengthen regulatory oversight of registered organisations and their officers with fiduciary and statutory responsibilities more closely aligned with companies and directors under the Corporations Act 2001. These measures are included within the RO Act Amendment Bill 2014 and are highlighted by:

- Increasing civil penalties and introducing criminal offences for serious breaches of officers' duties, similar to those applicable under the Corporations Act 2001. This includes imprisonment for up to 5 years or 2,000 penalty units (equating to \$360,000)
- Amendments to officer's disclosure requirements for material personal interests (such as voting decisions) and changes to ineligibility and disqualification grounds to hold office
- Enhanced financial accounting and disclosure obligations under the RO Act by aligning obligations with those that apply to companies and making them enforceable as civil remedy provisions
- The creation of a Registered Organisations Commission to more strongly enforce these new regulations.

The conduct and regulations of some registered organisations has been a topical item of interest and NECA and its members have been concerned for many years about the behaviour and activities within the Building and Construction sector. At the Cole Royal Commission into the Building and Construction Industry in 2001, NECA provided extensive evidence of unlawful behaviour within the sector and called upon

the Federal Government to take significant steps to curb coercion and stand over tactics, inappropriate activities and other illegal acts. The Cole final report was tabled in March 2003 and found that the building and construction sector was characterised with “widespread disregard for the law” and noted that existing bodies lacked the sufficient power and resources to enforce and uphold the law.

NECA remains concerned that the standards of behaviour, identified by both the Cole Royal Commission and the Trade Union Royal Commission have returned to the sector, following its abolition and replacement by the Fair Work (Building Industry) Act 2012 (FW (BI) Act). The many instances of industrial stoppages and unlawful activity across the sector have led to low productivity and a rise in costs to deliver new public infrastructure². We believe that this behaviour threatens the viability and construction of nationally significant infrastructure projects and we believe it is critical to ensure that these projects are delivered efficiently and without waste of taxpayers’ money.

The proposed reforms to registered organisations, contained within this bill will deliver the following benefits:

- Improved transparency
- Enhanced fiduciary and disclosure accountability
- Increased severity in penalties for engagement in coercion and unlawful behaviour
- Community and business confidence;
- Greater value for taxpayer/ratepayer expenditure on public buildings
- Lower construction costs
- Stronger employment growth

Trade Union Royal Commission

NECA believes that the findings of the final report of the Royal Commission into Trade Union Governance and Corruption (TURC) serve to reinforce the need for the passage of this bill.

The Commission investigated 75 cases and conducted 189 days of hearings across Australia’s capital cities over a 21 month period. During this time, 500 witnesses gave public evidence and more than 2,000 notices to provide documents and

² <http://www.afr.com/news/politics/coalition-mp-paul-fletcher-blames-cfmeu-for-project-cost-blowouts-20160616-gpki6b>

evidence were submitted. A total of 79 recommendations were made to improve the governance of registered organisations and improve the management of construction sites across Australia.

Given, Commissioner Justice Dyson Heyson QC's findings that the labour movement contained "widespread" and "deep seated" misconduct within its ranks and that this behaviour was not simply "isolated" or the work of a few "rogue officials", it is clear to our members and the wider electrical contracting sector industry that enhanced reforms to the operations of registered organisations is necessary. The fact that 45 individuals were referred to authorities for possible criminal charges or civil action is a terrible indictment upon the building and construction sector and the present situation should not be allowed to continue without reform and legislative change.

NECA supports the recommendations contained within TURC to establish an independent, stand-alone regulator (Registered Organisations Commission) with stronger powers to monitor and investigate unlawful activity with increased severity of penalties for those found guilty of coercion and corrupt conduct. We are also clear in our belief that greater transparency will ultimately flow through to lower construction costs and stronger employment growth across the sector.

A recent example of last minute strike action by ETU workers in Queensland where threats were made against small businesses who failed to approve leave applications for union strike action is the type of behaviour that needs to be stamped out by the ABCC and accompanying legislation.

In summary, NECA strongly believes that the Senate must support the passage of the Fair Work (Registered Organisations) Amendment Bill 2014 as it is in the national interest and the best opportunity to create positive change within the building and construction sector. We also believe that the evidence of unlawful activity uncovered across both Royal Commissions gives further reason for the establishment of the Registered Organisations Commission which will deliver benefits for electrical contractors who are heavily exposed to building and construction sector activities.

Thank you again for the opportunity to comment on this bill and we look forward to seeing its successful passage in the Senate.

Yours faithfully,

Suresh Manickam
Chief Executive Officer
National Electrical and Communications Association (NECA)