Ai Group Opening Statement to the Senate Education and Employment Legislation Committee Inquiry into the Fair Work Amendment (Closing Loopholes) Bill 2023 (Bill).

Innes Willox, Chief Executive, Ai Group

CHECK AGAINST DELIVERY

Chancellor Two Room, Hotel Grand Chancellor, Melbourne.

Ai Group welcomes the opportunity to discuss our submission with this Committee.

Our views are informed by our members, large and small, and the depth of knowledge we bring from 150 years representing Australian industry.

Ai Group fundamentally opposes this misconceived and fatally flawed Bill.

The Bill does not 'close loopholes'.

Such Orwellian doublespeak suggests modest changes to address technicalities or fix ambiguities and uncertainties.

That is far from what the Bill proposes.

The Bill would implement a radical reworking of core elements of Australia's workplace relations system.

It would override carefully considered approaches settled by the Fair Work Commission and High Court relating to fundamental concepts underpinning our system.

It upends the notion of who is an employee; when someone can be engaged as a casual employee and when they should be eligible to convert to permanent employment.

It proposes giving the Fair Work Commission extraordinary new ill-defined discretionary powers to regulate parts of the economy.

The Bill is entirely inconsistent with the Government's recently released Intergenerational Report and its Employment White Paper.

Both point to the need to lift productivity and workforce participation.

It is therefore astonishing that this Bill does nothing to improve our languishing workplace-based productivity growth and therefore does nothing to lift real wage rates. It focuses entirely on imposing new complexities, inflexibilities and compliance burdens on employers.

If passed, the Bill would make it less attractive to employ people and detract from the ability of employers to adjust in the face of the major changes we face.

It would undoubtedly discourage investment and burden businesses with further unwanted complexity and red tape.

It is no less astonishing that the Bill erects substantial barriers against flexible work opportunities. Yet

this flexibility lies at the heart of achieving future gains in workforce participation.

The Bill will not lead to the creation of a single job.

It will stifle innovation.

It will discourage employment and investment.

Rather than creating harmonious workplaces, it will drive and fuel conflict.

Rather than promoting enterprise bargaining, it will discourage it.

Rather than reducing the complexity of the near 1,200 page Fair Work Act, it will create further confusion.

I would like to mention here that while we are fundamentally opposed to the Bill we have engaged constructively with the Department of Employment and Workplace Relations and the office of the Minister for Employment and Workplace Relations.

We recognise that the Bill has gone some way towards addressing some of the concerns that we have raised. However, when viewed in its totality it remains a bad Bill and an incoherent mess. Indeed, it would implement various measures that are simply unworkable.

This is not hyperbole.

The Bill, as framed, needs to be fundamentally reconsidered. It has been rushed and must not be rubberstamped by the Parliament.

We are concerned at the lack of any meaningful justification for many aspects of the Bill or analysis of their impact.

The Regulatory Impact Statement is vague, incomplete and often completely unhelpful. It is impossible to use the Statement for any realistic modelling of the economic impact of the measures.

Our submission addresses in detail what would be the operation or effect of key elements of the Bill and our concerns. We have sought to identify possible changes to some elements of the Bill to address specific deficiencies. Although such changes would be crucial, they do not rectify fundamental flaws in the Bill. They do not warrant its passage into legislation.

Briefly, I draw the Committee's attention to our overarching concerns regarding major elements of the Bill:

1. **The proposed changes to casual employment** are inconsistent with the High Court's clarification of who a casual employee is under common law and are incompatible with a Full Bench of the Fair Work Commission's interpretation of casual employment.

   It will create significant and entirely unwarranted problems and deter employers from hiring casuals and deny workers the flexibility casual employment offers so many.

2. **The proposed changes relating to the implementation of the 'same job same pay' or 'closing the labour hire loophole**' policy represent an unfair attack on the labour hire sector and the organisations and employees that rely upon it.

The proposed scheme represents considerable overreach through its application well beyond just traditional labour hire arrangements. And as our submissions demonstrate, there are a raft of fundamental questions about how it will operate that should cause this Committee to accept that the proposed scheme will be unworkable.

The changes to the meaning of 'employee' and 'employer' for the purpose of the FW Act represent a radical attempt to override the High Court's articulation of the proper approach to such matters. They will impose uncertainty and complexity on industry that will foreseeably disturb and put at risk the current uncontroversial engagement of a raft of independent contractors.

3. **The proposed regulation of contractors in the Road Transport Sector** risks repeating the mistake of the disastrous operation of the Road Safey Remuneration Tribunal. That Tribunal threatened to destroy the livelihoods of thousands of owner drivers before it was abolished in 2016.

4. **The changes directed at enabling employers and employees to transition from the multi-employer bargaining system to single-enterprise agreements** are a welcome acknowledgement of the deficiencies of multi-employer bargaining.

   However, the new requirement to compare them against multi-employer agreements rather than the established safety net of awards takes the system backwards.

5. **The introduction of further increases in civil penalties through the enforcement and compliance regime** dramatically increases penalties for certain contraventions without any meaningful effort to address the complexity of our system and will do little to improve compliance.

6. The changes to **delegates rights and union right of entry** are unclear, unfair and unnecessary given the raft of protections already afforded to employee representatives under our system.

There are notorious and persistent problems with the current Workplace Relations system, a key example of which is its baffling complexity. The Bill does not grapple with this complexity. Rather, it exacerbates the complexity that employers, employees and workplaces around Australia face every day.

Innes Willox, Chief Executive Ai Group

Link to full Ai Group submission to the **Senate Education and Employment Legislation Committee Inquiry into the Fair Work Amendment (Closing Loopholes) Bill 2023 (Bill).**

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