

**OUTLINE OF SUBMISSION OF AUSTRALIAN INDUSTRY GROUP  
ON OBJECTION TO RETAIL AND FAST FOOD WORKERS UNION INC  
BEING A PARTY PRINCIPAL TO THE REVIEW**

1. The Australian Industry Group (“**Ai Group**”) has prepared this outline in support of its objection to the Retail and Fast Food Workers Union Inc (“**RAFFWU**”) being, or being treated as, a party principal to the review being conducted by the Commission under section 156 of the *Fair Work Act 2009* (Cth) (the “**FW Act**”).
2. The Ai Group notes that RAFFWU describes itself as an “*industrial association*” within the meaning of the FW Act and RAFFWU does not assert that it is an “*organisation*” registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) or an “*organisation*” or “*employee organisation*” within the meaning of the FW Act (see, for example, section 12 “*organisation*” and section 12 “*employee organisation*” of the FW Act).
3. The Ai Group notes that RAFFWU is not listed as a registered organisation on the “Find Registered Organisations” page of the Commission website (see [www.fwc.gov.au/registered-organisations/find-registered-organisations](http://www.fwc.gov.au/registered-organisations/find-registered-organisations)).
4. The Commission has general control over the persons who may participate in the review under section 156 (see section 589 of the FW Act; see also generally *Re Vickers* [2017] FWCFB 3131 at [30] per Hatcher VP, Sams DP, Spencer C).
5. The Commission should not permit RAFFWU to be, or be treated as, a party principal to the review (and thus should not permit RAFFWU to cross-examine witnesses or make written or oral submissions):
  - (a) RAFFWU is not directly affected by the proposed variations to the Fast Food Award (see, by analogy, *Re Vickers* [2017] FWCFB 3131 at [30] per Hatcher VP, Sams DP, Spencer C).
  - (b) RAFFWU is not a registered organisation such that it is not subject to the extensive legislative regime applying to registered organisations and entailing that it ought not be permitted to appear on a basis equivalent to a registered organisation (see, by analogy, *Re Vickers* [2017] FWCFB 3131 at [30] per Hatcher VP, Sams DP, Spencer C).
  - (c) RAFFWU has filed no evidence in the proceedings.

- (d) There is no evidence that RAFFWU has any members at McDonald's, Hungry Jack's, Red Rooster, Chicken Treat, Oporto or any other large employer in the fast food industry (apart from Domino's (see RAFFWU Submissions, par 3)) (see, by analogy, *Re Vickers* [2017] FWCFB 3131 at [30] per Hatcher VP, Sams DP, Spencer C).
  - (e) There is no evidence of the number of members of RAFFWU working at Domino's.
  - (f) The interest of fast food employees in the review is being represented by the SDA (which according to its submissions filed on 16 March 2018 has 21,500 members working in the fast food industry, including at McDonald's, Hungry Jack's, KFC and Domino's (see SDA Submissions, par 3)) which is an organisation which is subject to the extensive legislative regime applying to registered organisations.
6. The Ai Group accepts that the RAFFWU was "*appointed*" as a bargaining representative in respect of the negotiations for an enterprise agreement to apply to Domino's (see *RAFFWU* [2018] FWC 145 at [4] per Hamberger SDP; see also RAFFWU Submissions, par 3). The RAFFWU was not a default bargaining representative as it was not an "*employee organisation*" within the meaning of the FW Act (compare section 176(1)(b) of the FW Act). The terms and scheme of the FW Act are that any person may be "*appointed*" as a bargaining representative (see section 176(1)(c) of the FW Act). However, the appointment of a person to be a bargaining representative for the purposes of negotiating an enterprise agreement (in accordance with an express provision of the FW Act) does not confer upon that person (and should not result in that person receiving) a right to participate as a party principal in proceedings for a different purpose (including the purpose of participating in a review under section 156).
7. The Ai Group accepts that the Commission may treat RAFFWU as an "*interested person*" in the review (see *Penalty Rates Decision* [2017] FWCFB 1001 at [31]-[32] per Ross J, Catanzariti VP, Asbury DP, Hampton and Lee CC) and may receive and take into account a "*contribution*" (such as a written document) from RAFFWU (see *Penalty Rates Decision* [2017] FWCFB 1001 at [31]-[32] per Ross J, Catanzariti VP, Asbury DP, Hampton and Lee CC).

**H J Dixon SC**  
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[4] April 2018