

4th April 2016

The Committee Secretary
Senate Education and Employment Committee
PO Box 6199
Parliament House
Canberra
ACT 2600

Dear Ms. Agostino

Re: The Fair Work Amendment (Protecting Australian Workers) Bill 2016

We refer to your correspondence in respect of the Fair Work Amendment (Protecting Australian Workers) Bill 2016, (the Bill) and its referral for inquiry and report by the Senate Education and Employment Committee. We thank you for the opportunity to make a submission on the contents of the Bill and our brief comments are set out in this letter.

1. About Master Grocers Australia

Master Grocers Australia (MGA) is a nationally registered organisation. There are 2,700 branded independent grocery stores, trading under brand names such as: Supa IGA, IGA, IGA Xpress, FoodWorks, Foodland, Farmer Jacks, Supabarn, Friendly Grocers, and SPAR, with a further approximately 1,300 independent supermarkets trading under their own local brand names. In addition, there are numerous independent liquor stores operating throughout Australia and trading under names such as Cellarbrations, The Bottle O, Bottlemart, Duncans, and Local Liquor, which are either single or multi-store owners. Our member's independently owned hardware stores trade under brand names including, Mitre 10 and True Value Hardware. The MGA member stores which collectively employ more than 115,000 staff are comparatively much smaller when juxtaposed against the large supermarket chains of Coles and Woolworths which combined represent approximately 80 per cent of the retail supermarket industry.

2. MGA responses to the main provisions of the Bill

a. Status of employees

The majority of MGA members operate their businesses under the General Retail Industry Award, but some retailers have their own enterprise agreements. As members of MGA they are provided with guidance and information in relation to their obligations under the award system or they are assisted to make their agreements that satisfy the requirements of the industrial relations legislation. MGA ensures that members pay their employees

in accordance with the rates prescribed under the appropriate award or we ensure that members properly interpret their agreements. We also provide guidance in respect of the Fair Work Act and the need for absolute compliance with the legal requirements of the legislation.

MGA therefore supports the proposal to ensure that any person who is legally entitled to work in Australia is entitled to receive the appropriate remuneration as defined in the industrial instrument that governs their employment. This should apply to all employees if they work in Australia and if this requires an amendment to the Migration Act then the appropriate changes should be made to the law.

It is not compulsory to join a registered association to obtain information so the facilities of the Fair Work Ombudsman should be compulsorily publicised in workplaces, in addition to the distribution of the Fair Work Information Statement, so that any new employees to Australia are made aware of their rights.

b. Fair Work Information Statement

Every worker in Australia, on being employed by a new employer, must receive a copy of the Fair Work Statement (FWS) on commencing employment. It is appropriate that the FWS should identify to overseas workers that they are entitled to take redress against a recalcitrant employer who does not provide appropriate payments and conditions as defined in the Fair Work Act.

c. Adverse action

All workplace rights are protected for those who are legally employed in Australia whether they are permanent residents or temporary overseas workers. There should be no reason for additional protection for overseas workers in respect of taking an adverse action because it is a fundamental right for all employees to be treated fairly and this equal right applies regardless of status.

d. Phoenixing

The issue of phoenixing is a contentious one and there should be legislative avenues pursued other than the Fair Work Act to undertake reform in this area. The Corporations Act would be better positioned to pursue those who attempt to avoid payment of entitlements in the event of the liquidation of a company.

e. Size of a company and associated penalties

In circumstances where the size of the business is such that it should have reasonably known its commitments to workers but ignores their obligations then penalties should be increased. There is ease of availability to information regarding legal obligations in respect of wages and conditions and ignorance of the law from an employer perspective in this respect is inexcusable. The larger the company the greater the opportunity to meet legal obligations to workers, it is therefore appropriate for penalties to be commensurate with size.

f. Disqualification from management of a corporation.

The extent of the offence would need to be a determining factor in disqualification of managing a corporation. Whilst in theory disqualification would be appropriate where there is a deficiency in the legal payments to workers for work performed for an employer, there may be mitigating factors that would need to be considered before such an extreme penalty was imposed. In practical terms the size of the business, the involvement of the director and the various levels of management that were involved, together with levels of coercive or threatening action would all need to be seriously considered before any such amendment was imposed.

g. Introduction of criminal offences.

Any coercion or threat to any person in respect of forcing workers to work against their will for little or no payment is a heinous offence. MGA totally condemns any such activities and regards the imposition of criminal penalties as justifiable punishment for such actions but it is submitted that penalties under the criminal law should be increased for these crimes rather than them being introduced into the Fair Work Act.

Conclusion

Overall MGA supports the main issues raised in the proposed amendments to the Fair Work Act. There is a need to employers to be cognizant of their obligations to their employees and there is assistance available from the Fair Work Commission and the Fair Work Ombudsman, as well as employer associations to protect the employer and employees. It is unfortunate that some businesses choose to act without appropriate advice which results in damaging their financial position and their reputation if they decide to ignore their obligations.

MGA thanks the Committee for this opportunity to comment briefly on the proposals to amend the Fair Work Act and would be pleased to discuss the issues in more detail should the Committee require further comments.

Yours sincerely

Jos de Bruin.

CEO

Master Grocers Australia