

**SENATE STANDING COMMITTEE ON
EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS**

QUESTIONS ON NOTICE

**Inquiry into the Fair Work Amendment (State Referrals and Other Measures) Bill
2009**

Senator Fisher asked ACCI on Wednesday, 11 November, 2009, EEWR Hansard page 10.

Question

COIL

Senator FISHER—Did ACCI ask about a COIL process for this bill?

Mr Mammone—No, because the first time we heard about this bill was when it was introduced into parliament on 21 October. I had no knowledge of the government preparing this bill. Another ACCI officer may have, but to my understanding no-one at ACCI was notified.

Senator FISHER—Since the Rudd government came to power, has there been any other bill that amended the federal workplace relations legislation in its various forms that the government did not subject to a COIL process?

Mr Mammone—I think all of the Fair Work legislation since 2008 has been subject to some COIL process. In saying that, there may have been one that was not subject to that process. I may need to take that on notice.

Answer

Our records indicate that the Committee on Industrial Legislation (COIL), which is a sub-committee of the National Workplace Relations Consultative Council (NWRCC), of which ACCI is a member, was not convened either prior or subsequent, to the introduction of the Fair Work Amendment (State Referrals and Other Measures) Bill 2009 (the Bill) in Parliament.

To the best of our knowledge COIL was convened for all other proposed Bills forming part of the Government's fair work legislative package. These being:

- a. Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009.
- b. Fair Work (State Referral and Consequential and Other Amendments) Bill 2009.
- c. Fair Work Bill 2008.
- d. Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008.

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Question

COIL – Clarification

Senator FISHER—Thank you. Would a COIL process with this bill have helped your understanding of it so that you could then have informed this committee of your views about the effect of it?

Mr Mammone—Certainly the ability—as much as there is—to understand the policy rationale for a piece of legislation which is afforded by a COIL process does assist. Unfortunately we just have not had enough time to digest the implications of the bill since it was introduced. I understand that affected employer organisations in states that are referring have probably not had as much consultation as they would have liked to have. I also understand that these changes will come into effect by 1 January next year, which is also a cause of concern for employer organisations that have to provide advice on the implications of this.

ACCI wishes to clarify the evidence it provided with respect to the above matters.

Had COIL been convened, and had ACCI become aware of certain proposals which are reflected in the Bill during COIL meetings, ACCI would have indicated that it:

- Does not support the ability for States to terminate their amendment references as set out in the Bill.
- Supports a general referral of all powers, and for all employers to be referred to the Commonwealth, as Victoria had done since 1997.
- Does not support the ability for existing federal system employers to be declared non-federal system employers.
- Would like to see a copy of any IGA that underpinned the referral of powers or if that was not possible, understand how the IGA works in conjunction with the referral of powers by States.
- Does not support the ability for State/Territory Governments to veto future amendments to the federal laws (either primary legislation or regulation) via any inter-governmental agreement that would affect either federal system or referral employers.

COIL may have also provided an opportunity to ensure that in the process of drafting, (a) the policy intent is reflected in the Bill and (b) unintentional consequences are identified before legislation is introduced into Parliament.

ACCI is unaware of any process akin to COIL occurring between relevant ACCI members and referring State Governments.

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Question

Senator FISHER—I ask you to take this on notice: please ask each of your chamber organisations in the participating states whether they were consulted by relevant state governments at any time while

state parliaments were dealing with the relevant referring legislation and, if so, who was consulted, by whom, when the first contact was made—relative to the referring legislation itself and its processing by the respective state parliamentary systems—and what the duration and results of those consultations were, if any.

Mr Mammone—Thank you. I will obviously take that on notice. I just flag that it may be difficult to get the information from each of the 36 organisations that are members of ACCI, some of which were involved in the referring state legislation process. So I will take that on notice.

Answer

Within the limited time available, feedback from the ACCI network indicates that:

SA – Business SA has indicated that it had formal consultations with State Government officials. ACCI is unaware of the detail of these discussions.

Tasmania – Tasmanian Chamber of Commerce and Industry (TCCI) has indicated that it had formal consultations with State Government officials. ACCI is unaware of the detail of these discussions.

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Question

Termination of Amendment References

Senator FISHER—Mr Mammone, could you get back to the committee on why you think the bill effectively says that a referring state which terminates its referral for either of the circumstances set out in subclauses (7) and (8) on page 18 of schedule 1 of the bill does not cease by that act to be a referring state? Can you take on notice what you think the purpose of that provision is and what you think the effect of that provision would be?

Mr Mammone—I am happy to take that notice, although it is the government's bill and the government has explained what it thinks the purpose is, so I can only answer it within that context.

Answer

A. ACCI cannot identify the extant policy rationale for sub-clause 7 or 8 of item 31. It allows in the first instance a State to terminate its "amendment reference" upon 6 months notice if all other referring States also terminate their amendment reference on the same day and still remain as a referring State within the federal system. The second instance, allows one State to unilaterally terminate their amendment reference upon 3 months notice if an amendment to the fair work laws "is inconsistent with the fundamental workplace relations principles". Sub-clause (8) is referred to by the Deputy Prime Minister in her second reading speech as follows:

"these principles prescribe fundamental values that the Commonwealth and relevant states have jointly declared to be essential features underpinning a fair and effective national workplace relations system".

Given the low threshold for a Governor to be satisfied that an amendment to the FW Act is inconsistent with the principles, there does not appear to be any legislative or policy imperative for sub-clause 8 to refer to these principles. ACCI is unaware of any other Commonwealth referral of powers legislation that sets out a method of terminating amendment references upon satisfaction of breaching certain prescribed principles.

B. To answer the second part of the question, it appears that in both cases, State referral employers and employees would not be subject to the proposed amendments (whatever they may be). This will mean that intra-state differences would apply to federal system and referral system employers and their employees from the time that is fixed by proclamation in accordance with sub-clause 7 and 8.

It is unclear whether States may terminate their amendment reference if amendments to the regulations are inconsistent with these principles.

As indicated at p.16 of its submission, ACCI does not support these provisions.

Senator Collins asked ACCI on Wednesday, 11 November, 2009, EEWR Hansard page 8.

Question

CCIWA

Senator JACINTA COLLINS—Are you able to inform us of WACCI's position in relation to this?

Mr Mammone—No. I hesitate to give any indication of what might be one of our member's views on the matter. So unfortunately I cannot answer that.

Senator JACINTA COLLINS—Do you know whether their position is on the record in terms of the Western Australian review?

Mr Mammone—I believe they have submitted submissions to the review but I am not sure of the general thrust of those submissions and whether they are public. So unfortunately I do not have that information.

Senator JACINTA COLLINS—Would you mind taking that on notice on providing it to us if it is public?

Mr Mammone—If it is public, yes. I can take that on notice.

Answer

The Chamber of Commerce and Industry WA (CCIWA) submission (162 pages) on the above matter is on the public record and can be accessed here: <http://www.commerce.wa.gov.au/LabourRelations/PDF/Misc/CCIWASubmissionStateIRReview.pdf>