



Senate Education and Employment Legislation Committee

Inquiry into the Fair Work Amendment (Protecting Australian Workers) Bill 2016

April 2016



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 97 years, AMMA's membership spans the entire resource industry value chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA works to ensure Australia's resource industry is an attractive and competitive place to invest and do business, employ people and contribute to our national well-being and living standards.

The resource industry is and will remain a major pillar of the national economy, and its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resource industry currently directly generates over 8% of Australia's GDP. In 2014-15 the value of Australian resource exports were \$171.9 billion. This is projected to increase to \$256 billion in 2019-20. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Over 50% of the value of all Australian exports are from the resource industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserve.

AMMA members across the resource industry are responsible for significant level of employment in Australia. The resources extraction and services industry directly employs 219,800 people. Adding resource-related construction and manufacturing, the industry directly accounts for 4 per cent of total employment in Australia.

Considering the significant flow-on benefits of the sector, an estimated 10 per cent of our national workforce, or 1.1 million Australians, are employed as a result of the resource industry.

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INTRODUCTION

1. Thank you for the opportunity to comment on the Opposition's *Fair Work Amendment (Protecting Australian Workers) Bill 2016* (Protecting Workers Bill)
2. The Fair Work system imposed on Australia's employers and employees in 2009 is in increasingly urgent need of repair. Two separate reviews (from Labor's own Fair Work Review Panel and the Productivity Commission (PC)) have recommended the legislation be changed in key areas where it is not working as intended, or is operating contrary to the interests of employers, employees and the wider community.
3. Economic and labour market challenges facing Australia, along with external global economic risks, weigh against complacency this critical area of policy and against any assumption that the current Fair Work Act is somehow perfect and not in need of, or amenable to, change.
4. Putting aside the politics of workplace regulation, the economy has changed markedly since the then Rudd government created the Fair Work framework. All parties should be working to ensure our workplace relations regulation is effective, fit for purpose and best supports the interests of employers, employees and the wider Australian community.
5. The current government was elected with a clear mandate to change specific areas of the Fair Work Act 2009 and other legislation, and has introduced a number of amending bills to do so.
6. Unfortunately, the Opposition has refused to pass any changes to the Fair Work Act, regardless of their merit or necessity. The Opposition has ignored improvements the proposed amending legislation would make to the operation of the Fair Work Act, and has instead pursued a 'just say no' strategy.
7. It is difficult to escape the conclusion that the Opposition has put the deliberate politicisation of workplace relations above the interests of employees, employers, jobseekers and the wider community.
8. It represents the utmost hubris for any party to impose speculative and very wide-ranging legislative change and then block all efforts to fix problems that inevitably come to light following implementation. It is difficult to escape the conclusion that the Opposition is indifferent to the negative impact of the Fair Work Act on employers' capacity to operate and employ, both viably and sustainably.
9. The resource industry's primary feedback on the Protecting Workers Bill is that the Opposition should pass the workplace relations bills already (or previously) before the Parliament, rather than pursue new legislation from opposition, which is more an exercise for show than one with any realistic chance of success.
10. The Opposition should support amendments to fix demonstrated problems in areas such as:

- a. Excessive union entry into workplaces.
 - b. Ridiculous lunch room meeting provisions.
 - c. The misuse of industrial action and threats of action in bargaining.
 - d. The National Employment Standards reversing long-standing approaches to leave and leave payments.
 - e. Legislation to restore the Australian Building & Construction Commission (ABCC) and improve the governance and accountability of registered organisations should also be passed.
11. We also note that the sole set of changes passed during the current Parliament (the Fair Work Amendment Act 2015) was only be able to be secured despite the Opposition desperately trying to filibuster and delay its passage.
 12. No Opposition should wear as a badge of honour blocking any and all amendments in an area as critical as workplace relations, with no regard to the merits or necessity of changing the legislation or to the real world concerns of employers and employees in workplaces. No Opposition should laud itself for blocking reforms that could see more Australians in work.
 13. The best thing the Opposition could do at this point would be to pass the Registered Organisations and ABCC legislation, and signal to the government that it will pass other previously introduced amendments to the Fair Work Act 2009 this side of the 2016 Election (if possible in the remaining sittings).
 14. As we near the election, the opportunity to fix obvious flaws in the Fair Work Act during this Parliament is running out. This will shortly shift the focus onto the competing workplace relations policies taken to the 2016 election.
 15. In drafting these policies, workplace relations issues currently before Parliament, and the recommendations of both the PC and the Heydon Royal Commission should be the starting position for policy consideration by all political parties. All parties should be committed to at least the scope of changes to the Fair Work Act introduced by the government during the current parliament.
 16. The workplace relations policies of all parties should be judged on their capacity to grapple with how our workplace relations laws can better support Australia becoming a more appealing and rewarding place to invest, do business and create job.
 17. We encourage the Opposition to focus on areas most in need of repair in the existing Fair Work Act, which is not the case in relation to the Protecting Workers Bill.

THE PRIVATE MEMBER'S BILL

18. The Protecting Workers Bill addresses important compliance considerations. However, it does so in areas that are already addressed in the Fair Work Act, and where existing obligations, penalties and enforcement already apply.
19. It is far from clear to resource employers that there is any case for increasing penalties and statutory obligations, nor that this will have the positive effects nominally attributed to the Bill.
20. There are already substantial penalties and obligations in the areas addressed in the Bill, and the Fair Work Act increased penalty levels significantly. The Fair Work Ombudsman already secures prosecutions and the imposition of substantial penalties in each of these areas. The various high profile cases cited for the introduction of the Bill, are being pursued and prosecutions made under the current law. They cannot of themselves justify the imposition of further or higher penalties.
21. Caution should also be exercised in assuming ramped-up penalties will redress very difficult, or long standing concerns, that have proved intractable in a stubborn minority of cases despite governments increasing enforcement and penalties in the past. Further ramping-up penalties punitively risks discouraging compliance, and threatens the transparency and rigor with which employment should be conducted, as well as in some areas discouraging investment and the offering of work through increased risks for job creators.

MIGRATION

22. International employment in Australia's resource industry delivers the highest rates of pay of all 457 visa work. Whilst numbers of migrant employees have fallen markedly in line with the shift from construction into production, even at its peak, migrant work in the industry was professionally administered, actually supported local jobs, and salary rates at or above market rates were the 'norm' (and well in excess of workplace relations and migration law minima).
23. AMMA supports adequately resourced Department of Immigration and Border Protection and Fair Work Ombudsman staff being able to firstly inform and empower international workers working in Australia and their employers – we say that Australia already has this in place.
24. Where necessary, information and support should be backed up with effective compliance and enforcement. We are however sceptical that penalties and enforcement need to be increased in this area, nor that increased enforcement and penalties can ever entirely remove the risk of deliberate gaming or non-compliance – particularly given the reward in many cases is a path into permanent residency and citizenship.
25. We also invite the Committee to recall that throughout the world some level of misuse and abuse occurs endemically in skilled migration.

26. This is not to excuse abuse or fraud, but to caution against any simplistic assumption that ramping up penalties and expenditure on enforcement will:
 - a. Automatically or universally deliver the desired policy outcomes.
 - b. Be without negative consequences for employment, investment and the doing of business in Australia.

OFFENCES

27. The Opposition seeks to create various new criminal offences.
28. This appears to be a classic 'look over here approach' seeking to divert attention from the Opposition's ongoing efforts to block the return of the ABCC, and ensure the Senate cannot deliver long overdue and sensible changes this side of the 2016 election.
29. If the Opposition is genuinely committed to the rule of law and improving the observation of workplace relations laws, a good starting point would be to support passing the legislation to restore the ABCC.
30. It is quite skewed to propose new penalties and the threat of imprisonment in one area of operation of our workplace laws, whilst at the same time standing in the way of the effective investigation of unlawful conduct and other breaches of the law in our construction industry.
31. It is remarkable that in the wake of the final report and recommendations of the Heydon Royal Commission, the Opposition would choose to pursue speculative new penal powers, whilst refusing to act on areas of urgent and clearly demonstrated need, including in the regulation, governance and accountability of Registered Organisations.
32. It is also inconsistent for the Labor Party to be pursuing additional criminal penalties in the Fair Work Act. We understood removing penal powers from our employment legislation was considered one of Labor's proud historic achievements. It seems strange to say the least that it is Labor that is now proposing to reinsert jail terms into our workplace relations legislation.
33. The Opposition's Protecting Workers Bill also opens the possibility that in future some of the proposed offences and imprisonment penalties could attach to other breaches of the Fair Work Act, including making threats and intimidation in bargaining.
34. It will be interesting to see if Labor is committed to consistency in this area, and could rely on union support for its supposed commitment to using criminal law and imprisonment to see our workplace relations laws enforced.

CONCLUSION – HOW TO PROCEED

35. Many of the matters said to give rise to the *Protecting Workers Bill*, are valid and important concerns.
36. However they are already addressed in our workplace relations system / Fair Work legislation. The final recommendations of the PC also address contracting, sub-contracting, and migrant employment.
37. These concerns should be addressed, not prematurely, pre-emptively or partially as the Opposition proposes in its Bill, but by way of a comprehensive response to the PC recommendations and the policies taken to the next election.
38. Both the Coalition and Labor should at this point be focused on reviewing the various recommendations they have before them, and in particular the recommendations from the PC's review of our workplace relations framework. This is where the next iteration of change to our legislation should come from, not a piecemeal exercise in political distraction on the eve of an election – which stripped of hyperbole, is what the *Protecting Workers Bill* boils down to.
39. Employers, employees, jobseekers and the wider community should expect of both our major parties at this juncture that they are formulating policies that will better support competitiveness, investment and job creation, and that will start to fix core problems with parts of the nearly seven year old Fair Work Act that are standing in the way of job opportunities and incomes for more Australians.
40. This, along with seizing opportunities to pass the above referenced stalled amending workplace relations Bills, should be the core task of all in the workplace relations policy community, not putting up private members' bills that misread or ignore the real priorities for change in our workplaces and which are very unlikely to be passed prior to the proroguing of this Parliament.
41. Resource industry employers oppose each of the proposed amendments in the Bill. These are the wrong priorities, and the wrong approaches to each of the matters addressed in the Bill.
42. Resource employers call on the Committee to recommend:
 - a. Against the passage or consideration of the *Protecting Workers Private Member's Bill* by the Senate.
 - b. Instead, the passage of the ABCC, Registered Organisations and other stalled legislation.
43. We would add in closing that it would be very disappointing were this Bill to have been ultimately motivated by an attempt to make political point about what is and is not prioritised on the Senate's timetable for the remainder of its sittings.

ACCI:

44. AMMA has also reviewed the Australian Chamber's more detailed feedback on the various amendments proposed in the Protecting Workers Bill.
45. In addition to the broad feedback in this submission, we share the Chamber's more detailed concerns with each of the items in the Bill.
46. We also share the Chamber's concern that the Bill will do nothing to restore balance in the workplace relations system and would in fact have the opposite effect.