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MASTER ELECTRICIANS AUSTRALIA

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Submission to House Standing Committee on Education and Employment

On

Fair Work Amendment Bill 2013

April 2013

Part of the ECA Group

Table of Contents

Inquiry into the Fair Work Amendment Bill 2013

Submission to the House Standing Committee on Education and Employment

BACKGROUND

1. **Master Electricians Australia** Ltd (MEA) is a not-for-profit organisation that provides a national accreditation program to electrical contractors seeking to differentiate themselves from other contractors. MEA is part of the ECA Group of Companies and operates nationally.

2. Established in 1937, the **Electrical Contractors Association** (ECA) has been representing electrical contractors for more than 75 years, making it one of the longest-standing industry associations of its kind. It is a dynamic and modern trade association recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. ECA is registered as an industrial organisation under Queensland legislation with its operation in Queensland.

3. References to MEA and opinions expressed by MEA, within this submission, should be read as both Master Electricians Australia and the Electrical Contractors Association.

4. This submission is made on behalf of members of MEA in relation to the proposed amendments outlined in the Fair Work Amendment Bill 2013 (the Bill).

5. MEA currently has a membership base of over 2500 electrical contractors Australia-wide of which approximately 95 per cent are employers with 15 or less employees and approximately 60 per cent of these members have less than 5 employees.

6. Therefore, MEA are committed to representing the best interests of small and medium sized businesses in the Electrical Contracting Industry.

OBJECTIVES OF THE *FAIR WORK ACT 2009*

7. The *Fair Work Act 2009* (FW Act) has the following objectives:

   (a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations; and

(b) *ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders; and*

(c) *ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system; and*

(d) *assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and*

(e) *enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and*

(f) *achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action; and*

(g) *acknowledging the special circumstances of small and medium-sized businesses.*

8. The above objectives must be taken into account when considering the proposed amendments to the FW Act.

MEA'S SUBMISSION

Schedule 1 – Family Friendly Measures

Part 1 – Special maternity leave

9. Currently, any period of special maternity leave taken by an eligible employee reduces the employee's entitlement to 12 months of unpaid parental leave.

10. Part 1 of Schedule 1 to the Bill amends the special maternity leave provisions so that any period of unpaid special maternity leave taken by an eligible employee will not reduce that employee's entitlement to unpaid parental leave.

11. This means, that a person who would have been entitled to a total of 52 weeks unpaid parental leave could be entitled to up to a total of 58 weeks leave.

12. Whilst this allows mothers additional time with the newborn it creates an extra burden for businesses, especially small businesses, to cover the additional time off.

13. The FW Act already contains provisions for extending the employee's period of unpaid parental leave beyond the 12 months if the employer agrees. Therefore, as the legislation currently stands, should an employer be in a position to allow additional parental leave beyond the initial 12 month period, they are able to do so. This balances the needs of the employee with the operational requirements of the business, meeting objectives (a) and (d) of the FW Act.

14. MEA supports the insertion of notes to clarify interaction with paid personal/carer's leave entitlements, however, given the employee is suffering from an illness MEA would submit that the employee must take all available personal leave before taking unpaid special maternity leave. This will better reflect that the national employment standards are a safety net and demonstrate that employers can, at that period, have a shared responsibility in the circumstances, taking into account the employee's length of service.

15. The current bill does not take into account the specific circumstances of small to medium businesses and as such we believe our submission in paragraph 14 would better balance all parties perspectives within this complicated issue.

Part 2 – Parental leave

16. Under the current legislation the maximum period of concurrent leave is three weeks, which can only be taken in one single period from the date of birth or adoption.

17. Part 2 of Schedule 1 to the Bill amends the concurrent leave provisions by increasing the maximum period of concurrent leave available from 3 to 8 weeks. Further the amendment will allow the 8 weeks' leave to be taken in separate periods (of at least 2 weeks unless a shorter period is agreed) at any time within the first 12 months of the birth or adoption of a child.

18. MEA is not opposed to flexibility in relation to when the concurrent leave is taken within the first 12 months from the date of birth or adoption. MEA acknowledge that the purpose of concurrent leave is to allow the family time at home to bond, and taking the leave at a later stage, rather than at the date of birth or adoption, may be more beneficial to some families.

19. However, MEA is opposed to the increase from 3 to 8 weeks and is further opposed to the entitlement to take the leave in separate periods.

20. For small businesses, having to re-organise staffing arrangements for a period of 2 months (i.e. 1/6th of the year) will be difficult.

21. It will be particularly problematic for small businesses if the employee intends to take the leave in 4 x 2 week periods, creating a huge burden for such employers who must take the time to re-arrange work schedules and causing a disruption to the day-to-day operations of the business. Small business may have the ability to cover a 3 week period without additional expenses, however, having periods of 2 weeks each being short staffed creates an impost. The period is often too short to justify the recruitment of replacement staff with capital investments such as plant and equipment not actively producing income for the business. At the same time, leasing costs and repayments continue to accrue for the business.

22. For a business with 3 employees to lose an employee for an additional 5 weeks reduces their capacity to generate 33% revenue to cover ongoing overheads which do not cease simply because the employee has decided to have children. If the employer was to ask 33% of their employees to take a 5 week unpaid break because the employer was in the same circumstances this would not be seen as acceptable by any employee or trade union. This proposed increase is a 250% increase in entitlement.

23. In critical skill shortage areas such as the electrical industry, replacing a staff member 4 times in a 12 month period with little or no notice while they take 2 weeks parental leave will again force the employer to lose valuable revenue whilst. They may also face genuine difficulties in finding qualified electrical workers who will be productive for that 2 week period. This new proposed arrangement would not be a viable option for many small businesses, which may mean that small businesses forgo work during that period. Thisdoes not promote productivity and economic growth.

24. MEA submit that the period of concurrent leave should remain at 3 weeks for small to medium businesses able to be taken in one single period at any time within the first 12 months of the birth or adoption. This would balance the needs of employees and employers equally.

25. The changes detailed in paragraph 24 would meet objective (d) of the FW Act, allowing flexibility in work arrangements for the employee to balance their family responsibilities. These changes would also meet objective (a) so as not to hinder productivity or economic growth and fulfil objective (g) in recognising the specific circumstances of small to medium businesses aim of the act.

Part 3 – Right to request flexible working arrangements

26. Currently the circumstances under which an employee can request flexible working arrangements are restricted to an employee who is a parent, or has responsibility for the care, of a child if the child is under school age or is under 18 and has a disability.

27. Part 3 of Schedule 1 to the Bill amends the current provisions of the FW Act in relation to requests for flexible working arrangements by extending the right to request a change in working arrangements to a wider range of caring and other circumstances.

28. MEA submits that the expansion of these provisions is far too broad.

29. As the proposed amendments stand, there is no set time, or review period, to assess the flexible working arrangements. MEA submit that there should be a bi-annual review of the flexible working arrangements (or sooner if the employee's circumstances change) whereby the employer and employee can assess the working arrangements. This will provide the employer an opportunity to assess whether the flexible working arrangements are viable moving into the future, having regard to the operational requirements of the business.

30. It is imperative that a review mechanism like this is developed as the circumstances of each individual business, as well as the economic climate, are ever-changing.

31. New subsection 65(1A) sets out the range of circumstances where an employee can request flexible working arrangements. In particular, the Bill amends the legislation to include someone who is a carer within the meaning of the *Carer Recognition Act 2010* (the Carer Recognition Act).

32. The Carer Recognition Act defines meaning of carer as:

> (1) For the purpose of this Act, a ***carer*** is an individual who provides personal care, support and assistance to another individual who needs it because that other individual:
>
> (a) has a disability; or
>
> (b) has a medical condition (including a terminal or chronic illness); or
>
> (c) has a mental illness; or
>
> (d) is frail and aged.
>
> (2) An individual is not a ***carer*** in respect of care, support and assistance he or she provides:
>
> (a) under a contract of service or a contract for the provision of services; or
>
> (b) in the course of doing voluntary work for a charitable, welfare or community organisation; or
>
> (c) as part of the requirements of a course of education or training.
>
> (3) To avoid doubt, an individual is not a ***carer*** merely because he or she:
>
> (a) is the spouse, de facto partner, parent, child or other relative of an individual, or is the guardian of an individual; or
>
> (b) lives with an individual who requires care.

33. MEA has a number of concerns with the use of the Carer Recognition Act and its meaning of carer.

34. The Carer Recognition Act's meaning of carer outlines circumstances where an individual may be a carer, however there is no definition on what constitutes "personal care", "disability", "medical condition", "mental illness" or "frail and aged". Therefore, the definition is quite unrestricted in that sense.

35. Additionally, other than a broad definition of "carer", there are no substantive provisions under the Carer Recognition Act for the purposes of determining who is a carer.

36. MEA call upon the Committee to consider whether the use of the *Social Security Act 1991* (the Social Security Act) would be more appropriate for the purposes of determining if the person is a carer. This Act outlines a number of substantive requirements that the person must meet in order to be considered a carer and the assessment tools required to determine if the person being cared for also fits an assessment and medical requirements with associated substantiation.

37. The Social Security Act at section 197 "definitions" goes on to describe that a disabled adult is defined as:

    a. ***disabled adult*** means a person aged 16 or more who:

        (a) has a physical, intellectual or psychiatric disability; and

        (b) is likely to suffer from that disability permanently or for an extended period.

    We believe that this definition better assists all parties to understand the circumstances which apply while the level of support needed is already available in statute being used by the federal government.

38. MEA would ask the Committee to fully investigate and explain to Parliament the use of the Carer Recognition Act as particularly at Section 10 it states:

    Act does not create legally enforceable obligations etc.

    (1) This Act does not create rights or duties that are legally enforceable in judicial or other proceedings.

    (2) A failure to comply with this Act does not affect the validity of any decision, and is not a ground for the review or challenge of any decision.

(3) If a public service agency, or an associated provider, is required by another law of the Commonwealth, or by a law of a State or Territory, to consider particular matters, or to comply with particular requirements, in the exercise of its functions or powers, nothing in this Act is to be taken to require the agency, or the associated provider, to act inconsistently with that law.

39. Therefore, MEA would question how the carer definition can then apply under the FW Act when the Carer Recognition Act itself states that the Act does not create rights or duties that are legally enforceable in judicial or other proceedings.

40. MEA view the proposed amendments in relation to requesting flexible working arrangements as a significant change that will affect other legislation and may have unintended consequences that are yet to be consulted over with advocacy groups who represent carers.

41. Under the current Carer Payment system with the government, a person's income affects the amount of carer payment that they can receive.

42. MEA would pose the questions: Is it the intention of the Government through the combination of the FW Act and the Carer Recognition Act to review the current income and relevant work requirements of carers through the Social Security Act? Is Government also seeking to review such circumstances and the effect this may have on carers' right to payments and consider raising the level of assessment for qualification for the carers payment?

43. MEA recognises the need to acknowledge an employee's genuine requests for flexible working arrangements, however submit that there must be an onus on the employee to clearly convey and demonstrate to the employer how (or why?) the flexible working arrangements are required. As such we would propose the following clause to replace that which is in the current bill:

(1A) The following are the circumstances:

(a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;

(b) the employee is a carer (within the meaning of the *Social Security Act 1991section 197*);

(c) the employee after commencement of employment becomes a disabled adult, which means a person aged 16 or more who:

(i) has a physical, intellectual or psychiatric disability; and

(ii) is likely to suffer from that disability permanently or for an extended period.

44. Other issues such as the period of duration, the review mechanism , freedom to access information required by the employer , the process whereby an employer can terminate the flexible working requirement due to operational issues, transmission of business, change in circumstances and a requirement for the employee to be obliged to inform the employer of changes in circumstances, all need to be considered to enable the employer to make a full decision on the flexible working arrangements.

45. MEA acknowledges that domestic violence is abhorrent and should not be condoned in any manner. However, in this context it is not an equitable situation that such a topic be placed over and above other types of circumstances. It is our view that in the event that a employee has a permanent or extended ailment as a result of domestic violence the above definition in our proposed clause would allow for that assessment to be made. It would alsomaintain what is a very private set of circumstances and one that not many sufferers will openly talk about or approach their employer about.

46. As the current legislation and proposed amendments currently stand there are no evidence requirements to accompany the request for flexible working arrangements. Given that in order for the request to be granted there needs to be a nexus between the request and the employee's particular circumstances, MEA submit that there should be a legislated requirement to produce evidence to the satisfaction of the employer, or reference to similar requirements as required under the Social Security Act.

47. MEA oppose the inclusion of subsection 65(1B), whereby it explicitly provides that an employee who is a parent returning from parental or adoption leave is entitled to request to work on a part-time basis. This request can already be made under the current legislativw provisions if the employee is under school age.MEA therefore submits that there is no value in adding this provision.

48. MEA supports the inclusion of a non-exhaustive list of what constitutes "reasonable business grounds" as this will assist employers with assessing their business and determining whether it is reasonable to refuse a request for flexible working arrangements.

Part 4 – Consultation about changes to rosters or working hours

49. Part 4 of Schedule 1 to the Bill inserts new content requirements for modern awards and enterprise agreements in relation to employers consulting with employees about changes to regular rosters or ordinary hours of work.

50. Currently, each Modern Award and Enterprise Agreement requires the inclusion of a Consultation Clause which requires employers to consult with employees who will be affected by major workplace changes.

51. In both the *Fair Work Regulations 2009* model Consultation term, as well as the standard "Consultation regarding major workplace change" clause in the modern awards, it outlines significant effects to include the alteration of hours of work.

52. If an employer intends to change regular rosters or ordinary hours of work in such a way that would have a significant effect on the employee/s, they would be altering the hours of work and therefore already trigger the obligation to consult with employees about this change.

53. As a part of the consultation process, employees would have the opportunity to give their views and raise concerns about how the proposed changes to the hours would adversely affect them. The employer would subsequently need to consider this, as well as any alternatives that are possible to meet the needs of both the employer and employee.

54. MEA therefore submits that the proposed amendment in relation to a specific requirement to consult about changes to rosters or working hours is not necessary, as both modern awards and enterprise agreements already require this.

55. MEA submit that this new content should not be included, as it restricts flexibility and productivity for businesses and does not meet objective (a) of the FW Act.

56. If however, the content is included to the FW Act, MEA would propose that a definition of "regular roster" would need to be included. The explanatory memorandum states that it is intended that the requirement to consult will not be triggered by a proposed change where an employee has irregular, sporadic or unpredictable working hours. However the definition of "regular roster" is needed to ensure this.

57. A definition of "regular roster" should reference hours of work that are regular and systematic. For casual employees a "regular roster" should be limited to a casual who has had regular and systemic rostering for a period of at least 12 months, particularly those who are employed by small to medium businesses.

Part 5 – Transfer to a safe job

58. Under the current legislation an employee is only entitled to transfer to a safe job if they are entitled to unpaid parental leave,i.e. they have, or will have, completed at least 12 months service with their employer immediately before the proposed leave is to start.

59. Part 5 of Schedule 1 to the Bill extends the existing entitlement to transfer to a safe job to a pregnant employee regardless of whether she has, or will have, an entitlement to unpaid parental leave.

60. MEA submit that the 12 month employment requirement is not unreasonable and should be maintained in relation to the entitlement of transfer to a safe job. This provides some stability for employers with staffing arrangements.

61. As the legislation currently stands, many small business employers are unable to provide a transfer to a safe job as there is no other work to be performed, other than what the

employee was engaged to do. To extend this right to employees who are not eligible to take unpaid parental leave will place an extra burden on small business employers to firstly find alternative work for the employee, and secondly find a replacement to perform the work the employee was engaged to do.

62. As an example, MEA has had a member with a female electrician who, at 20 weeks pregnant, produced a letter from her doctor stating that, due to her pregnancy and given the nature of the work and the potential harm to the developing fetus, she required an adjustment to her current duties. The doctor stated that the employee should avoid working at heights, avoid working in confined spaces and limit lifting to less than 10kg.

63. For a small business with only five employees who engaged the female electrician to predominately undertake the installation of roof mounted solar power systems, the doctor's directions for transfer to a safe job posed a difficult task.

64. The majority of the electrical work undertaken by the business was domestic work which required climbing ladders onto rooves, as well as entering roof spaces, all of which was deemed to be unsafe for the employee during her pregnancy. Therefore, as the employee was entitled to unpaid parental leave, the business was faced with a task of essentially creating another role for the employee so as to engage her in some form of work, rather than paying no safe job leave whilst she was not engaged. This particular business also employed her husband and is an example of what happens to small family orientated business and the costs that these proposed changes can have on a small business.

65. Small businesses do not have the resources and available funds to pay an employee in a safe job, plus bring in and pay someone to perform that person's usual work.

66. MEA would encourage the Committee to take into account the cost impacts on businesses when considering this proposed amendment.

67. MEA submit that there should be a small business employer exemption for the requirement to provide a transfer to a safe job, or pay no safe job leave, regardless of whether the employee is eligible for unpaid parental leave or not.

68. However, if the current provisions of paid no safe job leave continue and the proposed amendment is made, MEA submit that where an employer is unable to provide a transfer to a safe job for an employee who is not entitled to unpaid parental leave, then that employee should commence unpaid no safe job leave. Considering the resource and financial constraints small businesses already face, MEA support this.

Schedule 2 – Modern Awards Objective

69. The majority of MEA members are covered by *the Electrical, Electronic and Communications Contracting Award 2010* (Electrical MA).

70. However, some members have employees engaged under other modern awards including:

- *Clerks – Private Sector Award 2010* (Clerical MA)
- *Manufacturing and Associated Entities and Occupations Award 2010* (Manufacturing MA)
- *Professional Employee Award 2010* (Professional Employees MA)

71. Many modern awards, including the Electrical MA, the Clerical MA and the Manufacturing MA, all have provisions for remuneration for employees working irregular hours (such as overtime, weekends and public holidays).

72. MEA is concerned with the proposed amendment outlined in Schedule 2 to the Bill to require the Fair Work Commission (FWC) to take into account the need to provide additional remuneration for those irregular hours for all modern awards as a part of the modern awards objectives.

73. As outlined above, many modern awards already provide for additional remuneration for irregular hours. However, there are other modern awards that, due to the nature of the industry, do not outline specific remuneration provisions for irregular work such as overtime, weekend work and public holidays.

74. For example, modern awards that are generally applied to professional employees do not outline specific penalty rates, but rather allow flexibility with regards to the remuneration provided, often in the form of an annual salary.

75. To amend the FW Act so that all modern awards include specific provisions on remuneration would remove flexibility for employers operating in certain industries where it is the norm for annual salaries to be applied.

Schedule 3 – Anti-Bullying Measure

76. MEA recognises that bullying can have adverse affects on employees' wellbeing and therefore support the need to stop bullying early.

77. However, MEA submit that the management of workplace bullying should, at least in the first instance, be dealt with internally.

78. The amendments proposed in Schedule 3 to the Bill are part of the Government's response to the House of Representatives Standing Committee on Education and Employment Inquiry report *Workplace Bullying "We just want it to stop"* (including recommendations).

79. Schedule 3 to the Bill amends the FW Act to include a new Part 6-4B to enable a worker who reasonably believes that they have been bullied at work to apply to the FWC for an order to stop the bullying.

80. The proposed amended legislation states a worker who ***reasonably believes*** that he or she has been bullied at work may apply to the FWC for an order. The legislation also clarifies that a worker is not bullied at work in respect to reasonable management action carried out in a reasonable manner.

81. MEA would suggest that the current definition is too broad and non specific for FWC to make a reasonable and fair evaluation as to behaviour . It is also unlikely to be clearly understood byemployers until relevant case law is established which could lead to 12 to 18 months of uncertainty for businesses.

82. Stop Bullying SA defines Bullying as:

> *Workplace bullying means any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.*
>
> ***Repeated*** *refers to the persistent or ongoing nature of the behaviour and can refer to a range of different types of behaviour over time.*
>
> ***Systematic*** *refers to having, showing or involving a method or plan. Whether behaviour is systematic or not will depend on an analysis of the circumstances of each individual case with the general guideline in mind.*
>
> ***Risk to health and safety*** *includes the risk to the emotional, mental or physical health of the person(s) in the workplace.*

83. MEA propose that this is a more suitable definition. Nonetheless, MEA continues to encourage further consultation from all sides of the debate if the Anti-Bullying measures are to be included in the FW Act.

84. MEA is concerned that employers will face frivolous claims from employees who perceive reasonable management action, such as performance management, as bullying behaviour on the part of an employer.

85. Further, MEA is concerned that employees who perceive they are being bullied will bypass the company's internal grievance / disputes procedures and progress the claim straight to the FWC without first attempting to raise, and potentially resolve, the matter internally. This is certainly detracting from the employer's right to manage their business.

86. It is an abuse of process on employers, who are simply undertaking reasonable management action, to be served a dispute with a fictitious bullying claim, without the employee first approaching their supervisor, manager or the owner of the business to address their concern and allow an opportunity for resolution. There are also no set time limits and as such we would encourage that these complaints must be from current employees only. Dismissed employees or employees who have resigned have alternatives in the case of unfair dismissal laws and General Protections actions as detailed in the current FW Act.

87. A legislative change as proposed will likely result in a great amount of company time and effort spent on an issue that could have been resolved internally if raised by the employee and addressed via the company's grievance and dispute resolution procedures.

88. When time is a critical resource, as it is especially for small business owners, they cannot afford unnecessary down time on defending false claims.

89. There are also no references to costs/penalties in the event of a frivolous claim being found against an applicant or applicant's representative.

90. MEA submit that instead of introducing amendments to the legislation for employees to make a claim to the FWC, there should be a greater focus on education campaigns and training, giving employers the resources and tools to be able to recognise workplace bullying and put a stop to it internally.

91. However, if the proposed inclusions are passed, MEA would submit that the process the FWC undertake once an application has been lodged needs to be approached in a way to ensure that procedural fairness is provided to both parties.

92. MEA would submit that a written application to the FWC would need to be made by the employee, and the employer should have the opportunity to provide a written response to the alleged bullying, similar to the FWC's process for dealing with unfair dismissal applications. However, unlike the unfair dismissal process, MEA submit that the FWC should have the power to cease the claim following consideration of the employer's response if it is clear that it is not a case of workplace bullying.

93. Further, to ensure the FWC are only progressing claims within the definition of "bullied at work" the employee would need to outline in their application:

    - How the behaviour creates a risk to their health and safety;
    - Demonstrate how the individual's, or group of individuals', behaviour has been repeated; and
    - How the behaviour does not represent reasonable management action or is not related to performance.

94. If Part 6-4B is to be included in the FW Act, MEA support that the FWC is not able to make an order requiring payment of a pecuniary amount.

95. The interaction with this section and an adverse action claim should also be considered along with the interrelationship with relevant state jurisdictions on anti-discrimination legislation and bullying.

96. MEA have concerns about section 789FH in the Bill. MEA would question the flow on effects created by the proposed amendment in relation to multi-jurisdictional issues, and encourage the Committee to consider whether the Fair Work Commission has the power to impose these types of injunctions, which have previously been left to higher courts to address.

97. Further confusion arises with the reference to the *Work Health and Safety Act 2011* given that Victoria and Western Australia are yet to introduce the harmonised legislation, and therefore reference to this piece of legislation is inappropriate.

98. MEA firstly submit that workplace bullying should be kept separate and continue to be regulated by the State and Territories under Workplace Health and Safety legislation.

99. However, if the proposed amendments are passed, MEA submit that FWC cannot hear a case if it has already been lodged within another jurisdiction. Further, the claim must be employment related and it must exclude applications for maternity and paternity leave that are refused in accordance with the previous sections of the FW Act.

Schedule 4 – Right of Entry

100. Schedule 4 to the Bill will make amendments to:

- Provide for interviews and discussion to be held in rooms or areas agreed to by the occupier and permit holder, or in the absence of agreement, in any room or area in which one or more of the persons who may be interviewed or participate in the discussions ordinarily take meal or other breaks and is provided by the occupier for that purpose;
- Give the FWC capacity to deal with disputes about the frequency of visits to premises for discussion purposes;
- Facilitate, where agreement cannot be reached, accommodation and transport arrangements for permit holders in remote areas and to provide for limits on the amounts that an occupier can charge a permit holder under such arrangements to cost recover; and
- Give the FWC capacity to deal with disputes in relation to accommodation and transport arrangements and ensure appropriate conduct by permit holders while being accommodated or transported under an accommodation or transport arrangement.

Meetings held in lunch rooms

101. This legislated change broadens the unions power when attending workplaces for discussions.

102. This proposed amendment allows the permit holder to intentionally disagree to a proposed room, knowing that where there is no agreement between the permit holder and the occupier, they will be able to hold the meeting in a lunch room, therefore increasing their exposure to workers at the site.

103. ABS data shows 82% of Australian workers are not members of a trade union (6310.0 – Employee Earnings, Benefits and Trade Union Membership, Australia – ABS).

104. By giving unions the ability to use an employer's lunchroom to hold meetings, union meetings are being forced upon non-union workers who are simply eating their lunch and may have otherwise chosen not to participate in the meeting had it been held elsewhere. This does not support objective (e) of the FW Act in relation to freedom of association.

105. MEA submit that this proposed amendment should not be made.

Commission to deal with disputes on frequency of visits to worksites

106. MEA supports the amendment to allow the FWC to deal with disputes regarding the frequency of union visits to worksites for discussion purposes, and the power to make an order when necessary.

107. The new addition states that FWC may only make an order if the FWC is satisfied that the frequency of entry by the permit holder would require an unreasonable diversion of the occupier's critical resources.

108. In meeting objective (g) for the FW Act's objectives, when assessing whether there is an unreasonable diversion of the occupier's critical resources, the FWC should consider the size and nature of the business as many service orientated businesses do not operate out of one location and have itinerant workers . For a small business with limited resources, any resources are critical resources as detailed in the concurrent leave area example in paragraph 22.

109. Additionally, when considering the frequency of entry, MEA submit that in determining an appropriate order the FWC should also consider whether the permit holder has a genuine need to enter the premises for discussion purposes.

Accommodation and transport arrangements

110. These proposed amendments deal with circumstances in which permit holders and occupiers have been unable to reach agreement on accommodation and transport arrangements in remote areas. A remote area will generally be limited to circumstances

where the only realistic means for the permit holder to access the premises is by transport provided by the occupier or where the only accommodation at the location, if it is required, is that provided by the occupier.

111. MEA submit that this provision should not be included to the FW Act, as it is an extra and unwarranted cost burden that is being forced on employers.

112. Many employers are already facing financial difficulties in the current economic climate and should not be forced to bear the costs of another organisation.

Commission to deal with disputes in relation to accommodation and transport arrangements

113. If accommodation and transport arrangements are introduced to the FW Act, MEA support the amendment to allow the FWC to deal with disputes in relation to accommodation and transport arrangements.

114. When the FWC undertakes consideration into whether there would be an "undue inconvenience" for the occupier of the premises to provide accommodation to the permit holder, MEA would submit that the size of the business will need to be taken into consideration in accordance with objective (g) of the FW Act. Small and medium sized businesses do not have ample resources available and having to provide transport and accommodation is likely to put a strain on the business resources.

Schedule 5 – Functions of the FWC

115. MEA has no objection to the proposed amendments to section 576 of the FW Act in relation to the functions of the FWC.

Schedule 6 – Technical Amendments

116. MEA supports the proposed technical amendments.

CONCLUSION

117. MEA submit that, on the whole, the *Fair Work Amendment Bill 2013* has failed to strike the right balance between fairness and flexibility.

118. The Bill proposes amendments that will provide greater entitlements and flexibility for employees and grant further power to the unions but will not enhance workplace productivity and would severely restrict an employer's ability to be flexible in structuring their business.

119. Without government support, businesses (especially small businesses) will not be productive or sustainable. Without productive and sustainable businesses there will be a reduction in available jobs for employees and will likely result in a decrease in economic growth.

120. MEA would like to thank the Committee for the opportunity to present this submission to the Inquiry into the *Fair Work Amendment Bill 2013*.

Yours sincerely,

Jason O'Dwyer
General Manager – Workplace Relations