

**Senate Standing Committee on Education Employment and Workplace
Relations**

**QUESTIONS ON NOTICE
Additional Estimates 2010-2011**

Outcome 5 - Workplace Relations

DEEWR Question No.EW1030_11

Senator Abetz asked on 23/02/2011, Hansard page 126.

Refers to previous DEEWR Question No [EW0595_11](#)

Question

Senator ABETZ—In that case, can I ask you to take on notice the issues raised in that letter and the government and department's response to all the expressions of concern in relation to the various matters and how the government is seeking to address them, because they were, if I might say, serious matters that were raised. Ms Paul—The matters raised by AiG we always take seriously. Perhaps we can come back to you on the way that those sorts of issues get fed into the normal policy consideration mechanisms, of which we have many in this field. Mr Kovacic—The issues raised would be similar to the issues raised by AMMA and RMIT as part of that survey that we spoke of before. Senator ABETZ—We know what the issues were because we have a letter dated 1 October, if you can go through that detail for me. Ms Paul—We will address the issues for you, if you like. Senator ABETZ—Yes, please.

Answer

Ms Heather Ridout, CEO of the Australian Industry Group (Ai group) wrote to Senator Chris Evans, Minister for Tertiary Education, Skills, Jobs and Workplace Relations on 1 October 2010 expressing the Ai Group's concerns regarding a range of workplace relations issues.

The Minister met with Ms Ridout in late 2010 where a number of the issues canvassed in her letter were discussed. The responses to the issues raised include:

[Building and Construction Industry Improvement Amendment \(Transitions to Fair Work\) Bill 2009](#)

The Australian Government remains committed to reintroducing the Building and Construction Industry Improvement Amendment (Transitions to Fair Work) Bill 2009. The Government welcomes the opportunity to work constructively with the Ai Group and other stakeholders during this process.

[Changes to the General Employee Entitlements and Redundancy Scheme \(GEERS\)](#)

The Ai Group and other key stakeholders with an interest in the Fair Entitlements Guarantee (FEG) will have the opportunity to provide input on the policy underpinnings of the FEG prior to the legislation being drafted. Meetings will be held

with stakeholder groups to consult on key policy topics, including mechanisms to minimise the risk of parties avoiding responsibility for employee entitlements as raised by the Ai Group.

Appointment process for new Fair Work Australia (FWA) Members

The appointment process for FWA Members is sound and transparent, and has resulted in a tribunal that reflects a strong balance in the working backgrounds of its Members. While the strong interest that major industrial parties have in the outcome of the appointment process is appreciated, having a direct involvement would risk undermining the independence of FWA which must be, and must be seen to be, independent of unions and business. Moreover, requiring the appointment of an equal number of Members with an employment background and union background has the potential to undermine the principle of selection on merit. When FWA positions are publicly advertised, employer and employee organisations are welcome to encourage high quality applicants to apply.

Amendments to both the *Fair Work Act 2009* (FW Act) and the Fair Work Regulations

In relation to concerns that some FWA Members are effectively forcing employers to provide undertakings as a condition of enterprise agreement approval, the FW Act provides if an employer is concerned about an undertaking sought by FWA, the employer can decline to provide it and appeal any subsequent decision not to approve the agreement.

The Government encourages employers to ask FWA Members to put requests for undertakings in writing. In the Government's view, an expression of concern by FWA and request for an undertaking is an 'interim decision' for the purposes of s 601(1)(b) of the FW Act that is required to be put in writing and is itself capable of appeal.

In addition, section 191 of the FW Act provides that undertakings take effect as a term of an enterprise agreement, and requires enterprise agreements (in their entirety, including undertakings) to be published.

Cabotage

The Australian Government's policy is that all seafarers working regularly on ships in Australian waters should have the benefit of Australian workplace relations laws and a fair safety net of employment conditions.

The Department has been closely monitoring the impact of the decision to amend the Fair Work Regulations on the shipping industry and continues to engage with stakeholders on these issues. However, stakeholders have to date been unable to provide clear evidence showing a direct link between freight cost increases or the withdrawal of coastal shipping services and the application of the FW Act.

Superannuation

The Government is of the view that the three-year lead time, in respect of the increases in the Superannuation Guarantee Levy will enable employers and employees to factor this increase into future wage negotiations.

Transfer of business

With regard to the FW Act's transmission of business rules, the Government notes Ai Group's concerns. However, as noted in the response to SQ10-001523 the Government considers that the new transfer of business provisions strike an appropriate balance between the needs of employees and employers and are operating as intended. The Government will continue to monitor developments in the operation of the transfer of business rules over time.

Individual flexibility arrangements

Ms Ridout's letter advised that unions are routinely refusing to sign agreements unless the flexibility term allows little or no flexibility. The Government notes that the scope of a flexibility term is a matter for bargaining. An employer cannot be forced to agree to a flexibility term proposed by a union. If an enterprise agreement contains a flexibility term that does not meet the requirements of the FW Act, the model flexibility term prescribed in the Fair Work Regulations is taken to be a term of the agreement.

Fair Work Principles

While the Government notes the Ai Group's views concerning the Fair Work Principles, it has decided that the Fair Work Principles would require involvement by an independent third party as a demonstration of best practice in dispute settlement and, more broadly, in promoting fair, cooperative and productive workplaces amongst suppliers to the Government.

Safe Rates, Safe Roads Report

The Ai Group made a submission as a part of the consultation process period.