

SUBMISSION TO

**THE SENATE EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS COMMITTEE**

AUSTRALIAN MEAT INDUSTRY COUNCIL

**INQUIRY INTO THE WORKPLACE RELATIONS
AMENDMENT (TRANSITION TO FOREWARD
WITH FAIRNESS) BILL 2008**

February 2008

INTRODUCTION

This submission is made by the Australian Meat Industry Council ('AMIC'). AMIC has filed past submissions to Committees of the Senate and House of Representatives dealing with workplace relations and workers' compensation issues.

The filing of the submission is beyond the closing date but we did request a short extension. The Inquiry does concern matters of great importance to AMIC. We would be gratified if members of the Committee took account of these brief submissions.

Pragmatism tells us not to attempt to mount a call allowing employers/employees to keep making the statutory instruments known as AWA's. We realize we are beyond that point. We are however, concerned with some procedural inconsistencies contained in the Bill. We are aware that other employer organizations will have mentioned some. We are somewhat concerned that the transitional stages will create uncertainty at the workplace.

THE INQUIRY

This Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 is to pay particular reference to:

- *economic and social impacts from the abolition of individual statutory agreements;*
- *potential for a wages breakout and increased inflationary pressures;*
- *impact on sectors heavily reliant on individual statutory agreements;*
- *impact on productivity.*

ABOUT AMIC AND ITS MEMBERS

AMIC is registered as an employer organization under the Workplace Relations Act 1996 ('the Act') and has been registered as an employer body since 1928. AMIC covers and represents entities 'in or in connection with the meat industry'.

AMIC is the peak employer body in the meat industry throughout Australia representing retail, wholesale, smallgoods manufacture and processing establishments. AMIC has members in all States and the NT and ACT. Consequently, AMIC is involved in the industry from 'gate' to 'plate' and understands the industry intimately. .

The industry comprises generally four groups namely, meat retailers, meat wholesalers, manufacturers of smallgoods, and meat processors. The latter two groups are predominantly regional Australia. They employ substantial amounts of labour. In many regional areas, they are the largest employer of labour in the region. They need certainty and flexibility to maintain production, increase productivity and to contain cost pressures.

It is the processing sector that will be most affected with the abolition of individual statutory employment agreements known as AWA's. This sector is heavily involved in the export trade and thereby processing here and then competing with other countries with lower cost pressures. Unlike some other employers, processors are not able to pass on costs to outside buyers.

THIS SUBMISSION

The brief submission of AMIC seeks to cover some aspects concerning the 'particular reference' points. In doing so, it needs to cover a little history. .

THE FEDERAL MEAT AWARDS TO WHICH AMIC IS A PARTY BOUND

The position may be summarized as follows:

- AMIC is presently a party bound to 3 key simplified and modern Federal Awards that cover the states of NSW, Victoria, SA, Queensland, ACT and the NT. The Federal Awards have never applied in the States of WA and Tasmania where all AMIC members (up to WorkChoices) had state awards as the base conditions. AMIC is involved in those awards;

- Unlike many other industries in the federal arena, the meat industry attained simplified and modern federal awards as a result of the Workplace Relations Act 1996, albeit at a substantial cost;
- In the early 1990's a Full Bench of the Australian Industrial Relations Commission embarked upon 'An Inquiry into the Meat Industry' and in June 1992 handed down a decision (Print K3313) making recommendations/determinations that the meat industry should have three (3) up-to-date minimum rates awards namely, processing, smallgoods and a retail/wholesale awards;
- The recommendations were not implemented until the Workplace Relations Act 1996 was enacted showing the restrictive nature of the previous legislation. Thereafter, in 1999 and 2000, another Full Bench of the Commission headed by the present President handed down major decisions leading to the making of 3 minimum rates awards – some of the decisions are Prints R9075 and S9669);
- During this award modernization/simplification phase at least 50 federal meat industry awards were culled leaving 3.

The Federal Meat Industry (Processing) Award

We make specific mention of this award because it is highly relevant in the light of the Inquiry.

- In 1999 and 2000 the Commission removed tallies from the meat processing awards. Sometime later Federal Parliament enacted legislation forbidding meat tallies as an allowable matter in awards of the Commission. The prohibition still exists;
- Tallies are not a piecework system based on outputs. They are antiquated and based on inputs;

- The processing award contains provisions for the ‘daily hire’ of labour and ‘part time daily hire’. This form of employment is widespread in the meat processing sector of the industry;
- ‘Daily hire’ is a form of employment whereby employment terminates at the end of each day on which the employee is employed but engagement continues until the engagement is terminated. The employees could be stood down ending their employment but not engagement;

Many processing plants that have Federal Agreements, both collective and individual, employ on the basis of ‘daily hire’.

FEDERAL AGREEMENTS IN THE PROCESSING SECTOR

Many establishments in the processing sector, all over Australia, operate to Federal Agreements and the sector has a heavy concentration of these instruments. The Federal Agreements to which we refer are, using the terminology of the Act:

- (i) Pre-reform Certified Agreements,
- (ii) Pre-reform AWA’s,
- (iii) Workplace Agreements (AWA’s or Collective).

As we stated, many of the Agreements provide for ‘daily hire’.

Individual Statutory Agreements (AWA’s) in the Processing sector

Over the last twelve years many meat processing employers have entered into AWA agreements at the workplace. The implementation of AWA’s were necessary for economic survival and provided the necessary machinery for removing inefficient work practices, providing flexibility and efficient use of the plant. At the same time, many establishments provided wages and salaries and other conditions in the AWA’s that were far and above the awards that would have applied

If, as is publicly stated, that AWA's represent around 5 per cent of the workforce then our internal knowledge suggests it is considerably higher for the processing sector of the meat industry. Consequently, the ban on making of new AWA's, as envisaged by the Bill, will heavily and profoundly affect the processing sector of the meat industry during the transitional period.

We will have the odd situation that:

- AWA's are proposed to be abolished;
- AWA's that are made remain operative until replaced or cancelled or until 2012;
- Certain employers are allowed to make ITEA's by agreement with a different no disadvantage test;
- One cannot have a Collective Agreement covering everyone at an establishment if some employees on AWA's do not agree to cancel – section 348 of the Act;
- To revert to the general award may not be a flexible option;
- Other combinations.

PRODUCTIVITY AND ECONOMIC ISSUES FOR THE PROCESSING SECTOR OF THE MEAT INDUSTRY

Published studies of the meat industry over the past fifteen years have commented on the cost pressures (especially labour costs) of the processing sector: see *Meat Processing Report No. 38 (20 April 1994) of the then Industry Commission and Work Arrangements in the Australian Meat Processing Industry by the Productivity Commission of October 1998*.

Since that last Report the cost situation has worsened.

Across the processing sector, labour costs represent near 60 per cent of the actual processing costs to the sector. In some plants it may be slightly higher. The sector operates mostly in regional Australia adding further pressures to processing costs. Much of the sector is involved in the export trade. This export trade is a key industry for Australia and has been for many decades.

The period 1997 to 2006 provided the industry with:

- The flexibility base needed to adapt and compete;
- The strength to strive for productivity increases during this period;
- The ability to rid the sector, against ingrained opposition, of inefficient work practices;
- The ability to fully utilize capital;
- The ability to be able to spread labour costs across the establishment;
- The ability to have certainty in the industrial instruments applying over periods.

In many respects, for the period 1996 to 2006, Certified Agreements did not and could not have provided the outcomes just mentioned for some plants because of historical circumstances.

THE BILL

We mention only a few matters for emphasis.

Individual statutory Agreements

AMIC is concerned with the following aspects of the Bill relating to individual statutory agreements:

1. We envisage there may be entities seeking to avail themselves of the ITEA's in the meat industry. We are concerned that proposed section 326 will impact severely upon the use of daily hire in the processing sector of the meat industry. We have outlined above that daily hire means that employment ceases at the end of the day in the industry and employees could be stood down for seasonal reasons and re-employed. We are aware that very few other industries contain these provisions. The Bill has to be amended to deal with the situation of prior employment;
2. We believe that the use of individual statutory instruments should be extended beyond January 2010. If there is in place an appropriate 'no disadvantage test' these instruments should be available after that time. We point to the period 1996 to 2006 when a similar test to the proposed section 346D was contained in the legislation;
3. Over the last 10 months, AMIC has experienced the situation of Workplace Agreements being lodged and establishments receiving replies months later raising problems. There must be the need for quick resolution of these matters for certainty purposes and the legislation must contain the timelines rather than leave it to the discretion of the Workplace Authority Director.
4. We are concerned with the wording of proposed section 346J (1a). The needs of the employer and hence a balance seem to be missing and the section has the ability to create enormous problems;
5. Even if establishments decide, when the Bill becomes legislation, to embark on the path towards a Collective Agreement, it faces the problem of section 348 and

uncertainty because of the different instruments. There could be pre-reform AWA's, post-reform AWA's and a proposed Collective Agreement.

The award modernization process

Speaking generally, this is about the fourth attempt in the last fifteen years to deal with a similar issue. None of the previous attempts have been fully successful. The attempt of the AFPC was not successful and at the various meetings where AMIC attended, the tasks were seen to be Herculean for genuine reasons.

The timetable proposed is completely unrealistic.

For sectors such as processing and retail in the meat industry, the proposed National Employment Standards must allow the award makers some flexibility. We believe that the meat industry federal awards, mentioned earlier in the submission, will lose much of the overall flexibility in key work areas. This needs to be able to be retained.

AMIC members in WA and Tasmania are either covered by the state awards or by NAPSA's. In either case these awards contain tallies and many restrictive conditions. It will be near impossible to circumvent the problem in the modernization process. To give another example, in NSW the state award is a tally only award.

In short, AMIC is greatly concerned that the federal meat industry awards, that took years to attain, will be compromised in the modernization and legislative process.

We would respectfully ask that members of the committee give due consideration to these submissions.

