

10 March 2016

The Hon Brendan O'Connor MP
Shadow Minister for Workplace Relations
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Via email: yvette.nash@aph.gov.au

Dear Mr O'Connor

Labor's Protecting Rights at Work Policy and
Fair Work Amendment (Protecting Australian Workers) Bill 2016

Thank you for the opportunity to comment on the Opposition's Fair Work Amendment (Protecting Australian Workers) Bill 2016 and accompanying fact sheet / policy on Protecting Rights at Work.

The Fair Work system that the previous Labor government 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.

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.

Unfortunately, the Opposition has refused to pass any changes to the Fair Work Act, regardless of their merit or necessity. The Opposition has paid no regard to the improvements that proposed amending legislation would make to the operation of the Fair Work Act, and has instead pursued a 'just say no' strategy. 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.



It represents the utmost hubris for any party to impose speculative and very wide-ranging legislative change and then block all efforts to fix the problems that inevitably come to light in its implementation. It is again 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.

The resource industry's primary feedback to your correspondence of 25 February 2016 is that the Opposition should pass the workplace relations bills already (and previously) before the Parliament, rather than pursue new legislation from opposition, which is more for show than having any realistic chance of success.

Resource employers need the Opposition to support amendments to fix demonstrated problems in areas such as: excessive union entry into workplaces, ridiculous lunch room meeting provisions, the misuse of both industrial action and threats of industrial action in bargaining (note: industrial action is currently at its highest level since 2010) and the National Employment Standards reversing long-standing approaches to leave. Legislation to restore the Australian Building & Construction Commission (ABCC) and improve the governance and accountability of registered organisations should also be passed.

We also note that the one 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. 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 the real world concerns of employers and employees in workplaces.

The best thing the Opposition could do at this point would be to pass some of the much-needed amendments to the Fair Work Act 2009, and to commit itself to addressing real problems with the Act for employers and employees in workplaces. This should come before any misguided private members' legislation.

As we are nearing the federal election, the legislative timetable to fix obvious flaws in the Fair Work Act during this Parliament is running out. In drafting policies for the 2016 election, workplace relations issues currently before Parliament, and the recommendations of both the PC and the Heydon Royal Commission are a good starting position for the policy consideration of all political parties.

AMMA notes the issues addressed in your letter of 25 February 2016. That said, we encourage the ALP to focus solely on areas in need of repair in the Fair Work Act. All workplace relations policies will 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 jobs.

The Private Members' Bill

Turning to the Protecting Rights at Work Bill, it addresses important compliance considerations which can and do arise at workplaces. However, it does so in areas that are already addressed in the Fair Work Act, and where existing obligations, penalties and enforcement already apply.

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 effects nominally sought in the Bill.

There are already substantial penalties and obligations in the areas identified in the Bill, and the Fair Work Act increased penalty levels. The Fair Work Ombudsman already secures prosecutions and the imposition of substantial penalties in these areas. The various high profile cases cited in the Fact Sheet are being pursued and prosecutions made under the current law, and cannot of themselves justify the imposition of further or higher penalties.

Migration

Various elements of the proposed Bill address the employment of migrants residing in Australia for work purposes. 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'.

New criminal offences

You specifically request views on whether new criminal offences are warranted, and on your proposed new Part 4-1A of the Fair Work Act 2009. This appears to be a classic 'look over here approach' in seeking to divert the ALP's blocking of the return of the ABCC.

If the Opposition is 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.

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.

It is remarkable that in the wake of the final report and recommendations of the Heydon Royal Commission, your party would choose to pursue speculative new penal powers, whilst refusing to act on areas of urgent and clearly demonstrated need.

It is also inconsistent for the Labor Party to be pursuing additional criminal penalties in the Fair Work Act. Labor's history of removing penal powers from our employment legislation was considered an historic achievement. It seems strange to say the least that Labor is now proposing to reinsert jail terms into the legislation.

Your Bill opens the possibility that in future some of the offences and imprisonment penalties you propose could attach to other breaches of the Fair Work Act, including those relating to threats and intimidation in bargaining. There are a number of areas where unions regularly use threats and contravene the Act. It appears likely some unions may not want to see criminal penalties attached to their day-to-day conduct.

Further detail

AMMA has had the opportunity to review the Australian Chamber's more detailed feedback on the various amendments proposed in your private members bill. In addition to the broad feedback in this letter, we share the Chamber's more detailed concerns with each of the items in your Bill.

AMMA also shares the Australian Chamber's overall view that the amendments proposed are "clearly unnecessary and are not cogent", and that they do not reflect the return to proper balance our workplace relations legislation desperately needs.

How to proceed

Many of the matters outlined in the Fact Sheet, said to give rise to the private members bill, are valid concerns that are already well addressed in our workplace relations system. The final recommendations of the PC also address contracting, sub-contracting, and migrant employment.

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.

Employers, employees, jobseekers and the wider community should expect of both our major parties at this point that they are formulating policies that will better support competitiveness, investment and job creation, and that will fix core problems with the nearly seven year old Fair Work Act that are standing in the way of opportunities and incomes for more Australians.

This, along with seizing opportunities to pass the referenced stalled amending workplace relations legislation, should be the core task of all in this portfolio area, not putting up private members bills which misread the priorities for change in our workplace relations system and which cannot, and will not, be passed.

We thank you again for the opportunity to comment on the policy and the proposed Bill.

Yours sincerely,


Steve Knott
Chief Executive