AMMA AUSTRALIAN RESOURCES & ENERGY GROUP

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Statement on the ACTU's "Change the Rules" campaign

By Steve Knott, AMMA Chief Executive

AMMA agrees with the ACTU that Australia's workplace relations (WR) system needs changing.

While our current WR system is reminiscent of the 1972 HQ Holden replete with fluffy dice, the ACTU is seeking to revert further to a horse and buggy regime.

For instance, despite the fact Australia makes up only 0.003% of the world's population, for some nostalgic reason we are the only country in the world with an Industrial Award system.

We also have national employment standards, industrial agreements and while mainly a federal jurisdiction, some employers still have legal and industrial interfaces with state workplace tribunals.

In AMMA's view it is way past time Australia voluntarily moved to future-focused WR system; one that is responsive to rapidly changing domestic and international circumstances. I say 'voluntarily' because one way or another unrelenting global circumstances and new work methods will ultimately make such a shift, painless or otherwise, inevitable.

Further to our antiquated WR system, Australia also has an abundance of unnecessary red tape. In addition to the overly complex process of determining 'base' employment conditions we have a system that:

- Encourages speculative unfair dismissal claims;
- Assumes an employer is guilty of adverse action and allows an applicant up to six years to pursue a claim;
- Facilitates 'go away 'money for claims without merit;
- Overcomplicates enterprise agreement making, such as rejecting a draft agreement and forcing parties to restart bargaining and balloting processes, just because the agreement contains an inconsequential administrative error like a wrong phone number or website address;
- Does not allow an employer who wins a contract to engage staff from the previous contractor due to ridiculous 'transfer of business' laws; and
- Has no capacity for individuals to enter into an agreement with their employer and have it registered, despite 90% of the private sector being non-unionised.

The list of fundamental problems with our WR system goes on, but none of it is addressed in the ACTU's "Change the Rules" campaign.

Instead, the ACTU is pushing a lazy backwards agenda laden with factual errors, which is of no use to Australia apart from being easy media fodder.

Playing into this is the willingness of business groups to run commentary on the ACTU's 'rear view mirror' approach rather than spell out what is required for businesses and employees in 2018 and beyond.

While hesitant to add to this dynamic, the following commentary is provided on just four from the many ACTU 'Workplace Relations DeLorean' claims; those presenting the most danger to Australia's prosperity.

TOPIC 1: Industry Wide Bargaining

Industry Wide Bargaining is something resources and energy sector employers are quite familiar with because industry negotiations were commonplace during the 1970's, 80's and indeed the 90's.

The mining, aluminium and electricity sectors are good examples in demonstrating the big flaws in the ACTU's approach.

For example, not everybody who is employed as an electrician has the same value as another electrician. Some are more efficient, more committed and deliver much more value.

This notion of having the same pay rate for electricians around the country is flawed.

In addition, the ACTU is again seeking to overlay on top of that this notion that an 'industry' is also homogeneous.

The reality is if you're in the CBD of Sydney or Melbourne and you're looking for an electrician, you may end up paying a fair bit more than you would in most country and regional areas of Australia. Yet in some of the remote areas in Australia, you may indeed pay more.

In the smelting industry, for example, I recall a discussion between a former industry CEO and the then-newly appointed Workplace Relations Minister, Peter Reith, in 1996. In short, he explained the adverse community impact of having the same 'industry rates' for smelters in different states as they were completely different marketplaces.

The standard industry rate, set at a higher rate than the domestic market, sucked people out of other sectors in the local economy. This had a negative effect on manufacturing employers that were struggling to keep their heads above water.

Employers have to look at the skill sets of individuals. People are not all the same. They might have the same qualifications but their work output can be vastly different.

Employers also have to examine the regional employment market in which they're operating, and what they need to do to attract, retain and motivate a workforce in unique employment markets throughout Australia.

The one-size-fits-all approach of the ACTU has failed in the past and it will fail again.

The economy is so diverse, people are more individualised and less aligned to unions, so it's much harder work for the unions to attract and sign up new members.

It is understandable unions want to go back to the old days where they negotiated on behalf of industry and everybody had to be union members. That's their utopia, but the world has moved on since then.

Industry bargaining is a lazy nostalgic mechanism seen by some in the union movement as a way to arrest their almost-terminal decline in union membership members.

It failed in the past. Union membership has been in continuous decline for over 40 years. The trend is not their friend. As Australia's 29th Prime Minister famously said 'the trajectory is clear'!

TOPIC 2: Industry-wide strikes to support industry-wide claims

Unlike some of the shrill commentary about the potential of a return to a barbarous period of frequent strike action, employees in the resources and energy industry and related supply chains won't easily be persuaded to go down such a path.

Notwithstanding this, even the potential for limited periods of strike action will glean the interest of the investment community, plus customers who demand continuity of supply, as well as state and federal governments.

This is particularly so where even a few days stoppage can run into tens of millions of dollars of forgone revenue.

I've been in and around workplace relations for 40 years now. I recall very vividly the period where Australia had an appalling international reputation for being a strike-prone country.

Australia was under threat of losing our iron ore industry to Brazil, until changes were made in the Pilbara in the 70's, 80's and early 90's.

In essence pretty much the entire hard rock mining sector moved the sector towards more direct employee/employer employment arrangements.

The industry and the employees collectively said "we've had enough" and were just not interested anymore in going on strike.

Culturally, in our sector, this has flowed down through another generation. People have heard the array of stories like employees at Robe River going on strike over the colour of ice cream or the thickness of the ham in their sandwiches.

In 1988, under the leadership of Charles Copeman, Robe River shut its operation down and at a later date restarted it on common law employment contracts.

The choice for the workforce was a simple one. Were they going to continue to follow the direction and interests of union bosses or instead support the interests of their employer and indeed themselves?

We saw that happen at Robe River in 1988 and then again in the mid-90s at the Renison Tin mine in Tasmania. Similar scenarios occurred may times over at other operating sites during the mid to late 90's.

These were all similar sets of circumstances where the unions saw their core business as encouraging strikes and ultimately employees simply said "no more". There was a mass exodus to direct employment arrangements with their employers which is something still prevalent today.

Therefore, regardless of Sally McManus playing out her version of a Karl Marx manifesto, I just don't think it will cut through with anybody in our sector – most employees are just too smart, well-paid and well-educated.

They would rather track their share portfolios than race off to a "rah rah" session led by some disconnected union boss who has ridden into town trying to sign up new members.

In short, most employees in our sector have a far better knowledge of the marketplace that the industry operates in, both here in Australia and overseas, than external union operatives.

My belief is that the employees will be led by their own local knowledge and the knowledge they gain from their employer.

On the probability of there being widespread industrial action in our sector, driven by changes sought by the ACTU, I think there's more a chance of the Brisbane Lions going through the rest of the AFL season undefeated.

TOPIC 3: ACTU seeking to stop termination of expired enterprise agreements

In 2011 it was correctly reported that laundry hands and barge welders in the offshore oil and gas construction sector were earning between $300,000 and $500,000 per annum. This was driven by a critical shortage of labour for mega projects on the North West Shelf. In addition, the oil price was well over hundred dollars a barrel and the spot iron ore price hit $185 a tonne.

The industry was indeed in very buoyant times.

Accordingly, Enterprise Agreements were entered into at the top end of the commodity cycle.

One of the failings of Australia's workplace relations system is that when the tide goes out, it is very difficult to enact what's referred to in the industry as 'brownfields agility'. This is the ability to adjust to changing commercial circumstances.

In the ACTU's view of the world, which doesn't match reality, they always want to be making agreements at the top of the cycle and using that agreement as the base for the next round of negotiations.

Just as people experienced record high property prices in key resource sector towns, where some prices rose to astronomic levels, when the cycle past, the harsh reality was property prices often plummeted.

As a teenager I had the good fortune to meet Sir Arvi Parvo (AMMA President in 1976). I recall him saying there are two certainties in the resources sector; 'commodity prices will go up and they will go down'.

While pretty basic, it's a simple concept that seems beyond the wit of some in the union movement to comprehend. Make no mistake, employees understand this.

In short, ACTU attempts to try and lock in enterprise agreements for base rate perpetuity purposes made at the top of the cycle, is a recipe for sending jobs offshore.

In our sector, one way in which the marketplace naturally resets things is when contractors change over.

As commercial circumstances change, and wage-setting arrangements whether through new enterprise agreements with existing contractors or through turnover of contracting arrangements, have to be flexible enough.

It is no secret our industry pays very well – well above award rates and quite easily at the top quartile of the Australian labour market. But the rates from one cycle to the next do not always go up.

For sectors or businesses where contract turnover or enterprise bargaining won't reset the wages environment in times of significant changes in commercial circumstances, the ability to apply for termination of Enterprise Agreements is basically the last remaining option.

If we don't have the capacity to terminate enterprise agreements, then the next option that will be under strong consideration will be to terminate the project.

The mistake that former Treasury Head Ken Henry and former PM Kevin Rudd made, when they introduced the failed so-called 'Resource Super Profits Tax, was their incorrect assessment that capital in our sector is locked in here in Australia.

The reality is that these major oil and gas and mining companies have plenty of opportunities to invest elsewhere around the world. They'll mothball a project or put it in care and maintenance rather than run it at a loss.

We need the flexibility in the system where if an agreement was made at the top end of the market and now proves unsustainable or nonviable, that it can be reset.

This option keeps people in employment; a far preferable alternative to shutting up shop.

The other scenario that will arise in relation to new projects is that employers won't enter Enterprise Agreements at all. They'll just lock in the base rates and conditions in the award and put people on staff contracts which they can move up and down, subject to the giving of a month's notice.

If you are entering into a new project it would give you pause to think why you would even bother entering into an Enterprise Agreement in the first place.

TOPIC 4: Returning to arbitration of workplace disputes by the FWC

This is a Trojan Horse for returning the industrial relations club to the front and centre of Australian business enterprises. It would be an absolute disaster and while the ACTU and the Greens may support it, I don't believe the hard heads within the ALP would countenance it.

How it would work is that unions would return to making ambit claims. It was not unusual in the past for unions to make more than 200 claims to change employment terms and conditions. Employers routinely wouldn't agree to them, and then the parties end up in what was termed an "intractable dispute" before the Fair Work Commission. This is where the Commission would make a determination.

The Fair Work Commission is anything but its namesake.

It has 40 members, 22 were appointed by Labor and 18 appointed by the Coalition.

The current Fair Work Act was written by the ALP, shadowed by then ACTU bosses.

When last in office the ALP demoted two Coalition appointed Vice Presidents; the first time something like this has happened since Federation.

Fast forward to 2018, we now have a Fair Work President, who's an ex-ACTU boss, two ALP appointed Vice Presidents, one who was a former ALP candidate for the Federal seat of Mackellar, and a general manager of Fair Work who is also an ex union official. The list goes on.

I acknowledge that when people take office in Fair Work they take an oath to deal with things impartially, with good conscience, equity and on substantial merits of the cases before them.

However we don't want to see a situation where employers are routinely dealing with ambit union claims designed only to bring about arbitration by an institution where the majority of tribunal members have never run a business.

The lack of business management experience in Fair Work was neatly described by former Vice President of the Fair Work Commission Graeme Watson (one of the ALP-demoted Fair Work VPs).

In an address to the NSW Industrial Relations Society in 2012, VP Watson said we had to be "frank and not ignore realities" about the overwhelming number of tribunal members who were appointed from union backgrounds and the disparity of this to record low levels of unionism in Australian workplaces.

The direct quote from former VP Watson is as follows:

"Nor for that matter does it fit well with a body made up largely of people with experience in adversarial industrial relations disputes. Let's be frank and not ignore realities. Until the recent appointments, only one of the Sydney based Commissioners of Fair Work Australia did not come

from a union background - and she is a career public servant. The only real variety in background is they come from different unions. As I have already observed, this spectrum of experience is likely to involve a small minority of workplaces and a particular type of workplace dynamic. In a workplace with a low level of unionisation, (the vast majority of workplaces) the offer of advice, assistance or recommendations from people with such a narrow spread of backgrounds is likely to be seen as more frightening than enlightening." *(Source)*

Just as VP Watson noted in 2012, we need to be frank and realistic about whether our employment tribunals and other institutions are structured to meet the evolving needs of Australian workplaces, employees and employers in the 21st century.

In the resources and energy industry we're running serious outfits, sometimes in the tens of billions of dollars.

We make no apology that an ideal system allows business owners and managers who are experienced in these areas to make management decisions.

In addition to the abundance of former union officials and ALP operatives appointed as Fair Work members, most appointed from employer groups or law firms also have never run a business before.

Once we throw the keys of Australian businesses over to third parties like that, we have no doubt how the international investment community will respond.

They make investments based on not only the asset or resources base, but how those assets and resources can be productively and efficiently utilised.

They'll be relying on their chosen expertise to do that. That's what their shareholders pay them to do.

Some employers may voluntarily embrace having a Fair Work Commission member substituting their decision for the decision of their management. I suspect most won't.

In short, most in the resources and energy sector see returning to a 1970's IR arbitration system as a no-go zone.

It would be irreparably harmful to our country.