



23 NOV, 2023

Burke claims victory as employers cry foul

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Page 1 of 3

PAGE TWO

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Steve Knott wouldn't typically be called a soft target when it comes to industrial relations. His long history in the resources industry has been more one of hand-to-hand combat in fighting unions and Labor government proposals for "reform".

But the deal the chief executive of the Australian Resources and Energy Employers Association reached this week with Workplace Relations Minister Tony Burke ensures some of Knott's biggest critics are now on the employer side.

The agreement on amendments to the government's industrial relations bill has infuriated – among others – the Minerals Council and the Business Council, as much as it has delighted Burke, elated at being able to divide the business community and claim support from a key employer group.

Hence the savage statement from the MCA's Tania Constable yesterday declaring the amendments relating to service contractors "fall desperately short of a workable solution".

"Unfortunately, this is the modus operandi for Minister for Workplace Relations Tony Burke," she declared.

"Find a soft target, get them to support your amendments sight unseen, and then portray the problem as solved. No one should be fooled by such tactics."

The BCA said the latest attempt to amend the complex and poor policy was further confirmation the bill doesn't work.

"Offering secret deals is not how you create policies that will affect every worker and business in Australia, as well as driving up the cost of living," CEO Bran Black said.

"What is currently being discussed is

only one small element in a major omnibus bill that significantly increases union powers, will cut pay and reduce work for casual workers, increase red tape and make Australia less competitive."

Knott is typically unapologetic. He calculated earlier this year that Burke would persuade enough crossbench senators to pass a version of the bill no matter what the AREEA – or other employer groups – thought of it.

That meant Knott and his board were open to negotiating a special deal with Burke to exclude AREEA

members – particularly their key contractors – from being roped into the most damaging aspects of the government's proposed changes.

The Minerals Council and others were deeply unimpressed in June by AREEA revealing arrangements for a "multifactor test" to exclude contractors from the labour hire companies being targeted by the government.

But the draft of the bill tabled in September didn't deliver what Knott believed had been agreed. The wording was vague enough to allow the Fair Work Commission leeway to insert itself into relationships of contractors providing services to resource companies.

Stalemate was eventually followed by further negotiations during the past few months over AREEA's "red lines".

The impasse was resolved only on Tuesday when Burke and Knott agreed on tougher wording supposedly removing the commission from involvement in contractors providing their own employees, equipment and supervision.

Nor can the commission intervene



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Page 2 of 3

when such work could be or might have been provided by the resources companies in the past.

At least some AREEA members aren't happy with the deal. Other employers argue a relatively niche issue affecting particular companies doesn't fix the other major problems in the bill while undermining the ability to address this in a comprehensive way.

The entire resources industry, for example, is united with other employers in strongly opposing the bill's provisions for unions' right of entry to workplaces on a 24/7 basis, as well as giving union delegates the right to examine payroll records, including for non-union members.

The Master Builders Association says independent subcontractors in the construction industry won't be protected, while the cumulative impact of the bill on the economy will be devastating and not helped by some groups "cherry-picking" clauses.

There's also great concern about the casual workforce, given confusion

about regular hours for casuals will drag employers into arguments about whether such employees are permanent.

Burke was thwarted in his determination to get the bill passed this year after the Senate referred it to a Senate committee with a February 1 report date.

Although still facing a wall of employer opposition, his tactics have included negotiating with some employer groups about their particular concerns.

As well as AREEA, this has included deals with Uber and Menulog about gig economy arrangements and the Australian Hotels Association about the use of casuals.

He promised the pubs and clubs a "legislative note", for example, specifying casual workers with regular patterns wouldn't be affected. Other employer groups argue this is open to

interpretation by the courts and will make all employers reluctant to take the risk.

But the biggest corporate targets for the unions – and therefore for Burke – have always been Qantas and BHP. The airline's outsourcing of its workforce and aggressive approach to industrial relations under Alan Joyce made it a particular enemy of the union movement.

BHP has also been under attack from unions after Mike Henry set up Operations Services in 2018. This offers permanent employment to maintenance and production workers previously brought in as labour hire for temporary jobs at different sites. Unions insist wages and conditions at Operations Services are lower than those of other BHP employees.

Court decisions against Qantas and community irritation with the airline's service have effectively nobbled its ability to publicly prosecute the case against the bill under a new CEO busily apologising to passengers.

BHP – a big backer of the MCA and with Henry promoted to CEO – is resolute in its condemnation, claiming the bill will cost the company \$1.3 billion. The AREEA amendments won't change that.

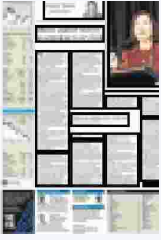
The immediate battleground will be parliament next week, with no quarter given. Some other employers still hope to persuade Burke to eventually make sensible compromises.

Don't bet on it.

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Bran Black, CEO, Business Council of Australia



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Minerals Council of Australia CEO Tania Constable. PHOTO: DION GEORGOPOULOS