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23 August 2007

Julia Gillard  
Deputy Federal Labor Leader  
Shadow Minister for Employment and  
Industrial Relations, Social Inclusion  
Parliament House  
CANBERRA ACT 2600

Dear Julia

The purpose of this correspondence is to further outline and seek clarification of key ALP IR policy consideration issues for the resources sector.

Prior to doing so, AMMA acknowledges the broad consultation process that key ALP representatives have undertaken with our sector. This includes several meetings you have personally had with AMMA.

As you are aware the resources sector relies heavily on AWAs. A recent analysis of all resource sector agreements lodged with the Workplace Authority in the past twelve months found that almost three out of every four employees are covered by AWAs.

AMMA recognises that the ALP's proposed mechanism for individual arrangements relies on the use of common law contracts. Our concerns with this approach were detailed in a paper titled *AWAs – A Major Matter for Miners*<sup>1</sup>, and focused on inflexibilities associated with common law contracts and their interaction with awards and agreements, potential for industrial action and the enhanced role of unions.

In August 2005 AMMA proposed a 'remuneration threshold award exclusion concept' in our submission to the *Senate Inquiry into Workplace Agreements*. AMMA proposed a mechanism which would facilitate the use of individual agreements without the need for formal registration. The proposal was to restrict the operation of awards and industrial agreements where a specified remuneration level exceeded a threshold set by regulation.<sup>2</sup>

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<sup>1</sup> [http://www.amma.org.au/home/publications/awas\\_amajormatterforminers.pdf](http://www.amma.org.au/home/publications/awas_amajormatterforminers.pdf)

<sup>2</sup> [http://www.amma.org.au/publications/AMMASubmission\\_AgreementMaking\\_5Aug05.pdf](http://www.amma.org.au/publications/AMMASubmission_AgreementMaking_5Aug05.pdf) See para 24.





While there has been much media commentary over whether and / or what level such a remuneration threshold should be set, the report in today's AFR that AMMA supports setting such a threshold at \$75,000 provided it included salary, allowances and rostered overtime is an accurate reflection of our position.

For such an arrangement to be workable access to industrial action would need to be excluded where an employee's remuneration exceeded the threshold. Union access should also reflect current circumstances where it is activated if the employee had appointed the union as their bargaining agent/representative.

For employees below the threshold level a common law process that removed the operation of awards and agreements should also be facilitated. The application of this could occur where it is demonstrated that a global no-disadvantage test type scenario reflects no worker is worse off compared to the award.

In relation to the Australian Building and Construction Commission AMMA strongly recommends that the ABCC be retained in its current form for reasons previously advocated. It is important for AMMA members involved in major infrastructure projects to have the confidence that the rule of law now present in the construction industry will continue.

Many of the projects currently under consideration (ABARE estimates the projects to be in the order of \$130 billion) extend beyond January 2010, with some planning being undertaken out to 2018. These are major multi-billion dollar projects which require certainty regarding adherence to established laws in order to attract necessary investment backing. Some examples of projects in the pipeline can be found in AMMA's paper *Constructing Lawful Workplaces*.<sup>3</sup>

In summary AMMA seeks that the existing powers and functions of the ABCC be retained and that a commitment be given that those powers and functions would be transferred to any successor to the ABCC if this is what the ALP plans to do.

In relation to the length of statutory agreements, AMMA successfully lobbied for the current maximum 5 year terms. These provisions were designed to provide certainty for major projects by facilitating pre-start agreements, normally with unions, that would apply during 40 – 60 month construction phases. The ALP's plans to limit agreements to four year terms appears to be a simplistic division between the current five year term and previous three year terms. State governments of both political persuasions have run with five year terms previously and this has been relatively uncontroversial. AMMA strongly recommends that the ALP accepts the current five year terms or alternatively provide a mechanism for four year agreements to have a 'plus one year option'

<sup>3</sup><http://www.amma.org.au/home/publications/constructinglawfulworkplaces.pdf> Page 26.





for projects in excess of 1 billion dollars, without additional bargaining or approval processing.

In relation to right of entry for union officials, AMMA believes that the current system, including permits, works well and should be retained.

Further on the area of industrial action compliance, there are two other important areas of ALP policy that have yet to be released. This again is highlighted in AMMA's *Constructing Lawful Workplaces*<sup>4</sup> paper. AMMA contends that the final ALP IR policy should retain the existing access to the Civil Courts in respect of unlawful industrial action, and continue the existing secondary boycott legislation provisions in the Trade Practices Act.

In respect of the role of unions, AMMA contends that unions like corporations must be democratic and accountable for their actions. AMMA has no opposition to employees freely electing to join a Union and being represented by Unions. AMMA is however concerned about 'turf wars' over union coverage and the potential for the workplace to be used a forum to push union political agendas in lieu of resolving genuine workplace grievances. Hence we recommend retaining restrictions on bargaining processes to 'matters pertaining to the employment relationship' and retain the 'more conveniently belong and more effectively represent' rules over membership coverage.

AMMA looks forward to discussing the above issues with you and your colleagues in the weeks ahead.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Knott', written in a cursive style.

Steve Knott  
Chief Executive

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<sup>4</sup> <http://www.amma.org.au/home/publications/constructinglawfulworkplaces.pdf>