AMMA
RESOURCE INDUSTRY EMPLOYER GROUP

TOP 10 IR REFORMS

AMMA members have identified numerous concerns with our industrial relations system following the introduction of the *Fair Work Act 2009*. The issues in most urgent need of reform are identified below as AMMA's Top 10 IR Reforms and primarily concern agreement making and the taking of protected industrial action.

1 Mandated genuine flexibility arrangements

Enterprise agreements must at least contain the *Fair Work Act's* model flexibility term that is currently included in all modern awards. Further, there should be a requirement that the mandatory flexibility terms in enterprise agreements genuinely meet the flexibility needs of both the employer and employee.

There must also be an ability to make individual flexibility arrangements (IFAs) a condition of employment with maximum four-year terms, under which the parties can agree that no protected industrial action occur during the life of the IFA.

Neither party should be able to unilaterally terminate an IFA within its term except by mutual agreement.

2 Greenfield agreements with or without union involvement

Employers should be able to make pre-start (greenfield) agreements for new projects without a union having a veto over whether an agreement can be made and/or what terms it should include.

Where unions demand that fanciful and inflationary claims be agreed before sanctioning a greenfield agreement, there must be a safety valve for employers. In such circumstances, employers must have the option of registering a greenfield agreement that would be tested against the relevant modern award, the National Employment Standards and the better off overall test without obtaining consent from a union or unions.

Fair Work Australia should have the ability to deem that a union's demands are not in the public interest and to issue a greenfield "determination" where agreement with unions cannot be reached in these circumstances.

3 The option of individual employment contracts

Employers and employees must have the option of agreeing to individual contractual arrangements that have statutory effect. These individual arrangements would require a guarantee of minimum entitlements under modern awards and the National Employment Standards.

The failure to provide for statutory individual contracts between parties is not reflective of a modern industrial relations system nor is it conducive to promoting innovative and progressive workplace arrangements.

4 Majority support a pre-requisite for industrial action

Under the current interpretation of the *Fair Work Act*, employees can take protected industrial action with just a minority of employee support provided that minority represents the majority view of union members to be covered by the agreement. This is an unfair impost on the majority of employees and the employer, both whom may have no desire to progress a union-negotiated collective agreement.

The majority support of all employees subject to a proposed agreement must be obtained before employees can embark on disruptive protected industrial action. This would make the process equitable for all parties.

5 Protected industrial action to satisfy a public interest test

Protected industrial action should be prohibited where unions are pursuing claims that don't satisfy a public interest test.

The current ability to take protected industrial action over claims that are clearly contrary to the public interest must be removed. Protected industrial action should only be available as a last resort after a demonstrated attempt has been made to exhaust all bargaining options including mediation. Resort to coercion via protected industrial action at first instance is at odds with an obligation to bargain in good faith.

Public interest issues would include consideration of: the size of the wage claim made vis a vis inflation and general industry standards; productivity issues; whether bargaining has been exhausted; and the employer's capacity to meet the wage and condition claims.

6 Restrictions on subject matter in enterprise agreements

The objects of the *Fair Work Act* of facilitating greater productivity in enterprise bargaining are not being met under the current framework.

Unions are currently using the provisions of the *Fair Work Act* to include a wide array of matters in agreements as a vehicle to entrench their role at the workplace and deflect the focus away from improving working arrangements.

Union bargaining agendas are increasingly related to promoting union rights and privileges as opposed to wage and condition increases for employees or boosting the productivity of an enterprise. Provisions in agreements that restrict the use of contractors, increase union access to worksites and require employers to encourage union membership fail to meet any objective test of benefit to the employment relationship or the enterprise.

7 Prohibitions on pattern bargaining

The *Fair Work Act* purports to prohibit the taking of protected industrial action where pattern bargaining is occurring which pays no regard to the needs of the enterprise. However, pattern bargaining continues to be the *modus operandi* of many unions who then encourage employees to take protected industrial action to secure a pattern agreement. Fair Work Australia is yet to prohibit the taking of protected industrial action while this is occurring.

The ability for unions to take protected industrial action where they are engaged in pattern bargaining should be removed.

8 Balanced right of entry provisions

The *Fair Work Act's* amended right of entry provisions have allowed for a greater number of unions to visit a greater number of workplaces thereby disrupting work and adding to the cost of doing business for employers.

Union right of entry to a workplace should be limited to situations where that union has members on-site and where the union is covered by a workplace agreement that operates on that site.

Unions should not have a legislative right to visit workplaces where they have no members. Nor should there be any ability for industrial agreements to contain union entry rights which are in addition to those contained in the *Fair Work Act*. The ability for only those unions that are covered by enterprise agreements to enter worksites would also limit union demarcation disputes that have arisen under the Act.

9 Removal of adverse action provisions

The *Fair Work Act's* general protections or 'adverse action' provisions should be removed in their entirety.

Employees and employers already have generous protections from workplace discrimination under state and federal anti-discrimination and equal opportunity laws. *The Fair Work Act* also contains protections for employees against unlawful conduct and unfair dismissal.

The adverse action provisions have created a new field of litigation such that every employer action relating to an employee activity now needs to be assessed against the potential for an adverse action claim to be brought at some future time. No real justification was ever provided for these laws which create an overlap with existing anti-discrimination laws.

The reverse onus of proof on employers to defend adverse action claims that can be filed up to six years after the event is a massive impost on employers and should be removed.

10 No transfer of previous employer's industrial instruments

The current transfer of business laws are acting as a disincentive for new employers where a transfer of business has occurred to take on the existing employees of the previous employer.

The *Fair Work Act's* mandatory requirement for employers to take on a previous employer's industrial arrangements where a business transfer occurs is a serious inefficiency, particularly where the new employer has its own industrial arrangements in place. The burden of imposing a previous employer's industrial arrangements on the new employer is counter-productive and should be removed.

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