

Fair Work Australia and unions to become de facto business managers under recommendations

THE federal government's Fair Work Act Review has completely missed the mark, with its recommendations proposing to have Fair Work Australia and the union movement even more heavily involved in the daily management of Australian businesses.

According to national resource industry employer group AMMA, the recommendations show an uncompromising attempt to prop up unionism in Australian workplaces and further renege on 2007 pre-election promises.

"Many of these recommendations are nothing more than a vehicle to allow the Federal Government to move further away from its IR election promises to deliver productive workplaces," says AMMA chief executive Steve Knott.

"If this report is accepted we will have lost a real opportunity to fix up this failing legislation and create more productive workplace practices.

"The irony here is that the review's report recommends Fair Work Australia gets more involved in business activities in order to boost productivity – all the while ignoring calls from business leaders and academics that the Fair Work Act itself is one of the barriers to restoring productivity.

"It cannot be taken seriously that Fair Work Australia members should be able to impose themselves on employers in compulsory conciliation and arbitration processes relating to workplace practices. We're concerned by the panel's recommendations that employers with highly qualified managers somehow need constant intervention to run their businesses."

Mr Knott acknowledges the recommendation designed to close the *JJ Richards* loophole in which a workforce was able to strike without majority support and before bargaining began. Recommendation 21 also addresses a bargaining representation issue as highlighted in the recent *Technip* case.

However he says other recommendations around protected strike action are 'very concerning'.

"AMMA spent north of \$300,000 in various proceedings on the *JJ Richards* case to highlight that the legislation did not reflect the government's commitments about protected strike action. We are pleased the review process seeks to address this and look forward to the detail," Mr Knott says.

"But there are several other recommendations that serve only to encourage and reward the taking of industrial action by employees. These include a recommendation that would require employers to keep providing accommodation to striking workers.

"Proposing that employers must continue to provide accommodation to striking workers is completely unrealistic. In our industry an employer would have to pay for its entire workforce to live in remote working villages while thousands of workers sit around taking strike action.

"It proposes an employer should pay union delegates to bask around the camp's pool, have a few drinks and get a tan while taking protected strike action - what an absurd concept."

Greenfield agreement making under the Fair Work Act, in which unions have demonstrated an ability to hold new resource projects to ransom, was an area in which resource employers were hopeful of being granted some reprieve.

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AMMA is pleased there has been an acknowledgment that the greenfield agreement making process is an issue, however the proposed solutions advocated by the review risk making matters worse.

“The changes as proposed risk making the federal industrial tribunal a de facto project manager of greenfield sites and threaten to further place pressure on employers in an already unworkable system,” Mr Knott said.

“The focus of reform in this area should be to provide a much-needed safety valve for employers placed in untenable industrial situations while trying to get greenfield projects up and running, not to further encourage unions to make exorbitant claims and delay negotiations in the hopes of an arbitrated outcome.”

Other recommendations in the Fair Work Review Panel's report, [Towards more productive and equitable workplaces – the Fair Work Act](#), show an alarming attempt to prop-up unionism in an environment where delegate numbers are dwindling to just 13% of the private sector workforce.

Mr Knott says resource industry employers and the wider national business community 'have again been let down' by the review recommendations with the recorded and well reported difficulties in operating under the Fair Work laws completely ignored.

“The review is way off the mark,” Mr Knott says.

“We had an opportunity to make real improvements to the way Australian workplaces do business and deliver productivity and global competitiveness – but it appears it is all but lost.”

The AMMA submission

AMMA's 178-page submission to the review made a series of 54 recommendations for legislative change, including:

- **A statutory individual contract** measured against the Better Off Overall Test and the National Employment Standards should be introduced to facilitate workplace flexibility;
- **Fair Work Australia** should have the power to make a greenfield determination for a new project where agreement on reasonable terms within a reasonable timeframe cannot be reached with a union;
- **Individual Flexibility Arrangements (IFAs)** should be able to operate for up to four years, with the arrangements able to run for shorter periods where mutually agreement and be terminated at any time by mutual agreement;
- **Protected industrial action** should not be permitted where the claims being sought do not meet a 'public interest test' applied by Fair Work Australia;
- **Workplaces should have the option** of voting for an 'internal regulation' model of industrial relations if a two-thirds majority of the workforce endorses it;
- **The majority support of all employees**, not just union members, should be required before any employees can take protected industrial action; and
- **Protected industrial action** should not be available to employees before bargaining has commenced or a majority support determination has been made by Fair Work Australia.

[For a summary of AMMA's submission, click here.](#)

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