

10 February 2009

Mr John Carter
Secretary
Standing Committee on Education, Employment and Workplace Relations
PO Box 6100
Parliament House
Canberra ACT 2600

Re: AMMA appearance before Senate Standing Committee on Education, Employment and Workplace Relations concerning the Fair Work Bill.

Dear Mr Carter,

Thank you for allowing me to appear before the committee on 27 January 2009. I have reviewed the draft transcript and would like to take this opportunity clarify and/or add to the oral submissions made to the committee.

Could you please arrange for copies of this letter to be provided to Committee Members.

AMMA presentation to the Australian Labour Lawyers Association

In respect to the first question asked by Senator Collins on page 3 I advise that the Australian Labour Law Conference was held on 14 November 2008. Immediately before my presentation the Deputy Prime Minister made a speech¹ which provided additional information on the content of the Fair Work Bill. My presentation relied on publically available information as at that date and the new information contained in the Deputy Prime Ministers speech.

The Fair Work Bill was not released until 25 November 2008. As I discussed before the committee, the Fair Work Bill departs from some of the previously announced policy provisions (e.g. modern awards will not be a factor in determining union access rights).

The content of our submission relied on an analysis of the detail contained in the Fair Work Bill and input from our membership including the AMMA Board Reference Group. The analysis of the detailed changes revealed a much greater level of concern that was expressed in my speech made prior to the release of the Bill; our submission reflects those heightened concerns.

¹ http://www.deewr.gov.au/Ministers/Gillard/Media/Speeches/Pages/Article_081128_090051.aspx

Employee Records

At paragraph 4.25 the AMMA submission notes that the Fair Work Bill does not define the term 'record'. Whilst the Bill does define the term 'employee record', this term has not been used in s.482(1)(c). We also note the concerns contained in the submission of the Privacy Commission concerning the definition of the term record.

12 Hour shifts

In respect of the questions asked by Senator Siewert (page 8) I should clarify that AMMA is seeking to retain provisions which currently allow the working of 12 ordinary hours per day (subject to the maximum of an average of 38 hours per week over the roster cycle).

Union Density Statistics

In respect to my evidence about union membership levels in the resource sector I confirm the following statistics which are contained in or derived from ABS Labour Statistics dated August 2007 (latest publication);

- Private Sector Union membership 13.9%
- Resource Sector Union membership 21.5%
- Coal Sector Union membership 56.5%
- Non-Coal Sector Union Membership 12.1%

Greenfield Agreements

Since giving evidence I have had the opportunity to review the oral evidence and supplementary submission presented by Professor Andrew Stewart. There appears to be general support to vary the Bill so as not to require an employer to reach agreement with every eligible union. This is the position which has existed since Greenfield agreements were first introduced.

AMMA is however concerned about Professor Stewart's comments that good faith bargaining provisions may operate in a way that impedes the timely making and approval of Greenfield agreements.

An example of this possibility is that a single rogue or minority union who adopts an unreasonable position and is thus unable to reach agreement, could obstruct the approval of an agreement made between the employer and other unions, by using the good faith bargaining provisions. Such a process could result in an application for good faith bargaining orders or an arbitration. This approach would be at odds with the use of Greenfield agreements as a mechanism to pre-determine project arrangements before employees were

engaged. AMMA contends that this situation could be avoided by removing good faith bargaining obligations in respect of Greenfield agreements.

AMMA and its members are also concerned about the impact of Professor Stewart's suggestions to increase the powers of Fair Work Australia (FWA).² Such a move would undoubtedly result in untimely delays and increased legal costs in processing Greenfield Agreements. This would fundamentally undermine the industrial and commercial purpose of broad based project agreements in the construction sector.

If the Senate is disposed to adopt any of Professor Stewart's suggestions, AMMA proposes that FWA would not be able to intervene where the Greenfield had been made with union(s) which are capable of representing a simple majority of the employees who would be covered by the agreement.

If you have any questions concerning this additional material please contact me on 08 82120585.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'C. Platt', with a long horizontal flourish extending to the left.

Christopher Platt
Director Workplace Policy.

² Page 4 of Professor Andrew Stewart's supplementary submission