



11 November, 2021

House of Representatives Standing Committee on
Employment, Education and Training
Via email: ee.reps@aph.gov.au

To the Secretary,

Fair Work Commission Annual Report 2019-2020

The Australian Manufacturing Workers' Union ("AMWU") represents over 70,000 workers who create, make and maintain. Most of our members are national system employees and could access the Fair Work Commission on a range of matters including:

- a) the determination of minimum pay and conditions through the making, review and variation of industry-based Awards and the Annual Wage Case
- b) support for enterprise bargaining including the making of orders (including protected industrial action ballots) and approval of enterprise agreements;
- c) dispute resolution in the workplace; and
- d) resolving individual disputes particularly unfair dismissal applications.

The AMWU's experience over the past two years suggest that the management of the COVID-19 pandemic has only marginally increased the number of workplace and individual disputes we have lodged with the Commission. This is due to a range of factors, ranging from how the AMWU generally deals with matters to the limitations of the Fair Work Commission in trying to resolve COVID related matters.

The AMWU is a union that focuses on resolving as many issues as possible in the workplace. The AMWU works towards empowering its workplace delegates and activists to be able to negotiate directly with their employers on matters affecting their site; and provides advice and support from its officials to achieve this goal.

An example of this is in March – April 2020 where the NSW Branch campaigned in individual workplaces for the provision of paid pandemic leave. Such leave was to be used for people to self-isolate if they had come into contact with COVID-19 and, if necessary, cover the period of their quarantine. In all, 96 medium and large sites were successful in obtaining this leave, largely as a result of the work of members in their workplace.

Many of the issues that have arisen due to COVID-19 have followed this pattern – the AMWU has advised its members and if further action is required it is usually dealt with at the workplace. In particular, AMWU officers spent significant time continually reviewing and interpreting changing Public Health Orders and then informing members of the situation; only for the information to be out of date within a matter of days, with new restrictions emerging and other measures being abandoned. If the employer refuses to engage, or if there is benefit in engaging with the Commission, we will escalate the dispute.

In some instances it is likely that policy initiatives have lessened the necessity or the utility of bringing such disputes to the Commission. The introduction of JobKeeper in 2020, for example, provided both financial support for businesses and their employees, as well as additional flexibility to manage work arrangements through the use of JobKeeper directions.

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In usual circumstances, on average the AMWU would file no more than 2 or 3 disputes under section 526 of the *Fair Work Act*. These disputes deal with stand downs of employees without pay. While the number of disputes filed increased in 2020 and 2021 due to COVID, it is likely that JobKeeper reduced the need for eligible employers to consider stand downs as a course of action. Similarly, JobKeeper directions provided employers with the authority to make rostering arrangements that would not otherwise be permitted under enterprise agreements, especially without the agreement of employees. As such it curtailed the ability of unions such as the AMWU to bring disputes on these matters.

The Fair Work Commission also had no jurisdiction to address some of the inadequacies of JobKeeper that created other issues in the workplace. For example, because of the flexibility that labour hire workers provide to businesses, they were often the first people to lose work because a business had shut down or numbers needed to be reduced to prevent the risk of COVID transmission. As many of these workers were employed as casuals, they were not automatically eligible for assistance through JobKeeper. There is limited value in seeking the Commission's assistance when these workers are let go.

The management of COVID 19 in the workplace is also primarily a work health and safety issue. AMWU members' have raised serious concerns about the management of risks to COVID in their workplace, with nearly half the participants in an AMWU NSW Branch survey feeling that they have been at risk of exposure to COVID in their workplace.¹ While every attempt is made to resolve these matters at the workplace, there is limited scope to bring any such dispute to the Fair Work Commission, given that these issues are within the jurisdiction of regulatory agencies and/or State Industrial Commissions.

The use of public health orders issued by State and Territory Governments to manage the risks of COVID-19 in the community also restricts the ability of the AMWU to bring some disputes to the Commission. The Commission is not a Court that can rule on the validity or otherwise of a mandate under a State Public Health Order and thus its ability to resolve a dispute is limited. In addition, the lack of co-ordination between State and Federal regulatory agencies concerning access to support payments, tracking and tracing and movement across borders are all problems that the AMWU were having to deal with in terms of a workforce that regularly moves across state borders. The ability of the Fair Work Commission to provide assistance in this space is unfortunately limited.

The decision of the AMWU to bring a dispute to the Fair Work Commission is not taken lightly. Our preference is to deal with disputes directly at the workplace whenever possible. The AMWU has continued to make application to the Fair Work Commission throughout the past two years on a range of matters, many of which are not related to COVID-19. While policy initiatives taken to manage the risk of COVID-19 in the community will give rise to challenges in the workplace, the AMWU notes that there are often limitations and restrictions that will prevent the Fair Work Commission from being able to fully address these challenges. As such, the AMWU does not expect to be increasing the Commission's workload purely as a result of COVID-19 policy initiatives.

Kind regards,



Steve Murphy
AMWU NATIONAL SECRETARY

¹ Online survey of AMWU members conducted between 27 July – 2 August 2021. 892 responses received.
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