Industrial Relations (Transparency & Accountability of Industrial Organisations) Submission 023

22 May 2013

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Inquiry into the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013

I refer to the above inquiry and provide a brief submission on behalf of the Australian Mines and Metals Association (AMMA).

About AMMA

AMMA is Australia's resource industry employer group. Our membership is diverse both in terms of geography and coverage of every resources sub-sector and servicing industry. Similarly, AMMA's influence in Queensland is comprehensive. Sixty of our more than 400 member companies are based in Queensland. Many more have active operations in the State.

AMMA members employ 50,000 workers in Queensland. This represents 70% of the State's total mining workforce. Between 2002 and 2012, mining employment in Queensland increased by 242% and the value of advanced major mining projects increased by 1799%.

AMMA has several consultants actively providing industry services to employers operating and involved with the construction of Queensland's four major LNG pipeline projects. During the peak construction demand – until 2016 – these projects are forecast to create around 40,000 new Queensland jobs.

This submission

This submission addresses two elements of the amendments to be effected by the Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Bill 2013 (the bill):

a) Part 4 – amendment of section 11 (Who is a worker), schedule 2 (Who is a worker in particular circumstances) and related sections, of the *Workers' Compensation and Rehabilitation Act 2003.*

MELBOURNE T (03) 9614 4777 F (03) 9614 3970 E vicamma@amma.org.au
BRISBANE T (07) 3210 0313 F (07) 3210 0291 E qldamma@amma.org.au
PERTH T (08) 6218 0700 F (08) 9221 5422 E waamma@amma.org.au
SYDNEY T (02) 9211 3566 F (02) 9211 3077 E nswamma@amma.org.au
ADELAIDE T (08) 8212 0585 F (08) 8212 0311 E saamma@amma.org.au
HOBART T (03) 6270 2256 F (03) 6270 2257 E tasamma@amma.org.au

b) Clauses 10 to 13 – amendment of *Industrial Relations Act 1999* to "improve procedural arrangements for union right of entry into an employer's premises".

Part 4

Clause 71 and related provisions would amend the definition of "worker" in the Workers' Compensation and Rehabilitation Act. In introducing the bill to the Queensland Parliament, the Honourable Attorney-General said that submissions made by employers and business groups to an inquiry by the Finance and Administration Committee had identified such an amendment as a matter of great priority and, as a result, the Government had decided to proceed with amendment ahead of that committee's report.

As AMMA had provided a submission in those terms to the Finance and Administration Committee, AMMA welcomes early amendment. In particular, AMMA welcomes the parliamentary intentions:

a) To respond to the legitimate concerns of business by providing clarity for workers and employers about who must be included in an employer's workers' compensation policy.

b) To reduce costs to employers, consistent with section 5 of the Act which requires maintenance of a balance between providing fair and appropriate benefits for injured workers and ensuring reasonable cost levels for employers.

Clauses 10 to 13

Clauses 10 to 13 would amend union right of entry provisions in the Industrial Relations Act.

The amendments are based on the requirements in the *Fair Work Act 2009* (Cth) that impose an obligation on a permit holder to provide at least 24 hours' notice of entry to an employer's workplace if entering to hold discussions under section 484 or to investigate a suspected breach under section 481of that Act.

The explanatory notes state (at 2-3) that the policy objectives of the amendments and the reasons for them are:

Union right of entry provisions as they apply in the Queensland industrial relations system are now out of step with national workplace relations laws. It is in this context that the Bill provides for improvements to the right of entry provisions to be more consistent with certain procedural requirements of the Fair Work Act 2009 *(FW Act) (Cth) and to ensure that right of entry does not cause undue interference, harassment or disruption to an employer's business.*

In relation to clauses 10 to 13, AMMA draws the attention of the committee to three matters.

a) The proposed amendments would adopt the Fair Work Act requirement to provide 24 hours' notice of union entry. However, the proposed amendments to the Industrial Relations Act would not, and should not, go further to ensure direct consistency with Fair Work Act right of entry provisions. In particular, proposed changes to the Fair Work Act, as found in the Fair Work Amendment Bill 2013 (Cth) currently before the Federal Parliament, should not be adopted.

The Fair Work Amendment Bill, if passed, would significantly expand union right of entry in the Federal jurisdiction. On 19 March 2013, Australia's four leading employer representative organisations (AMMA, ACCI, BCA and AiG) wrote to the Prime Minister, the Leader of the Opposition, the Minister and Shadow Minister for Workplace Relations, the Leader of the Greens, and Independent Members and Senators regarding that bill. The letter stated that the bill, including proposed amendments regarding union right of entry, should not be passed:

These amendments should not be progressed.

In fact there is a need to start again. The approach proposed by the government will not address the core issues raised by the private sector, and almost all are entirely outside the considerations and recommendations of the review of the Fair Work Act in 2012. Many elements of the proposed amendments fail the test of good policy design and good regulation.

AMMA made a detailed submission to the Senate Education, Employment and Workplace Relations Committee (the Senate Committee) regarding that bill and, in particular, the proposed changes to the union right of entry (available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=eet_ctte/completed_inquiries/2010-13/fair_work_2013/submissions.htm).

b) Neither the existing union right of entry provisions in the Industrial Relations Act, nor the proposed amendments under consideration by the committee, appear to prohibit right of entry to those parts of workplaces which are used for residential purposes. It is common for workplaces in the resource industry and allied sectors, particularly those in remote locations, to include accommodation precincts. Accordingly, it is suggested that the Industrial Relations Act be amended to include a provision such as section 493 of the Fair Work Act.

c) Similarly, a general union right of entry which allows access to remote, offshore and operationally sensitive workplaces can raise significant issues of safety and practicality. Section 365 of the Industrial Relations Act, even if amended as proposed by clause 7, may not ensure such safety and practical considerations can be addressed by an employer in an appropriate or adequate way. Relevant issues in this regard were canvassed in the AMMA submission to the Senate Committee on the Fair Work Amendment Bill 2013.

We would be pleased to discuss this submission further. Please contact Julie Copley, Policy Manager on (07) 3210 0313 or via email: julie.copley@amma.org.au.

Yours sincerely

SCOTT BARKLAMB
Executive Director, Industry