SUBMISSION OF TEYS AUSTRALIA PTY LTD AND N H FOODS PTY LTD TO THE AUSTRALIAN PRODUCTIVITY COMMISSION INQUIRY INTO THE AUSRTRALIAN WORKPLACE RELATIONS SYSTEM

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EXECUTIVE SUMMARY

INTRODUCTION

This submission is compiled and submitted on behalf of Teys Australia and NH Foods, two large Australian Meat Processing employers. - *see http://www.teysaust.com.au/ and http://www.nh-foods.com.au/*

Australia is one of the world's most efficient producers of cattle and the world's third largest exporter of beef. The off-farm meat value of the Australian beef and cattle industry is $12.75 billion *(consumer expenditure plus export value)* and around 200,000 people are involved in the red meat industry, including on-farm production, processing and retail.

Meat processing is and will for the foreseeable future be labour intensive, labour costs representing approximately 60% of processors total manufacturing costs. The "meatworks" is quite often the life blood of rural Australian towns, being the largest if not a very large employer within those regional population hubs.

Consequently, Australia's workplace relations system plays an important role in facilitating productive , efficient and harmonious meat processing workplaces.

THE PRODUCTIVITY COMMISSION INQUIRY

The Inquiry is essentially an examination of the entire operation of the Fair Work Act and the outcomes are potentially significant for labour intensive employers. These submissions do not address all the matters canvassed in the inquiry's published issues papers, preferring to focus on sensible and reasonable solutions to problems meat processors have encountered since the Fair Work Act commenced to operate in 2010.

OUR SUBMISSIONS

The following table summarises the issues Teys Aust aqnd NH Foods believe are important for the inquiry to assess and suggests relevant, workable, fair and equitable solutions and remedies to current difficulties it faces with the provisions of, and application of, the Fair Work Act.

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AUSTRALIAN MEAT PROCESSING EMPLOYERS-ANALYSIS OF CURRENT PROBLEMS/ ISSUES WITH THE FAIR WORK ACT AND SUGGESTED SOLUTIONS

ISSUE CATEGORY	*SUB-CATEGORY AND FWA REFERENCE*	*BRIEF DESCRIPTION OF PROBLEM*	*SUGGESTED SOLUTIONS*
THE ACT	COVERAGE, NAME OBJECTS AND FUNCTIONS- Chapter 1	"Fair Work" moniker has had its day, duplication needs to be removed and objects and functions defined with more clarity. Employers face claims in far too many jurisdictions.	✗ *A unitary system covering* ***all employment related matters*** *except Worker's Comp (incl Discrimination, bullying, freedom of association, unfair/ unlawful dismissal , visa holder protection in employment , LSL etc) called the Australian Employment Act (AEA) encompassing the Australian National National Employment Commission (ANEC).* ✗ *Objects of the Act-* ***fairness , balance, enhanced productivity, job creation, national good*** ✗ *The ANEC should also have specified obligations to -* ✗ ***when exercising all its functions, generally enhance productivity improvements within Australian businesses, and*** ✗ ***at an industry level, pro-actively identify and take measures to dilute any impending issues , and*** ✗ ***at an industry level, promote, facilitate and assist with the process of establishing industry specific minimum conditions of employment to complement the NES , and*** ✗ ***ensure consistency of its decision making by the establishment of an expert Appeal Bench with broad power to correct error and set consistent principles, and*** ✗ ***continue to set minimum wage and be responsible for setting generic minimum penalty rates***
MINIMUM CONDITIONS OF EMPLOYMENT	NES- Chapter 2 - Part 2-2	Minimum entitlements too complex and confusing.	✗ *Expand the NES to complement phasing out of modern Awards.* ✗ *NES to include* ***low , minimum standard $ per hr, penalty rates for overtime, shift work, week end work, work on Public Holidays*** *for all employees regardless of industry unless they are high income salaried staff or have a registered approved agreement with an all up rate which compensates for such minimum loading.* ***High income threshold reduced to $90k per annum*** *and indexed up each year by % increase to Aust OTE. The* ***ANEC would have the power to review and /or declare that the minimum penalty rate standard would not apply to SME's*** *in designated industries or sectors.* ✗ *NES to include* ***standardised Public Holidays and Long Service Leave*** *(States need to agree) and i****mmutable TCR*** *standards.* ✗ *States* ***to agree only two Australian time zones-*** *central and eastern based on current S.A. time - western based on current WA time with standard daylight savings from Oct to March each year. (Note - not technically an IR issue but has a business impact)*
	AWARDS- Chapter 2 - Part 2-3	Minimum entitlements too complex and confusing.	✗ ***Phase out Awards over 5 years- f****irst phase -collapse current 120 current modern Awards into 17sector Awards containing only bare minimum employment conditions* ✗ *Alternatively ,* ***retain the 17 sector Awards*** *if elimination of Awards altogether is considered a "bridge too far".*
	AGREEMENTS AND BARGAINING - Chapter 2 - Part 2-4	Agreement making too complex and cumbersome. Employees and Unions can derail/ delay bargaining by demanding provisions which do not directly relate to the employment relationship. EBA's have evolved to the point that they no longer require so much scrutiny.	***Types, Content, Status, Approval and Cessation of Agreements-*** *The system should accommodate -* × ***Enterprise specific collective agreements, and*** × ***Single Employer multi-site collective agreements, and*** × ***Related bodies corporate single and/or multi site collective agreements, and*** × ***Greenfields collective or individual agreements, and*** × ***Specific Group and/or individual agreements for employees below the $90k per annum salary threshold.*** *Approval of Agreements -* × ***Have to be approved and registered with ANEC , and*** × ***have to pass an initial broad NDT until Awards are phased out (not line by line) , and*** × ***max life of 5 years with finite expiry but greenfields can run for life of project, and*** × ***parties can agree to roll overs in advance of any expiry date with no need to formally re-register, and*** × ***jointly signed sworn affidavit signifying agreement is sufficient for ANEC to approve, vary, roll over , extend or terminate - no need for ballots.*** *Contents must -* ✗ ***only "pertain to the employment relationship" as per Electrolux High Court decision , and*** ✗ ***unless agreed or decreed otherwise not apply to high income earners*** *(>$90k per annum)* ***, and*** ✗ ***include an effective grievance procedure, and*** ✗ ***include details of predicted hours of work which cannot be excessive having regard to the proposed income to be regularly generated , and*** ✗ ***include relevant rates of pay and a process for periodic review of them.*** *Standing -* ✗ ***Specific group or Individual agreements override collective agreements (or any other industrial instrument except the NES) , to the extent of any inconsistency***

		Processes to roll over and/or terminate agreements should be far less involved. There should be the capacity for a wide range of agreement types including stat individual agreements.	*Cessation -* ✗ ***Agreements can be terminated at any time by joint application lodged with ANEC,*** ✗ ***Collective and greenfields agreements automatically terminate 26 weeks after nominal expiry date unless a party obtains an extension from ANEC*** ✗ ***Individual or specific group agreements expire at the specified expiry date, unless the necessary steps are taken to roll over or extend them.*** *Greenfields -* *A proposed greenfields employer can, no later than 12 weeks prior to the predicted commencement of employment on a site or project , elect to-* ✗ ***bargain with a Union/s, or*** ✗ ***lodge an application of its version of collective employment conditions with ANEC , or*** ✗ ***lodge an application of its version of individual employment conditions and seek that the operation be declared an individual or collective contract site by ANEC .*** *and any resultant employment conditions instrument may be approved by ANEC if it meets the NDT and prevailing employment conditions test.* ***Bargaining-*** *Employers, (other than SME's) must bargain in good faith, but can only be compelled to bargain for a collective agreement if -* ✗ ***there is no system of approved formal registered individual agreements already in place , and*** ✗ ***a formal ballot of employees endorses pursuit of a collective agreement .*** *A Union may be appointed as bargaining rep for any type of agreement only after ANEC approval prior to bargaining and having established* ***it has a current financial membership density of no less than 25% amongst the employees who are intended to be covered by the proposed agreement.***
INDUSTRIAL ACTION	PROTECTED ACTION AND ACCESS TO ARBITRATION- Chapter 3 - Part 3	Industrial action too damaging. Rules are very complex and able to be manipulated. There are no "circuit breaker" provisions if there is an impasse.	***Protected Action -*** *Immunity should only be available after-* ✗ ***an existing collective agreement has past its nominal expiry date, and bargaining for a new collective agreement has occurred for at least 13 weeks, and*** ✗ ***a secret ballot order has been obtained and the ballot conducted under the auspices of the ANEC approves the nature and extent of the protected action, and*** ✗ ***where pending industrial action has been notified, there has been a 7 day cooling off period during which the matters at issue have been the subject of compulsory conference in ANEC, and*** ✗ ***the relevant employer is not one which has sought and been granted a prior exemption from protected action by the ANEC.*** ***Exemption and Arbitration -*** *Employers should be able to immunise against any protected action by-* ✗ ***within 14 days of commencement of bargaining, seek certification from ANEC that it be exempt from protected action on the basis that it will submit itself to compulsory arbitration of any outstanding matters if bargaining has not resolved them within 13 weeks after the nominal expiry date of the previous agreement.*** ✗ ***the Minister should have the power to deem any employer an"essential service" and therefore immune from any protected action.***
RIGHT OF ENTRY	UNION OFFICIALS RIGHTS TO ENTER PREMISES - Chapter 3 - Part 4	Officials do not have to establish the need to enter and can create high levels of interruption and inconvenience.	✗ *The rights of permit holders re suspected breaches and OHS should not be retained as these duties are rightfully performed by officers of regulatory authorities such as Worksafe or the FWO. For a Union to obtain and maintain right of entry privileges into a particular work site for discussions with members and/or potential members it needs to -* ✗ ***write to the the relevant employer seeking discussions and agreement on all matters re those arrangements including frequency of visits, identification of officials who can enter, times of entry, location of discussions with employees, etc, and*** ✗ ***following those discussions, gain approval from ANEC as per the above agreed arrangements or in absence of agreement on terms and conditions determined by ANEC as being reasonable in the circumstances of the individual site, and*** ✗ ***any approval granted by ANEC may be rescinded at any time due to established abuse or misapplication of it and must be reviewed before each biennial anniversary of it being granted, unless the relevant employer indicates to ANEC that such a review will not be necessary.***
UNFAIR/ UNLAWFUL DISMISSAL/ GENERAL PROTECTIONS	RIGHTS AND RESPONSIBILITIES - Chapter 3 - Part 3/2	Frivolous and vexatious claims continue to survive the system as does "go away" money. The definition of 'workplace rights" is too wide and results in spurious claims.	***Unfair/ Unlawful Dismissals, Harassment and Bullying, Discrimination, General Protections-*** The following changes are proposed- ***1.*** *All claims should go through an* ***initial pre- conciliation screening process by the ANEC*** *to determine if there are any reasonable grounds for the claim to proceed, and* ***2. Mediation*** *should occur before final arbitration, and* ***3.*** *All claims (including from employees above the high income threshold who should not be excluded from making a claim)* ***must go through the entire process in ANEC*** *before there can be any access to other litigation (ie breach of contract by execs), and* ***4.*** *Compensation is restricted to a* ***max of 6 months pay,*** *and* ***5. The term "Workplace Rights' be excised*** *from general protections provisions and make these genuine protective provisions against* ***freedom of association, discrimination , harassment and bullying behavior, and*** ***6.*** *All the anti- discrimination and associated jurisdictions relative to employment and pre- employment be,* ***rationalised*** *and placed into the AEA under the jurisdiction of ANEC .*
REGISTERED ORGANISATIONS	FAIR WORK (REGISTRATION OF ORGANISATIONS) ACT 2009	Many industrial organisations have not been properly regulated	***Industrial organisations*** should continue to be tax exempt as long as they satisfy registration requirements, however their registration should not be subject to the AEA but rather be regulated by ***new legislation to be administered by the ACCC***, even if it largely mirrors the current provisions. Elected officials *(and/or employees)* of industrial organisations ***should be subject to the same legal obligations as company directors.***

1. INTRODUCTION

This submission is compiled and submitted on behalf of Teys Australia Pty Ltd and NH Foods Pty Ltd details of which are to be found in the table below.

Name of Processor	Location of Site/s	Employee Numbers	Industrial Instrument
NH Foods Pty Ltd	***QLD-*** *Oakey,* *Mackay* ***NSW-*** *Wingham*	***770*** ***580*** ***480***	*Oakey Beef Exports Pty Ltd Enterprise Agreement 2014* *Wingham Beef Exports Pty Ltd Enterprise Agreement 2014* *Thomas Borthwicks and Sons (Australia) Pty Ltd Enterprise Agreement 2011*
Teys Australia Pty Ltd	***QLD****- Rockhampton* *Biloela* *Beenleigh* ***NSW-*** *Tamworth* *Wagga Wagga* ***SA-*** *Naracoorte*	***900*** ***450*** ***790*** ***380*** ***850*** ***420***	*Teys Australia Southern Pty ITd Tamworth Production Departments Enterprise Agreement 2012 (AE899701), Teys Bros (Biloela) Pty Ltd Production Departments Enterprise Agreement 2010 (AE882302), Teys Bros (Central Queensland) Pty Ltd Production Departments Enterprise Agreement 2011 (AE887070), Teys Australia Food Solutions Pty Ltd (TAFS) Production Departments Collective Agreement 2012 (AE892213), Teys Australia Naracoorte Pty Ltd Production Departments Enterprise Agreement 2012 (AE897333), Teys Australia Southern Pty Ltd Wagga Wagga Production Departments Enterprise Agreement 2012 (AE400151), Teys Australia Distribution Pty Ltd Hemmant Enterprise Agreement 2014 (AE409771), Teys Australia Condamine Pty Ltd Feedlot Enterprise Agreement 2014 (AE410982), Murgon Leather Pty Ltd Tanning Employees Enterprise Agreement 2010 (AE884181).*

Between them, these national system employers directly employ approximately 6,000 people and when accepted levels of statistical indirect employment leakage are applied, this figure becomes approximately 10,000. *see http://www.teysaust.com.au/ and http://www.nh-foods.com.au/*

2. THE AUSTRALIAN MEAT PROCESSING INDUSTRY

Australia is one of the world's most efficient producers of cattle and the world's third largest exporter of beef. The off-farm meat value of the Australian beef and cattle industry is $12.75 billion *(consumer expenditure plus export value)*.[1] There are 123 accredited meat processing facilities in Australia operated by 96 Companies.[2]

The following Meat and Livestock Australia *(MLA)* statistics show the national economic contribution of the Australian Red Meat Industry:

People in the industry:

- *Around 200,000 people are involved in the red meat industry, including on-farm production, processing and retail.*

How much is produced?

- *In 2013-14, Australia produced approximately 2.5 million tonnes cwt of beef and veal.*[3]
- *In 2013-14, 2.6 million grainfed cattle were marketed – 30% of all adult cattle slaughtered.*

What is the value of production?

- *The gross value of Australian cattle and calf production (including live cattle exports) is estimated at $7.7 billion.* [4]
- *Cattle contributed 16% of the total farm value of $47.9 billion in 2012-13.*
- *The direct contribution of beef and live cattle to gross domestic product was approximately 1% in 2012-13.*

Domestic value and consumption:

- *Domestic expenditure on beef was approximately $6.3 billion in 2013-14.* [5]

[1] *MLA 2014 Australia Beef Industry-* http://www.mla.com.au/Cattle-sheep-and-goat-industries/Industry-overview/Cattle

[2] *AUS-MEAT Accreditation Listing as at 26/02/2015*

[3] *Latest available ABS data- Figures for fiscal year 2013-2014*

[4] *ABS Agricultural commodities- figures for 30 June 2014*

[5] *Meat and Livestock Australia Estimate*

- *Australians ate around 30.9kg of beef per person in 2013-14 .*
- *Around 95.5% of Australian fresh meat buyers purchased beef in 2014.* [6]
- *In volume terms, beef is the second most popular fresh meat consumed through the food service industry after chicken (BIS Shrapnel).*

Export value and volume:

- *In 2013-14, Australia exported 70% of its total beef and veal production to over 100 countries.*[7]
- *The value of total beef and veal exports in 2013-14 was $6.45 billion.* [3]
- *Australian live cattle exports were valued at $1.05 billion in 2013-14.* [3]
- *The beef industry (including live cattle) contributes 17% to the total farm export value of $41 billion (FOB).* [4]

Australia's place in the world:

- *Australia has 4% of the world cattle inventory, with India, Brazil and China taking the top three places (USDA 2013).*
- *Australia produces 4% of the world's beef supply, and is the third largest beef exporter in the world (USDA 2013).*
- *The Australian cattle herd is expected to decline to 26.8 million head by June 2015 – going from what was a 35 year high cattle herd to what will be a two decade low herd, in the space of just 24 months.*
- *Australian adult cattle slaughter during 2015 is expected to decline 15% year-on-year, to 7.8 million head 2015.*
- *Beef production is expected to decline in 2015, largely the result of a dramatic reduction in slaughter, to 2.91 million tonnes cwt – 14.1% lower year-on-year, which is actually a relatively normal annual volume.*
- *After breaking the Australian beef export record for the third consecutive year in 2014, at 1.29 million tonnes swt, a significant decline is projected for 2015 – dropping 19% year-on-year, to 1.05 million tonnes swt.*

By any measure, meat processors make an important contribution to Australia's economic well being and, in particular, sustain numerous rural communities. Meat processing is labour intensive, so the impacts on business of national workplace relations framework is an issue of critical importance to the sector.

3. THE PRODUCTIVITY COMMISSION INQUIRY

The inquiry's terms of reference are broad.[8] It is essentially an examination of the entire operation of the Fair Work Act and is therefore significant as are any potential outcomes for labour intensive employers such as meat processors.

The Commission has released five (5) issues papers which pose numerous questions and invite responses on some very complex and detailed matters. These submissions do not address all the matters canvassed in the issues papers, preferring to focus on sensible and reasonable solutions to real problems meat processors have encountered since the Fair Work Act commenced to operate in 2010.

4. THE ACT AND ITS OBJECTS

4.1 The name of the Act and its Tribunal -

With respect, the "Fair Work" moniker was always a political slogan adopted by the Federal Labour party to maximise public angst against the Howard Government's Workchoices legislation[9] which preceded it. If there was ever a need for such a slogan, it has long since passed and, in alignment with our strong preference for a singular employment

[6] *AC Nielsen Homescan*

[7] *Latest available DAFF data- figures for fiscal year 2013-14*

[8] *Productivity Commission inquiry into the Workplace Relations Framework- http://www.pc.gov.au/inquiries/current/workplace-relations/terms-of-reference*

[9] *Workplace Relations Amendment (Workchoices) Act 2005- http://www.austlii.edu.au/au/legis/cth/consol_act/wraca2005418/*

related legislative regime we recommend that the Act be renamed the ***"National Employment Act " (NEA)*** and in a complementary way, its tribunal be re-badged as the ***"Australian National Employment Commission" (ANEC).***

4.2 The need to reduce duplication-

Large employers can face employment related claims and/or litigation in a plethora of arenas, including but not necessarily confined to-

- *Fair Work Commission*
- *Federal Circuit Court*
- *Federal Court*
- *Worker's Compensation Tribunals*
- *State and Federal Anti- discrimination Tribunals*
- *Migration Review Tribunal*

Australian business cannot afford to operate within duplicated or overlapping systems and where possible we favour a single unitary system which contains most, if not all employment related statute. Whilst recognising complex legal barriers, ideally there should be only one Australian employment statute and system with States either ceding their powers, or *(as far as is possible)* the Fed Govt exercising both the corporations and conciliation and arbitration heads of powers of the Australian constitution[10] to create one system.

Despite the clear advantages a unitary system would bring to employers, the most obvious exclusion from this singularity, is the various Worker's Compensation and rehabilitation schemes, still predominately covered by legislation enacted in each State and territory, notwithstanding the findings of the Woodhouse Committee of Inquiry in 1973[11] which advocated -

" the replacement of state and territory workers' compensation schemes with a comprehensive federal accident compensation scheme modeled on the New Zealand accident insurance scheme. The Woodhouse philosophy contained five basic principles for an approach to accident prevention:

community responsibility: the community should bear the costs of the inevitable consequences of social and productive activities, not just random victims of those activities because the community at large benefits from them

- ***comprehensive entitlement—24 hours a day and seven days a week***
- ***complete rehabilitation***
- ***adequate compensation, and***
- ***administrative efficiency. "***

These comments, whilst made over forty (40) years ago, nonetheless ring true some of the advantages that would result from a truly singular system of employment related regulation.

4.3 The objects of the Act -

As is the case with any statute, these are important as they set its intent, parameters, ideals and the values underpinning its implementation and application. There is little need for change here, other than to place an enhanced emphasis on improved productivity in Australian workplaces. We therefore advocate that the objects of the NEA be-

to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

- ***providing laws that are fair to working Australians and their employers, are flexible , promoting and enhancing productivity and economic growth for Australia's future economic prosperity, taking into account Australia's international labour obligations; and***
- ***ensuring a guaranteed safety net of fair, relevant and enforceable minimum employment terms and conditions; and***
- ***enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protecting against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms; and***
- ***achieving productivity and fairness by providing a range of bargaining options and clear rules governing industrial action; and***
- ***acknowledging the special circumstances of small and medium sized businesses (SME's).***

[10] *Commonwealth of Australia Constitution Act- http://www.austlii.edu.au/au/legis/cth/consol_act/coaca430/*

[11] *Committee of Inquiry into a National Rehabilitation and Compensation Scheme 11 October 1973- http://pmtranscripts.dpmc.gov.au/transcripts/00003037.pdf*

4.4 The structure and functions of the ANEC -

The current Federal Govt has been crystal clear about its intentions in the IR space, repeatedly stating that-

The Coalition's Policy to Improve the Fair Work Laws[12] will:

- ***· Keep and improve the Fair Work laws – including the independent umpire***
- ***· Re-establish the Australian Building and Construction Commission***
- ***· Provide better protection for members of Registered Organisations***
- ***· Provide practical help to small business workplaces***
- ***· Guarantee workers the right to access fair flexibility***
- ***· Create realistic time frames for Greenfield agreements***
- ***· Ensure union right of entry provisions are sensible and fair***
- ***· Promote harmonious, sensible and productive enterprise bargaining***
- ***· Ensure the laws work for everyone and an independent review by the respected Productivity Commission will be undertaken***
- ***· Deliver a genuine paid parental leave scheme and lift female participation rates in Australian workplaces***
- ***· Ensure workplace bullying is comprehensively addressed***
- ***· Urgently review the Remuneration Tribunal for the trucking industry***
- ***· Implement many recommendations from the Fair Work Review Panel report***
- ***· Give underpaid workers a better deal.***

Our policy will not re-introduce Australian Workplace Agreements, nor will it weaken safety nets or cause any Australian worker to go backwards. There won't be another Work Choices – it is dead, buried and cremated. The past is the past and we will not go back to it.

The Federal opposition is no different in a policy sense, in that it strongly supports the current Fair Work Act as being fairly balanced[13]. Clearly then, regardless of political persuasion, the existing Australian Workplace Relations framework will remain in a fundamental sense for the foreseeable future. Furthermore, there are constitutional considerations for any future Federal Govt to abide, given that the founding fathers saw it as of crucial national importance for there to be a national system designed to manage industrial disputes stretching across the border of any one State - the conciliation and arbitration power of the Commonwealth[14].

Given these realities, it would seem to be pointless for Australian employers to propose a radically different or greatly deregulated system, such as that which exists in the US. Indeed, we see it as important that there continue to be employment related regulation in Australia, so as to prevent and/or limit access to very costly, damaging and often prolonged litigation promoted by plaintiff lawyers in the common law arena, where outcomes can be uncapped. Most Australian employers advocate such an approach.

Sections 575 to 580 inclusive of the Fair Work Act[15] detail the current establishment and functions of the Fair Work Commission. There is nothing in those provisions which raises any particular chagrin amongst meat processors, however, given the changes to the Act that we advocate in this submission, the following might be added to its lists of functions and the performance of them-

- ***when exercising all its functions, generally enhance productivity improvements within Australian businesses, and***
- ***at an industry level, pro-actively identify and take measures to dilute any impending issues , and***
- ***at an industry level, promote, facilitate and assist with the process of establishing industry specific minimum conditions of employment to complement the NES , and***

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[12] *The Coalition's Policy to improve the Fair Work Laws May 2013- http://www.liberal.org.au/improving-fair-work-laws*

[13] *Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

[14] *Commonwealth Conciliation and Arbitration - http://www.foundingdocs.gov.au/resources/transcripts/cth6_doc_1904.pdf*

[15] *Section 575 to 580 of the Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

- ***ensure consistency of its decision making by the establishment of an expert Appeal Bench with broad power to correct error and set consistent principles, and***
- ***set and review minimum adult and junior hourly wage rates and generic minimum standards of penalty rates.***

5. MINIMUM EMPLOYMENT CONDITIONS

Australian meat processors can be bound by up to five instruments *(and/or a combination thereof)* which variously establish and prescribe the minimum conditions of employment for their employees. They are-

- ***the National Employment standards (NES)[16] as contained in the Fair Work Act[14], and***
- ***modern Awards[17] set on either an occupational or industry basis, and***
- ***common law contracts of employment, and***
- ***labour agreements[18] with the Commonwealth imposing further employment rights and obligations with respect to sponsored 457 visa holders[19], and***
- ***training contracts with State training authorities[20] in respect to trainees and apprentices.***

Creating a significant and unnecessary hierarchical burden of compliance and considerable potential for complexity and conflict. In our view, one of these tiers *(the Award tier)* should be phased out, with the NES being retained, immediately revised and generally expanded, eventually setting the following minimum standards-

1. A mechanism for the establishment and review of the Australian adult and junior minimum wage rates (expressed as hourly rates) which can only apply for a max of 12 hours per day or shift and for up to 38 hours in any week or where an averaging system is in place on an agreed basis, an average of 38 hrs per week. This should include review of minimum standard penalty rates- *see 7 below.*

2. Annual Leave- 4 weeks (152 hours) paid annual leave per year of completed continuous service

3. Personal Leave (including sick, compassionate and community service leave)- 76 hours per year of service

4. Long Service Leave- standardised national provisions based on an accrual rate of .8667 weeks per year of service.

5. Parental Leave- up to 104 weeks of unpaid parental and adoption leave.

6. Public Holidays - the number of Public Holidays and their relevant dates should be standardised across Australia.

7. Penalty Rates – a mechanism for the establishment and review of generic minimum standards (expressed as $ per hour figures) for shift work, week end work, overtime, work on Public Holidays etc. which can be altered only by agreement at industry level (for a particular industry minimum standard) and/or the ANEC exercising a discretion to adjust it as a component of its review of the minimum wage and/or declare that it will not apply permanently or temporarily to SME's in designated industries or sectors.

8. Notice of Termination and Redundancy Pay which should be immutable, unable to be altered up or down.

9. Protection against bullying, harassment, discrimination, impinging freedom of associations, unlawful and/or unfair dismissal.

10. Machinery matters- Default grievance procedure, new employee info statement , consultation processes, bargaining rights notice , etc.

6. THE AWARD SYSTEM

The Fair Work Act contains, inter-alia, the following objective-

"(f) achieving productivity and fairness through an emphasis on enterprise- level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action"[21]

and most supporters of a deregulated labour relations system advocate that a system which devolves the setting of wages and conditions to the most micro level, the enterprise, is preferred. If indeed it is valid that such an approach is more likely to enhance enterprise productivity, then why would prescribed Award conditions, set on an industry or cross-industry occupational basis and reflecting a hybrid of agreed or arbitrated outcomes from a bygone era, have any role to play at all in a modern workplace relations system?- see ACCI submission [13]

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[16] *National Employment Standards- http://www.fairwork.gov.au/employee-entitlements/national-employment-standards*

[17] *Meat Industry Award 2010 MA000059)- https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000059/default.htm*

[18] *Department of Immigration and Border Protection (DIBP)- http://www.immi.gov.au/Pages/Welcome.aspx*

[19] *Temporary Work (Skilled(visa (subclass 457)- http://www.immi.gov.au/Visas/Pages/457.aspx*

[20] *State Training Authorities- http://www.australianapprenticeships.gov.au/state-training-authorities*

ACT Department of Education and Training, SA_ Department of State Development, NSW- State Training Services, TAS- Skills Tasmania, NT- Department of Business, VIC- Department of Education and Early Childhood Development, QLD- Department of Education, Training and Employment, WA- ApprentiCentre.

[21] *Section 3 of The Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

There are undoubtedly dissenters to that view, however it seems to meat processors that the modern Meat Industry Award serves no valid purpose other than to *"ratchet up the equation"* for EBA negotiations by virtue of the BOOT test requirement to have collective agreements assessed and approved by the FWC, bearing in mind that any minimum wage adjustment flows upwards into all the Award's classification level. The term *"modern Meat Industry Award"* is a classic misnomer, as it is a prime example of an instrument which contributes very little to the industry's well-being, present or future. Its provisions are archaic, the classification of work contained in it having been inherited without any significant change from an initial Federal Award made in the 1960's. That structure has very little relevance to work in a modern, value adding food processing facility.

Awards should be phased out over five (5) years and the first step in this process should be collapsing the current one hundred and twenty-two (122) modern Awards into approximately seventeen (17) sector Awards such as-

- *Manufacturing Award*
- *Agricultural Award*
- *Health and Caring Award*
- *Mining and Natural Resource Extraction Award*
- *Hospitality Award*
- *Retailing Award (other than SME's)*
- *Govt Services Award*
- *Maritime Award*
- *Entertainment and Media Award*
- *Transport and Aviation Award*
- *Building and Construction Award*
- *Utilities Generation and Distribution Award.*
- *Finance Award*
- *Education Award*
- *Services Award*
- *SME Award*
- *Miscellaneous Award. (catch all)*

but *(other than the SME Award)* these new sector Awards should have a finite life of 5 years, during which industry *(as opposed to sector)* parties can *(with assistance from ANEC)* come forward an an agreed basis only to set industry standards *(as opposed to sector)* which complement the NES *(as regulations to the NEA)* in that industry only.

Alternatively, it may eventually prove to be that complete elimination of the Award system as a safety net is a *"bridge too far "* for any Government, and it may be that the appropriate extent of reform is maintenance of the sector Awards, as long as those Awards set true and relevant minimum employment standards, as advocated by the Business Council of Australia on 28 February 2015[22].

(Notes- 1. A specific division of ANEC should be established to develop, maintain and enforce the SME Award which should contain only one minimum hourly rate of pay and standardized penalty rates for overtime, Public Holiday work, week end work etc. to apply to all Australian SME's

2. A SME employer is one whose rolling average of the past three years payroll tax[23] and workers comp declaration of wages[24] falls below a certain $ threshold. Small business employers only have to meet the SME Award as a minimum and cannot be compelled to bargain.

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[22]- *see http://www.bca.com.au/newsroom/workplace-relations-second-article-in-the-australian*

[23] *Payroll Tax Legislation- http://www.payrolltax.gov.au/legislation. QLD- Payroll Tax Act 1971, NSW- Payroll Tax Act 2007, ACT- Payroll Tax Act 2011, VIC- Payroll Tax Act 2007, TAS- Payroll Tax Act 2008, SA- Payroll Tax Act 2009, NT- Payroll Tax Act 2009, WA- Payroll Tax Act 2002.*

[24] *Workers Compensation Act 1987- http://www.austlii.edu.au/au/legis/nsw/consol_act/wca1987255/*

3. As at the date the relevant sector Award ceases to operate (i.e. in 5 years time) , employers (other than SME's) must have in place, either -
(a) a relevant approved collective agreement , or

(b) a ANEC approved system of individual agreements which covers the majority of employees, or

(c) ANEC approved industry standards to which the SME has committed to observing.

7. THE AGREEMENT SYSTEM

We assume that most parties and Federal Govt policy will continue to support a proposition that remuneration and other terms and conditions of employment are best set at the micro level- either at the enterprise and/or on an individual basis. This is the position of Australian Meat processors and, given this, we advocate the following-

7.1 - Types of Agreements-

The system should accommodate the capacity for employers to reach, directly with their employees a wide range of statutory agreements, including-

- ***Enterprise collective agreements-*** *collective agreements covering all employees at a particular enterprise or site.*
- ***Single Employer multi-site agreements-*** *collective agreements covering all employees of an employer at a number of sites.*
- ***Related bodies corporate single and/or multi site agreements-*** *collective agreements covering all employees of a group of related bodies corporate at a particular enterprise or site or a number of sites.*
- ***Greenfields agreements-*** *collective agreements established before any employment occurs covering all future employees at a particular enterprise or site which is a new business .*
- ***Specific Group and/or individual agreements -*** *strictly individual agreements or mirror agreements applying individually to any employee in a defined specific group or occupation on an enterprise or site.*

7.2 - Contents and Application of Agreements

There continues to be much debate about the growing trend for pressure to be exerted on employers to include matters which are not directly relevant to the employment relationship, particularly in areas which are rightly categorized as being within the realms of management prerogative. It is argued this not only restricts dynamic management of a business when it is necessary, but as well, can unnecessarily prolong the bargaining process. Australian Meat processors share those concerns and advocate a position where the contents of any registered agreement must -

- ***only "pertain to the employment relationship" as determined in the Electrolux high court decision[25], and***
- ***be very clear as to the type of work , geography, exemptions and any other defining feature of the employees whose terms and conditions of employment it is designed to cover, and***
- ***unless in a particular case it is agreed by the parties or decreed otherwise by ANEC , do not apply to employees in receipt of income equivalent to or above the "high income threshold, which should be reduced to $90,000 per annum"[26].*** *(currently $129,300 per annum)*

7.3 - Agreement Approval

There is criticism of the current administrative processes associated with the approval, variation and/or termination of agreements. Meat processors agree that these requirements can prove onerous and time consuming , particularly when a significant number of the workforce are non English speaking. Enterprise Bargaining has now evolved from its embryonic state to the extent that it is arguable that less tribunal scrutiny of that process is necessary or indeed desirable.

Relevant Meat Industry Decisions

- ***Teys Australia Beenleigh Pty Ltd Production Departments Enterprise Agreement 2013 (AG2013/8000) –*** *Teys Australia lodges application for approval, DP Asbury approves on 27th September 2013 but the decision is subsequently appealed by the AMIEU.*
- **APPEAL- Australasian Meat Industry Employees Union, The v Teys Australia Beenleigh Pty Ltd** (C2013/6376)- *27 September 2013 DP Asbury approved the Teys Beenleigh Agreement. Some 709 persons voted, 351 in favour and 343 against and 7 informal. Teys made application for approval and the AMIEU opposed such approval. AMIEU asserted that some 21 persons were not eligible to vote The appeal concentrated on the construction and interpretation of clause 1.3 of the agreement (coverage clause). The Full Bench concluded that DP Asbury had erred in her interpretation of the expression "will be covered" by the agreement, the decision to approve was set aside, and remitted to DP Asbury.*
- ***Teys Australia Beenleigh Pty Ltd Production Departments Enterprise Agreement 2013 (AG2013/8000) –*** *Second approval by DP*

[25] *Electrolux Home Products Pty Ltd v Australian Workers Union* (2004) 209 ALR 116.

[26] *Section 333 Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

Asbury on 10th April 2014 but the decision is subsequently appealed by the AMIEU.

- **APPEAL-The Australasian Meat Industry Employees Union v Teys Australia Beenleigh Pty Ltd** (C2014/4178) -*Appeal against decision of 10 April 2014 approval by DP Asbury. AMIEU submitted that the DP had erred in concluding that the 21 employees in question fell within the coverage of the 2013 EA. In a split decision, Acton and Simpson concluded that the DP could not have been satisfied that the agreement had been made in accordance with s.182 or have been genuinely agreed to. Teys were given an opportunity to provide undertakings to satisfy the full benches concerns by 25.9.14 (which were subsequently rejected in another split decision). SDP Richards found no error in DP Absury decision and concluded that the appeal should not be allowed on public interest grounds and should be dismissed.*
- **JUDICIAL REVIEW -**On ***12 February 2015*** the full Federal Court handed down its judgement on the Teys appeal against the first FWC Full Bench decision to overturn the first approval of the EBA and the Union's application for judicial determination. The Court decided that whilst DP Asbury was correct in her original approval of the EBA, the Full Bench did not fall into jurisdictional error.

- **JBS Australia Pty Limited** (AG2012/10063) 16th November 2011- *JBS lodged agreement for Rockhampton facility in 2012, after lengthy discussions and a period of industrial action by both JBS and the AMIEU the ballot was conducted by AEC, affirmative but narrowly with 7 votes, and opposed by the AMIEU. The AMIEU asserted that the agreement failed the BOOT test and the notice to all employees was in contention as to whether displayed. Commissioner concluded that JBS had not taken appropriate negotiation and pre approval process, given the non English speaking backgrounds, the lack of access to documents, representational rights notices, language barriers and the negotiation was conducted with un-represented employees, the agreement was not genuinely agreed to because of this "unreasonableness alone".*

There is also criticism of-

- ***the principle and application of the Better Off Overall test (BOOT)[27], particularly its at times line by line, pedantic approach when compared to its less onerous predecessor the No Disadvantage test (NDT)[28]***
- ***the need to specify the maximum length of an agreement[29] and/or***
- ***the lack of a streamlined administrative approach when parties wish to simply extend or "roll over" existing agreements[30].***

All agreements should have to be approved and registered with ANEC, with a maximum life of five (5) years but parties can agree to roll overs in advance of any nominal or finite expiry date with no need to formally re register.

A jointly signed sworn affidavit from the employer and a properly elected representative of employees *(internal or external)* signifying agreement is sufficient to support any application to approve, vary, roll over, extend or terminate any specific group or collective agreement – there should be no need for ballots, unless in a particular case an employer or the representative *(internal or external)* requests one.

7.4- Good Faith Bargaining-

The introduction of the principles of bargaining in good faith, a fundamental of the US labour relations system[31] was treated with some initial trepidation by Australian employers - to date that apprehension, largely, has not largely proven to be justified. Notwithstanding this, there are Australian employers *(and no doubt their employees)* who are *"over"* the formal system of scheduled, institutionalized bargaining and /or have nothing more to bargain about, many believing the formal EBA system has served its purpose and has become nothing but a counter- productive chore.

There are yet others who-

- ***would undoubtedly prefer to remain Award reliant, or***
- ***might prefer industry or geographically negotiated or determined consistent outcomes binding several or even all employers in an industry or sector, actually wanting pattern bargaining to prevail, or***
- ***genuinely don't see consistent enterprise wide outcomes as being appropriate, rather that individual outcomes based on performance, potential, qualifications and other criteria are more productive and beneficial.***

It is very difficult, if not impossible, to design a system which facilitates all those sometimes conflicting preferences and aspirations and, if it is a reality that the Australian system is to be underpinned by the principle that wages and terms and conditions of employment are best determined at the micro, enterprise level, then there seems little point in proposing a radical departure from such a principle.

However, within that framework, Australian meat processors favour a regulatory regime whereby all employers, *(other than SME's)* should bargain in good faith if requested or required to do so, but should only be compelled to bargain for a collective agreement if -

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[27] *Section 193 Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

[28] *Workplace Relations Act 1996- No Disadvantage Test (NDT)*

[29] *Section 186 5(b)- Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s186.html*

[30] *Variation and termination of enterprise agreements by employers and employees, Subdivision A Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

[31] *National Labor Relations Act (NLRA) 1935- http://www.nlrb.gov/resources/national-labor-relations-act*

- ***(a) there is no system of approved formal registered individual agreements already in place which covers a majority of the relevant employees , and***
- ***(b) a formal ballot of a majority of the relevant employees endorse pursuit of a collective agreement .***

Unions may be appointed as bargaining reps for any type of agreement but only after ANEC approval upon application prior to bargaining commencing and having established-

- ***(a) the nature, extent and density of its membership presence on the site, and***
- ***(b) a majority of the relevant employees has signified a desire to be so represented***

7.5- Status of Agreements -

There needs to be a stated heirachy of agreements as there currently is in the Fair Work Act [32]and these do not need to fundamentally change. Specific group or Individual agreements should override collective agreements *(or any other industrial instrument except the NES)* , to the extent of any inconsistency, and all agreements-

- ***(a) have no legal standing unless approved by ANEC , and***
- ***(b) have to pass an initial broad NDT (not line by line) to be registered, and***
- ***(c) must contain effective grievance and consultative procedures, and***
- ***(d) must have details of predicted hours of work which cannot be excessive having regard to the proposed income to be regularly generated , and***
- ***(e) must contain relevant rates of pay and a process for periodic review of them, and***
- ***(f) must have a finite expiry date but with a capacity to be extended or rolled over by written agreement of the parties before that expiry date with no need to re-register in ANEC.***

7.6- Termination of Agreements -

The current provisions of the Fair Work Act regarding termination of agreements [33]have been applied and interpreted in ways which make such terminations cumbersome, even if an agreement has long since passed its nominal expiry date. This does not produce the necessary incentive for agreements to be quickly renegotiated and in future, meat processors advocate an approach where-

- ***any agreement can be terminated at any time by agreement between the parties without ANEC approval, and***
- ***collective and greenfields agreements automatically terminate 26 weeks after their nominal expiry date unless a party applies to ANEC for an extension before the 26 week deadline is reached and establishes appropriate grounds for such extension, and***
- ***Individual or specific group agreements expire at the specified expiry date, unless the necessary steps are taken to roll over or extend them-*** *(see 6.3 above).*

7.7 Greenfields agreements-

The significant and valid issues which have been raised by employers in the major construction project sector, whilst indeed valid concerns, are not as significant for meat processors. Notwithstanding that, this is a matter which requires comment and submission, given very recent significant foreign investment interest in reviving hitherto redundant processing plants and/or construction of new facilities such as the much publicized AACO facility outside Darwin.

The Federal Government has a bill[34] , currently lying on the parliamentary table which is designed to amend the Fair Work Act and meat processors support its adoption. In alignment with the provisions of that bill, a proposed greenfields employer can, no later than twelve (12) weeks prior to the predicted commencement of employment on a site or project , elect to-

- ***(a) bargain with a Union/s, or***
- ***(b) lodge an application of its version of collective employment conditions with ANEC , or***
- ***(c) lodge an application of its version of individual employment conditions and seek that the operation be declared an individual contract site or enterprise by ANEC .***

[32]*Chapter 2, Part 2-1, Division 3 , Sections 55 to 58 inclusive*

[33]*Chapter 2, Part2-4- Div 7 , sub-division C*

[34] *Fair Work Amendment (Bargaining Processes) Bill 2014*

and any resultant employment conditions instrument may be approved by ANEC as long as the instrument has a nominal expiry date no more than two (2) years after date of approval, or, in the case of a construction project, its completion date and meets the NDT and prevailing employment conditions test.

8. PROTECTED INDUSTRIAL ACTION -

Research of FWC records suggests that in the last three (3) years, at least twenty-one (21) applications were made by the AMIEU for proposed protected action ballot orders against meat processing companies. Industrial action can destroy businesses, livelihoods and lives. It is however difficult to argue that a limited form of recourse to such a bargaining weapon should not be permitted in a controlled environment, if there is no other safety valve mechanism for pursuit of unsatisfied yet realistic and genuine claims.

There are however, businesses and services which cannot and should not be permitted to be subjected to interruption to supply in the public interest. In meat processing, food safety is of paramount importance and that is , to varying degrees, regulated by on-site presence of AQIS veterinarians and meat inspectors who are an integral part of ensuring public confidence in the integrity of food destined for human consumption. AQIS staff are a very good example of employees who, by taking *(or even threatening to take)* protected industrial action inflict little or no pressure on their employer *(the Commonwealth)* and potentially significant damage to their clients. This should not be allowed to occur.

Meat processors consequently advocate changes to the current system so that protected industrial action should only be available after-

- ***(a) an existing collective agreement has past its nominal expiry date, and bargaining for a new collective agreement has occurred for at least 13 weeks, and***
- ***(b) a secret ballot order has been obtained and the ballot conducted under the auspices of the ANEC approves the nature and extent of the protected action, and***
- ***(c) where pending industrial action has been notified, there has been a 7 day cooling off period during which the matters at issue have been the subject of compulsory conference in ANEC, and***
- ***(d) the relevant employer is not one which has sought and been granted a prior exemption from protected action by the ANEC-*** *see note 1 below.*

(Notes- 1. Once notified, and a secret ballot has endorsed pursuit of a collective agreement, the relevant employer , within 14 days, may seek certification from ANEC that it be exempt from protected industrial action during the bargaining process on the basis that it will submit itself to compulsory arbitration of any outstanding matters if bargaining has not resolved them no sooner than 13 weeks after the nominal expiry date of the previous agreement.)

2. Employers may take retaliatory lock out action, but only after another 7 day cooling off period has expired and during which , the matters at issue have been the subject of compulsory conference in ANEC)

Existing provisions prohibiting payments during periods of industrial action must be maintained.

9. TRANSMISSION OF BUSINESS/ EMPLOYMENT

This is not a particularly controversial or significant feature of the current legislation[35, h]owever some difficulties have and do occur when industry consolidation takes place, due to M&A activity.

Essentially the same system should be retained, however any new employer should , prior to transmission, have the opportunity to seek exemption from being bound by a particular agreement or industrial instrument by ANEC based on sound business arguments, potential detrimental effect on future employment , productivity and profitability, prevailing industry employment standards and with an undertaking to protect the accrual levels and $ value of existing employee accrued entitlements.

[35] *Part 2-8 Transfer of Business (Fair Work Act 2009)*

10. UNFAIR/ UNLAWFUL DISMISSALS, HARASSMENT AND BULLYING, DISCRIMINATION, GENERAL PROTECTIONS-

There is no significant issues which meat processors have with the current arrangements[36] other than the potential for claims in a duplicity of jurisdictions. Introduction into the arena of the term *"workplace right"* into legislation has unreasonably extended the level of protection to employees to essentially include any act or behavior related to employment. In contrast, the freedom of association provisions introduced into the Workplace Relations Act in 1996 [37] provided adequate protection to employees without unnecessarily extending that protection into the wider domain of *"workplace rights".*

Essentially, the same system as current should be retained, except-

- ***All claims (including from employees above the high income threshold whop should not be precluded from making a claim) must go through the process before there can be any access to other litigation (ie breach of contract by execs), and***
- ***Compensation is restricted to a max of 6 months pay, and***
- ***The term "Workplace Rights' be excised from general protections provisions and make these genuine protective provisions against freedom of association, discrimination , harassment and bullying behavior, and***
- ***All the anti- discrimination jurisdictions be, rationalized and placed into the NEA under the jurisdiction of ANEC .***

11. RIGHT OF ENTRY -

There is no good reason in the view of meat processors why existing provisions regarding entry of Union officials for the purposes of identifying, researching and pursuing suspected OHS and industrial instrument breaches should be maintained, as those obligations and powers are rightly vested in State and/or Federal regulatory authorities. Indeed large Australian meat processors are regularly served with entry notices [38]and Fair Work Australia archived decisions are dominated by disputes generated over such entry rights within the meat processing sector- *(see table below)*

In the future , for a Union to obtain and maintain right of entry for any of its permit holders, into a particular work site for the purposes of discussions with members and/or employees it is eligible to cover, it will need to -

- ***write to the the relevant employer seeking discussions and agreement on all matters re those arrangements including frequency of visits, identification of officials who can enter, times of entry, location of discussions with employees, etc, and***
- ***following those discussions, gain approval from ANEC as per the above agreed arrangements or in absence of agreement on terms and conditions determined by ANEC as being reasonable in the circumstances of the individual site, and***
- ***any approval granted by ANEC may be rescinded at any time due to established abuse or misapplication of it and must be reviewed before each biennial anniversary of it being granted, unless the relevant employer indicates to ANEC that such a review will not be necessary.***

Relevant Meat Industry Decisions

- ***Greenmountain Food Processing and AMIEU (RE 2014/803) –*** *dispute re frequency, location, duration, movements and participation.*
- ***Teys Bros Beenleigh Pty Ltd and Australasian Meat Industry Employees Union***(RE2013/900)- *AMIEU sought orders re officials right to enter lunch rooms.*
- ***Australasian Meat Industry Employees Union v Goodchild Pty Ltd*** (RE2011/3351)- *AMIEU sought orders re officials right to enter lunch rooms.*

12 . POWERS/ ROLE OF ANEC AND FAIR WORK OMBUDSMAN -

These should be generally retained as currently detailed in the Fair Work Act[39] . However, the powers of the ANEC should be slightly expanded to establish a specific and specialised panel to deal with employment related disputes involving employees working in Australia on sponsored work visas. The ANEC should also have specified obligations to -

- ***when exercising all its functions, generally enhance productivity improvements within Australian businesses, and***
- ***at an industry level, pro-actively identify and take measures to dilute any impending issues likely to give rise to disputation, and***
- ***at an industry level, promote, facilitate and assist with the process of establishing industry specific minimum conditions of employment to complement the NES before the expiry of sector based Awards, and***
- ***ensure consistency of its decision making, and***
- ***continue to set minimum wage rates through the annual wage review process and establish a mechanism for the setting and review of generic minimum penalty rates standards***

[36] *Part 3-2 Unfair Dismissal Fair Work Act- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

[37] *Workplace Relations Act 1996 - http://www.austlii.edu.au/au/legis/cth/consol_act/wraca2005418/*

[38] *Section 4847 Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/s484.html*

[39] *Fair Work Act 2009- http://www.austlii.edu.au/au/legis/cth/consol_act/fwa2009114/*

13. REGULATION OF INDUSTRIAL ORGANISATIONS -

Much recent publicity has attended what is seemingly poor governance within some industrial organisations which has in turn led the Government to conduct a Royal Commission[40] . Naturally the findings of that Commission may lead to recommendations which will almost certainly influence Government policy on this issue. Industrial organisations within the meat processing sector have not *(recently at least)* been embroiled in any such scandals, however its position on future governance is -

- ***Industrial organisations should continue to be tax exempt as long as they satisfy registration requirements, and***
- ***their registration should be regulated by new legislation to be administered by the ACCC, even if it largely mirrors the current provisions, and***
- ***elected officials (and/or employees) of industrial organisations should be subject to the same legal obligations as company directors.***

[40] *http://www.tradeunionroyalcommission.gov.au/Pages/default.aspx*

PRODUCTIVITY COMMISSION QUESTIONS FROM ISSUES PAPERS – RESPONSE OF AUSTRALIAN MEAT PROCESSORS

ISSUES PAPER	SUB-CATEGORY AND FWA REFERENCE	BRIEF DESCRIPTION OF ISSUE	QUESTIONS
1.THE WORKPLACE RELATIONS FRAMEWORK :THE INQUIRY IN CONTEXT - Issues Paper 1	National Workplace Relations Framework - page 5 Objects of the Act- Page 8 Current strengths and weaknesses of the WR system and suggested reforms- page 10	The performance of the WR system as a whole and the need for change. The current objects of the Act are diverse and potentially in conflict - they are to deliver outcomes which are fair, flexible, co-operative, productive, relevant, enforceable, non-discriminatory, accessible, simple, clear, deliberately biased towards collective bargaining, recognises the needs of SME's , the needs of family with workplace responsibilities, sets minimum wage and employment standards and preserves the rights to freedom of association. Most people believe that WR systems matter to economic performance but they disagree about what type of arrangement is best	• *There may well be significant trends, other than those outlined above, that affect the desirable evolution of the WR system. The Commission welcomes views on these.* ***No comment*** • *The Commission encourages stakeholders to give their views on the appropriate objectives of the WR system, how these can be balanced and their capacity to adapt to future structural change and global economic trends.* ***Objectives must be expanded to include enhanced productivity and job creation - see clause 3 of the submission.*** • *whether the current system is well suited to contemporary (and evolving) workplace needs for Australia in an increasingly globalised economy. It may be that overseas experiences will guide us. However, it appears there is no single template workplace relations model globally that we can emulate, although the Commission would welcome analysis drawing on the experience of other countries.* ***A unitary system is essential – see*** • *The Commission invites participants to submit proposals they consider would improve the operation of the WR system together with supporting evidence and argument.* ***Considerations for assessing policy proposals*** • *In considering policy options, to what extent are the benefits of a given element of a worthwhile reform package dependent on implementing other elements of the package?* ***No comment*** • *What are the biggest risks from changing the present WR system and how could these be moderated or avoided? What are the likely transitional costs associated with worthwhile reforms?* ***Change overload.*** ***Issues in assessing economy wide impacts*** • *The Commission invites participants' views on the best evidence about the impacts of the WR system. It also requests views about the mechanisms through which the WR affects aggregate economic outcomes, as well as impacts on particular regions, industries and firm sizes.* ***No comment*** ***Data and analytical methods*** • *The Commission seeks feedback on major studies and databases relevant to this inquiry. How could new data and new methods help improve the assessment of policy choices?* ***No comment*** ***International experiences may provide some lessons about future directions*** • *Beyond their advantages in providing lessons about parts of the WR system and any of its flaws, are there broad lessons for Australia from overseas WR arrangements?* ***Yes , particularly Scandanavia*** • *What are the most rigorous and comprehensive measures of the nature and impacts of international WR arrangements? What are the strengths and weaknesses of the existing measures?* ***No comment***

2.SAFETY NETS- Issues Paper 2	Federal Minimum Wage - PAGE 1 - $16.87 PER HR/ $33K PER ANNUM		***What is the appropriate role of minimum wages?*** • *What is the rationale for the minimum wage in contemporary Australia? How effective is the minimum wage in meeting that rationale? To what degree will the role and effects of the minimum wage change with likely future economic and demographic developments?* ***Meat processors support the concept of a minimum wage seeing it as an important safety net. See clause 4 of submission.*** • *How many people receive the minimum wage (and for how long)? What is the best measure of this share and why?* ***No comment*** • *What are the effects of minimum wages on different households, taking account of direct and indirect wage and price effects, and the tax and social transfer system?* ***No comment*** • *Are there any issues associated with the special minimum wage rate arrangements that apply to juniors, trainees and apprentices?* ***No comment*** • *What are the impacts of minimum wages on employment as a whole, and on particular groups of people (by age, skill, education, gender, and location, among other things)? How robust is the evidence? Are zero or positive employment effects from minimum wages for lowskill workers plausible for the industries in which minimum wages predominate, and if so why?* ***No comment*** • *What would be the best process for setting the minimum wage, and how (and why) does this vary from the decision making processes used by the minimum wage Expert Panel of the Fair Work Commission? Are there grounds to vary the criteria used by the Panel? Should the ratio of the minimum wage to median wages change and, if so, in which direction?* ***Meat processors support the continuing role of FWC in setting minimum wages and penalty rates. See clause 4 of submission.*** • *What evidence is there about the effects of minimum wages on the incentives for employees and employers to increase employees' skills?* ***No comment*** • *How do minimum wages ripple throughout the wage system and over what time frame? Are any ripple effects desirable or undesirable and, if the latter, how would they be mitigated?* ***The ripple effect flows through the Award system which rachets up the BOOT -this is a major reason why we advocate phasing out of the Award system.- see clause 5 of submission*** • *Should there be a process to allow the minimum wage to vary by state and territory or region? If so, on what basis? What would be the effects of such variations at the borders between states or regions? What would be the overall impacts?* ***No the minimum should be a standard hourly rate and a minimum $ figure per hour for overtime work at unsociable hours. See clauses 4 and 5 of the submission.*** ***The minimum wage and the tax transfer system*** • *Are there grounds for an inwork benefit, taking into account their social and distributional impacts, effects on employment and economic efficiency, risks, administrative requirements, and compliance costs?* ***No comment*** • *How would any inwork benefit be designed and implemented? How would it be targeted to minimise deadweight costs?* ***No comment*** • *To what extent should an EITC or some other inwork payment serve as a complement or substitute for minimum wages?* ***No comment*** • *How should any such payments be funded, and what would be the economic and distributional outcomes of alternative funding mechanisms?* ***No comment*** • *What would be the budgetary implications of any inwork benefit, and how would this affect its desirability and possible timing?* ***No comment*** • ***Practical aspects of the minimum wage and alternatives*** • *What reforms, if any, should be made to the processes used to determine the current minimum wage?*

			Slight modifications- the minimum should be a standard hourly rate and a minimum $ figure per hour for overtime work at unsociable hours. See clauses 4 and 5 of the submission. • *Should the desired processes be more prescribed in regulation or law; or are guidelines preferable?* ***Guidelines are preferable*** ***National Employment Standards*** • *What, if any, particular features of the NES should be changed?* ***Yes to include and a minimum $ figure per hour for overtime work at unsociable hours. See clauses 4 and 5 of the submission.*** ***The Award system and flexibility*** • *The Commission seeks feedback on these issues, and the implementation and transitional challenges of any significant changes.* ***Award system to be phased out or Awards reduced to 17 sector Awards . See clauses 4 and 5 of the submission.*** ***Penalty Rates*** • *It would be helpful if submissions indicated whether one of these courses is the preferred model, why, and with what effects on society broadly, and on employees, consumers and businesses.* • *How should penalty rates be determined?* ***By the NES with periodic review by FWC .*** • *What changes, if any, should be made to the modern awards objective in relation to remuneration for nonstandard hours of working?* ***The modern Award objective needs to be reviewed in light of our submissions that Awards should be phased out.*** • *What are the economic effects of current and alternative penalty rate arrangements on business profitability, prices, sales, opening hours, choice of employment type, rostering, hours worked, hiring, unemployment and incomes?* ***No comment*** • *Were penalty rates deregulated, would wages fall to those applying at other times, or would employers still have to pay a premium to attract labour on weekends and holidays?* • *What are the long run effects of penalty rates on consumers and on the prices of goods and services?* ***No comment*** • *To what extent does working on weekends or holidays affect families, employees and the community? Are penalty rates effective at addressing any concerns in this area?* ***No comment*** • *What do the experiences of countries like New Zealand, the United Kingdom and the United States — which generally do not require penalty rates for weekends — suggest about the impacts of penalty rates?* ***No comment*** • *What are the variations in profit margins and sales over the week, and to what extent does this affect the appropriate design of penalty rate arrangements?* ***No comment***
THE BARGAINING FRAMEWORK- Issues Paper 3			***Types of enterprise bargaining and their key processes*** • *Clearly, some processes are important to enable efficient bargaining, but it is an open question whether there should be changes to processes to meet the objectives set out in the first Issues Paper. The Commission seeks stakeholders' views.* • *The Commission seeks views about the best arrangements for greenfields agreements (not just those contemplated in the recent Bill), including an assessment of the effects of any arrangement on the viability and efficiency of major projects on the one hand and, on the other, maintaining the appropriate level of bargaining power for employee representatives.* ***See clause 7 of the submission- employers may elect.*** • *These various aspects raise the question of the appropriate role, if any, of pattern bargaining, a matter on which the Commission*

			seeks comments. ***If employers want to agree to pattern bargaining they should be permitted to do so, but no coercion should be permitted if they do not so choose.*** • *To what extent does the current system allow for bargaining with the most appropriate enterprise?* ***No comment*** • *Would there be any advantages or disadvantages to employee groups negotiating a joint agreement with both the labour hire agency and the host business?* ***No . Meat processors oppose the concept of joint employment.*** • *To the extent that it would be desirable, how could joint enterprise bargaining work in practice?* ***It is not practical*** ***Restrictions on agreement content*** • *The Commission seeks views from stakeholders about what aspects of the employee/union-employer relationship should be permitted matters under enterprise agreements, and how it would be practically possible to address in legislation any deficiencies from either the employer, employee or union perspective.* ***The Electrolux High Court principles should be enshrined in legislation.*** ***Agreements need to make employees "better off overall"*** • *To what extent is the BOOT clear and appropriate in its current form, and how, if at all, should it be improved?* ***The NDT from the WRA should replace the BOOT.*** • *Should the BOOT be met for all employees subject to an agreement, or should the test focus on collective welfare improvement for employees?* ***The latter.*** • *Is there evidence that the BOOT prevents working arrangements that would mutually benefit employers and employees, or in other ways limit worthwhile flexibility in workplace arrangements?* ***Yes*** ***Requirement to consider productivity improvements*** • *The Commission seeks feedback on practical options in this area, and why they are needed within the current bargaining process. In particular, why are there not already sufficient commercial incentives (and competitive pressures) for parties to improve productivity, either as a commitment under an enterprise agreement or during the normal operation of the enterprise?* ***Aside from inclusion of enhanced productivity in the aims and objectives of the Act and inclusion in the role and functions of FWC, there is nothing more nthat needs to occur.*** • *The Commission also request views about the effectiveness of existing productivity clauses, and whether there are any features of the industries, unions and firms that explain why some forge such agreements and others do not.* ***No comment*** ***Requiring parties to bargain in good faith*** • *To what extent are the good faith bargaining arrangements operating effectively and what if any changes are justified? What would be the effects of any changes?* ***The current arrangements are effective.*** • *Are the FWC good faith bargaining orders effective in improving bargaining arrangements?* ***No comment*** ***Individual Flexibility Arrangements*** • *How should a WR system address the desire by some employers and employees for flexibility in the workplace?* ***No comment***

			• *What protections need to be in place for employees and employers in creating bespoke agreements?* ***No comment*** • *What are the benefits and costs of IFAs (or similar provisions)? Case studies would be very helpful.* ***No comment*** • *Why are employers apparently reluctant to use IFAs (in both enterprise agreements and individual arrangements that seek to override an award)?* ***No comment*** • *Should there be restrictions on the matters that parties can trade off in forming individually-tailored agreements, and if so, why?* ***No comment*** • *On the factual front: How widespread are current IFAs?* ***No comment*** • *Which industries and occupations are most likely to be subject to these agreements?* ***No comment*** • *What sorts of matters are varied by IFAs?* [The Commission is aware of the FWC's 2012 employer and employee surveys relating to IFAs, but is seeking any further evidence on these matters, as there have been changes to the arrangements for IFAs and potentially greater familiarity with them since then.] **No comment** • *Are the enforcement arrangements for ensuring IFAs meet the FWA efficient and effective? If not, what are the remedies?* ***No comment*** • *Are the notice provisions adequate?* ***No comment*** • *To what extent are IFAs standardised across employees, rather than tailored to individual circumstances?* ***No comment*** • *Are there better models for individual agreements internationally, and what evidence is there about their costs and benefits?* ***Yes there should be statutory individual agreements available.*** ***No extra claims provisions*** • *Given the clarification provided by the Toyota decision, what if any concerns persist about no extra claims provisions, and what should be done about this?* ***No comment*** ***When enterprise bargaining disputes lead to industrial action*** • *Some commentators argue that the secret ballot requirements are too prescriptive. The Commission seeks participants' views.* ***Protected action should have numerous precursors including a 7 day cooling off period and not be available until 13 weeks after nominal expiry date of agreements. See clause 7 of the submission.*** • *To what extent should there be any changes to the FWC's conciliation and arbitration powers?* ***Employers should be able to elect whether or not to expose themselves to arbitration thereby immunising against protected action. See clause 7 of the submission.*** ***Are policy changes for industrial disputes needed?*** • *Given the low current level of disputes, it is an open question whether there is any requirement for changes in the FWA's arrangements for industrial disputes, but the Commission is interested in:*

			• *any appropriate changes to what constitutes protected industrial action under the FWA?* ***Yes see clause 7 of the submission.*** • *arrangements that might practically avoid industrial disputes?* ***Yes see clause 7 of the submission.*** • *the scope and desirability of creating more graduated options for industrial action beyond lock-outs for employers. Would options like this assist negotiation or increase disputation?* ***Yes see clause 7 of the submission.*** • *whether there are any problems in determining whether tactics in bargaining really amount to industrial action or not?* ***No comment .*** • *any need to change the protected action ballot process?* ***Yes see clause 7 of the submission.*** • *the role of the FWC in relation to disputes, especially in relation to cooling off periods and the test that determines whether such a period is justified ?* ***Yes see clause 7 of the submission.*** • *the prevalence of 'aborted strikes' (the capacity to withdraw notice of industrial action) as a negotiating tool, and the degree to which there is any practical response to this apart from the good faith bargaining requirements of the FWA?* ***Yes see clause 7 of the submission.*** • *the degree to which adversarial workplace cultures — rather than bargaining per se — contribute to industrial action, and what could be done to address this?* ***No comment .*** • *the adequacy of enforcement arrangements for disputes?* ***No comment .*** • *the reasons for international variations in industrial action?* ***No comment .*** • *data about the nature of disputes, such as lock-outs and go-slows (as ABS data is limited in its categorisation of disputes)?* ***No comment .*** • *the degree to which working days lost provide an accurate reflection of industrial action.?* ***No comment .*** ***Individual arrangements outside enterprise agreements*** • *The Commission requests information about the relative importance of common law and the FWA in establishing employment terms and conditions (by industry, skills and occupation). An associated issue is the extent to which such individual agreements do, in practice, lead to more flexible working arrangements.* ***No comment .*** • *The Commission is also interested in understanding:* • *the extent to which the common law provides a legal 'safety net' for employees and employers if there are flaws or omissions in statutory employment law* ***No comment .*** • *whether there should be greater (or lesser) reliance on individual arrangements, and why should this be so.* ***No comment .*** ***Resolving disputes over terms and conditions*** • *The Commission is interested in understanding whether employees and employers can effectively and efficiently resolve disputes over employment terms and conditions under the existing framework. How are existing dispute resolution pathways working? Do*

			people know where they should seek assistance? ***No comment .***
EMPLOYEE PROTECTIONS- Issues paper 4			***Unfair Dismissal*** • *Do Australia's unfair dismissal processes achieve their purpose, and if not, what reforms should be adopted, including alternatives (or complements) to unfair dismissal provisions?* ***They serve their purpose.*** • *Are the tests used by the FWC appropriate for determining whether conduct is unfair, and if not, what would be a workable test? Are the exemptions to unfair dismissal appropriate, and if not, how should they be adapted?* ***Yes*** • *What are the strengths and weaknesses of the Small Business Fair Dismissal Code, and how, if at all, should the Australian Government amend it? Should the employment threshold be maintained, raised or lowered?* ***No comment .*** • *In cases where employers are required to pay compensation in lieu of reinstatement, are the current arrangements for a cap on these payments suitable?* ***Yes*** • *What are the effects of unfair dismissal arrangements on firm costs, productivity, recruitment processes, employment, and employment structures?* ***No comment .*** • *What are the impacts on employees of unfair dismissal, both personally and in terms of altered behaviours in workplaces?* ***No comment .*** • *What are the main sources of costs (including indirect costs), and how could these be reduced without undermining the fundamental goals of unfair dismissal legislation?* ***Legal fees- should be strictly a non lawyer jurisdiction. .*** • *Under current or previous arrangements, what evidence is there of the practice of 'go away money'? Have recent changes, such as those that provide the FWC with expanded powers in relation to costs orders and dismissing applications based on unreasonable behaviour, improved matters?* ***No comment .*** • *Do unfair dismissal actions disproportionately affect any particular group of employees (for example, by gender, ethnicity, geographical location, industry, union affiliation, occupation or business size)?* ***No comment .*** • *What are the main grounds on which people assert unfair dismissal, and what types of claims are most likely to succeed?* ***No comment .*** • *How does Australia compare internationally with regard to the unfair dismissal protections? Are there elements of overseas approaches and frameworks that could usefully by applied to Australia?* ***No comment .*** ***Anti-bullying laws- a new addition to the WR framework*** • *What are the likely utilisation rates of the anti bullying provisions, and what factors are most likely to affect these rates?* ***No comment .*** • *What are the impacts, disadvantages and advantages of the anti bullying provisions of the FWA for employers and workers?*

			No comment . • *Are there any unintended consequences of the anti bullying provisions?* ***No .*** • *To what extent are the anti bullying provisions of the FWA substitutes for, or complements to, state and federal WHS laws and other provisions of the FWA? What implications do overlaps have for the current arrangements?* ***Meat processors favour a unitary system with no State overlaps. See clause 3 of the submission.*** • *How effective has the FWC been in assessing applications for orders to stop workplace bullying?* ***No comment .*** • *What, if any changes, should occur to the anti bullying provisions of the FWA or in the processes used to address claims and to communicate with businesses and employees about the measures?* ***No comment .*** ***General Protections and 'adverse action'*** • *Do the general protections within the Fair Work Act 2009, and particularly the 'adverse action' provisions, afford adequate protections while also providing certainty and clarity to all parties?* ***No – see clause 9 of the submission .*** • *What economic impacts do these protections have?* ***No comment*** • *To what extent has the removal of the 'sole or dominant' test that existed in previous legislation shifted the balance between employee protections and employer rights?* ***Significantly*** • *Is there scope or argument for consolidating or clearly separating the mechanisms by which employees can seek redress for unfair conduct by others in the workplace?* ***No comment*** • *Are the discrimination provisions within the general protections effective, and are they consistent with other antidiscrimination regulations that currently apply in Australia?* ***No comment*** • *In regard to the dismissal related general protections, to what extent do the current arrangements for the awarding of costs and convening of conferences produce outcomes that are problematic?* ***Significantly*** • *To what extent has the recent harmonisation of the time limits for lodgements of general protection dismissal disputes and unfair dismissal claims increased certainty for all parties involved and reduced the 'gaming' of such processes?* ***Positive impact***
OTHER WOKPLACE RALTIONS ISSUES- Issues paper 5			***How well are the institutions working?*** • *How are the FWC and FWO performing? Are there good metrics for objectively gauging their performance?* ***No comment*** • *Should there be any changes to the functions, spread of responsibility or jurisdiction, structure and governance of, and processes used by the various WR institutions?* ***Yes overarching appeal jurisdiction*** • *Are any additional institutions required; or could functions be more effectively performed by other institutions outside the WR framework?*

			No comment • *How effective are the FWO and FWC in dispute resolution between parties?* ***No comment*** • *What, if any, changes should they make to their processes and roles in this area?* ***No comment*** ***Compliance costs- a 'bog of technicalities'*** • *What are the main compliance costs faced by parties in the WR system (management time, costs of paying for expertise, delays in making decisions)? How big are they (in dollars or share of management time)?* ***Legal fees/ management time.*** • *To what extent do such compliance costs vary by enterprise size, by industry or by jurisdiction?* ***No comment*** • *What aspects of the WR system are the main sources of compliance costs (for example, rules concerning enterprise bargaining, awards, industrial disputes)?* • *How could compliance costs be reduced?* ***No comment*** • *To what extent do compliance costs or other barriers relating to the WR system represent a barrier for non employers shifting to employers?* ***No comment*** ***Secondary boycotts*** • *To what extent do the existing secondary boycott arrangements in the CCA contribute to a well functioning WR system? Should the Australian Government modify ss.45D and 45E, and if so, how?* ***No comment*** • *Are there barriers of a regulatory or policy nature to enforcement of ss. 45D and 45E, and if so, what should be the remedies?* ***No comment*** • *Are there grounds for widening the capacity of the CCA to address concerns about misuse of market power exerted through collective bargaining by employees and employer groups? If so:* ***No comment*** • *what would be the scope of any desirable changes and their linkages with the FWA?* ***Ensure high court Electrolux principles are enshrined in legislation.*** • *what would be the effect of any changes on the outcomes of the WR system (for example, workplace harmony, the power balance between employers and single employees, efficiency, productivity; wages and conditions, transaction costs), the existing industrial law system, and the resourcing of the ACCC?* ***No impact*** • *how would it be practically applied? For example, how would the ACCC identify restrictive trade practices, who could be the infringing parties, and what would be the role of authorisations and notifications for unions and employer groups?* ***No comment*** • *Are there grounds for changes to the CCA to address enterprise agreements that have the effect of limiting competition from contractors or labour hire businesses (and why would the CCA be preferred to the FWA in this respect)?* ***No comment*** • *what would be the benefits, costs and risks of any changes?* ***No comment***

			• *On the other hand, are there grounds for shifting some aspects currently covered by the CCA to the FWA?* ***No comment*** ***Public Sector workplace relations*** • *How should WR arrangements in state and public services (and any relevant stateowned enterprises) be regulated? In particular, to what extent and why, should WR provisions vary with the public or private status of an enterprise?* ***No comment*** ***Alternative forms of employment*** ***Independent contractors*** • *Are there any impediments in the current legislation to the efficient mix of independent contractors and ongoing workers?* ***No comment*** • *Are there any general concerns about the WR system as it applies to independent contractors?* ***No*** ***Sham Contracts*** • *What are the advantages and disadvantages of creating a statutory definition of an 'independent contractor'?* ***No comment*** • *Do any aspects of the WR system represent a barrier to independent contractors?* ***No comment*** • *Are the current provisions in the Fair Work Act sufficient to discourage sham contracting?* ***No comment*** • *To the extent that the current provisions are insufficient, what changes could be made to strengthen the Act?* ***No comment*** • *In what industries is sham contracting most prevalent? Have instances of sham contracting become more or less common over time? How much of sham contracting is deliberate rather than mistaken?* ***No comment*** ***Labour Hire*** • *Are there any general concerns about the treatment of labour hire workers under the FWA?* ***No*** • *What is the prevalence of provisions restricting the use of independent contracting and labour hire arrangements in enterprise agreements? What types of restrictions have been applied?* ***There is no place for these provisions as they impinge on management prerogative.*** • *What are the arguments for and against any such provisions, and to what extent are there grounds for any legislative amendments?* ***No comment*** • *What are the effects of such provisions on flexibility, productivity and costs in workplaces, and on the capacity of employers to manage labour? How have they affected independent contractors and labour hire businesses?* • *To what extent do such provisions affect the mix of independent contractors / labour hire workers and ongoing workers?* ***Sponsored foreign workers*** • *How does the WR system affect the use of sponsored foreign workers?*

			No impact • *Does any element of the WR system affect the incentives of employers either towards or away from the use of sponsored worker visas?* ***No impact*** ***Right of Entry*** • *Do the existing rights of entry laws sufficiently balance the interests of employees and employers, and if not, what are the appropriate reforms?* ***No – significant reform is proposed- see clause 10 of the submission.*** ***Transfer of business*** • *What are the problems, if any, about the WR arrangements for the transfer of business, what are the appropriate changes and what effects would these have?* ***No comment*** ***Long Service Leave*** • *What are the costs associated with existing differences in long service leave entitlements across states? Do these costs justify the adoption of a uniform national standard?* ***No comment*** • *If a uniform national standard for long service leave was to be adopted, how should the existing disparities between state and territory laws be resolved?* ***Freeze all existing entitlements of employees and apply standardized approach prospectively, although there may be a need for some transitional arrangements.*** ***International Labour Standards*** • *What are the implications of international labour standards (including those in trade agreements) for Australia's WR system?* ***No comment .***