



16 October 2015

Mr Peter Harris
Chairman
Productivity Commission
Level 12
530 Collins Street
MELBOURNE VIC 3000



Dear Mr Harris

Re: Employer views on agreement content under the Fair Work Act

At public hearings in Melbourne on 23 September 2015 it was suggested to AMMA that there were significant differences between major employer representatives as to the limitations that should be placed on agreement content under the Fair Work Act.

You went on to suggest that such differences between employer groups in this area made it difficult for the Commission to do its "design work" in recommending changes to the Fair Work architecture, and that the Commission needed specifics in order to develop appropriate recommendations in this area. To that end, you observed that greater consistency and clarity between peak business groups AMMA, ACCI, Ai Group and the Business Council would be helpful.

The four organisations signatory to this letter have heeded this call, engaged on this issue and hope the following will assist the Commission in making further recommendations on agreement content.

The first point we would like to make is that the four employer groups named in this letter have substantially similar views about what should be the content of enterprise agreements.

Each of the undersigned organisations is firmly of the view that the content of agreements must be limited, and that agreement content cannot be a free-for-all and never has been.

The agreement-making process allows parties to suspend or vary the lawful rights of others, and approved agreements become enforceable by law; clearly the scope of these agreements must be focused and limited.

We might have different views on the means to get there, but on the principle that agreement content should be limited, we are in total agreement. There must be clarity of permitted content, clarity of bargaining rights, clarity on which claims can give rise to protected industrial action.

We are all in agreement that certain things have no place in enterprise agreements in 2015 and beyond.

We note that the Commission's Draft Recommendation 20.1 recommends that terms that restrict the engagement of independent contractors, labour hire and casual workers, or regulate the terms of their engagement, should not be able to be included in enterprise agreements. We strongly support such matters not being the subject of agreements or bargaining, or giving rise to protected industrial action.

All four employer groups agree that such clauses should not be subject to bargaining given they relate to commercial decisions that should be made by the business. In the view of all four business groups terms of this kind are impermissible constraints on the way people can offer for work.

We are united in the view that agreement content should go no further than matters related to the relationship between the employer and employees. Legitimate, enforceable enterprise agreements should be confined to matters that pertain to that direct employment relationship and workplace legislation should be crafted in such a way that it is clear that matters beyond that relationship are not able to be subject to bargaining and enterprise agreement-making.

We would like to emphasise that legitimate bargaining under the Fair Work Act should entail bargaining for things that can be included in agreements and no other matters.

We all agree that only those matters that pertain to the direct employment relationship should be able to be the subject of protected industrial action by unions and employees.

We also consider that where matters are not directly permissible, not only should any such content within agreements not be enforceable, but agreements should not be approved in the first place with such matters contained within them. It is inappropriate that statutory agreements, which create legal liabilities and obligations, and that are enforceable by inspection and through the courts, contain terms that can have no effect.

In short, all four employer groups agree to the important principles that there should be a tight test for the matters that can be included in an enterprise agreement and that certain things should not be in agreements. We all also agree that such matters should be confined to the direct employment relationship and that matters not directly permissible should not be included in agreements, even if those matters are deemed not to be enforceable, and should not be able to be bargained over.

We are also all of the view that anything that does not fall within the test for inclusions should be unlawful content for agreements and bargaining, and that the test for inclusions should be matters that pertain to the employment relationship between employers and their employees.

We ask the Commission to take into account the commonality between major employer participants in this review on these important matters, and urge the Commission to accept such principles and make recommendations which give effect to them within its final report and recommendations.

In terms of providing you with an illustrative list of matters that should not be included in agreements or pursued with protected industrial action, please refer to the following extracts from our submissions: **Business Council**: September 2015 submission, Appendix 2; **ACCI**: March 2015 submission, pp.102-103; September 2015 submission, p.83; **Ai Group**: March 2015 submission, pp.45-48; September 2015 submission, pp.43-44; **AMMA**: March 2015 submission, Chapter 3.6, pp.140-162; September 2015 submission, pp.33-41.

Attached to this letter is a list of further employer participants in your review of Australia's workplace relations framework, with references to those sections of their submissions where, we say, they have also endorsed the Commission adopting the approach outlined above.

We trust this letter assists the Commission in understanding the positions of the four employer groups and, in particular, that there is a great deal of commonality between employers on this vital issue.

Yours sincerely

Innes Willox
Chief Executive
Ai Group

Kate Carnell
CEO
ACCI

Jennifer Westacott
Chief Executive
Business Council of
Australia

Steve Knott
Chief Executive
AMMA

ADDITIONAL EMPLOYER SUBMISSIONS REFERENCING AGREEMENT CONTENT

- AFEI primary submission (p.47).
- ANRA primary submission (p.23).
- APPEA primary submission (p.27).
- ARA primary submission (paragraph 60).
- Asciano primary submission (p.8)
- Australian Higher Education Industrial Association primary submission (p.5)
- Australian Shipowners Association primary submission (paragraph 11.2)
- BHP primary submission (p.9)
- Bluescope Steel primary submission (p.9).
- Brickworks Limited primary submission (pp 6 -7).
- CCIWA primary submission (p.44)
- Cement Industry Federation primary submission (p.3)
- CME primary submission (p.7)
- Glencore primary submission (p.10)
- Manufacturing Australia primary submission (p.5)
- Master Builders Australia secondary submission (p.56).
- Minerals Council of Australia primary submission (p.30)
- National Farmers Federation (p.42 and 45).
- NECA primary submission (p.24)
- Qube Ports Pty Ltd primary submission (p.7)
- Teys Australia Pty Ltd and N H Foods Pty Ltd primary submission (p. 12)