26 October 2023
Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

Via email: eec.sen@aph.gov.au

Dear Committee Secretary,

AMIC is the peak body representing red meat and pork retailers, wholesalers, processors, and smallgoods manufacturers across the country. Our industry is one of the largest manufacturers in Australia today. We exist for a clear reason: to help our members achieve and maintain profitability and ensure our members are recognised for the crucial role they play in the agribusiness supply chain. We are the only industry association representing the post-farmgate Australian meat industry. Our overriding goal is profitability for our members. To help our members achieve and maintain profitability, we work hard to solve our industry's key challenges and provide a range of services that make it easier for our members to run their businesses, from finding staff to complying with legislation.

The Australian Meat Industry Council is the voice of Australian businesses in the crucial and complex post-farmgate meat industry. Our 1500 plus members employ tens of thousands of people and are significant contributors to their local economies.

We are continually working towards a more competitive and prosperous meat and livestock supply chain that is good for members, good for industry and good for communities. We do this by advocating for effective and strategic policy, supporting our industry on important issues and providing members with tools to build and grow their businesses so they remain competitive and profitable within the Australian and global supply chain.

The Closing Loopholes Bill will introduce greater uncertainty and complexity into Australia's already complex industrial relations system. The Bill creates new and unnecessary challenges for both business and workers, and it reveals much more of a large, sweeping, and costly change that could have significant effects on our Meat Industry members (albeit perhaps most industries).
Further to this, the large-scale change seems to be at odds with boosting productivity and investment, workforce flexibility, workplace productivity and local issue resolution, and instead increases Union powers (noting current low union membership within our industry), compliance burdens, and discourages employment and investment.

Whilst businesses of all sizes, but especially our small business members, "butchers," are struggling to make ends meet, they are having to, and will continue to have to, invest more and more resources "just to keep up" with each tranche of IR changes. All businesses small, medium, and large will, (as a result of this Bill), be impacted by a continuing increase in compliance burden, and ultimately cost, and also a decline in flexibility (again, including impacting cost). This results in multiplying and compounding negative affects to our members in relation to be able to run their businesses effectively and sustainably. Resources are going to have to be diverted from employing, innovating, and service delivery, to working through complex legislative change and subsequent administrative burden.

AMIC asks that the government work through the issues and provide evidence as to the benefits it espouses, outline education and reasonable length of time to transition programs. Each one of the proposed changes should be subject to public scrutiny, extensive cost/benefit modelling, case studied, and given longer and wider public consultation.

Bargaining – New Model Flexibility, Consultation and Dispute Terms

Multi-employer bargaining will have the potential to cripple small business (AMIC represents over 1,200 individual small businesses within Australia). There is no win for small business in our, or any industry, to be in this position and one that would cause a significant financial hardship being imposed. They will not be able to keep up with larger business with rates, requirements, union demands in the bargaining process, and having an equal say in the overall process of an agreement. Multi-employer bargaining will slow down the bargaining process and create significant issues across all businesses who are caught up in the multi-employer bargaining process.

The effectiveness of this proposal is affected by the extreme changes that have been proposed in relation to the assessment of agreements (the BOOT test). The BOOT test should not be placed against multi-employer agreements, but against the relevant Modern Award. Additionally, unions could veto employers from entering single enterprise agreements (and exiting a multi-enterprise agreement). This in essence means that smaller businesses would more than likely fall back to the award and reduce their attraction for workers in industry.

It is proposed that the requirement for all employee organisations who are party to a multi-enterprise agreement to sign off before an employer can arrange for a vote on a single enterprise agreement is an inappropriate requirement and should be removed. In addition to this, the BOOT Test should <u>not</u> be performed against a prior multi-enterprise agreement. If this requirement were to stay, this is inconsistent with the central theme and structure of the Fair Work Act.

Delegates Rights

The provision that relates to providing unions with a greater access to the workplace and employees will have a significant impact on the industry. Greater access to the workplace and employees will potentially cause undermining of the relationship that our industry members work very hard to build. It will take away the ability for business to engage directly with its workforce to build feelings of mutual trust and build an increased focus on an employee-based culture.

Greater access, or as the new proposal lends itself to full access for any site will lead to a natural progression of workers meeting with delegates in work time and causing significant down time and cost to production processes. With little detail on outer limits, or thresholds, any move a business makes to reduce this on a reasonableness basis will be seen negatively by the employees, and potentially promoted this way by delegates.

This will cause significant disruption and unrest amongst the workers, seeing it pressing towards a likeness to force employees to become union members (in an industry with low union membership, covered by a small union in potential merger talks with a union outside the industry), removing the freedom of association in its true form. Industry employers want to remain the primary contact for their employees and should be able to maintain this fundamental right. By opening this avenue, it raises concerns for loss of direct communication with employees to avoid misunderstandings, misinterpretations, and an exacerbation of situations.

Increasing delegates rights will undermine the essence of the workforce right to management in its primacy. Furthermore, AMIC as an industry body works with all of industry on major issues underpinning general profitability including Biosecurity. Workers must feel able to speak with an

employer on this and many other industry issues that the Union is not involved in from a voluntary or statutory basis.

Two items of note are the increased rights in relation to communication are, access to facilities, and related training. With vague wording, our members could have situations that are huge impingements on privacy. (Subsection 350 (c) "……a workplace delegate is entitled to (a) reasonable communication with those members, and any other persons eligible to be such members, in relation to their industrial interests; (b) for the purposes of representing those interests: (i) reasonable access to the workplace and workplace facilities where the enterprise is being carried on". How is this going to be interpreted? Unions will be able to draw a "long bow" if this wording is not tightened and is left open to interpretation. Long protracted meetings in work hours, access to all documents pertaining to people's private information, union materials covering each page of the intranet or break rooms? Or in the case of training (Section 350C (3)(b) (ii)) "……. reasonable access to paid time during work hours, for the purposes of related training." What does this extend to? What is reasonable? All union members stopping work and performing training? There are many facets of work that could be classed as "related training," could they go to something once a week, or once a year? The impost of such generalised wording and such powers could create huge disruptions and cost to an employer and animosity trying to strike a balance in relation to the interpretation. This increase in power is extensive and concerning for our members and will affect, workplace culture, harmony, productivity, cost, and profitability.

These proposed changes will fuel considerable disadvantages to businesses in being agile, degrade decision making to meet customer and market requirements. It will slow down process and allow greater ability for unions to inject into areas of businesses doing business as usual. There is already significant coverage and protections available to employee representatives under the current system. The additional rights that are now proposed are not justified (given rights already exist) and the rights that have been outlined, do not provide sufficient certainty or clarity as to how to apply them. There is a potential for misuse, and a significant decline in localised communication between the employer and employee. AMIC would like to propose that the current range of protections that are already contained with the Fair Work Act suffice to protect employee representative interests and provided the balance and protections for both the employer, employee, and employee representatives. The changes are superfluous and alters what has been achieved - a balanced system.

Right of entry

At present, permit holders are required to provide at least 24 hours' notice of right of entry for the purpose of investigating suspected contraventions of the Fair Work Act. It should be noted that there are currently more than adequate provisions in the Fair Work Act which provides strong rights for unions to enter in the case of suspected underpayments – see Section 481 of the Fair Work Act.

The Bill appears to undermine and weaken a balanced system of right of entry. It provides unrestricted access to obtain an exemption certificate for suspected contraventions. Reducing the process (and notice) under the right of entry requirements will see a flood gate open to unions attending sites with little foundation, substance, or proof. The increase in power proposed now affords the unions authority under this Bill. There should be an introduction of unions being answerable and accountable to abide by the same guidelines that businesses do. This does not forge a relationship of respect and boundaries.

Closing the Loopholes provides for the union to create their own loopholes to build on memberships, union revenue and remain largely unchecked during the process. This will place significant unrest in industry and how we progress as an industry moving forward.

Changes to Casuals – A new definition and pathway to permanency

Casual engagement and conversion laws are already complex. No one can argue either perspective (casual or not casaual) to any success. This also does not reflect the choice of the employee that wants to be a casual worker. It is harder and harder for businesses to commit to all the law surrounding casual engagement and what that means. Our members will think twice before entering into badly needed casual arrangements (even when they are legitimately casual and unpredictable), and engage in modes of employment that are much more restrictive costly and, in some situations, disadvantageous to the worker (there are many workers who prefer to be casual).

The shortening of the time frame for conversion and definition change will have considerable effects on our members including decreasing flexibility for employers and individuals, add complexity to the current system of engaging casual workers, and produce a large administrative burden answering conversion requests that individuals do not necessarily want in the first place. The issues that these changes create to casuals (and how they are dealt with) are deep and circular and ultimately affect everyone as the engagement of casuals become a risky, and a costly proposition for businesses (all businesses, not just small businesses). In essence, it is limiting workplace flexibility for businesses and employees.

Businesses will be in fear of employing casuals. It disincentivises businesses (particularly small businesses) to employ casual workers for fear of getting it wrong or penalised. With casual conversion, the employer has no recourse but to make a worker permanent. As suggested earlier, there have been many times where workers have refused to go permanent due to the attractive penalty rates (casual loading), and the flexibility of working under their own terms. Counter to that, a worker has a right to demand that they are made a permanent employee upon request. There needs to be an avenue for the business, who is paying the wages, and managing seasonal demand to have some control over the situation and process, without being in breach of obligations under legislation.

For some of the industry casual engagement works and for others it does not. It would seem a better to define a tested step by step approach, that employers have comfort over and will stand when tested. It would also make it far easier for employers to manage, provide less room for grievances, and misunderstandings of engagement, which end up in costly court battles. Fear of getting it wrong most certainly will impact our members choices about what mode of employment they use to engage workers, and in some cases, if at all. Employers must have an easy to navigate process to engage a workforce that is responsive, seasonal, and dynamic in order to sustain a profitable business model. Being able to upscale and downscale as supply and demand ebbs and flows is at the core of many businesses and allows businesses to retain profits which can be reinvested in further employment, capital, and innovation. Additionally, this Bill is silent on what could propagate into a huge issue for existing arrangements, contracts, Awards and EBAs. The cost of these changes just multiples at every turn.

The change to the conversion period to six months will affect our members. There are many companies out there that have clear seasonal and customer supply demands and temporary surges in outputs that could conceivably go beyond six months (especially if you need to frontload the start of their employment with reasonable training time). Casual conversion of less than 12 months makes no sense and further dilutes flexibility and increases compliance burden to an employer. It effectively ignores key concepts of being able to hold a casual workforce as the flexible responsive part of your workforce.

The impacts of the new definition in the Bill are far reaching, they include (but not limited to), casuals being offered less work, employers heightened uncertainty of arrangements, substantial risks to employers who engage casual workers over a long period of time (who prefer those arrangements), employers reducing casuals (and the associated flexibility) increasing cost, reducing profits, and affecting employers, consumers, and employees.

'Same Job, Same Pay' - Regulation of Labour Hire Workers

A large amount of our membership relies heavily on the labour hire industry to keep their businesses operating and responsive. The introduction of this Bill will affect businesses' models and cost structures. Additionally, the increased costs, may in part, be passed on to an already struggling consumer. The cost burden and lack of flexibility will affect businesses bottom line, and ultimately erode a business's ability to operate. This could be catastrophic to the industry and the communities they operate in.

Whilst the focus of these provisions appears to be on the standard 'labour hire' arrangements, there is also speculation of broader ramifications, extending to service contracts. Independent contractors can and do play significant roles in industry and should not be considered in this regulation of labour hire arrangements.

There appears to be many holes in the proposed system which would make it almost untenable to try and manage. Further burden for labour hire providers (a valuable source of resource for our industry members). The list of issues is significant (including but not limited to), difficulties with how to calculate the protected rate of pay, how a labour hire provider could possibly calculate the pay, but at the same time set up payroll systems that account for each and every set of pay arrangements, adequately and accurately match up competency and classification systems, account for woven in flexibility arrangements, annualised salaries, matching up of loadings, penalties and allowances, inclusion of incentive payments, bonuses and overtime. It is almost insurmountably complex and burdensome and can only result in cost increases across the board, potentially shutting down both labour hire companies and their host businesses.

These changes to proposedly regulation of labour hire workers are complex, and burdensome on both the labour hire organisations and the host employees. It imposes serious direct cost increases to employers, and to labour hire providers, with almost unending issues in relation to how calculations are accurately completed. There is so much risk and uncertainty and imputations of error that could occur, which could have a detrimental effect on the suspect of underpayment of wages.

Sham Contracting

The Bill changes the defence from the Fair Work Act of 'recklessness' to one of 'reasonable belief,' and then goes on to provide a list of (non-exhaustive) factors that are to be considered when determining "reasonableness". What is reasonable is not always consistent.

This will be extremely worrying, complex, risky, and costly to our members. With the definition of employee changing, there is an increased chance of employers getting this classification wrong. It can be tested at any time in the relationship and force employers to gain comfort only by engaging legal advice (which may not even guarantee certainty). The ability for the courts to look at subsequent conduct, rather than the independent contract agreement means the protection is limited for an employer (even after costly advice).

The defence to a claim has been changed. At the moment, the current section of the Fair Work Act (Section 357 (2)) allows an employer to defend an allegation if the employer can prove they did not know, or they were not reckless as to whether the contract was a contract ***for*** services (contractor) versus a contract ***of*** service (employee). The differences are subtle, but important.

Employers are at a high risk of misrepresenting the relationship unless they engage specialist advice. It also means that because the assessment can occur at any time, companies will need to keep revisiting the output of this arrangement to ensure that the characteristics of the relationship have not changed and morphed or crept into an inherently different relationship. This is complex, onerous, worrying, and burdensome. It potentially means another flexible mode of employment that will not be available to our companies. Are companies expected to go and pay to have it assessed on a yearly basis? The changes are going to negatively affect our companies access to alternative workforce arrangements, access specialist skills, and ultimately end up having to engage costly professionals to provide comfort they comply.

Conclusion:

There is no doubt that these changes for our members and the Meat Industry could be extremely detrimental. The proposed changes in the Bill create increased cost, uncertainty, risk, union power, and fear, and decreased flexibility, responsiveness, local workforce management and culture.

There has already been significant change and real struggle under the government changes and IR reforms, leaving the average employer wondering what is next and how to cope. There will be some that do not make it. There are particular changes (and compounding ones) that will result in whole business models falling over. If this were to strike a company in a rural area, the multiplier effect to the town and the people becomes catastrophic.

Of note, the casual definition change, the same job, same pay for labour hire (and the subsequent attempts of managing that from both the labour hire provider perspective and the host organisation), sham contracting and definition of employees, seemingly deny industries who thrive on seasonal activity access to varying flexible and responsive modes of employment, and freedom to upscale and downscale as required.

Complex, burdensome, costly regimes, creating fear and a real chance of error and penalty, stagnating investment, productivity, innovation, and service delivery in a time when it is needed the most. Enforcement of casual conversion in situations where whole cohorts of employees would rather remain casual and have the flexibility (and the increased loadings). Attempts to compare 'apples' and 'oranges' when it comes to the same job, same pay, creating an environment where labour hire companies could be disincentivised to run their business or make a meaningful profit, again hurting our Meat Industry members access to a ready-made workforce in times of need. It also emphasises a completely disregarding the workers that like working in different environments, and like the flexibility. The creation of multi-factorial tests that mean errors could be made, or be correct at one point in time, but wrong a day later, providing no comfort to employers that they have it right, again, reducing the likelihood of people employing diverse and varying workforces made up of all types of employees.

In an already struggling industry, in a time where the cost of living is at an all-time high, the changes proposed are not appropriate and must be reviewed in their entirety. Change for change's sake is not the answer, and any change must be transitional, and compliance must be educated with time to remediate. The issues that this Bill is intending to mitigate, are not a one size fits all solution, and indeed open up broader issues, concerns and risks. We need a practical and rational reform, not one that could ultimately ensue greater challenges and unrest. I strongly request this committee to reject this legislation in its current form.

Yours sincerely

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Australian Meat Industry Council

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