



31 March 2016

Julia Agostino
Committee Secretary
Senate Education and Employment Committees
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Dear Ms Agostino

Submission on the Fair Work Amendment (Protecting Australian Workers) Bill 2016

The Law Council's comments on the Fair Work Amendment (Protecting Australian Workers) Bill 2016 (**the Bill**) are restricted to the effect of the proposed amendments on migrant workers. The short turn-around time for providing submissions has not allowed the Law Council to consult with its Constituent Bodies on other aspects of the Bill.

As set out in the Explanatory Memorandum, the Bill incorporates some of the recommendations made by the Productivity Commission in its Report on the Workplace Relations Framework in respect of migrant workers.¹ The Law Council welcomes changes made in accordance with the Productivity Commission's Report. In particular, the Law Council welcomes proposed amendments to the *Fair Work Act 2009* (Cth) (**the Act**) that:

- (a) clarify that the Act applies to all workers irrespective of their immigration status (at Item 3), in accordance with the Productivity Commission's Recommendation 29.4; and
- (b) require the Fair Work Information Statement to provide information relevant to migrant workers, and in relevant languages (Items 4-6), in accordance with the Productivity Commission's Recommendation 29.1.

The Law Council considers that in order for these amendments to have their desired effect, all workers must be able to access the protections of the Act, regardless of their immigration status. For example, consideration should be paid to the effectiveness of these proposed changes for workers who are subject to removal following their dismissal, and before any assessment of their unfair dismissal claim.

The Law Council considers that the proposed amendments must come with additional resourcing in order to fully and effectively implement the Productivity Commission's recommendations. For example, the Law Council notes that:

¹ Productivity Commission, *Workplace Relations Framework: Productivity Commission Inquiry Report No 76* (30 November 2015).

- (a) although the proposed amendments in the Bill partially address Recommendation 29.1, it is imperative that there is also additional resourcing provided to the Department of Immigration and Border Protection (**the Department**) and the Fair Work Ombudsman (**FWO**), to enable these agencies to provide information on their websites about migrant workers' workplace rights and conditions in easily accessible languages and formats; and
- (b) the Productivity Commission's Recommendation 29.2 expressly recommends that additional resources be provided to the FWO to identify, investigate and carry out law enforcement activities against employers underpaying workers, and in particular, migrant workers.

The Law Council also observes that the Bill does not appear to respond to the Productivity Commission's Recommendation 29.3, or Recommendation 29.5. The latter recommendation concerns the sharing of identifying information between the FWO and the Department, recommending against this, and also recommends the Department share information with the FWO if it suspects employers have underpaid migrants.

The first element of this Recommendation 29.5 has significant implications for migrant workers: the fact that the FWO is required to share information with the Department operates as a deterrent on migrant workers approaching the FWO, as they risk deportation. The Law Council considers that it is important to provide incentives to migrant workers, taking a human rights based approach to people in these situations, rather than simply just a law-enforcement or otherwise punitive approach.

For example, it is important that migrant workers who may be engaging with the Fair Work Commission are not deported before they have received their unpaid wages or had an unfair dismissal claim assessed. The Law Council is concerned that the Explanatory Memorandum does not detail how migrant workers who are underpaid will have recourse to action to be paid what they are owed, prior to their deportation.

Furthermore, it is important that migrant workers engaging in such matters have access to support services and legal advice,² which is not linked to their capacity or willingness to assist law enforcement agencies with prosecution of their employer.

The Law Council would be pleased to provide further comment in relation to other aspects of the Bill, as the Committee requests.

Yours sincerely



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² Law Council of Australia, Submission to the Parliamentary Joint Committee on Law Enforcement Inquiry into human trafficking, 15 February 2016, 11-12, available at: http://www.lawcouncil.asn.au/lawcouncil/images/3112 - Human_Trafficking_Inquiry.pdf.