

30 August, 2019

Hon Christian Porter MP
Attorney-General, Minister for Industrial Relations
Parliament House
Canberra

via email: Christian.Porter.MP@aph.gov.au

Dear Minister

I write in response to the federal government's announcement of a review of the Fair Work Act and our subsequent meeting on the subject.

Our nation is in the grip of a low wages crisis unlike any other in the post-war period. Wage theft and underpayments are rampant, too many workers in Australia are now in insecure and precarious work. Women continue to be denied equality in the workforce resulting in a 14% gender pay gap and a superannuation gap that sees women with 47% less superannuation at retirement.

It is in this context that we note the Prime Minister's comments that reform of our industrial relations system must improve wages, jobs and the economy. It is our view that reform must also improve equality and equity for the nation's workforce.

In his speech of 24 June 2019 announcing the government's willingness to change our industrial relations laws, the Prime Minister only called on employers for their ideas. This leaves us concerned that the government is only focused on the corporate agenda and not the issues of most concern to workers and their families.

It is our view that the wages crisis and inequality can be directly addressed by government policy levers through industrial relations reform. This view is shared by many others. The ACTU, on behalf of 1.6 million members, their families and their communities, expects that any necessary reform proposed by the government in critical areas of workplace policy will be unequivocally in the national interest.

We are concerned that some in the business community have already proposed changes that would lead to workers receiving lower pay and having less job security. Here I refer to public comments and policy from some employer groups, supported by Liberal Party MPs such as Senators Amanda Stoker and Andrew Bragg, and MP's Tim Wilson and Jason Falinski.

It is contrary to the government's stated objectives in this review to entertain proposals that would make it easier to sack workers unfairly, make it possible to pay workers less than award rates, make it easier to deny workers their rights to protection against unfair treatment in the workplace, reduce the minimum wage, strip awards even further or convert permanent work into casual jobs – yet all of these proposals have been put forward by business advocates.

To deliver vital improvements in wages, jobs, economic growth and equality it is in the national interest to focus on four (4) critical areas of reform.

1. Low wage growth crisis

Around 60% of the economy is driven by domestic consumption. Today the volume of total retail sales is at a level not seen since the 1990-91 recession, households are dipping into their savings, personal debt has skyrocketed and over one million children and young people live in poverty. More than one million people are working multiple jobs yet on average they earn less than those working just one job.

The only factor that is keeping wages even marginally ahead of inflation is the increases to award rates achieved over the last three years.

Ending the low wage crisis requires reform in critical areas including changing the annual minimum wage review to put a greater emphasis on the needs of the low-paid.

Awards should improve over time and to do this the modern awards objective should be reformed so that awards reflect community and industry standards. Cuts to penalty rates imposed under the current modern award objective should be reversed.

Enterprise bargaining is in decline, especially in the private sector. The consequent growth in individual arrangements has fuelled low wage growth with average wage growth for employees covered by awards and enterprise agreements significantly outstripping wage growth for workers on individual arrangements.

Individual arrangements are clearly not a solution to wages growth yet the post-GFC economy has seen the emergence of complex corporate structures and supply chains where singular enterprise bargaining is often not a viable collective bargaining model.

Reforming collective bargaining to encourage agreement-making between parties at an industry or sector level alongside enterprise bargaining is necessary to give all workers and employers access to collective bargaining. This will achieve the broad wages growth our country needs to stimulate consumer demand and drive our economy forward. International experience indicates that this is also a pathway to improved productivity.

2. Tackling wage theft and the causes of wage theft

Wage theft or underpayment of wages and superannuation has become an operating model for some businesses.

Defeating wage theft requires reform that recognizes that there are incentives for non-compliance driving these industry norms. This is not a problem that an advertising campaign can solve. The rewards outweigh the risks for too many businesses. Changing this requires removing the incentives and increasing the deterrents.

With 250 FWO inspectors for 1.2 million businesses the chances of getting caught are low.

Many workers do not report wage theft or underpayment until after they leave a job. This is because of the fear of losing their job, especially if they are in insecure work. Those who do take action are faced with the significant cost and delay associated with recovery through the current court system.

Even after navigating this costly, technical, protracted process, the most likely outcome will simply be a repayment of stolen money.

In this environment unscrupulous employers have high incentives for wage theft and very low risk of negative consequences.

Meanwhile workers are unlawfully underpaid, wage compliant competitors are placed at an unfair disadvantage, the community suffers lost tax revenue and the nation loses much need superannuation contributions that would otherwise be available for investment and to safeguard the retirement of the workers involved.

The Fair Work Act should be reformed to allow unions to properly fulfil their role in improving employer compliance on wages and superannuation.

The legal process for recovering stolen wages through the courts must provide fast, efficient, low-cost, non-legalistic access to justice for underpaid workers. The penalties for underpayment and wage theft must be significantly increased and extended in order to provide effective deterrence. Workers need to be confident that they can freely report wage theft and underpayments without facing recriminations.

It is through this combination of fast, efficient justice for the underpaid, increased likelihood of detection and increased penalties for perpetrators that the government can tackle the causes of wage theft and underpayment.

3. Australia needs more secure jobs

In 2018, full time permanent employees with entitlements were no longer the majority of the workforce in Australia. With over 700,000 workers unemployed and another 1.1 million workers underemployed and looking for more work, we are nowhere near realising our potential as a nation.

The high levels of casual employment, labour hire, rolling fixed term contracts, sham contracting, gig economy workers and other non-standard forms of engagement have radically shifted the balance away from working people and created uncertainty and insecurity among workers and their families. Uncertain and insecure workers are less likely to spend, less likely to borrow, less likely to invest and less likely to engage in their community. We should adopt the solutions that have worked for other successful developed nations who have put reasonable limits on these forms of work.

Employers cannot be allowed to unilaterally designate workers as casuals regardless of the objective facts of their working arrangements.

All workers need the protection of the Fair Work Act, and it should be amended so that its protections unequivocally extend to all working people.

4. Equal pay for women

The gender pay gap in Australia is currently 14%. Women typically retire with 47% less superannuation than their male peers.

Australian women continue to face systemic inequality. Women are undervalued in their work, particularly in female dominated occupations and industries, are disproportionately working in insecure and precarious forms of employment and shoulder the responsibility of caring (for children and family members) which therefore disrupts consistent engagement with paid work. They are also the majority of workers who experience workplace sexual harassment as well as family and domestic violence.

Work in feminised industries such as early childhood education and aged care needs to be fairly valued. The Act needs to be amended to ensure this occurs.

Australia lags behind international standards for paid parental leave.

The work/life collision must be effectively regulated to ensure that those with carers' responsibilities are not disadvantaged.

Both direct and indirect discrimination are holding back our national performance in wages growth, job security and economic growth.

Reforming the Fair Work Act to deal with these issues will meet the government's tests for wage growth, jobs growth and economic growth.

Next steps

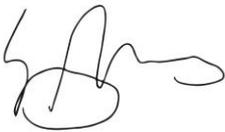
I urgently seek your assurance that the government will focus on these four areas for reform and will not side with big business against the interests of working people during this review.

It is important that as our economy, our work and our country changes, that the laws protecting working people and that govern our workplaces are updated. Our economy today is vastly different to the one in which the Fair Work Act was written.

We believe that the low wage growth crisis, wage theft and its causes, insecure work and inequality for working women are the four big issues that must be successfully addressed in any review of the Fair Work Act.

We look forward to seeing details of the government's review process incorporating these issues into the agenda together with timelines for consultation and decisions.

Your sincerely

A handwritten signature in black ink, appearing to read 'Sally McManus', with a stylized flourish at the end.

Sally McManus
Secretary