Australian Government Competition Policy Review

Australian Mines & Metals Association (AMMA)

June 2014

AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 95 years, AMMA's membership covers employers in every allied sector of this diverse and rapidly evolving industry.

Our members include companies directly and indirectly employing more than half a million working Australians in mining, hydrocarbons, maritime, exploration, energy, transport, construction, smelting and refining, as well as suppliers to these industries.

AMMA works with its strong network of likeminded companies and resource industry experts to achieve significant workforce outcomes for the entire resource industry.

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INTRODUCTION

1. AMMA welcomes the opportunity to provide a submission to the Competition Policy Review.

2. AMMA has attempted to respond to the most pertinent issues affecting the resource sector from a workplace relations perspective. AMMA submits the following considerations are clearly within the Terms of Reference for this inquiry:

    a. Ensuring that the existing prohibitions (and associated remedies and penalties) against secondary boycotts contained in the *Competition and Consumer Act 2010* are effective in preventing trade unions from using this as an industrial tactic and weapon against target companies.

    b. Consideration of providing shared jurisdiction to Fair Work Building & Construction (and the proposed Australian Building and Construction Commission) to enforce secondary boycotts within the building and construction industry as previously recommended by the Cole Royal Commission in 2003.

    c. Considering existing legal rights and capacities which are used by trade unions to assist with reducing the ability for employers to engage labour hire and contractors on competitive terms and conditions.

3. Other policy issues which AMMA believes are important to consider and that will be raised in the forthcoming Productivity Commission inquiry into the Fair Work laws in greater detail include:

    a. The setting and adjustment of wages and conditions within occupational and industry designated modern awards.

    b. Minimum statutory employment standards (largely contained in the National Employment Standards).

    c. The restrictions and problems for employers needing to make a greenfield enterprise agreement.

    d. The lack of choice regarding agreement making options.

    e. Capacity for unions to lawfully strike over matters outside of the employment relationship.

    f. The breadth of allowable enterprise agreement content.

    g. The inflexible transmission of instrument regime which locks in labour costs and terms for an incoming employer.

    h. The dual regulation of superannuation compliance (and restrictions on retail funds being included as a default superannuation term in modern awards).

4. Whilst AMMA understands that this review will not traverse the above workplace relations issues in detail, AMMA would strongly encourage the Panel to consider these issues, at least in-principle, which will also be raised in the forthcoming Productivity Commission inquiry into the *Fair Work Act 2009*.

COMPETITION POLICY AND WORKPLACE RELATIONS

5. AMMA provides this submission having considered both the terms of reference and the Competition Review Issues Paper (14 April 2014).

6. AMMA welcomes the message from the Panel in the Issues Paper that "[t]he deliberately wide Terms of Reference for this Review give us the opportunity to make broad-ranging recommendations to promote competition across the Australian economy and to deliver benefits to Australians".[1]

7. The resource sector continues to be vital to Australia's economy performance and whilst the sector moves from construction phase to the production phase, data from the Bureau of Resources and Energy Economics (BREE) show that Australia will reap an 8% gain in export earnings each year for the next four years, reaching $284 billion to 2018-19 thanks to the resource industry.[2]

8. The Issues Paper indicates that the overarching objective of the Review is to "identify competition-enhancing microeconomic reforms to drive ongoing productivity growth and improvements in the living standards of all Australians".[3]

9. Whilst the inquiry appears to be broad-ranging, the Panel has made clear that it will not be considering in detail "the competitiveness of individual firms or sectors of the economy", including workplace relations which the Panel has indicated does not fall within the terms of reference.[4]

10. Whilst workplace relations policy remains critically important to the resource sector, AMMA will be providing detailed submissions to the forthcoming Productivity Commission inquiry into the national workplace relations system when it commences this year.[5]

11. This submission will focus on particular aspects of competition policy that are specifically outlined in the Issues Paper. AMMA will amplify and expand upon competition policy matters in the Productivity Commission review into the Fair Work laws in due course.

12. It is important that the Review Panel note that regulations and policy settings, including the framework for workplace relations are vital to the resource sector and the broader national economy.

13. This includes regulations which impede the ability for firms to better compete on labour and restrict a firm's capacity to structure their workplace arrangements to maximise productivity, efficiency and the ultimate price of goods and services to consumers.

[1] Issues Paper, at p.iii.
[2] Resources and Energy Quarterly – March Quarter 2014.
[3] Ibid, at p.1.
[4] Ibid, at p.4.
[5] As at the time of writing, the Terms of Reference for the inquiry had not been released.

Secondary Boycotts

14. The existing provisions prohibiting secondary boycotts that were contained within the former *Trade Practices Act 1974* are now contained in the *Competition and Consumer Act 2010* (CCA).

15. Sections 45D-45E contain relevant provisions prohibiting secondary boycotts. The Issues Paper raises questions about the effectiveness of these provisions and whether they work to further the objectives of the CCA.[6]

16. There have been previous reviews of the secondary boycott provisions as they apply to persons who attempt to hinder or prevent a third party from dealing or doing business with a target.[7]

17. AMMA strongly supports the retention of the secondary boycott provisions as they have been an important deterrent to stopping trade unions from attempting to apply unlawful leverage in the form of secondary boycotts on innocent companies (and in turn, other innocent parties such as employees, consumers and the public).

18. Whilst it is fair to say that the existing secondary boycott provisions have not been utilised extensively by the Australian Competition and Consumer Commission (ACCC) for reasons which are not entirely apparent, there have been a number of successful cases brought against unions by the ACCC for engaging in unlawful boycott conduct.

19. That said, there appear to be a number of improvements which could be made to strengthen the existing regime to ensure it remains accessible and effective for victims of unlawful boycott activities, and relevant as the industrial tactics of trade unions evolve in ways which test the letter and purpose of the law

Enforcement Issues

20. AMMA welcomes the most recent public statements by the Chairman of the ACCC, Mr Rod Sims earlier this year, when he stated:[8]

> *"Just like other forms of anti-competitive conduct, secondary boycotts can be extremely detrimental to businesses, consumers and the competitive process. Where the ACCC becomes aware of possible secondary boycott conduct, it will investigate.*
>
> *We have had some recent incidents where the harm from secondary boycott activity was significant. While the ACCC was proactive, we have seen reluctance by some business to provide the evidence we need to get matters before the courts, given their continuing relationships with the unions involved.*

[6] Ibid, at p. 34.
[7] A useful history of ss.45D-E can be found in a Federal Parliamentary Bills Digest No. 134 2001-02 http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd0102/02bd134
[8] Speech to the CEDA conference: Looking forward to 2014, 21 February 2014.

This is unfortunate, but it is quite common in relation to this particular breach of our Act.

We currently have up to 10 in depth investigations under way in relation to anti-competitive agreements, and anticipate that there will be further proceedings issued this year."

21. In his speech, Chairman Sims indicated that "[i]t is crucial that we do, and are seen to, enforce the law by taking matters to court. This is essential to our overall effectiveness."[9]

22. However, AMMA is concerned by recent media reports which indicate that further strengthening of the existing enforcement of secondary boycotts is warranted:

    a. The CEO of a large building supplier in the building and construction industry reported that the company has effectively not been able to pour concrete in Melbourne's CBD for a year, costing the company approximately $12 million in revenue and $2 million in earnings.[10]

    b. When allegations were reported to the ACCC, the agency apparently considered that the evidence was akin to hearsay and could not be used by the agency to conduct a proper investigation into the allegations.

    c. This is despite the agency possessing coercive investigative powers and having resources to conduct an investigation into allegations of unlawful conduct.

23. On 13 April 2014 the Minster for Employment Senator Hon. Eric Abetz indicated his concern over these allegations stating:[11]

    "Well, the Boral situation is very concerning, and I take my hat off to Mike Kane and Boral for the very principled stand they've taken, along with Grocon, who have also said, 'Enough is enough.' But can I tell you, from my point of view, the law enforcement agencies, I think, are more interested in keeping the peace rather than enforcing the law. And there's a very subtle difference here, and for smaller companies in particular, they simply don't have the wherewithal to go to the Supreme Court, get an injunction about a year after the event, get some damages. If you're a small business, you don't have the financial capacity to wear that sort of cost."

24. On 5 June 2014, media reports indicate that the ACCC has now decided to "launch a proper investigation" as a result of more evidence coming to light.[12] However, this has only occurred following increased scrutiny prompted by the perceived inaction of the ACCC, and criticism by both the company concerned and the Minister for Employment.

[9] Ibid.
[10] Sydney Morning Herald, "Bruised Boral determined to beat CFMEU", Michael Smith, May 8 2014.
[11] Transcript, *The Bolt Report*, 13 April 2014.
[12] Sydney Morning Herald, "ACCC probe of construction union boycott", Nassim Khadem and Tom Cowie, June 8 2014.

25. This case study is illustrative of the type of examples that were canvassed a little over a decade ago before the Royal Commission into the Building and Construction Industry and summarised in the Commissioner's Final Reports. Ultimately, this is why the Cole Royal Commission recommended that industry specific legislation provide mirror secondary boycott provisions which could be enforced by the specialised agency policing workplace laws in the industry (which became the ABCC).

26. Whilst each case needs to be considered and treated on its merits, the public stance of the regulator when faced with allegations of unlawful conduct by a significant building supply company in Australia is an important signal to other firms (particularly smaller firms and contractors) and is seen as a sign as to whether the regulator has an appetite to enforce the law in particular areas of statutory remit.

27. Furthermore, where a business has concerns with the conduct of trade unions (or persons knowingly involved with activities of a trade union) which may be boycott action, there appears to be very little readily available information on the ACCC's website about how a business can be assisted with the issue, let alone have a single point to make a complaint.[13]

28. The provision of clear, accessible and understandable information for legal duty holders and persons who are required to comply with the law is considered standard operating procedures for contemporary regulators. When considered against the standard applied by other Commonwealth regulators, this appears an area that could be improved upon by the ACCC.

29. Whilst AMMA understands that the ACCC has a large statutory remit in its monitoring and policing under the CCA, the secondary boycott provisions are inherently complex for legal practitioners let alone any business to navigate. It is not unfair to say that there would be a high degree of difficulty for any smaller business or contractor to determine that they may have a legal problem and whom to turn to for assistance.

30. For example, there are no illustrative examples of what may be captured by the relevant provisions on the ACCC's website, other than historic media releases which relate to court action taken by the regulator. There does not appear to be a stand-alone written resource on the boycott provisions which would assist unions and other persons on how to comply with the law, particularly in the context of protected and unprotected industrial disputation.

31. Nor is there any readily available information as to how persons may raise allegations and what protection may be available to ensure they are not subject to adverse treatment or retribution. The Cole Royal Commission in its report noted, in the context of secondary boycotts that "[t]he victims of such unlawful conduct have rarely sought to pursue their remedies through the courts."[14] This is unsurprising and individuals and companies are right to be concerned about making complaints without any protection from reprisals or recriminations.

[13] See for example the following information for business located on the ACCC's website concerning secondary boycotts: http://www.accc.gov.au/business/anti-competitive-behaviour/collective-bargaining-boycotts

[14] Volume 11, Final Report of the Royal Commission into the Building and Construction Industry, February 2003, at p. 32

32. In the much publicised Grocon case in Melbourne, a state secretary of a trade union proclaimed that the union did not seek to deliberately break the law but "sometimes we have to push the boundaries a little" and "sometimes it's going to happen".[15] Furthermore, it appears that this particular trade union has factored in the possibility of having to pay monetary penalties into their industrial campaign strategies. For example, one State Secretary reportedly stated that:[16]

> "Unfortunately, the price of that is we will get fines. Our union has given us a mandate, they want us to remain a militant union."

33. Fortunately, this attitude appears to be very much limited to one or two trade unions and not reflected across the wider trade union movement, which does not believe in engaging in representing its members outside the norms of community expectation and the law.

34. Further education and clarity about how to make a secondary boycott complaint, would empower both large companies and small business contractors to have confidence to actually act in the face of conduct which may be unlawful.

Remedies and Penalties

35. It is timely for the Review to consider the adequacy of remedies and penalties which can be awarded by the courts where there is a breach of the relevant secondary boycott provisions and whether they are appropriately set to deter unlawful conduct. Of the few cases that resulted in a determination by the courts the penalties ranged from $100,000 to $150,000 per organisation (excluding costs). Criminal penalties do not appear to lie for a breach of any provision of Pt IV of the CCA, including the boycott provisions. Civil action for the recovery of pecuniary penalties is, however, available under s.77, as are the ability to obtain injunctive relief.

36. The maximum penalty for a breach of ss.45D, 45DB, 45E and 45EA is $750,000 per offence. This appears to be based on the penalty levels introduced in 1977 and adjusted for inflation. It is important to ensure that the penalties available to a court reflect the quantum of potential harm suffered by a target of secondary boycott action, and are sufficient to discourage prohibited conduct.

37. The provisions concerning secondary boycotts are complex and a thorough examination of the adequacy and effectiveness of both the substantive prohibitions and their corollary remedies and penalties, would be welcome given that they were not examined when the former Government passed legislation to replace the *Trade Practices Act 1974* with the CCA.

Extension of Secondary Boycott Provisions

38. The Office of the Fair Building Industry Inspectorate (referred to as Fair Work Building and Construction or FWBC) is a specialist inspectorate which replaced the former

[15] The Sunday Herald Sun, "CFMEU pledges to continue militant operation", Matt Johnston, May 25 2013.
[16] Ibid.

Australian Building and Construction Commission (ABCC). The functions of the FWBC are set out in the *Fair Work (Building Industry) Act 2012*.

39. The Coalition Government introduced the Building and Construction Industry (Improving Productivity) Bill 2013 and the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 into the House of Representatives on 14 November 2013. The Bill is intended to replace the *Fair Work (Building Industry) Act 2012* with a restored and properly re-empowered ABCC. AMMA strongly supports passage of the Coalition Government's legislative package to restore the rule of law in the building and construction sector, strongly supports the restoration of the ABCC, and has participated in relevant Senate Committee inquiries on this basis.

40. The Bill, if enacted, would enable the Minister to issue a code of practice which would be a legislative instrument under proposed s.34(1) of the Bill. This mechanism remains under the existing legislation.[17]

41. The Building and Construction Industry (Improving Productivity) Bill 2014 would enable the Minister for Employment to issue a code of practice that is to be complied with by persons in respect of building work (see subsection 34(1)). Subsection 34(3) of the Bill provides that a person who is:

- a building contractor that is a constitutional corporation;
- a building industry participant and the work is to be carried out in a Territory or Commonwealth place; or
- the Commonwealth or a Commonwealth authority,

can be required to comply with that code of practice.

42. The explanatory statement indicates that:[18]

> *"The code of practice sets out the Commonwealth Government's expected standards of conduct for all building industry participants that seek to be, or are, involved in Commonwealth funded building work.*
>
> *A building contractor or building industry participant that could be required to comply with the code of practice under section 34 of the Act becomes subject to the code of practice in relation to all their future building work from the first time they submit an expression of interest or request for tender (howsoever described) for Commonwealth funded building work on or after the date the code of practice commences.*

[17] See s.27 of the *Fair Work (Building Industry) Act 2012*. The existing Building Code, which came into effect on 1 February 2013, replaces all previous versions of the Australian Government Implementation Guidelines for the National Code of Practice for the Construction Industry (the Guidelines).
[18] Explanatory Statement, Advanced Release, Building and Construction Industry (Fair and Lawful Building Sites) Code 2014, at p.1

> *For the purposes of the code of practice, an entity that has done this is referred to as a 'code covered entity'."*

43. The Minister for Employment published an advanced release of the *Building and Construction Industry (Fair and Lawful Building Sites) Code* 2014 (Building Code 2014) on 17 April 2014 and subsequently published an advanced release of the explanatory statement to accompany the Building Code 2014 on 12 May 2014. The new Building Code 2014 would commence at the same time s.3 of the Bill commences.[19]

44. An advanced copy of the Building Code contains a requirement for a code covered entity to report instances of secondary boycotts to the ABCC as follows:

> *Subsection 16(4) provides that a code covered entity must, in relation to building work, report to the ABCC any request or demand by a building association that the code covered entity engage in conduct that appears to be for the purposes of a secondary boycott within the meaning of the Competition and Consumer Act 2010.*
>
> *The report must be made as soon as practicable, but not later than 24 hours, after the relevant request or demand is made. A note to the subsection further highlights that subsection 9(2) of the code of practice requires code covered entities to comply with the Competition and Consumer Act 2010.*
>
> *The prompt reporting of practices such as 'black bans' to the ABCC will enable an effective response to conduct that may be a secondary boycott in the building and construction industry.*
>
> *A failure to notify pursuant to section 16 would constitute non-compliance with the code of practice and may result in an exclusion sanction being imposed on a code covered entity.*

45. However, the proposed ABCC will not have any statutory powers to enforce the relevant provisions of the CCA. Presumably, all that the proposed ABCC would be able to do is to prepare a brief of evidence or dossier where there may be a probable breach of the secondary boycott provisions and submit this to the ACCC for their consideration.

46. This lacuna in the legislative framework re-affirms AMMA's view that the proposed re-established ABCC should have shared/joint jurisdiction with the ACCC in enforcing secondary boycott provisions for that industry sector.

47. In support of this approach, AMMA notes that the Cole Royal Commission into the Building and Construction Industry made two specific recommendations about secondary boycotts which have not yet been acted upon.

[19] Part 1, clause 2, Building Code 2014, Advanced Release.

48. An extract from Volume 1 of the Final Report of the Royal Commission into the Building and Construction Industry summarises the issue as follows:[20]

> "***Issue***
>
> *The Australian Competition and Consumer Commission presently has exclusive responsibility for investigating allegations of secondary boycotts in the building and construction industry. It has not been active in doing so.*
>
> *A question arises whether the Australian Building and Construction Commission should be given a concurrent power identical to that of the Australian Competition and Consumer Commission to investigate and prosecute breaches of the secondary boycott provisions of the Trade Practices Act 1974 (C'wth) affecting the building and construction industry."*

49. The two specific recommendations are as follows:[21]

> "***Recommendation 181***
>
> *The Building and Construction Industry Improvement Act contain secondary boycott provisions mirroring ss45D–45E of the Trade Practices Act 1974 (C'wth), but limited in operation to the building and construction industry.*
>
> ***Recommendation 182***
>
> *The Australian Building and Construction Commission share jurisdiction with the Australian Competition and Consumer Commission in investigating and taking legal action concerning secondary boycotts in the building and construction industry."*[22]

50. Commissioner Cole also recommended that industry specific legislation "proscribe secondary boycotts being imposed in support of claims being made in respect of a proposed agreement".[23]

51. AMMA would support consideration of empowering the existing FWBC (and its successor should legislation be passed by the Parliament to re-establish the ABCC) with shared jurisdiction to enforce secondary boycotts in the building and construction industry. This should be complemented/supported by suitable MOUs developed between the agencies.

52. As a secondary proposition, there should also be consideration of vesting the Fair Work Ombudsman with shared jurisdiction given the confined coverage of the FWBC and proposed ABCC.

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[20] Volume 1, Final Report of the Royal Commission into the Building and Construction Industry, Summary of Findings and Recommendations, February 2003, at p. 158.
[21] Ibid.
[22] Emphasis added.
[23] Ibid, at p.38.

53. Consideration should also be given to establishing inter-agency secondments and specialist training, to ensure that agencies understand the industrial context of secondary boycotts.

Enterprise Bargaining and the CCA

54. Whilst the primary purpose of this submission is to provide AMMA's preferred approach to secondary boycott prohibitions, as this is specifically referred to in the Issues Paper, AMMA would welcome the opportunity to provide the Panel with further submissions on the intersection of competition policy and industrial relations.

55. AMMA does not intend to canvass in forensic detail the extensive range of concerns the resource industry has with the *Fair Work Act 2009* given the indication of the Review Panel that this will not be dealt with in this inquiry.

56. However, and for the record, it is a concern for resource sector employers that unions continue to strategically use their significant rights and capacities under the *Fair Work Act 2009* to limit the ability of an employer to engage workers on terms and conditions which meet the operational needs and cost parameters of resource projects. This occurs against a backdrop of historically low unionisation in the private sector with unions now representing only 12% of the private sector.[24]

57. AMMA supports reconsideration of how existing provisions regarding enterprise bargaining agreement content and the taking of protected industrial action operate, and their impact on the competitiveness of Australian enterprises.

58. This would include, *inter alia*, the seemingly lawful ability for unions to limit and restrict employers' use of independent contractors through "pay parity" clauses in enterprise agreements which do not offend the existing general protections provision of the *Fair Work Act 2009*, nor the CCA.[25] The *Fair Work Act 2009* allows unions to pursue such terms in enterprise agreement bargaining so long as they pertain to the relationship between employers and trade unions and employers and their employees under s.172. AMMA intervened in a significant Full Federal Court judicial review proceeding in support of AiG's appeal against an earlier Full Bench decision of the Fair Work Commission.

59. The decision of the Full Federal Court essentially allows a green light for trade unions are able to pursue pattern agreements across an entire industry or sub-sector which restrict competition for labour, particularly in the building and construction industry which feeds into resource projects. This appears to have been intended by the Rudd Government when it introduced the *Fair Work Act 2009*.

60. Relevantly the court noted at [26]:

[24] ABS, Employee Earnings, Benefits and Trade Union Membership, Australia, August 2013 (cat. no. 6310.0).
[25] See for example *Australian Industry Group v Fair Work Australia* [2012] FCAFC108 which dismissed an appeal to overturn a Full Bench decision relating to an enterprise agreement which contained terms dictating that independent contractors should be paid the same as employee who would be covered by the enterprise agreement. See also AMMA's written submission to the *Post-Implementation Review of the Fair Work Act 2009* (February 2012) available here: https://submissions.deewr.gov.au/sites/Submissions/FairWorkActReview/Documents/AustralianMinesandMetalsAssociation.pdf See in particular at p.87 where AMMA recommended changes to the *Fair Work Act 2009* to prohibit certain terms in agreements and for the ability for employees to take protected industrial action in support of such terms.

"If it was intended that s 194 had the effect of disallowing such a clause in an enterprise agreement, the legislature would have made that clear."

61. Apart from direct changes to the *Fair Work Act 2009*, another option to ensure that trade unions are not restricting companies from engaging independent contractors on terms and conditions which suit the company and the contractor is to consider amendments to the *Independent Contractors Act 2006*. For example, amendments to this piece of Commonwealth legislation could prohibit and/or nullify terms in enterprise bargaining agreements which would restrict or control the terms and conditions of an employer engaging contractors.

62. AMMA notes that the proposed Building Code 2014 prescribes certain types of clauses which a code covered entity must not include in enterprise (collective) agreements, including clauses that, *inter alia*:[26]

    a. Impose or purport to impose limits on the right of the code covered entity to manage its business or to improve its productivity.

    b. Prescribe the number of employees or subcontractors that may be employed or engaged on a particular site, in a particular work area, or at a particular time.

    c. Restrict the employment or engagement of persons by reference to the type of contractual arrangement that is, or may be offered by the employer.

    d. Prescribe the terms and conditions on which subcontractors are engaged (including the terms and conditions of employees of a subcontractor).[27]

63. AMMA generally considers that these types of restrictions should not only apply to code covered entities, but should apply more broadly to the making of all enterprise agreements, similar to the prohibited content rules applying under the now repealed s.356 (and associated regulations) of the *Workplace Relations Act 1996*.

Other Matters

64. Other policy issues which AMMA believes are important to consider and that will be raised in the forthcoming Productivity Commission inquiry into the Fair Work laws in greater detail include:

    a. The setting and adjustment of wages and conditions within occupational and industry designated modern awards.

    b. Minimum statutory employment standards (largely contained in the National Employment Standards).

[26] See Part 3, clause 11, Building Code 2014, Advanced Release.
[27] The Explanatory Statement, Building and Construction Industry (Fair and Lawful Building Sites) Code 2014, Attachment A at paragraph 52 states as an illustrative example the following clause:
For example, a clause that provides that subcontractors cannot be engaged unless they apply wages and conditions at least at the same level as the enterprise agreement that applies to the head contractor would be prohibited.

c. The restrictions and problems experienced by employers needing to make a greenfield enterprise agreement for a new resources development/project.

d. The lack of choice regarding agreement options.

e. Capacity for unions to lawfully strike over matters outside of the employment relationship.

f. Enterprise agreement content.

g. The inflexible transmission of instrument regime which locks in labour costs and terms for an incoming employer.

h. The dual regulation of superannuation compliance (and restrictions of retail funds to be a default term in modern awards).

65. To reiterate, whilst AMMA understands this review is unlikely to traverse the above issues in detail, AMMA would strongly encourage the Panel to consider these issues, at least in-principle as matters of note affecting competitiveness in Australia, which should be further examined in the forthcoming Productivity Commission inquiry into the *Fair Work Act 2009* and workplace reform more generally.