National Union of Workers

Submission to the Senate Education and Employment Committee

Fair Work Amendment (Remaining 2014 Measures) Bill 2015

Introduction

The National Union of Workers (**NUW**) is a large Australian trade union registered under the *Fair Work (Registered Organisation) Act 2009* (Cth).

It represents both permanent and casual workers (directly and indirectly engaged) in a range of industries including warehousing, logistics, food processing, manufacturing, poultry, defence logistics, dairy, and market research.

This submission addresses three particular areas of the *Fair Work Amendment (Remaining 2014 Measures) Bill 2015*:

- Flexibility term;
- Right of Entry; and
- Unfair dismissal applications.

Flexibility Term

The NUW opposes the proposed amendment requiring flexibility terms in modern awards and enterprise agreements to provide for unilateral termination of individual flexibility arrangements with 13 weeks' notice.

The Act currently provides for either party to terminate an individual flexibility arrangement on the provision of 28 days' notice. This is a reasonable amount of notice.

The proposal is inappropriate, and potentially disadvantages the employee (or the employer), who upon realising that a particular individual flexibility arrangement may not be as advantageous as initially thought, or where there has been a change in circumstances, is forced to wait more than 3 months before they are able to revert to a standard working arrangement.

The NUW opposes requiring flexibility terms in enterprise agreements provide, as a minimum, that individual flexibility arrangements may deal with when work is performed, overtime rates, penalty rates, allowances and leave loading.

This heavy handed approach appears inconsistent with the Act's object of the promotion of enterprise bargaining, where it is the bargaining representatives and employees that ultimately determine the content (above a set of minimum conditions around leave, wages and the like) as part of the negotiation process rather than the state.

The NUW believes it is the parties to an enterprise agreement that are best placed to determine what areas of flexibility should be part of any potential individual flexibility arrangement.

Further, mandating what parties must be flexible about, rather than letting the parties decide this, is inconsistent with the notion of flexibility.

In any case, it is the NUW's experience that individual flexibility arrangements are little used, with very few employers or employees pursuing such arrangements.

The NUW opposes confirming that benefits other than an entitlement to payment of money may be taken into account.

This change could lead to potentially detrimental outcomes for employees.

Employees would, under this proposal, be open to losing significant amounts of remuneration for a marginal non-financial benefit that is difficult or impossible to quantify.

The NUW opposes providing a defence to an alleged contravention of a flexibility term where the employer reasonably believed that the requirements of the term were complied with at the time of agreeing to a particular individual flexibility arrangement.

This proposal provides a perverse disincentive for employers to be prudent and thorough when agreeing to an individual flexibility arrangement with an employee.

The NUW notes that the obligation on an employer to simply ensure a flexibility term is not contravened is hardly an onerous one.

Right of Entry

The NUW opposes repealing amendments made by the Fair Work Amendment Act 2013 that required an employer or occupier to facilitate transport and accommodation arrangements for permit holders exercising entry rights at work sites in remote locations.

The proposals would make it far more difficult for workers in remote and regional Australia to exercise their rights to freedom of association and collective bargaining by limiting their practical access to union assistance and representation.

The NUW opposes repealing amendments made by the Fair Work Amendment Act 2013 relating to the default location of interviews and discussions and reinstating pre-existing rules.

A Union's ability to access its members and other workers is integral to it performing its role as a representative and advocate for working people.

This proposed change would undermine the opportunities for unions and employees in this regard by denying employees the ability to meet union officials in the most convenient locations for employees.

Employers should not be able to unilaterally determine what is a reasonable location for a meeting to take place. Such a determination is more appropriately made by through consultation and agreement with unions and of course employees, and where no agreement can be reached, these meetings should continue to occur where employees (including potential members) are together – namely where they socialise, eat and congregate during their breaks.

NUW members repeatedly indicate a preference to meet with their union representatives in lunchrooms or equivalent spaces, on the basis that it is the most convenient, comfortable (and often, due to size of a particular short or work group) only practical place to meet.

The current position with regard to meeting locations is consistent with Australia's international legal obligations around freedom of association.

The NUW notes that the current arrangements have been in place since 1 January 2014, and have not prevented unions, workers and employers from continuing to have productive relationships.

There is no cogent argument that has been made to deny unions on behalf of their members and employer from negotiating alternate right of entry arrangements. The proposed curtailment of the rights of unions to represent and provide information to members and potential members, and of workers to be represented and receive information, would be simply an exercise in denying workers the ability to freely associate and exercise associated workplace rights.

The NUW opposes expanding the capacity to deal with disputes about the frequency of visits to premises for discussion purposes

This change is unnecessary, as there are already adequate provisions in the Act that deal with dispute resolution, which were introduced by the *Fair Work Amendment Act 2013.*

Unfair Dismissal Applications

The NUW opposes providing that the FWC is not required to hold a hearing or conduct a conference when determining whether to dismiss an unfair dismissal application.

This would represent a concerning breach of natural justice for workers. It has been a fundamental feature of the unfair dismissal system since its conception that parties are able to be heard prior to the dismissal or termination of an application.

The NUW believes that this element of procedural fairness to employees should be retained.

Conclusion

The NUW believes that existing provisions in the Act are working in a way that properly balances the rights of employers and employees. The proposed amendments are unnecessary and mostly designed to expand the rights of employers while at the same unnecessarily restricting the rights of workers to join and be represented by trade unions.