

12 November 2012

The Committee Secretary  
Senate Education, Employment and Workplace Relations Committees  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Committee Secretary,

**Fair Work Amendment Bill 2012**

We provide the following submission in relation to the Fair Work Amendment Bill 2012 (the Bill).

The legislative outcomes of the Fair Work Act Review (the Review), as reflected in the Bill, demonstrate that the well documented and consistent concerns of employers have not been addressed and the opportunity for effective regulatory reform has been bypassed.

The Bill is described by the Australian Government as the first tranche of the government's response to the review of the Fair Work Act 2009 (the Act). The Minister for Education and Workplace Relations, Financial Services and Superannuation has described the 'first tranche' of amendments as those that are broadly supported.<sup>1</sup>

AFEI made comprehensive submissions earlier this year to the Review including oral submissions to the Review Panel.<sup>2</sup>

AFEI submissions indicated that the Act is not operating effectively, has increased employment costs and reduced flexibility in employment. AFEI proposed in excess of 25 amendments to the Fair Work Act.

Of the changes proposed by AFEI only one is included in the Bill concerning a reduction in the time for making general protections claims and aligning that time limit with the time limit for making unfair dismissal claims.

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<sup>1</sup> The Hon Bill Shorten MP. (2012). *Government implements first tranche response to Fair Work Act Review* [Press Release]. Retrieved from <http://ministers.deewr.gov.au/shorten/government-implements-first-tranche-response-fair-work-act-review>

<sup>2</sup> Australian Federation of Employers and Industries. 2012. *AFEI submission to Fair Work Act review panel*. Retrieved from: <http://www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/AustralianFederationofEmployersandIndustries.pdf>,

While the time limit for making general protection claims should be reduced substantially and, ideally, aligned with the time limit for making unfair dismissal claims, the Bill proposes to achieve this through an extension of the time limit for making unfair dismissal claims from 14 to 21 days.

AFEI opposes the proposed extension of the time limit for filing unfair dismissal claims. The proposed extension of time will result in increased uncertainty for employers in a climate in which unfair dismissal claims are rising each year since the introduction of the Act and are currently around 14,000 per year<sup>3</sup>. The proposed 21 day period will be significantly at odds with the original 7 days proposed in the Fair Work Bill 2008<sup>4</sup>. The unfair dismissals provisions were intended, among other things, to discourage 'go away' money. Clearly the provisions are not working effectively and not as the Government intended. None of the proposed amendments will remedy the current situation and the extension of the time limit will exacerbate the difficulties already faced by employers under the current laws.

We refer also to other proposed amendments in the Bill which may be regarded by the Australian Government as non-contentious in that they enshrine in legislation the current interpretations of the Act by Fair Work Australia (FWA). These include the amendments concerning enterprise agreements with more than one employee, opt-out clauses and the form of notices of representational rights. The FWA interpretations, however, have imposed a greater regulatory burden, higher costs and less flexibility on employers. The proposed amendments will not address the genuine concerns of employers that the enterprise bargaining provisions in the Act have failed to promote workplace flexibility and productivity.

We would be prepared to provide further information if required by the Committee.

Yours sincerely,



**Garry Bfack**  
**Chief Executive**

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<sup>3</sup> Fair Work Australia. 2012. *Fair Work Australia Annual Report 2011-2012* . pg 27. Retrieved from [http://www.fwa.gov.au/documents/annual\\_reports/ar2012/FWA Annual Report 2011-12.pdf](http://www.fwa.gov.au/documents/annual_reports/ar2012/FWA%20Annual%20Report%202011-12.pdf)

<sup>4</sup> *Fair Work Bill (2008)* (Cth) s394 (Austl) Retrieved from <http://www.comlaw.gov.au/Details/C2008B00262>