

CHAPTER 1

Introduction and overview

Reference

1.1 On 1 November 2012, the Senate referred the provisions of the Fair Work Amendment Bill 2012 (the bill) to the Senate Education, Employment and Workplace Relations Legislation Committee (the committee) for inquiry and report by 26 November 2012.

Conduct of inquiry

1.2 The committee advertised in *The Australian* on 7 November 2012, calling for submissions by 13 November 2012. Details of the inquiry were also made available on the committee's website.¹

1.3 The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 34 individuals and organisations, as detailed in Appendix 1.

1.4 A public hearing was held in Canberra on 21 November 2012. The witness list for the hearing is at Appendix 2.

Background

1.5 The bill seeks to implement the first tranche of amendments to the Fair Work Act (the Act) recommended by a review of the Act conducted between December 2011 and June 2012, by an independent panel of three experts. The panel made 53 recommendations aimed at improving the operation of the legislation without compromising productivity and fairness in the workplace.

Overview of the bill

1.6 According to the Explanatory Memorandum (EM), apart from technical and consequential amendments, the bill would make:

- amendments to clarify that opt-out terms cannot be included in enterprise agreements, that enterprise agreements cannot be made with only one employee and that a union official from one union cannot act as a bargaining representative where that union does not have coverage;
- amendments to align the time limits for lodging unfair dismissal claims and general protections claims involving dismissal at 21 days and to provide new

1 www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=eet_ctte/Fair_work_2012/index.htm (accessed 12 November 2012)

measures in relation to dismissing unfair dismissal applications and costs orders in certain circumstances;

- amendments to clarify which union members are able to vote on and participate in protected industrial action and the conduct of protected action ballots, including allowing for electronic voting and requiring ballots to be conducted expeditiously
- structural amendments to FWA including:
 - changing the name to the Fair Work Commission (FWC), including provision for the appointment of the General Manager on the nomination of the FWC President;
 - allowing stay orders to be made by Presidential Members;
 - allowing for the appointment of acting Commissioners;
 - creating two statutory positions of Vice President;
 - establishing a process to deal with complaints against FWC members and streamlining provisions dealing with conflicts of interest of members; and
 - other minor amendments to improve the conduct of matters before the FWC.

1.7 The bill would also amend the Act to give effect to the Government's response to the Productivity Commission's *Report into Default Superannuation Funds in Modern Awards (Report No. 60)*. The bill would specifically:

- introduce new requirements in relation to modern award terms about default superannuation, and a process under which the FWC would review default fund terms every 4 years (at the same time as the 4 yearly review of modern awards); and
- provide for the establishment of the Expert Panel, which will subsume the functions of the Minimum Wage Panel (MWP) and will include members with relevant expertise to allow them to be appointed to the Expert Panel assessing default superannuation funds or to the Expert Panel responsible for the annual minimum wage review.

Compatibility with human rights

1.8 The provisions in the bill engage a number of rights, including the right to just and favourable conditions of work, the right to freedom of association, the right to privacy and reputation, and the right to a fair hearing. The Explanatory Memorandum states that the bill is compatible with human rights and freedoms.² The Parliamentary

2 Explanatory Memorandum, p. 3. See also pp 3 – 10.

Joint Committee on Human Rights has not yet reported on its consideration of the bill.³

Matters identified by the Senate Scrutiny of Bills Committee

1.9 The committee notes that the Senate Standing Committee for the Scrutiny of Bills wrote to the Minister for Employment and Workplace Relations, the Hon. Bill Shorten MP, regarding certain aspects of the bill. These specifically relate to the possible inappropriate delegation of power and possible undue trespass on personal rights and liberties.⁴ The Minister's response is unlikely to be received before the tabling of this report. The committee considers that the matters raised by the Scrutiny of Bills Committee should be satisfactorily resolved before the bill proceeds.

Acknowledgment

1.10 The committee thanks those individuals and organisations who contributed to the inquiry by preparing written submissions and giving evidence at the hearing.

Notes on references

1.11 References in this report to the *Hansard* for the public hearing are to the *Proof Hansard*. Please note that page numbers may vary between the proof and the official transcripts.

3 The Parliamentary Joint Committee on Human Rights' Seventh Report of 2012 will be available on the following website, once it is tabled:

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=humanrights_ctte/reports/index.htm (accessed 22 November 2012).

4 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest No. 14 2012*, 21 November 2012, pp 8–12. Concern was raised in relation to Part 4, Schedule 6; Schedule 8, item 62, proposed subsection 581A(3); Schedule 8, item 62, proposed section 581B and Schedule 11, item 1.