

CHAPTER 1

Fair Work Amendment Bill 2014

Reference

1.1 On 6 March 2014, the Senate referred the provisions of the Fair Work Amendment Bill 2014 to the Education and Employment Legislation Committee for inquiry and report by 5 June 2014.¹

Conduct of inquiry

1.2 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 23 individuals and organisations, as detailed in Appendix 1. A public hearing was held in Canberra on 14 May 2014. The witness list for that hearing is available in Appendix 2.

Background

1.3 The Bill would amend the *Fair Work Act 2009* (Cth) (FWA) to implement numerous policy commitments made by the Government before the 2013 federal election. These commitments were outlined in the *Policy to Improve the Fair Work Laws* released by the then shadow Minister (and current Minister) for Employment, Senator the Honourable Eric Abetz.² The Bill also responds to numerous outstanding recommendations from the review into the Fair Work Act (FWA) (Fair Work Review Panel): *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation* (June 2013).³

Fair Work Review Panel Recommendations

1.4 The Bill proposes to implement numerous recommendations of the Fair Work Review Panel, including:

- Recommendation 3 (extensions of unpaid parental leave);⁴
- Recommendation 6 (annual leave paid on termination in accordance to relevant industrial instrument);⁵
- Recommendation 2 (employees cannot take or accrue leave under the FWA);⁶
- Recommendation 9 (requires flexibility terms in modern awards and enterprise agreements);⁷

1 *Journals of the Senate*, 6 March 2014, pp 575 to 577.

2 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

3 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

4 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

5 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

6 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

- Recommendation 11 (requires flexibility terms in enterprise agreements provide, as a minimum, that such agreements may deal with when work is performed, overtime, penalty rates, allowances and leave loading);⁸
- Recommendation 12 (confirms that benefits other than entitlement to payment of money may be taken into account in determining whether the employee is better off overall under the individual flexibility arrangement);⁹
- Recommendation 24 (provides a defence to an alleged contravention of a flexibility term);¹⁰
- Recommendation 31 (provides that an application for a protected action ballot order cannot be made unless bargaining has commenced);¹¹
- Recommendation 38 (provides that there will not be a transfer of business under Part 2-8 of the FWA when an employee becomes employed with an associated entity of his or her former employer after seeking that employment on his or her own initiative before the termination of the employee's employment with the old employer);¹² and
- Recommendation 43 (provides that subject to certain conditions, the Fair Work Commission (FWC) is not required to hold hearings or conduct conferences when determining whether to dismiss an unfair dismissal claim).¹³

Government policy before the 2013 election

1.5 The remaining elements of the Bill seek to implement commitments made by the Government prior to the election, including providing for new single-enterprise greenfields agreements and amending the right of framework conditions in the FWA. These include repealing numerous amendments made by the *Fair Work Amendment Act 2013* (Cth) that required employers or occupiers to:

- provide transport and accommodation arrangements for permit holders;
- provide new eligibility criteria to determine whether permit holders may enter premises for the purposes of holding discussions or conducting interviews;
- change legislative requirements for default locations for interviews; and

7 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

8 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

9 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

10 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

11 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. ii.

12 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. ii.

13 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. ii.

- expand the FWC's capacity to deal with disputes about the frequency of visits to premises for discussions.¹⁴

Overview of the Bill

1.6 The Bill was introduced in the House of Representatives on 27 February 2014.¹⁵ The Bill is comprised of two schedules. Schedule 1 proposes to amend the FWA as follows:

Schedule 1, Part 1	Extensions of periods of unpaid parental leave
Schedule 1, Part 2	Payment for annual leave
Schedule 1, Part 3	Taking or accruing annual leave while receiving workers' compensation
Schedule 1, Part 4	Individual flexibility arrangements
Schedule 1, Part 5	Greenfields agreements
Schedule 1, Part 6	Transfer of business
Schedule 1, Part 7	Protection action ballot orders
Schedule 1, Part 8	Right of entry
Schedule 1, Part 9	FWC hearings and conferences
Schedule 1, Part 10	Unclaimed money ¹⁶

1.7 Schedule 2 contains numerous transitional amendments to the FWA.

Human Rights implications

1.8 The explanatory memorandum details the bills engagement of numerous human rights instruments:

- the right to work under Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to just and favourable conditions of work under Article 7 of the ICESCR;
- the right to maternity leave under Article 10(2) of the ICESCR and Article 11(2) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);

14 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, p. i.

15 *Votes and Proceedings*, 27 February 2014, pp 329 to 330.

16 Fair Work Amendment Bill 2014, p. i.

- the rights of parents and children under Articles 3, 5 and 18 of the Convention of the Rights of the Child (CRC) and Article 5(b) of the CEDAW;
- the right to an effective remedy under Article 2 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to a fair hearing under Article 14 of the ICCPR;
- the right to protection against arbitrary and unlawful interferences with privacy under Article 17 of the ICCPR; and
- the right to freedom of association in Article 22 of the ICCPR.¹⁷

1.9 The explanatory memorandum states that the Bill is compatible with human rights and freedoms listed under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), arguing that the amendments are compatible as they advance the protection of human rights. Further it argues:

To the extent that the amendments may limit human rights, those limitations are reasonable, necessary and proportionate.¹⁸

Financial Impact Statement

1.10 The Committee notes the inclusion in the Regulation Impact Statement of data suggesting the red tape and compliance savings for the amendments are expected 'to be in order of \$70,052,747 per year over ten years to the Australian economy.'¹⁹

Acknowledgement

1.11 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

1.12 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.

17 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, at Statement of Compatibility, p. li.

18 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, at Statement of Compatibility, p. lxiii.

19 Fair Work Amendment Bill 2014, *Explanatory Memorandum*, at Regulation Impact Statement, p. xlviii.