

ANNEXURE A

Letters of complaint submitted to Minister Julia Gillard and Ms Barbara Bennett by Enterprise Initiatives

30 September 2008

The Hon. Julia Gillard, MP
Deputy Prime Minister; Minister for Employment and Workplace Relations;
Education and Social Inclusion
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

Dear Minister,

Timeframe for Approval of Collective Agreements – A Necessity

I have previously written to you providing an overview of our 18 years experience assisting over 3,000 small businesses and their employees with the workplace agreement making process.

I now write in reference to your intention to fully enact Labor's Forward With Fairness Policy in the form it was presented to the Australian public before the 2007 federal election. I note that the following important procedural element of the policy has so far been entirely ignored:

Under Labor's system, collective agreements will be approved by Fair Work Australia within 7 days.

I commend Labor for making this commitment. However, I am extremely concerned that, as yet, no defined timeframes exist for the assessment of agreements. I feel that this issue must be addressed, as such a lack of accountability from the Workplace Authority is causing a great deal of frustration to employers and employees.

I estimate that since the assessment of collective agreements moved from the Australian Industrial Relations Commission to the Workplace Authority in 2006 the average timeframe for assessment has increased from 21 days to 12 months. This is evidenced by the fact that a number of Employee Collective Agreements that my organisation lodged in the middle of 2007 are only now being reviewed against the then Fairness Test. Also, all agreements we have lodged over the past 6 months have not received any response from the Workplace Authority. I feel that this is appalling as this delay has led some employers to be subject to crippling back-pay issues that would have otherwise been avoided had assessments been made in a timely manner.

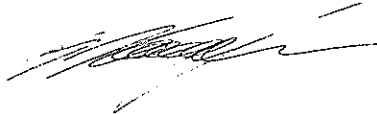
Furthermore, now that agreements do not commence operating until approved by the Workplace Authority, any delay has the capacity to cause mass uncertainty and ongoing

grievances in many thousands of workplaces around Australia. On numerous occasions colleagues of mine who have attempted to seek clarification on Forward with Fairness assessments (that is; agreements lodged subsequent to the introduction of the No-Disadvantage Test in March 2008) have been informed by officers at the Workplace Authority that 'it is policy that no timeframe is given for such assessments'. This has left clients in doubt of when they will be able to operate under a legitimate industrial instrument which is supposed to be the centrepiece of Labor's new workplace relations regime.

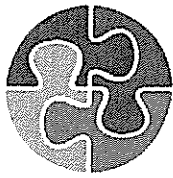
Minister, I strongly encourage you, for the sake of all employers and employees to introduce accountability and clear timeframes for the assessment of agreements by the Workplace Authority and in time, Fair Work Australia, as the current situation is unreasonable and overly burdensome for business and employees.

For your information I will be circulating this letter and any response with our fortnightly newsletter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ben Thompson', with a long horizontal line extending to the right.

Ben Thompson
Managing Director



Enterprise
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The Hon. Julia Gillard MP
Minister for Employment and Workplace Relations
PO Box 6022
House of Representatives
Parliament House
Canberra ACT 2600

9 September 2008

Re: Workplace Authority Management of Employee Collective Agreements

Dear Minister,

We write with serious concerns regarding the management by the Workplace Authority of Employee Collective Agreements ("ECAs") that have been lodged by Enterprise Initiatives Pty Limited. Enterprise Initiatives has operated as a bargaining agent for employers since the inception of collective bargaining, and as such has grown to become one of Australia's largest private providers of workplace bargaining and agreement-making services.

Our concerns involve the treatment of ECAs lodged by us, on behalf of our clients, in accordance with the Fairness Test. In particular our concerns relate to the management of the undertakings and reassessment process that occurs when an ECA is assessed as not having met the Fairness Test and more specifically the conflicting information provided by officers of the Workplace Authority in this regard, and lack of timeframes for assessments.

As a bargaining agent, we have now managed several situations where an agreement has not met the Fairness Test. On several occasions we have identified errors within the assessment process undertaken by the Workplace Authority, which have subsequently led us to lodging a request for reassessment of the agreement. Such errors include:

- the Workplace Authority applying incorrect rates of pay (for example, applying post October 2007 rates of pay to agreements lodged prior to this date);,

- utilising inappropriate Awards for the purposes of the Fairness Test assessment;
- applying industry default hours of operation even when actual hours of operation have been provided;
- not recognising that the Fairness Test under the prevailing legislation is a point-in-time test taking into consideration the specific circumstances of the individual employer and their employees at the time the agreement was made and approved (pursuant to 346N of the prevailing legislation);
- failing to apply the Australian Fair Pay and Conditions Standard to agreements made by organisations incorporated after the 26th March 2006, and
- failing to apply the Fairness Test in accordance with the Workplace Authority's own policy guide.

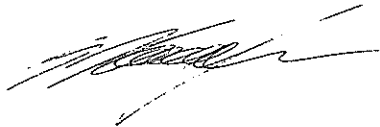
Most recently our client, [REDACTED] received a notification that their ECA had failed the Fairness Test, with undertakings to increase the minimum rates under that ECA. These undertakings were signed and returned to the Workplace Authority, along with a request for reassessment based upon the fact that the industry default span of hours used to assess the agreement bore little resemblance to the actual hours of work undertaken by employees at that company. Actual rosters had already been provided as evidence of these hours but were apparently ignored. Both the signed employer undertaking and the letter requesting reconsideration were lodged with the Workplace Authority on the 18th August 2008 (it should be noted that the original agreement was lodged in September 2007 – almost a full year prior). On 21st August 2008 the Workplace Authority issued a letter stating that the ECA as amended by the undertaking made by the employer passed the Fairness Test. No communication with respect to whether the agreement had been reassessed had been received. Over the past week our office has made over ten phone calls to the Workplace Authority in order to determine how the ECA is to be reassessed, and what advice to provide our client given these circumstances. It was then established that the Workplace Authority had failed to reassess the ECA in accordance with the reassessment request, and had issued the notification that the ECA had passed as varied in error.

We write to you with these concerns as it has taken one of our most senior managers over 10 hours to follow up this matter, which continues to remain unresolved. The lack of timeframes for the Workplace Authority to consider agreements and reassessments has led to a situation where the vast majority of our clients have waited over 8 months, and in some cases over 12 months, for any

feedback from the Workplace Authority in relation to their ECAs. Furthermore, when a reassessment is requested, further significant delays are applied to the process. Additionally, there is no way of receiving feedback from the Workplace Authority as to the progress of an agreement through this process as it is policy of that agency that neither the Agreement Assessors, nor Reconsideration Assessors, talk to the public (we were advised of this during phone call reference number 2010594). This seems to be an incongruous situation given that these are employees of the crown, and it has been our experience in the past that these matters are best dealt with through regular communication and face-to-face meetings.

We appreciate you looking into these matters.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ben Thompson', with a long horizontal line extending to the right.

Ben Thompson

Managing Director

CC: Senator The Hon. Penny Wong, Senate Representative for Workplace Relations

Ms. Barbara Bennett, Director of the Workplace Authority