

8 April 2009

Mr John Carter  
Committee Secretary  
Senate Standing Committee on Education, Employment and  
Workplace Relations  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Via email: [eewr.sen@aph.gov.au](mailto:eewr.sen@aph.gov.au)

Business  
Council of  
Australia



Dear Mr Carter

**INQUIRY INTO THE PROVISIONS OF THE FAIR WORK (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 2009**

The Business Council of Australia (BCA) appreciates the opportunity to comment on the government's Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 (Transitional Provisions Bill).

The BCA represents the chief executives of over 100 of Australia's leading companies. The BCA develops and advocates, on behalf of its members, public policy reform that positions Australia as a strong and vibrant economy and society. The businesses that the BCA members represent are among Australia's largest employers and represent a substantial share of Australia's domestic and export activity.

The BCA is represented on the Committee on Industrial Legislation (COIL) of the National Workplace Relations Consultative Council, which has reviewed the Bill. During that process a number of significant issues were consistently raised by business representatives. It appears that many of these have been addressed, for example, those relating to unilateral termination of AWAs and ITEAs, and to the basis upon which Fair Work Australia will be able to make take-home pay orders.

That said, the BCA does have some continuing concerns about the content of the Transitional Provisions Bill. It is not, for example, persuaded of the efficacy or appropriateness of conditional termination of AWAs and ITEAs. Most importantly, it has significant concerns about the delays that its members experience in obtaining approval for agreements from the Workplace Authority Director (WAD). These concerns are compounded by the possibility that agreements made during the bridging period (or even before the repeal of the Workplace Relations Act [WR Act]) might not be formally approved until some considerable time after the full commencement of the Fair Work Act.

A number of suggestions were put forward by business and union representatives to address this situation. But it does not appear that the current Bill has addressed these concerns in any substantive way.

As the BCA has argued consistently, it is imperative that all aspects of the new workplace relations system support and enable flexibility and the capacity for businesses and their employees to adapt and respond quickly to changing circumstances. Undue delays in processing agreements works against this.

The BCA also notes that there are still significant gaps as to matters of detail concerning the implementation of the new legislative regime. These gaps are to be filled by regulation. The BCA does not have an in-principle objection to the use of regulations for this purpose. It does, however, have an active interest in the content and effect of the proposed regulations, and trusts that it and other business representatives will be provided with an opportunity to provide meaningful input into their development. It is also of the strong view that regulations should not be used to deal with significant policy issues: that is a matter that is properly the responsibility of the Parliament.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Melinda Cilento', with a stylized flourish at the end.

**Melinda Cilento**  
Deputy Chief Executive