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Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: eec.sen@aph.gov.au

Dear Committee Secretary

I write to you in relation to the inquiry into the *Fair Entitlements Guarantee Amendment Bill 2014* by the Senate Education and Employment Legislation Committee.

Executive Summary:

It is appropriate to provide a scheme of last resort to protect core employee entitlements where a business is liquidated or declared bankrupt. For more than ten years the industrial and legislative standard for redundancy has been a maximum of 16 weeks redundancy pay. Given that the Fair Entitlements Guarantee (FEG) is meant to be a scheme of last resort, it is fair and reasonable that the maximum amount of redundancy pay provided is aligned with the National Employment Standards (NES). There are no reasons for providing taxpayer assistance to guarantee redundancy schemes in excess of the NES standard.

Accordingly, Business SA supports the passing of the *Fair Entitlements Guarantee Amendment Bill 2014*

Background:

A scheme of last resort has been in place since 2001 to protect employee entitlements, including unpaid wages, annual leave, long service leave, payment in lieu of notice and redundancy pay where an employee's employment is terminated due to the liquidation or bankruptcy or their employer. This appropriately ensures that employees will be able to access their core entitlements in the unfortunate event they lose their job due to liquidation or bankruptcy.

The Howard Federal Government introduced the General Employee Entitlements and Redundancy Scheme (GEERS) in 2001 which provided a maximum amount of 8 weeks redundancy pay¹. The maximum payment of 8 weeks was consistent with the industrial standard in Federal and State awards that had been in place since the 1984 Termination,

¹ Abbott T 2001, Minister for Employment, Workplace Relations and Small Business, Even better arrangements to protect employee entitlements, media release, 20 September 2001

Change and Redundancy Case.

The then Australian Industrial Relations Commission in March 2004 handed down its decision in the 2004 Redundancy Case Decision, PR032004, increasing the maximum amount of redundancy pay contained in Federal Awards from 8 weeks to 16 weeks. From 22 August 2006², the new industrial standard for redundancy pay was reflected in the GEERS with the maximum amount of redundancy pay provided increased to 16 weeks

With the commencement on 1 January 2010 of the National Employment Standards (NES) under the *Fair Work Act 2009* (the Act), redundancy pay became one of the core ten entitlements applicable to all national system employees. Under the NES the maximum amount of redundancy pay is 16 weeks.

For more than 10 years the maximum amount of redundancy pay provided by the award system and later by the *Fair Work Act 2009* has been 16 weeks. However, the enactment of the *Fair Entitlements Act 2012* removed the link between renamed scheme - the Fair Entitlements Guarantee (FEG) and the NES.

Instead of an upper limit of 16 weeks redundancy pay, the FEG guarantees up to four weeks of redundancy pay per year served with no upper limit, which is significantly more generous than the NES. This means that any redundancy scheme provided for by a “*governing instrument for employment*” (i.e. a written law, an award, determination, written instrument or agreement) which is excess of the NES is guaranteed by the taxpayer funded FEG.

Given that the Fair Entitlements Guarantee (FEG) is meant to be a scheme of last resort by guaranteeing the core employee entitlements in the unfortunate event that an employee’s employer is liquidated or made bankrupt, it is fair and reasonable that the amount of redundancy pay is aligned with the minimum enforceable entitlements in the NES. Also given that Parliament has determined that a maximum of 16 weeks redundancy pay is the acceptable standard for redundancy in all other circumstances, Business SA submits that there are no reasons for providing taxpayer assistance to guarantee redundancy schemes in excess of the NES standard.

Of course businesses and unions are free to agree to more generous redundancy provisions in the course of enterprise bargaining. However, having a taxpayer funded scheme guaranteeing more generous redundancy provisions does not encourage responsibility in the bargaining process and for industrial practices to be sustainable in the long term.

² Department of Education, Employment and Workplace Relations 2006, *General Employee Entitlements and Redundancy Scheme: Operational Arrangements 1 November 2005 to 31 October 2006*.

In this context we note the remarks of the Minister in the Second Reading Speech that FEG in its current form *“creates a moral hazard - it provides an incentive for employers and unions to sign up to unsustainable redundancy entitlements, safe in the knowledge that if the company fails, the Fair Entitlements Guarantee and the Australian taxpayer will pay for it.”*

In conclusion, the *Fair Entitlements Guarantee Amendment Bill 2014* will provide a more reasonable and balanced approach to the protection of redundancy pay by aligning the FEG with the NES, an approach fully supported by Business SA.

Who we are:

As South Australia's peak Chamber of Commerce and Industry, Business SA is South Australia's leading business membership organisation. We represent thousands of businesses through direct membership and affiliated industry associations. These businesses come from all industry sectors, ranging in size from micro-business to multi-national companies. Business SA advocates on behalf of business to propose legislative, regulatory and policy reforms and programs for sustainable economic growth in South Australia.

Yours sincerely

~~Rick Cairney~~
Director of Policy