

Answers to questions on notice provided by the Australian Manufacturing Workers' Union

- 1) Senator FARUQI:** Thank you so much to you and your members who have been on the frontline of the pandemic for some time now. I'm interested in what you're able to share about the priority issues raised during the working group process. I understand that AMWU was involved in the greenfield agreement working group. I'd just like to know what priorities did you raise, and are any of those actually reflected in the bill?

The AMWU's representative on the Greenfields Working Group reports that the AMWU and other unions raised the issues of duration, wages, wage increases, work value (classifications), parties to the agreements, rules around how they would be negotiated, and the role of the FWC in making sure that these new agreements did not disadvantage the workers covered by them.

The employers proposed a much weaker set of protections and processes – lower thresholds for the application of the new time limits, shorter negotiation periods before the FWC could approve the agreements, allowing the employer to pick and choose who they negotiated with, among other things.

In our view, the Bill reflects the employer wish list and none of the proposed improvements and protections the unions requested were included.

- 2) CHAIR:** Would you accept that the bill makes the processes for recovering underpayments quicker and easier?

There are some improvements in the Bill, such as the “small claims” limit to \$50,000 which will assist the recovery of many underpayment claims, particularly the straightforward refusal to pay out entitlements. The use of conciliation as part of the process is also likely to result in faster resolution of the claims.

However, while most underpayment claims should be able to be dealt with more efficiently, the AMWU has dealt with claims that exceed \$50,000 or claims that deal with more complex matters for which the small claims process might not be appropriate.

In the scope of the Bill as a whole, these minor improvements do not offset the significant harm done to workers whose wages have been stolen.

- 3) CHAIR:** What is the effect of the current section 189 and how does it compare with the proposed change?

The AMWU believes that the BOOT is an integral protection for workers who enter into enterprise agreements. When the AMWU is a party to the bargaining process we have measures in place to inform members, and, by extension, other employees, of Award entitlements and where Agreement provisions may be in breach. However not all workplaces have unions active in the bargaining process and workers may not be aware of all their entitlements or, more likely, the entitlements of all employees who will be covered by the proposed enterprise agreement. As such the Fair Work Commission's power to not approve an enterprise agreement that fails to meet the BOOT is an important one.

The AMWU notes that the proposed amendment provides a number of examples to demonstrate “public interest”. The AMWU is sceptical that there is a need for this amendment as the Fair Work Commission can already assess the impact of the enterprise agreement on all workers covered by the Agreement and prevent approval of an Agreement that will leave any workers – particularly apprentices or those who are in a minority within the workplace – no better off than the Award.

- 4) Senator O'NEILL:** I have a question that you might want to take on notice. We've had a massive drop in the eligibility criteria for a greenfields agreement. We talked about the length of them, but it's dropped to \$250 million. It sounds like a lot to normal Australians, because we don't have that money washing around in our accounts, but in terms of big businesses and the manufacturing sector that's not really very much. Could you provide on notice some understanding for the committee about the advantages or disadvantages of the government's proposed drop to \$250 million. That would be very helpful.

The AMWU believes that the new, lower threshold of \$250 million will be bad for workers. In the working group, our representative suggested that \$5 billion would be a more appropriate figure.

As outlined in our submission, we believe that the new approach to Greenfields Agreements in the Bill could see projects such as defence procurement (ship and submarine building) and commercial construction in major cities eligible for the longer deadlines, rather than the large resource projects commonly imagined.

This would likely see a significant number of workers locked out of the bargaining for the wages and conditions that govern their work. These changes should be rejected.

- 5) Senator O'NEILL:** If you could provide on notice the safety implications if this legislation passes, in the context of the type of work

The AMWU believes that the Bill will encourage an increase in casual and insecure work, including labour hire. It has been clearly established that casual and insecure workers are more likely to be injured at work, less likely to feel comfortable raising safety concerns and much less likely to receive on the job training. We need new industrial laws that improve workplace safety, reduce insecure work and allow workers to bargain for a improved wages and conditions – the Bill will do the opposite.

- 6) CHAIR:** I've got one question on notice too: in what circumstances does Labor's current section 189 enable employers to bargain under the award?

In the AMWU's experience, there are some employers who have a complete disregard for the law and will attempt to engage workers on wages and conditions less than the Award. These employers were in existence before the commencement of the Fair Work Act and, unfortunately, will continue to exploit workers regardless of whatever changes are made to bargaining. The AMWU does not support bargaining below the Award in any circumstances.

The AMWU also notes that the BOOT is about workers being "better off" than the Award. An employer can, in theory, choose to enter into an enterprise agreement that has the same overall financial outcome for a worker as they would under an Award, but has tailored certain conditions in their enterprise agreement to better meet the needs of their workplace – such as rostering arrangements, obligations on employees in terms of absences, cashing out of leave etc. Such an agreement might not meet the BOOT, but it would not be lesser conditions than under the Award.

The BOOT is also applied when an enterprise agreement is varied. In rare circumstances, such as trying to avoid an imminent collapse of a large business, an employer might seek to negotiate a variation to an Agreement that dramatically cuts pay and conditions. This might seek to bring the Agreement back to the Award.

However, it should be noted that there are two parties to bargaining and if an agreement is below the Award then it can and should be rejected by the employees who will be covered by it.