

Overview of the Fair Work Amendment Bill 2013

Structure of the Bill

- 1.1 The Fair Work Amendment Bill 2013 (the Bill) proposes to amend the *Fair Work Act 2009* (the Act) in six broad areas:
- expanding the existing family friendly arrangements provided under the Act;
 - amending the modern awards objective to provide a fair and relevant minimum safety net of terms and conditions;
 - introducing new anti-bullying measures;
 - amending right of entry provisions;
 - amending the functions of the Fair Work Commission (FWC); and
 - providing some minor technical amendments.
- 1.2 Each set of amendments is given effect in separate schedules within the Bill.

Referral and conduct of the inquiry

- 1.3 On 21 March 2013, the House of Representatives Selection Committee referred the Bill to this Committee for inquiry and report. The reason for the referral was:
- The bill makes changes to the Fair Work Act that will have an impact on each employee and employer in Australia. It is

important that the Parliament be fully aware of this bill and identify any unintended consequences.¹

- 1.4 The Committee received 41 submissions, and held a public hearing in Melbourne on 24 May 2013.

Context of the bill

- 1.5 The Explanatory Memorandum (EM) states that the proposed amendments are in response to findings made by the Fair Work Act Review Panel (the Review Panel) in its June 2012 report *Towards more productive and equitable workplaces: An evaluation of the fair work legislation* and this Committee's report on workplace bullying called *Workplace bullying: We just want it to stop*.²

Consultations and the recommendations of the Review Panel

- 1.6 Some business and industry organisations expressed concern that the proposed amendments were 'not as a result of the Review Panel's recommendations' arguing that some of the proposed amendments are Government initiated, and consequently the Bill, 'does not reflect the needs of both employees and employers'.³

- 1.7 Similarly, Australian Business Industrial (ABI) stated:

The Bill purports to respond to recommendations of the [Review] Panel [and] the recommendations of [this] Committee which undertook a significant inquiry into workplace bullying. In reality, the Bill's schedules have little to do with either report and there is little evidence of balance in its proposed provisions. The Bill was assembled quickly with no consultation and little or no warning, and contains consequences which are possibly unintended and certainly no adverted to.⁴

1 House of Representatives Selection Committee, *Report No. 78, Consideration of Bills*, 21 March 2013, p. 4.

2 Fair Work Amendment Bill 2013, Explanatory Memorandum, pp. 1-2; Department of Education, Employment and Workplace Relations (DEEWR), *Submission 16*, p. 3.

3 Business SA, *Submission 2*, p. 4. Other organisations making this point include: Australian Chamber of Commerce and Industry (ACCI), *Submission 12*, p. 9; Master Builders Australia (MBA), *Submission 14*, p. 6; Housing Industry Association, *Submission 19*, p. 4; Australian Federation of Employers and Industries (AFEI), *Submission 38*, p. 3.

4 Australian Business Industrial, *Submission 15*, p. 4.

- 1.8 The Review Panel did not recommend wholesale changes, but instead made 53 technical recommendations to further promote productivity, improve equity or correct anomalies with the Act.⁵
- 1.9 In late 2012, the Parliament passed the first tranche of amendments to the Act based on the Review Panel's recommendations. The Fair Work Amendment Bill 2012, specifically focussed on 'unfair dismissal provisions, the functions of the Fair Work Commission and a range of technical and clarifying amendments'.⁶
- 1.10 The current Bill incorporates a second tranche of amendments. The Department of Education, Employment and Workplace Relations (DEEWR) stated that:
- The Bill implements the Government's response to a further five recommendations of the Fair Work Act Review Panel, as well as other changes arising from consultation with stakeholders following the release of the Review report... The Government is continuing to discuss with stakeholders the remaining recommendations of the Review Panel.⁷
- 1.11 DEEWR noted the Review Panel's consultation process prior to its making recommendations:
- Through the Review process all key workplace relations stakeholders, including employers, employer organisations, employees, unions, state and territory governments, academics and others were given the opportunity to share their views on the operation of the FW Act. The process enabled the Review Panel to undertake an evidence-based assessment of the legislation to determine whether it was meeting its objectives and any areas for improvement.⁸
- 1.12 In addition to the Review Panel's consultations, the Minister consulted the National Workplace Relations Consultative Council (NWRCC) on the amendments at a meeting on 7 March 2013. DEEWR engaged in further consultations with the NWRCC on the Bill's amendments with NWRCC representatives on 8 March 2013 and with state and territory officials on 1 and 8 March 2013.⁹

5 Department of Education, Employment and Workplace Relations (DEEWR), *Submission 16*, p. 4.

6 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 1.

7 DEEWR, *Submission 16*, p. 3.

8 DEEWR, *Submission 16*, p. 5.

9 DEEWR, *Submission 16*, p. 5.

- 1.13 DEEWR also submitted that stakeholders were further consulted on the details contained in the Bill prior to its introduction through the Committee on Industrial Legislation (a subcommittee of NWRCC) on 14 March and 20 March 2013. DEEWR provided copies of the draft legislation to stakeholders and sought their feedback on the proposed amendments.¹⁰ Claims relating to lack of consultation are significant and this Advisory Report will consider them in greater detail in later chapters.

Regulatory Impact Statement and Financial Impact Statement

- 1.14 The Bill was not accompanied by a Regulatory Impact Statement (RIS). An RIS is a document prepared by the department, agency, statutory authority or board responsible for a regulatory proposal, following consultation with affected parties.
- 1.15 According to the Department of Finance's Best Practice Regulation Handbook, an RIS is
- mandatory for all decisions made by the Australian Government and its agencies that are likely to have a regulatory impact on business or the not-for-profit sector, unless that impact is of a minor or machinery nature and does not substantially alter existing arrangements.¹¹
- 1.16 The absence of an RIS compounded business and employers' concerns that the Bill was progressed without consultation and without consideration of the impact on employers. Business SA stated that:
- Industrial Relations reform needs to take a balanced approach and needs to focus on productivity and efficiency as well as employee related reforms, and the potential impact of such reform must be ascertained by way of a properly conducted RIS.¹²
- 1.17 The Australian Chamber of Commerce and Industry (ACCI) and Master Builders Australia also expressed concerns about the absence of an RIS.¹³
- 1.18 DEEWR noted that there was an exceptional circumstance exemption provided by the Prime Minister so no analysis has been undertaken, but did not explain why the exemption was sought.¹⁴
-

10 DEEWR, *Submission 16*, p. 5.

11 Department of Finance (Office of Best Practice Regulation), *Best Practice Regulation Handbook*, Canberra, June 2010, p. 8.

12 Business SA, *Submission 2*, p. 4.

13 ACCI, *Submission 12*, p. 9; MBA, *Submission 14*, p. 6.

- 1.19 In addition, no Financial Impact Statement (FIS) accompanied the Bill. An FIS 'describes both the direct and indirect financial impact for the Commonwealth of the proposed bill including any savings, expenses, revenue losses or gains, or changes in net asset position or the fiscal balance resulting from the proposal(s)'.¹⁵
- 1.20 The Explanatory Memorandum stated that 'financial impacts will be announced as part of the 2013-2014 Budget'.¹⁶
- 1.21 The regulatory and financial impacts of the bill were of concern to a diverse range of stakeholders. Many expressed apprehension that the FWC would have difficulty meeting its new responsibilities should the Bill be passed. These concerns focused on clauses relating to workplace bullying, and will be discussed in greater detail in Chapter 2.

Structure of report

- 1.22 This Advisory Report will be structured in the following way.
- 1.23 Chapter 2 will examine the Bill's expanded family friendly measures (Schedule 1) and Chapter 3 will examine the Bill's anti-bullying measures (Schedule 3).
- 1.24 Chapter 4 will address the Bill's amendments to the modern awards objective and to the right of entry provisions (Schedules 2 and 4).
- 1.25 Appendix B lists all submissions to the inquiry and Appendix C lists those appearing at the public hearing held in Melbourne on 24 May 2013.

14 John Kovacic, Deputy Secretary, Workplace Relations and Economic Strategy, DEEWR, *Transcript of Evidence*, 24 May 2013, Melbourne, pp. 25-6.

15 Department of Prime Minister and Cabinet, *Legislation Handbook*, Canberra, 2000, 40.

16 Fair Work Amendment Bill 2013, Explanatory Memorandum, p. 13.

