

CHAPTER 1

Reference

1.1 On 4 September 2014 the Senate referred the provisions of the Fair Entitlements Guarantee Amendment Bill 2014 (bill) to the Senate Education and Employment Legislation Committee (committee) for inquiry and report by 24 September 2014.¹

Conduct of the inquiry

1.2 Details of the inquiry were made available on the committee's website.² The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 14 organisations, as detailed in Appendix 1.

1.3 A public hearing was held in Melbourne on 17 September 2014. The witness list for the hearing is available in Appendix 2.

Background

1.4 The bill proposes to amend the *Fair Entitlements Guarantee Act 2012* (the Act) to provide financial assistance (an 'advance') to cover certain unpaid employment entitlements for eligible employees who lose their job due to the liquidation or bankruptcy of their employer.³

1.5 The Fair Entitlements Guarantee Scheme (the Scheme) is the successor of the General Employee Entitlements and Redundancy Scheme (GEERS) that was introduced in 2001 by the Howard government to protect employee entitlements.⁴

Rationale for the bill

1.6 The bill implements the government's 2014–15 Budget announcement to align the maximum redundancy pay entitlement under the Scheme with the maximum set by the National Employment Standards contained in the *Fair Work Act 2009*.⁵ It also restores the level of redundancy pay entitlement that was available under the GEERS Operational Arrangements that were in effect from 22 August 2006 and 31 December 2010.

1.7 Since the Scheme's introduction, the demand for advances has increased significantly. In 2006–07 there were 8626 claimants being paid \$72.97 million. In

1 *Journals of the Senate*, No. 52, 4 September 2014, p. 1421.

2 Parliament of Australia, Senate Committees, Senate Standing Committee on Education and Employment, Fair Entitlements Guarantee Amendment Bill 2014, (accessed 8 September 2014).

3 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 1.

4 The Hon. Mr Christopher Pyne MP, Minister for Education, *House of Representatives Hansard*, 4 September 2014, p. 1.

5 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 1.

2012–13 there were 16 019 claimants being paid \$261.65 million.⁶ In response to the increasing demand for entitlements under the Scheme and community expectations, the government is seeking to amend the Act to ensure its smooth operation and the Scheme's future sustainability.⁷

Overview of the bill

1.8 Currently, where eligible employees lose their job due to the liquidation or bankruptcy of their employer, they are provided financial assistance under the Scheme to cover certain unpaid employment entitlements. Presently this includes:

- assistance for up to 13 weeks of unpaid wages;
- unpaid annual and long service leave;
- up to five weeks' payment in lieu of notice; and
- redundancy pay, capped at four weeks per full year of service, with no cap on years of service.⁸

1.9 Item 5 of the bill would provide that where a claimant did not take reasonable steps before their employer's insolvency event to be paid debts relating to their unpaid employment entitlements, the Secretary may reduce the amount of the claimant's amount by those debts.⁹

1.10 The explanatory memorandum emphasises that this approach is intended to ensure that employees are still required to actively protect their own interests by pursuing debts, but also allow payments to be made for debts that the employee took reasonable steps to pursue.¹⁰

1.11 Item 6 of the bill would reinstate a claimant's redundancy pay entitlement to 16 weeks' pay in total.¹¹

1.12 In his Second Reading Speech, the Hon. Christopher Pyne MP, Minister for Education, explained that while the advance for redundancy pay under the proposed Scheme will not exceed 16 weeks, employees will still be able to pursue their employers for any remaining unpaid entitlements through the winding-up process.¹²

1.13 The bill also makes a number of technical amendments to clarify the operation of the Act. These amendments will:

6 The Hon. Mr Christopher Pyne MP, Minister for Education, *House of Representatives Hansard*, 4 September 2014, p. 1.

7 The Hon. Mr Christopher Pyne MP, Minister for Education, *House of Representatives Hansard*, 4 September 2014, p. 1.

8 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 1.

9 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 5.

10 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 5.

11 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 6.

12 The Hon. Mr Christopher Pyne MP, Minister for Education, *House of Representatives Hansard*, 4 September 2014, p. 1.

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- clarify where a claimant is eligible for financial assistance under the Scheme, the claimant's initial entitlement under the Act will be calculated without reference to any amounts required to be withheld by law, such as pay as you go tax withholding;
 - clarify that the death of a person does not prevent the person being eligible for financial assistance, to enable the next of kin or estate to pursue a claim; and
 - clarify when a debt owed by a claimant to his or her employer is greater than the employment entitlement to which it relates, it can be offset proportionally against any of the claimant's other employment entitlements under the Scheme.

1.14 The bill also seeks to establish a funding source in the legislation for certain legal costs associated with applications to the Administrative Appeals Tribunal for review of decisions made by the department. This was suggested by the previous government.

1.15 The bill would commence on 1 January 2015 or the day after the bill has received Royal Assent, whichever is later. However, the amendment relating to the department's funding arrangements would apply from 1 July 2015 to align with the start of the 2015–16 financial year.¹³

Human rights implications

1.16 The explanatory memorandum details the bill's engagement of the right to social security, including social insurance, under Article 9 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). The committee on Economic, Social and Cultural Rights has stated that the right to social security encompasses the right to access benefits without discrimination in order to secure protection from lack of work related income caused by unemployment.¹⁴

1.17 The explanatory memorandum states that the bill is compatible with human rights because:

... it seeks to maintain the sustainability of the Scheme of financial assistance without compromising minimum entitlements and to the extent that the amendments may limit rights, those limitations are reasonable, necessary and proportionate to that legitimate objective.¹⁵

13 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 1.

14 Fair Entitlements Guarantee Amendment Bill 2014, *Statement of Compatibility with Human Rights*, p. 1.

15 Fair Entitlements Guarantee Amendment Bill 2014, *Statement of Compatibility with Human Rights*, p. 4.

Financial Impact Statement

1.18 The explanatory memorandum submits that the bill would have a financial impact, resulting in an estimated saving of \$79.4 million over the forward estimates, as illustrated by the table below.¹⁶

Table 1 - Explanatory Memorandum, Financial Impact Statement¹⁷

2014–15	2015–16	2016–17	2017–18	Total
\$m	\$m	\$m	\$m	\$m
9.2	20.8	23.3	26.1	79.4

Acknowledgement

1.19 The committee would like to thank those individuals and organisations who contributed to the inquiry by preparing written submissions and giving evidence at the hearing.

Notes on References

1.20 References in this report to the Hansard for the public hearing are to the Proof Hansard. Please note that page numbers may vary between the Proof Hansard and the official transcript.

16 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, p. 2.

17 *Fair Entitlements Guarantee Amendment Bill 2014, Explanatory Memorandum*, p. 2.