

## CHAPTER 2

### Key Issues

2.1 The committee is supportive of a publicly funded safety net scheme to protect workers who are affected when their employers experience insolvency or bankruptcy, and believes such a scheme should be fair and reasonable for all affected workers and taxpayers.

2.2 The Fair Entitlements Guarantee Amendment Bill 2014 (the bill) will amend the *Fair Entitlements Guarantee Act 2014* (the Act) by implementing the government's 2014 –15 Budget announcement to align the maximum redundancy pay entitlement under the Fair Entitlements Guarantee scheme (the Scheme) with the maximum set by the National Employment Standards (NES) contained in the *Fair Work Act 2009*. The new maximum redundancy pay entitlement will be 16 weeks' pay.<sup>1</sup>

2.3 The committee has received evidence from a range of submitters and witnesses in relation to the proposed changes, and will address several concerns raised.

#### **Capping redundancy entitlement at 16 weeks**

2.4 Item 6 of Schedule 1 replaces the current cap of four weeks per year of service on redundancy pay with a cap of 16 weeks' pay in total. The intention is to align the bill with the maximum payment available under the NES contained in the *Fair Work Act 2009*.<sup>2</sup>

2.5 By way of context, the NES are ten minimum employment entitlements that must be provided to all employees. With the national minimum wage, they make up the minimum entitlements for employees in Australia. An award, agreement or employment contract cannot exclude or provide conditions that are less than the national minimum wage or NES.<sup>3</sup>

2.6 The committee notes the Department of Employment's (department) submission that explains:

All employees who are in the national workplace relations system are covered by the National Employment Standards regardless of the award, registered agreement or employment contract that applies. Their application to most employees and employers in Australia means the National Employment Standards are an appropriate safety net reference for redundancy entitlements under the FEG.<sup>4</sup>

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

2 Fair Entitlements Guarantee Bill 2014, *Statement of Compatibility with Human Rights*, p. 2.

3 Department of Employment, *Submission 13*, p. 11.

4 *Submission 13*, p. 11.

2.7 A number of submitters expressed concerns that despite being compatible with the NES, capping the redundancy entitlement at 16 weeks will result in some workers not being paid the full amount of redundancy payments they are owed by their employer in the event that employer goes bankrupt.<sup>5</sup>

2.8 The Australian Manufacturing Workers' Union (AMWU) argues in its submission that capping entitlements at 16 weeks is not fair because the NES is a minimum statutory entitlement and employment conditions are not set by legislation alone. AMWU emphasised that some workers have negotiated enterprise agreements with redundancy entitlements above the NES.<sup>6</sup>

2.9 Mr Trevor Clarke, Director Industrial and Research, Australian Council of Trade Unions (ACTU) provided evidence to the committee:

Redundancy entitlements are set by awards, by enterprise agreements and by contract of employment. Sometimes unions are involved in setting the entitlements; sometimes they are not. Sometimes the Fair Work Commission is involved in setting those entitlements; sometimes it is not. Whoever sets those entitlements has reasons for doing what they do.

It is not difficult to imagine why the entitlement at some workplaces is set in excess of the bare minimum provided by the law.<sup>7</sup>

2.10 Ms Michele O'Neil, National Secretary, Textile Clothing and Footwear Union of Australia (TCFUA) stated:

To start with a very basic principle of law, workers who accrue, through long years of service, leave, superannuation and redundancy entitlements are entitled to be paid 100 per cent of those entitlements when they are made redundant.<sup>8</sup>

2.11 The committee notes these views, but also received compelling evidence from submitters and witnesses who support the proposed capping of entitlements at 16 weeks because it is an equitable scheme, applying to all employees regardless of any negotiated enterprise agreement.

2.12 Australian Industry Group (Ai Group) submitted:

The 16 week cap mirrors the entitlement to redundancy under the National Employment Standards and hence reflects community standards... It is unfair for a publicly funded scheme to pay extremely generous

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5 Slater and Gordon Lawyers, *Submission 11*, p. 3; Australian Manufacturing Workers' Union, *Submission 8*, p. 5; Queensland Nurses' Union, *Submission 10*, p. 3.

6 *Submission 8*, p. 5.

7 Mr Trevor Clarke, Director, Industrial and Research, Australian Council of Trade Unions, *Proof Committee Hansard*, 17 September 2014, p. 9.

8 Ms Michele O'Neil, National Secretary, Textile Clothing and Footwear Union of Australia, *Proof Committee Hansard*, 17 September 2014, p. 11.

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compensation to the employees of one insolvent company and much less to those working for another company.<sup>9</sup>

2.13 The committee also heard evidence from the Australian Chamber of Commerce and Industry (ACCI), who stressed that while it was open to parties to negotiate entitlements, this came with a level of responsibility, and is a matter of public policy concern.

It should, of course, remain open to parties to employment arrangements to negotiate the terms and conditions they want; however, ACCI believes it is dangerous for there to be an 'all care and no responsibility' dynamic sitting above negotiations. Terms and conditions must be realistic and affordable, with ultimate responsibility for them held by the negotiating parties. The fair entitlements guarantee scheme should not have the effect of being a blank cheque when redundancy entitlements are up for negotiation.<sup>10</sup>

...

The non-payment of employee entitlements on insolvency is a relevant public policy concern. Any remedy must appropriately consider and balance the interests of employees, employers, creditors, taxpayers and the economy as a whole.<sup>11</sup>

2.14 Master Builders Australia submitted the general redundancy standard for the building and construction industry is out of step with the general community standard, and suggested that the proposed cap is in line with the community standard.<sup>12</sup>

2.15 Both Ai Group and ACCI expressed the view that a publicly funded safety net scheme is necessary to protect workers whose employers went bankrupt. However, they stressed that it should offer an appropriate level of protection. Ai Group stated:

When there is an insolvency, everyone is a loser. Often the managers lose their jobs. If it is a private company, the owners of the business often lose their houses. There are no winners. It is a matter of having the appropriate level of protection.<sup>13</sup>

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9 Australian Industry Group, *Submission 3*, p. 7.

10 Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p. 2.

11 Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p. 2.

12 Master Builders Australia, *Submission 2*, p. 3.

13 Mr Stephen Smith, Director, National Workplace Relations, Australian Industry Group, *Proof Committee Hansard*, p. 3.

2.16 ACCI further provided evidence:

This scheme provides a very fair outcome there – up to 16 weeks of redundancy pay plus all of those other protections. That, in our view, is an appropriate level of protection.<sup>14</sup>

2.17 These views are broadly supported by a number of other submitters, including Business SA<sup>15</sup> and the National Electrical and Communications Association (NECA).<sup>16</sup>

2.18 The department advised:

This 16 week cap relates only to the redundancy pay entitlements available under the FEG, it does not operate as an overall cap of entitlements payable under the scheme. In addition to a maximum payment of 16 weeks for redundancy pay, employees will still be able to receive assistance for up to 13 weeks unpaid wages, all accrued annual leave and long service leave that is left unpaid, and up to five weeks payment in lieu of notice.<sup>17</sup>

2.19 The ACTU suggested during the hearing that other options could be explored before any reduction in entitlements under the Scheme is contemplated, including ranking employee entitlements above certain secured creditors. The ACTU's position is that 'more can and should be done to ensure that the government can maximise the returns it gets from the scheme and to discourage insolvencies that are brought about by misconduct.'<sup>18</sup>

2.20 While this suggestion was not fully explored during the inquiry, the committee notes evidence from the department about the government standing in the shoes of the employee to receive entitlements in the usual order of priority as a creditor.<sup>19</sup>

***Impacts of the 16 week cap***

2.21 The department submitted the proportion of total Scheme expenditure attributable to the redundancy pay has increased since the entitlement cap was increased in 2011, and the dollar value of redundancy pay entitlements has increased disproportionately to other entitlement types covered by the schemes.<sup>20</sup> The incidence

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14 Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p. 4.

15 Business SA, *Submission 1*, p. 2.

16 National Electrical and Communications Association, *Submission 12*, p. 1.

17 *Submission 13*, p. 11.

18 Mr Trevor Clarke, Director, Industrial and Research, Australian Council of Trade Unions, *Proof Committee Hansard*, 17 September 2014, p. 10.

19 Ms Sandra Parker, Deputy Secretary, Workplace Relations and Economic Strategy, Department of Employment, *Proof Committee Hansard*, p. 21.

20 *Submission 13*, p. 7.

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of agreements providing a total maximum redundancy payment of more than 16 weeks has also increased since 2011.<sup>21</sup>

2.22 Specifically, the committee heard evidence from the department that:

Demand has increased from 8,626 claimants being paid \$72.97 million in 2006-07 to 16,019 claimants being paid \$261.6 million in 2012-13. The Commonwealth now covers the full cost of the scheme. In relation to this bill, redundancy payments have increased from \$21.2 million in 2006-07 to \$102.2 million in 2012-13. The government's assessment is that these increases are not sustainable. There is also evidence of an increase in redundancy payments above 16 weeks in agreements. The increase is from 22.3 per cent in March 2011 to 28.3 per cent in June 2014...<sup>22</sup>

2.23 The department estimates the 16 week cap will affect only around six per cent of future claimants who are paid an advance under the Scheme, or approximately 815 people per year. Over the past three financial years, 41 393 claimants have been paid an advance under the Scheme or its predecessor and of these, 2446 received entitlements equivalent of more than 16 weeks' pay out of 21 752 claimants who were entitled to a redundancy pay entitlement.<sup>23</sup>

### ***Committee view***

2.24 The committee has carefully considered the view of all submitters and witnesses. The committee is supportive of a safety net scheme and is of the view that the proposed capping of redundancy entitlements at 16 weeks provides an appropriate level of cover for those workers affected by liquidation or bankruptcy of their employer. It notes that redundancy pay is only one of a number of entitlements that can be accessed under the Scheme.

2.25 The committee agrees that employees are entitled to all the benefits owing to them by their employer; however, the committee does not agree that a publicly funded scheme should cover all of these entitlements when they exceed the NES.

2.26 The committee is of the view that the proposed change provides an equitable solution to all affected workers, rather than favouring those who have negotiated a much higher entitlement. The committee notes that where a claimant is owed more than 16 weeks redundancy pay by their employer, they will be able to pursue the portion of that debt that is not paid by the Scheme.<sup>24</sup>

### **Reasonable steps to pursue a debt**

2.27 Item 5 inserts a new section 17A which provides 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 of the department may

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21 *Submission 13*, p. 11.

22 Ms Sandra Parker, Deputy Secretary, Workplace Relations and Economic Strategy, Department of Employment, *Proof Committee Hansard*, p.18.

23 *Explanatory Memorandum*, p. 3.

24 *Explanatory Memorandum*, p. 3.

reduce the amount of the claimants' advance by the amount of those debts. The provision is designed to ensure that individuals are still required to actively pursue debts owed to them, but will also allow payment to be made for debts where the person took reasonable steps to pursue a debt. The requirement to take 'reasonable steps' will depend on the individuals' unique circumstances.<sup>25</sup>

2.28 Some submitters expressed concerns about the inclusion of this provision. The ACTU indicated that while it appreciates the proposed provision is intended to clarify the original intention that an employee ought to have taken reasonable steps to claim debts owed to them, the amendment may lead to circumstances where offsetting occurs other than on a 'like for like' basis.<sup>26</sup>

2.29 The department explained in its submission that the current Act operates with an unintended consequence, whereby if a part of an employee's unpaid entitlements is considered not to have been reasonably pursued, the employee will not be eligible for payment under the Scheme.

If applied literally, this would have an unduly harsh outcome for employees and would be at odds with the intended operation of the provisions. The Bill seeks to address this unintended narrowing of the provision by shifting the requirement for a person to take reasonable steps to pursue a debt from a consideration under eligibility criteria to a consideration under calculating the amount of entitlements owed.

Under the proposed amendment a fairer and more flexible approach will be available so that a claimant can still be paid those entitlements that are unaffected by the 'did not reasonably [take] steps to pursue' rule. This will provide a more beneficial outcome for employees.<sup>27</sup>

2.30 The committee sought to clarify the issue during the hearing, referring to examples contained in the department's submission, and requested more information about how 'reasonable steps' might apply in practical terms.<sup>28</sup> The department provided the following explanation:

In that situation the only requirement is that the applicant had taken reasonable steps, and that would be judged on a case-by-case basis. We discuss this at length in the explanatory memorandum for the original bill. You look at the totality of the circumstances. Their language skills, for example, are one consideration and what kinds of debts they were. In a situation where a company was consistently telling people that their debts were safe it would be entirely open to the secretary to be satisfied that you

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25 Fair Entitlements Guarantee Amendment Bill 2014, *Explanatory Memorandum*, pp. 5–6.

26 *Submission 5*, p. 5.

27 *Submission 13*, pp 13–14.

28 Senator Sue Lines, *Proof Committee Hansard*, pp 19–20.

would not need to take active steps to pursue that debt when you were being reassured that the debt was safe.<sup>29</sup>

2.31 The department continued:

A person will be eligible if they have taken reasonable steps, such as bringing the outstanding entitlements to the employer's attention.

This is similar language to what we have in work, health and safety. It is about reasonableness, it is about reasonably practicable. It is a general view of what reasonable looks like, but the secretary is able to take account of circumstances at the time. This is a benefit for employees.<sup>30</sup>

***Committee view***

2.32 The committee is satisfied that the provision provides a much needed discretion that will result in fairer decisions for employees as it will allow the Secretary of the department to consider each set of circumstances on a case by case basis to determine whether reasonable steps to recover a debt were taken by an employee.

**Offsetting debts owed to an employer**

2.33 The committee also considered evidence provided about situations where an employee may owe a debt to the employer at the time the employer becomes bankrupt. New subsection 32(2A) clarifies that where 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 claimants other employment entitlements that are payable under the Scheme. For example, where an employee has taken annual leave before they have accrued it.<sup>31</sup>

2.34 The ACTU in its submission, expressed some dissatisfaction with this proposed provision, indicating, amongst other things, that:

... it is presently unclear how any "employment entitlements" other than annual leave (which is used in the example in the explanatory memorandum) could bring about a situation where the debt exceeds the entitlement. The amendment should be confined to the circumstance of annual leave paid in advance.<sup>32</sup>

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29 Mr Matthew Bankins, Senior Government Lawyer, Workplace Relations Legal Group, Department of Employment, *Proof Committee Hansard*, p. 20.

30 Ms Sandra Parker, Deputy Secretary, Workplace Relations and Economic Strategy, Department of Employment, *Proof Committee Hansard*, pp 20–21.

31 *Explanatory Memorandum*, p. 7.

32 *Submission 5*, p. 10.

2.35 The department explained to the committee that an employee debt can occur for anything, including for annual or sick leave, or because property has been retained, such as a laptop.<sup>33</sup>

... at the moment the rules are that we can offset, if a debt is owed to the employer, if we are satisfied that the debt exists and it is reasonable to offset it. If the debt does not relate to the five entitlements that are covered under the scheme then we can offset it proportionally against all five entitlements.

...

But if the debt does relate to an entitlement that is payable under the scheme, the wording of the act is unintentionally narrow so that we cannot offset it against the other entitlements; we can only offset it against that particular entitlement. So the purpose of this amendment is to correct that unintended narrowing of how you can offset debts where the debt actually relates to one of the entitlements that is covered under the scheme.<sup>34</sup>

2.36 The department further explained that in terms of working out a value for an item, it would rely on advice from the insolvency practitioner and use other evidence to determine market value.<sup>35</sup>

### ***Committee view***

2.37 The committee is persuaded that this measure is appropriate because it ensures that where an employee has received something from their employer (including leave not yet accrued or property) there is a capacity to offset a public funded payment for its value.

### **Does the current Scheme create a 'moral hazard'?**

2.38 In the Second Reading Speech, the Hon Christopher Pyne, MP, Minister for Education, stated:

This level of protection is very generous by community standards. It 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.

2.39 Discussion at the hearing about 'moral hazard' centred on whether the introduction of uncapped redundancy payments has led to employers being coerced by unions to sign agreements including entitlements that are worth over and above

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33 Ms Sue Saunders, Acting Group Manager, Workplace Relations Implementation and Safety Group, Department of Employment, *Proof Committee Hansard*, p. 22.

34 Ms Sue Saunders, Acting Group Manager, Workplace Relations Implementation and Safety Group, Department of Employment, *Proof Committee Hansard*, p. 22.

35 Ms Sue Saunders, Acting Group Manager, Workplace Relations Implementation and Safety Group, Department of Employment, *Proof Committee Hansard*, p. 22.

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NES levels with the knowledge they will be covered by the commonwealth in the event of insolvency or bankruptcy.

2.40 A number of submitters expressed strong views that a moral hazard in this context simply does not exist. For example, the TCFUA stated that in its experience, 'there is simply no evidence that this is borne out in enterprise bargaining since the commencement of the enhanced GEERS scheme and the FEG Act.'<sup>36</sup> In evidence at the hearing, the TCFUA emphasised this point:

This is a contention which is completely unfounded. There is simply no evidence that the existence of provisions in the FEG Act providing for the payment of redundancy beyond 16 weeks creates an incentive for unsustainable bargaining.<sup>37</sup>

2.41 Similarly, the AMWU stated:

Unions have been in the business of trying to get some security for workers for a very long time, and certainly before my time. So, there is nothing new the unions pressing redundancy claims. It is not true that since the introduction of the federal entitlement guarantee the AMWU has pressed a patent four-week claim. This is simply not the case.<sup>38</sup>

2.42 The ACTU expressed a similar view:

Let us get the facts straight on this moral hazard argument. There is not one. Nobody has shown a rise in the level of redundancy pay provided in agreement or contracts of employment, and even if they could do that it would be another thing to attribute a cause to it. It is pure speculation. Further, it ought to be remembered that redundancy terms are developed in the context of an expectation that business will continue. No business and no worker wants to see a redundancy of some members of the workforce turn into the closure of the workplace on account of an incapacity to pay...<sup>39</sup>

2.43 Equally, the committee received submissions and took evidence at the hearing that strongly supported the view that a moral hazard does in fact exist. The Ai Group discussed that it is in fact a small percentage of employers who do the wrong thing that create a moral hazard:

There are major moral hazards present in the current legislative provisions, because there is little protection against employers being coalesced by

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36 Textile Clothing and Footwear Union of Australia, *Submission 7*, p. 14.

37 Ms Michele O'Neil, National Secretary, Textile Clothing and Footwear Union of Australia, *Proof Committee Hansard*, 17 September 2014, p. 12.

38 Mr Steve Dargavel, Victorian State Secretary, *Proof Committee Hansard*, 17 September 2014, p. 10.

39 Mr Trevor Clarke, Director, Industrial and Research, Australian Council of Trade Unions, *Proof Committee Hansard*, 17 September 2014, p. 9.

unions into implementing extremely generous redundancy packages in the lead up to insolvency, leaving taxpayers to pick up the tab.<sup>40</sup>

...

[T]here are a raft of laws that seek to ensure that that happens: directors' liabilities, accounting standards, a whole range of things. Over the years we have written a lot about protection of entitlements. The term 'moral hazard' is a very common term in all the literature, not just ours. 99.99 per cent of employers pay their entitlements when due. The other fraction of one per cent, despite all those other laws, do not. That is where we need a fair, publicly funded scheme to come along and provide an appropriate level of protection. Yes, people are free to negotiate whatever they want in the enterprise bargaining system but it should not be the case that taxpayers are exposed to a massive extent by what people agreed to in the bargaining sphere.<sup>41</sup>

2.44 ACCI expressed its views about moral hazard in terms of a risk to employers:

But there is a major incentive for unions to coerce employers in the lead up to an insolvency to agree to a redundancy package of four weeks per year of service. The level of protection in the Act is quite minimal on that. From memory, I think there is a six month period where the rationale can be looked at. There is a major risk.<sup>42</sup>

2.45 ACCI also discussed the potential for the design of the scheme to distort the bargaining process:

What I am saying is that the potential arises in the dynamic it introduces into negotiations. It is one thing for two parties to sit down and negotiate terms and conditions, but if they know at the back of their mind that ultimately the government will pick up this entitlement then our proposition is that that will impact on the bargaining dynamic.<sup>43</sup>

...

What we are saying is that the design of the scheme should be amended to reflect the safety net in the NES.<sup>44</sup>

2.46 The committee asked the department to expand on the theme of moral hazard, asking for evidence or examples of where employers have signed unsustainable

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40 Mr Stephen Smith, Director, National Workplace Relations, Australian Industry Group, *Proof Committee Hansard*, p. 1.

41 Mr Stephen Smith, Director, National Workplace Relations, Australian Industry Group, *Proof Committee Hansard*, pp 4–5.

42 Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p. 4.

43 Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p. 5.

44 Mr Richard Clancy, Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, p. 6.

redundancy payments in these circumstances.<sup>45</sup> The department provided the following advice:

... there has been an increase in redundancy payments in excess of 16 weeks in agreements since the scheme came in, that the proportion increased from 22.3 percent in 2011 to 28.3 per cent in June 2014. That parallels the introduction of the more generous redundancy entitlement. No, we do not have evidence of the exact cause and effect, but there is certainly a pattern.<sup>46</sup>

2.47 The committee heard evidence from the department about the cost of the Scheme to the taxpayer, and notes that this is not insignificant:

Some of the stats I provided before showed the growth in the number of claimants and the growth in the amounts. We certainly think that \$297 000 for one redundancy creates risks and we agree with Ai Group when they said that one large company going under can cost the taxpayer millions of dollars. We have lists of companies and the costs that have been paid out to them, and some of them are fairly astronomical – including one for \$15.5 million, going down to \$1 million for the top 10 under FEG and then under GEERS \$10 million down to \$2 million just for a single company. With GEON Australia, for example there were 527 claimants and the amount paid was 15 ½ million.

The government has said that it supports FEG and GEERS. The question is about how much payment and how much of that should [be] borne by the taxpayer. That is a fundamental question. It is also being proposed that it be a safety net and that that be aligned with the NES in terms of redundancy. Some of the discussion has been much broader than that, but in terms of redundancy it is about the safety net and what taxpayers should fund. The department's assessment is that yes, there is a risk to costs. We are very concerned about the cost blowout in the scheme because it just keeps growing.<sup>47</sup>

2.48 In response to this evidence, the committee chair asked the department whether this cost blowout was anticipated and appropriately budgeted for at its inception.<sup>48</sup> The department confirmed that it was not, and that part of the issue was that with more claims, the department requires more staff which costs more as well.<sup>49</sup>

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45 Senator Sue Lines, *Proof Committee Hansard*, p. 23.

46 Ms Sandra Parker, Deputy Secretary, Workplace Relations and Economic Strategy, Department of Employment, *Proof Committee Hansard*, p. 23.

47 Ms Sandra Parker, Deputy Secretary, Workplace Relations and Economic Strategy, Department of Employment, *Proof Committee Hansard*, p. 25.

48 Senator Bridget McKenzie, *Proof Committee Hansard*, p. 25.

49 Ms Sandra Parker, Deputy Secretary, Workplace Relations and Economic Strategy, Department of Employment, *Proof Committee Hansard*, p. 25.

### ***Committee view***

2.49 The committee accepts that while most businesses do not bargain with the intention of failing, the design of the Scheme could create a risk in some situations whereby some unions negotiate with employers who enter into enterprise agreements on the basis that if the business fails, the government will meet the terms of whatever redundancy agreement is in place, regardless of how far in excess to the NES it is. The committee is of the view that this has the potential to place an unacceptable financial burden on the taxpayer.

2.50 Further, the committee accepts the department's evidence that costs of the Scheme have grown since the cap was removed.

### **Conclusion**

2.51 The committee acknowledges the government's ongoing commitment to providing a safety net scheme to cover certain unpaid employment entitlements when employees lose their job due to the liquidation or bankruptcy of their employer. This scheme has become increasingly generous in recent years, was unbudgeted, and now covers entitlements significantly over and above those in the NES.

2.52 The committee considers the bill is necessary to implement the government's 2014–15 Budget announcement to align the maximum redundancy pay entitlement under the Fair Entitlements Guarantee Scheme with the NES to ensure a sustainable scheme in the future.

2.53 The committee considers that any scheme to compensate employees in the unfortunate position of losing their job under these circumstances should be fair and reasonable to both employee and to the taxpayer. The committee has received overwhelming evidence to suggest that a 16 week cap on redundancy pay entitlement in line with the NES, is fair and reasonable.

2.54 The committee is persuaded that the proposed changes to the Scheme are limited and appropriate. Further, that the cap on redundancy entitlement meets community expectation that the government provide a safety net to those workers affected by the insolvency or bankruptcy of their employer, but that the taxpayer should not meet costs over and above those set out in the NES.

### **Recommendation 1**

**2.55 The committee recommends that the bill be passed.**

**Senator Bridget McKenzie**  
**Chair**