

AUSTRALIAN GREENS' DISSENTING REPORT

1.1 The Greens do not support the Fair Entitlements Guarantee Amendment Bill 2014 (bill) because it will make life harder for employees at the very time they need support: when their employer organisation fails.

1.2 We note that before the election, the Coalition reassured voters that it would not change the Fair Entitlements Guarantee. The current Minister for Employment, Senator the Hon. Eric Abetz, said in July 2013 that 'you can be assured that the Coalition would not seek to do anything that would water down these important protections for Australian workers.' This was yet another broken promise and unarguably deceived voters.

1.3 The Prime Minister, the Hon. Tony Abbott, MP, has no mandate to change the *Fair Entitlements Guarantee Act 2012* (Act) and especially not to reduce employees' redundancy payouts, but that is exactly what he is seeking to do.

1.4 The bill seeks to unfairly shift the financial responsibility onto employees, who have been or are just about to be made redundant, despite the fact that they are not responsible for running the business that has failed and are paid less as a result. The bill would sacrifice the rightfully earned benefits of employees thanks to the actions of others, which may have contributed to or caused the failure of their employer organisation. This means that employees could have their benefits curtailed through no fault of their own.

1.5 The Greens do not believe that this is right in principle or in practice.

1.6 We believe that the bill will weaken the safety net that protects workers when their employer becomes bankrupt or insolvent. In turn, this will make it harder for people to get back into the workforce and that is plainly not in the national interest.

Older employees

1.7 We also believe that this bill would not only potentially compound the impact of redundancy on retrenched employees, but would also hit older employees hardest of all, as they will usually have the highest potential payouts and thus stand to lose the most from a cap that reduces their payout. These are people who have worked medium to long periods with the failed employer yet could pay the highest price for their loyalty and hard work.

1.8 The ability of older employees to recover from the impact of being made redundant will already be harder than for younger employees. We know that it is often much harder for older employees to find work, for example. With the government seeking to raise the age that older people can claim their pension, reducing their redundancy benefits would be particularly egregious. This is grounds alone to reject this bill, although there are plenty more.

Cutting redundancy payments

1.9 The Greens believe that a fair day's pay for a fair day's work is fundamental to Australia's way of life. This bill weakens that historic contract.

1.10 It is equally fundamental and reasonable for employees to expect their entitlements, which are part of their employment contract, to be legally enforceable rights, enshrined in law. It is a continuing affront to basic workplace rights and to employees' workplace rights that, in 21st century Australia, their accrued and rightfully earned benefits can simply vanish when a business fails.

1.11 The bill proposes capping the maximum payout that a redundant employee can receive at 16 weeks' pay. We believe this could mean that an employee is not paid the full amount to which they are entitled. This could therefore impinge one of the fundamentals of fair work, that of being paid what you have rightfully earned. This amounts to institutional theft.

Reasonable steps to pursue a debt

1.12 The bill also proposes potentially reducing a retrenched employee's rightfully earned entitlements if they do not take 'reasonable steps,' before their employer's insolvency, to be paid their debts relating to their unpaid employment entitlements. Even the committee's report concedes that what constitutes 'reasonable steps' will depend on the individual's unique circumstances.

1.13 It is unclear why the onus should be on the employee to recover what is rightfully theirs, earned by their own hard work, and none of the onus is shared by the employer, whose actions may have contributed to or even caused the failure of the employing organisation.

1.14 The Hon. Christopher Pyne MP, Minister for Education, second reading speech suggests this amendment is technical and aimed at ensuring employees aren't excluded from eligibility but merely may have their payments reduced.¹ However, it is not clear that the current provision has resulted in unfairness in its operation.

Exploited employees

1.15 We note the Textile Clothing and Footwear Union of Australia's (TCFUA) submission that 'most workers' in the textile industry work week to week, have few resources, little discretionary income, may be enduring long-held injuries, may have a low education threshold and poor language skills. This bill would make it harder, not easier, for them to claim what is rightfully theirs when their employer organisation fails. We believe that it is simply unrealistic to put the burden of claiming their rightful benefits on the employee, who for these reasons may find it impossible to demand their benefits from an exploitative or unsympathetic boss. Vulnerable employees deserve additional protections to guarantee their benefits, not have what protections they do have watered down even more.

Phantom moral hazard

1.16 We note that the government has tried to make the argument that the current Act creates a 'moral hazard.' By this it apparently means that the Act creates an overly

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

generous redundancy payout regime that is open to exploitation by employees and unions. We note, in equal terms, that the government has failed to provide any evidence for this apparent 'moral hazard' and that the government's own department said in its submission that it did 'not have evidence of the exact cause and effect' of this apparent risk.²

1.17 In reality, the government has created a phantom risk as a pretext to reduce the rights of people at work, while reducing the payouts that company managers and owners may have to pay out.

1.18 The Greens understand that fair work depends on mutual respect between employers and employees, to which a fair day's work for a fair day's pay is fundamental. We believe that the government tilting the playing field against employees is counter-productive and will only result in long-term damage to workplace relations, which is in no one's interests.

1.19 The real moral hazard is trying to shift the burden of responsibility onto retrenched employees when they are at their most vulnerable, despite them having no fiduciary, managerial or legal responsibility for the fate of the company. If those running and claiming higher, often significantly higher, remuneration are not answerable to company law that is commensurate with their level of responsibility, this creates inherent risk. When this happens, we agree with the Ai Group that, in these circumstances, '[i]t is a matter of having the appropriate level of protection.'³

Making the country less prosperous

1.20 This bill would subtly shift the responsibility for income support from the commonwealth to the social security system. This would simply be counterproductive. The funds that the government claims would be saved by cutting people's hard-earned redundancy payouts may be offset by the cost of NewStart Allowance and for other support payments. This is particularly true of older workers.

1.21 Fair redundancy payouts are much more beneficial because they help retrenched workers make ends meet until they get back into work. But just like the flawed logic of making young jobseekers look for work without any income support, cutting redundancy payouts makes the country worse off because it makes it harder for people to find work. The Greens oppose this bill.

Senator Lee Rhiannon
Australian Greens

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

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

