

# CHAPTER 1

## Introduction

### Reference

1.1 On 27 November 2014, the Hon. Christopher Pyne MP introduced the Fair Work Amendment (Bargaining Processes) Bill 2014 (the bill) in the House of Representatives.<sup>1</sup> On 4 December 2014 the Senate referred the provisions of the bill to the Senate Education and Employment Legislation Committee (the committee) for inquiry and report by 25 March 2015.<sup>2</sup>

### Conduct of the inquiry

1.2 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 23 individuals and organisations, as detailed in Appendix 1.

1.3 A public hearing was held in Canberra on 20 March 2015. A list of witnesses is available in Appendix 2.

### Overview of the bill

1.4 The bill would amend the *Fair Work Act 2009* (the Act) by inserting new clauses in subsections 187(1), 443(1) and 443(2). Broadly, the amendments introduce a new approval requirement for enterprise agreements and provide guidance regarding the circumstances in which a protected action ballot order can be made.<sup>3</sup> If enacted, the bill would:

- require the Fair Work Commission (FWC) to be satisfied, as a condition of enterprise agreement approval, that workplace productivity improvements were discussed during the bargaining process;
- clarify that the FWC can only approve an application for a protected action ballot where the applicant has genuinely tried to reach agreement with the employer; and

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1 *Votes and Proceedings*, 29 November 2014, p. 1011.

2 *Journals of the Senate*, 4 December 2014, p. 1985.

3 Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. iii.

- clarify that the FWC must not make a protected action ballot order if it considers that the applicant's claim is 'manifestly excessive' or would have a 'significant adverse impact on productivity at the workplace'.<sup>4</sup>

### *Enterprise agreements*

1.5 Enterprise agreements are made between employers and employees and set out minimum employment terms and conditions.<sup>5</sup> The proposed requirement for discussions on productivity to take place as a pre-condition of enterprise agreement approval is not intended to require the FWC to make a determination on the merit of any improvements.<sup>6</sup>

### *Protected action ballot order*

1.6 A protected action ballot order is required before employees can lawfully take industrial action, except where the action is in response to industrial action by the other party in enterprise bargaining.<sup>7</sup>

### *Guidance for the FWC*

1.7 In assessing whether an applicant for a protected action ballot order is genuinely trying to reach an agreement, the bill would require the FWC to have regard to a range of non-exhaustive factors. These factors would include:

- the steps taken by each applicant to try and reach an agreement;
- the extent to which each applicant has communicated its claims in relation to the agreement;
- whether each applicant has provided a considered response to proposals made by the employer;
- the extent to which bargaining for the agreement has progressed.<sup>8</sup>

1.8 The bill also provides that, where the FWC is satisfied that the claims of an applicant seeking a protected action ballot order are manifestly excessive, or would

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4 Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. iii.

5 Australian Government, Fair Work Commission, <https://www.fwc.gov.au/awards-and-agreements/agreements/make-agreement> (accessed 22 December 2014); Australian Government, Fair Work Ombudsman, <http://www.fairwork.gov.au/awards-and-agreements/agreements> (accessed 22 December 2014).

6 Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. 2.

7 Australian Government, Fair Work Commission, Protected action ballots, <https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/industrial-action/protected-action-ballots> (accessed 23 December 2014); Australian Government, Fair Work Commission, Industrial action, <https://www.fwc.gov.au/resolving-issues-disputes-and-dismissals/industrial-action/industrial-action> (accessed 23 December 2014).

8 Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. v.

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have a significant adverse impact on productivity at the workplace, the commission must not make a protected action ballot order.<sup>9</sup>

1.9 In conjunction with other reforms, this bill would give effect to the government's election commitment of ensuring that 'the Fair Work laws provide a strong and enforceable safety net for workers while helping businesses to grow, create new jobs, and deliver higher real wage growth.'<sup>10</sup>

## **Structure of the bill**

1.10 The bill is comprised of two schedules. The first contains the substantive amendments, while the second sets out their application and transitional provisions.

## **Consultation**

1.1 The committee notes that the government consulted state and territory ministers for workplace relations and work health and safety, the National Workplace Relations Consultative Council (NWRCC) and the Committee on Industrial Legislation (a subcommittee of the NWRCC) in the process of drafting the bill. Changes were made to the proposed legislation following the consultation process.<sup>11</sup>

## **Human rights implications**

1.11 The bill engages the right to freedom of association, the right to strike and the right to collectively bargain for terms and conditions of employment.<sup>12</sup>

1.12 The explanatory memorandum states that the bill is compatible with human rights and freedoms declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>13</sup>

## **Financial Impact Statement**

1.13 The explanatory memorandum submits that the bill will have no financial impact.<sup>14</sup>

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9 Fair Work Amendment (Bargaining Processes) Bill 2014, ss. 443(2).

10 The Hon Christopher Pyne, MP, Minister for Education, *House of Representatives Hansard*, 27 November 2014, p. 1.

11 The Department of Employment, *Submission 16*, p. 4.

12 Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. iii.

13 Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. iii.

14 Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. ii.

## **Acknowledgment**

1.14 The committee thanks those individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at the hearing.

## **Notes of References**

1.15 References in this report to the *Hansard* for the public hearings are to the *Proof Hansard*. Please note that page numbers may vary between the proof and official transcripts.