

The Senate

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Education and Employment  
Legislation Committee

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Fair Work Amendment (Bargaining Processes)  
Bill 2014 [Provisions]

April 2015

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# **RECOMMENDATIONS**

## **Recommendation 1**

**The committee recommends that the Senate pass the bill.**



# 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.

# CHAPTER 2

## Key issues

2.1 The committee received a range of submissions and heard divergent stakeholder views on the Fair Work Amendment (Bargaining Processes) Bill 2014 (the bill).

2.2 Most of the submissions received broadly supported the bill as 'an important piece of legislation which will complement other workplace relations legislation which has been introduced by successive Australian governments.'<sup>1</sup> However, the committee is aware of reservations expressed by some, notably unions.<sup>2</sup>

2.3 This chapter examines key facets of the bill and explores issues raised by submitters.

### Productivity is important

2.4 Productivity is critical to ensuring continued improvement in standards of living, and is a key feature of global economic competitiveness:<sup>3</sup>

Productivity matters because productivity gains allow more jobs to be created, more investment to take place, higher real wage growth to occur, and higher living standards to be achieved. Workplace productivity is the fundamental mechanism by which workers, businesses, families and the economy are all better off.<sup>4</sup>

2.5 As stated by Nobel Prize winning economist Paul Krugman, and quoted by the Department of Education (the department):

Productivity isn't everything, but in the long run it is almost everything. A country's ability to improve its standard of living over time depends almost entirely on its ability to raise its output per worker.<sup>5</sup>

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1 Australian Mines and Metals Association, *Submission 21*, p.1. See also Australian Chamber of Commerce and Industry, *Submission 17*, p.12; Australian Mines and Metals Association, *Submission 21*; South Australian Wine Industry Association Incorporated, *Submission 5*, p. 7; Master Builders Australia, *Submission 18*, p. 2.

2 See for example Australian Council of Trade Unions, *Submission 10*; Australian Workers' Union, *Submission 12*; Unions ACT, *Submission 11*.

3 Department of Employment, *Submission 16*, p. 4.

4 *The Coalition's Policy to Improve the Fair Work Laws*, p. 32, available at: <http://lpaweb-static.s3.amazonaws.com/Policies/FairWork.pdf> (accessed 17 March 2015).

5 Quoted in Department of Employment, *Submission 16*, p. 4.

2.6 Australia cannot afford to be complacent about productivity. In fact, the need to lift productivity performance is widely recognised,<sup>6</sup> as are our economic growth targets:

The need for Australia's policy settings to support productivity growth is essential if we are to meet the 1.8% growth target set by the G20 Finance Ministers and improve the competitiveness of the national economy.<sup>7</sup>

### **The Fair Work Act**

2.7 The *Fair Work Act 2009* (the Act) was established to help promote productivity whilst ensuring fairness.<sup>8</sup> A submission made on behalf of Australian Business Industrial and the New South Wales Business Chamber Ltd encapsulated the aim of the Act as follows:

The object of the Act is to provide a balanced framework of cooperative and productive workplace relations that promotes national prosperity and social inclusion for all Australians. It seeks to do this by providing workplace laws which, amongst other things, promote productivity and economic growth and seek to achieve productivity and fairness through an emphasis on enterprise-level collective bargaining.<sup>9</sup>

2.8 Despite this fact, the Act does not explicitly require, or even encourage, employees to consider productivity requirements in their negotiations for new enterprise agreements.<sup>10</sup> Australia's leading national and international business advocate, the Australian Chamber of Commerce and Industry (ACCI), posited that aspects of the framework are in fact 'currently acting as barriers to productivity improvement.'<sup>11</sup>

2.9 The committee notes that the government is committed to putting productivity back on the agenda.<sup>12</sup>

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6 See *Productivity and innovation in enterprise agreement clauses: an overview of literature, data and case studies at the workplace level*, Fair Work Commission, 2014, p. 1.

7 Australian Chamber of Commerce and Industry, *Submission 17*, p. 5.

8 Department of Employment, *Submission 16*, p. 4.

9 Australian Business Industrial and New South Wales Business Chamber Ltd, *Submission 13*, p. 3.

10 Department of Employment, *Submission 16*, p. 4. See also Australian Business Industrial and New South Wales Business Chamber Ltd, *Submission 13*, p. 4; Australian Chamber of Commerce and Industry, *Submission 17*, p. 6.

11 Australian Chamber of Commerce and Industry, *Submission 17*, p. 6.

12 See *The Coalition's Policy to Improve the Fair Work Laws*, available at: <http://paweb-static.s3.amazonaws.com/Policies/FairWork.pdf> (accessed 17 March 2015).

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## Enterprise bargaining

2.10 Statistics provided by the department indicate that, on average, 6696 applications for approval of enterprise agreements are made each year.<sup>13</sup> Enterprise bargaining is clearly an important feature of industrial legislation. However, attaching no importance to productivity during the bargaining process does not pass the common sense test.<sup>14</sup>

2.11 To address this, the proposed legislation would simply ensure that improvements to workplace productivity are discussed during enterprise bargaining. Examples of improvements include, but are not limited to:

- elimination of restrictive or inefficient work practices;
- initiatives to provide employees with greater responsibilities or additional skills directly translating to improved outcomes; and
- improvements to the design, efficiency and effectiveness of workplace procedures and practices.<sup>15</sup>

2.12 This requirement would not apply to negotiations for greenfields agreements,<sup>16</sup> and there would be no obligation for an agreement to be reached during negotiations. Parties would merely have to at least consider how productivity could be improved in their workplace, and the amendment places no extra burden on the FWC:

[It] is not intended to require the FWC to consider the merit of the improvements to productivity that were discussed, the detail of the matters that were discussed, the outcome of those discussions or whether it would be reasonable for certain provisions to be included in an enterprise agreement. Further, the new requirement is not intended to modify or delay the current timeframes for FWC consideration and finalisation of applications for agreement approval.<sup>17</sup>

2.13 Submitters were largely supportive of the thrust of the amendment.<sup>18</sup>

2.14 ACCI described the measure as a modest improvement:

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13 Department of Employment, *Submission 16*, p. 4.

14 House of Representatives, *Hansard*, 27 November 2014.

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

16 Enterprise agreements made in relation to a new enterprise before any employees are employed. Such enterprises do not have existing arrangements to which productivity improvements can be made. See <http://www.fairwork.gov.au/ArticleDocuments/723/Enterprise-Bargaining.pdf.aspx?Embed=Y> (accessed 16 March 2015).

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

18 Australian Business Industrial and New South Wales Business Chamber Ltd, *Submission 13*; Master Builders Australia, *Submission 18*; Australian Sugar Milling Council, *Submission 20*.

...while not a guarantee of enhanced productivity arising from bargaining, [the measure] will at least assist in getting the 'issue' of productivity onto the table. The proposed amendment is modest and may deliver some benefit if operating in conjunction with other measures set out in the Bill.<sup>19</sup>

2.15 The Australian Mines and Metals Association (AMMA) also supported the proposed amendment, but suggested adding a requirement that productivity be not only discussed, but genuinely considered.<sup>20</sup>

2.16 The South Australian Wine Industry Association echoed this position, stating that:

Simply mentioning the term productivity or agreeing that it is important to lift productivity rates does not in itself lead to productivity improvements.<sup>21</sup>

2.17 The New South Wales state government, meanwhile, saw definite merit in ensuring that the parties involved in enterprise bargaining turn their minds to the issue of productivity.<sup>22</sup>

2.18 On the other hand, some submitters questioned the fundamental premise linking productivity with wages growth:

The Bill appears to be based on an economic claim that is arguable: that any single increase in wages without productivity growth is bad for a country's economy.<sup>23</sup>

2.19 Others, such as Job Watch, described the requirement to discuss productivity improvements as part of the negotiation process as "superfluous":

Whether the employer and employees have had discussions regarding improvements to productivity should not impact on whether an Enterprise Agreement passes the Better Off Overall Test and is approved. Whilst presumably discussions regarding productivity, and thus the improvement of productivity, already occur during the Enterprise Agreement negotiation process, this should be left to the parties to discuss among themselves.<sup>24</sup>

2.20 The Australian Workers' Union expressed concerns about some of the consequences of the proposed amendments, adding that employers may at times be disingenuous in how they present data and information relating to productivity:

...data and documents relating to productivity in a workplace are generally not available to employees or unions, except at the discretion of the

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19 Australian Chamber of Commerce and Industry, *Submission 17*, p. 7.

20 Australian Mines and Metals Association, *Submission 21*, p. 8.

21 South Australian Wine Industry Association Incorporated, *Submission 5*, p. 4.

22 New South Wales Government, *Submission 3*, pp 1–2.

23 Australian Lawyers for Human Rights, *Submission 11*, p. 2.

24 JobWatch Inc, *Submission 14*, p. 4.

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employer. This means that employers may pick and choose which data and information to present as evidence to the FWC, and in what form to present it, so as to exaggerate the actual impact of the proposed claim.<sup>25</sup>

2.21 The committee notes the above concerns but is, however, aware that employees are able to request that employers provide the relevant data and information. This request may be followed by an order from the FWC if employers are not forthcoming.<sup>26</sup>

#### *Committee view*

2.22 The need to enhance productivity performance is widely acknowledged. In the committee's view, it therefore follows that productivity improvements should feature in conversations about work.

2.23 The committee notes submitter concerns about employers not always being forthcoming with employees on issues pertaining to productivity, but is confident that adequate protections exist to ensure that employees have access to relevant information.

### **Protected action ballots**

2.24 The Act provides that the FWC must make a protected action ballot order if satisfied that an application has been made under section 437, and that the applicant has been, and is, genuinely trying to reach an agreement with the employer.<sup>27</sup>

2.25 An application for a protected action ballot does not automatically trigger protected industrial action—rather, it is an application for a determination of whether such action will occur and how.<sup>28</sup> The bill seeks to provide clarity on the circumstances in which the FWC may make a protection action ballot order.

2.26 In making its determination, the FWC would have to look at *how* the applicant has been trying to reach an agreement with the employer, with regard to all relevant circumstances, including the following non-exhaustive list of matters:

- the steps taken by each applicant to try to 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; and

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25 The Australian Workers' Union, *Submission 12*, p. 12.

26 *Fair Work Act 2009*, s. 590(2)(c).

27 *Fair Work Act 2009*, ss. 443(1).

28 JobWatch Inc, *Submission 14*, p. 5.

- the extent to which bargaining for the agreement has progressed.<sup>29</sup>

2.27 Views on the amendment were varied. A number of unions argued that the proposed measures would in effect curtail employees' right to strike:<sup>30</sup>

The right to strike equalises the position of the employer and employees so that they can bargain as equals with approximately equal bargaining power. Without an ability to bargain as an equal with an employer, employees will not be able to effectively seek and obtain their fair share of the growth of the business, which they have played a critical role in supporting.<sup>31</sup>

2.28 Evidence suggests that these fears are unfounded. Careful analysis of the bill shows that the proposed amendments are consistent with current practice in that the 'genuinely trying to reach an agreement test does not require bargaining to have been exhausted or to have reached an impasse before a protected action ballot order can be made.'<sup>32</sup>

2.29 Submitters such as ACCI pointed out that the Act already requires the FWC to be satisfied that applicants have been and are 'genuinely trying to reach agreement,' the only difference is that there is currently no clarity on matters to be considered in making this determination.<sup>33</sup>

2.30 Master Builders Australia went further, suggesting that the requirement for applicants to merely be 'genuinely trying' is insufficient, pointing out that the Act does not contain any meaningful requirement that parties be acting in good faith and offering an example of the consequences of this omission:

One of the adverse effects...is seen in the prevailing culture in the building and construction industry. This culture is reflective of the fact that unions force parties to sign up to pattern or template agreements or they will suffer the consequences of industrial disruption, both lawful and unlawful ie the 'sign up or else' culture that has been identified by the Cole Royal Commission.<sup>34</sup>

2.31 ACCI was similarly of the view that the 'genuinely trying to reach agreement' requirement, as it currently stands, is ineffective:

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29 Drawn from principles of a Full Bench of Fair Work Australia decision in *Total Marine Services Pty Ltd v Maritime Union of Australia* [2009] FWAFB 368. See Explanatory Memorandum, Fair Work Amendment (Bargaining Processes) Bill 2014, p. 3.

30 Australian Manufacturing Workers' Union, *Submission 15*, p. 7; the Australian Council of Trade Unions, *Submission 9*, p. 4.

31 Australian Manufacturing Workers' Union, *Submission 15*, p. 7.

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

33 Australian Chamber of Commerce and Industry, *Submission 17*, p. 7.

34 Master Builders Australia, *Submission 18*, p. 8.

The decision in *JJ Richards & Sons Pty Ltd v Transport Workers Union of Australia* opened the door for unions to pursue industrial action in relation to a proposed enterprise agreement, even before bargaining has commenced, resulting in a number of significant and negative implications for the bargaining system. It is hard to imagine this was the intended outcome when the Act was being drafted. The threat of industrial action pursuant to such tactics not only undermines the voluntary nature of agreement making through ‘practical compulsion’ but has potential productivity stifling and damaging consequences from the outset. Critically, as things currently stand, the prerequisite that the applicant for a protected action ballot order is “genuinely trying to reach agreement” does not present as a significant hurdle.<sup>35</sup>

2.32 Evidence provided by employer groups clearly articulated the view that unions engage in disruptive industrial action as a bargaining strategy. Master Builders Australia further explained that there is no requirement for the FWC to be satisfied that a party is not engaging in pattern bargaining:<sup>36</sup>

This omission, combined with the absence of any constraints relating to good faith bargaining, has contributed to the culture of ‘sign up or else’ agreement making.<sup>37</sup>

### **Excessive claims**

2.33 Under the Act, protected industrial action can be taken even in pursuit of claims that are excessive or unrealistic.<sup>38</sup> To address this, the bill would also provide that the FWC must not grant a protected action ballot order if satisfied that:

- the applicant's claims are manifestly excessive; or
- the claims would have a significant adverse effect on workplace productivity.<sup>39</sup>

2.34 In making its determination, the FWC would need to have regard to the specific conditions at the relevant workplace and industry within which the employer sits. The department informed the committee that the phrase ‘conditions in the workplace’ is intended to be interpreted broadly, and that the FWC would retain discretion on the matters it takes into consideration in deciding whether claims are manifestly excessive.<sup>40</sup>

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35 Australian Chamber of Commerce and Industry, *Submission 17*, p. 8.

36 Pattern bargaining is a process by which an employee group gains a new entitlement from one employer and then uses that as a precedent to demand equal or better entitlements from other employers.

37 Master Builders Australia, *Submission 18*, p. 9.

38 Department of Employment, *Submission 16*, p. 6.

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

40 Department of Employment, *Submission 16*, p. 8.

2.35 Employer groups welcomed the amendment.<sup>41</sup>

2.36 ACCI suggested that the measure would actively work to discourage ambit claims—which can frustrate the bargaining process—and 'inject reasonableness into claims ultimately advanced.'<sup>42</sup>

2.37 Similarly, Master Builders Australia welcomed the effect the bill would have in discouraging ambit claims, but reminded the committee that 'some level of ambit claim may, however, be maintained because of the express limitation in the language of the phrase "manifestly excessive".'<sup>43</sup>

2.38 Not all submitters shared this view. The Maritime Union of Australia pointed out that the content of claims often changes over the course of a negotiation:

[T]his requirement [to reject manifestly excessive claims] would have the Commission make an assessment of a claim in circumstances where the final form of the proposed agreement is far from settled. It is often the case that claims which may initially seem to contain ambit may at a later stage, when "hard bargaining" has seen other claims by the applicant fall away, no longer be characterised as "manifestly excessive".<sup>44</sup>

2.39 The Australian Manufacturing Workers' Union further suggested that views on what is reasonable or excessive would be inherently subjective:

What may be considered manifestly excessive as a final outcome could be considered a reasonable outcome early in the bargaining process by one party, particularly where an employer has refused to engage in discussions and to provide their perspective about why they do not support certain claims. Conversely, what may be manifestly excessive from an employee's perspective may seem reasonable to an employer before they have had the opportunity to hear from union representatives about why certain entitlements are important to employees.<sup>45</sup>

2.40 The Australian Sugar Milling Council agreed that the terms 'manifestly excessive' and 'significant adverse effect' were subjective. The Council, however, pointed out that the FWC will require and rely on significant detail before making a

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41 Australian Chamber of Commerce and Industry, *Submission 17*, p. 10; Australian Public Transport Industrial Association, *Submission 8*, p. 3.

42 Australian Chamber of Commerce and Industry, *Submission 17*, p. 11. An ambit claim is an extravagant demand issued in expectation of a counter-offer and eventual compromise.

43 Master Builders Australia, *Submission 18*, p. 14.

44 Maritime Union of Australia, *Submission 19*, p. 6.

45 Australian Manufacturing Workers' Union, *Submission 15*, p. 10.

determination.<sup>46</sup> AMMA added that the 'threshold for an employer to prove that a claim or claims have a "significant" adverse impact may be too high a bar.'<sup>47</sup>

2.41 The Maritime Union of Australia, however, rejected the premise behind the requirement prohibiting claims that would have a significant adverse impact on productivity:

[T]he implicit assumption in the Bill appears to be that employee claims are adverse to productivity. This ignores the significant contribution that employees make to productivity improvements, often without receiving any corresponding benefit, as borne out by ACTU research.<sup>48</sup>

2.42 The department emphasised the discretion the FWC would have in determining whether claims would have an significant adverse impact on productivity:

For example, it may have regard to whether the claims would have a substantial effect on the output of the workplace relative to its time or cost inputs, if those claims were implemented in an enterprise agreement covering that workplace. Whether a claim or claims will have a significant adverse impact on productivity would depend on the characteristics and capabilities of the workplace, established on the facts and circumstances of the application. Bargaining claims initially advanced by an applicant but no longer being pursued would not be relevant to the Fair Work Commission's considerations.<sup>49</sup>

### **The real cost of industrial action**

2.43 Industry representatives explained that industrial action affects more than the particular employer in question, illustrating why such action is better prevented through good faith negotiation. Mr Daniel Mammone, AMMA, said he did not see why simply ensuring that claims are not excessive and that they include a focus on productivity should be of concern to anyone:

The bill is seeking to address the real problems that are occurring. They are not made-up problems. The explanatory memorandum talks about an industrial dispute in Port Hedland. The threat of that one particular dispute had the capacity to affect not only that company but other companies and their workforces. By and large, it had the capacity of \$7 million a day. That includes royalties lost—foregone—to the Western Australian government. These are not insignificant matters. Yes, we agree that, by nature, these laws will affect bargaining across the economy where bargaining occurs. But it will only affect bargaining in the context of protective industrial action where it is taken. By and large, the requirement that productivity be discussed—and there is no formal mechanism other

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46 Australian Sugar Milling Council, *Submission 20*, p. 3.

47 Australian Mines and Metals Association, *Submission 21*, p. 9.

48 Maritime Union of Australia, *Submission 19*, p. 7.

49 Department of Employment, *Submission 16*, p. 8.

than the commission being satisfied that productivity was discussed—should not be a problem across the board.<sup>50</sup>

2.44 Mr Scott Barklamb, also representing AMMA, added that the cost of the dispute to the Western Australian state government in terms of royalty income equated 'in very short order to the entire amount it spends on homelessness in any year.'<sup>51</sup> Mr Barklamb concluded:

The point of this is to say, though, that apparently localised disputation—what you might describe as sectional or someone might choose to characterise as sectional or limited to an industry—does affect the wider community.<sup>52</sup>

2.45 The committee also heard that the impact of industrial action can start before any action is even undertaken. As posited by the Australian Business Industrial and the New South Wales Business Chamber Ltd:

[T]he true impact of protected industrial action is not confined to its actual incidence, protected industrial action also impacts the bargaining process when it is raised as a credible threat.<sup>53</sup>

2.46 AMMA offered a concrete example of an employer left with no choice but to agree to excessive claims in order to stave off industrial action:

In our submissions, we refer to a project which was an offshore construction project. It was actually a \$4.5 billion project...Halfway through the project, when they needed to renew the agreement to cover the project, was where we saw extortionate pressure from the unions because the client had millions of dollars worth of equipment on site under lease, certainly over a million dollars a day just for the accommodation vessel. Of course, the unions were able to use that and the protected action that was on threat in that project to extract further extortionate claims from the company that was building this offshore facility, including one example where the vessel common-use ablutions allowance was paid at \$90 a day, which was for the fact that people had to walk from their room about 30 metres to go to showers and toilets. On the new accommodation vessel, which was there at the time when the new agreement was being negotiated, each room had its own ensuite, but they still insisted on not just the \$90 a day; that was escalated up to \$110 a day. I think the pressure in those circumstances was absolute. There was no discussion of productivity. They had the client and

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50 Mr Daniel Mammone, Director Government Relations, Australian Mines and Minerals Association, *Proof Committee Hansard*, 20 March 2015, p. 26.

51 Mr Scott Barklamb, Executive Director, Policy and Public Affairs, Australian Mines and Minerals Association, *Proof Committee Hansard*, 20 March 2015, p. 31.

52 Mr Scott Barklamb, Executive Director, Policy and Public Affairs, Australian Mines and Minerals Association, *Proof Committee Hansard*, 20 March 2015, p. 31.

53 Australian Business Industrial and New South Wales Business Chamber Ltd, *Submission 13*, p. 7.

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the actual employer and all of the subcontractors in a position where they could not afford to say no.<sup>54</sup>

2.47 The Australian Chamber of Commerce and Industry described this approach to industrial action as 'strike first, talk later tactics [which] undermine the economy and a stable industrial relations system.'<sup>55</sup>

2.48 The department explained that the bill would address this concern by encouraging discussion rather than costly industrial action:

The changes in the Bill give effect to the Government's Policy that protected industrial action should not be able to be taken at an early stage in negotiations, before proper and meaningful discussions have occurred or have had an opportunity to occur.<sup>56</sup>

#### *Committee view*

2.49 The committee is persuaded that amendments pertaining to protected action ballot orders would provide much needed clarity on how and when the FWC may issue such orders. The amendments are also a reasonable and fair way of ensuring that industrial action is not used as a first resort in enterprise agreement negotiations.

2.50 The committee recognises that both employee and employer groups considered terms such as "manifestly excessive" and "significant adverse effect" to be subjective. Given how complicated it would be for employers to demonstrate, for example, significant adverse impact, the committee is confident that this would serve as a protection for employees and is comfortable with the onus being on employers in this instance.

### **Conclusion**

2.51 The committee is concerned that much of the opposition to this bill appears to be ideologically driven. It does not share the view that requiring employees to consider productivity improvements in any way impinges on their rights. In fact, given that the route to improving living standards is through improved productivity, it is demonstrably in both employers' and employees' interests to work together to enhance productivity.

2.52 It can unfortunately be tempting to fall into the trap of viewing enterprise bargaining as an 'us-and-them' proposition. As is clear from the submissions received, unions are of the view that the proposed measures give employers the upper hand,

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54 Mr Tony Bradford, Principal Consultant, Australian Mines and Minerals Association, *Proof Committee Hansard*, 20 March 2015, pp 29–30.

55 Australian Chamber of Commerce and Industry, *Submission 17*, p. 8

56 Department of Employment, *Submission16*, p. 6.

while in employers' experience the Act doesn't adequately balance their interests against those of unions.<sup>57</sup>

2.53 It is worthwhile remembering that the modern workplace has moved beyond that clichéd, adversarial model. Today only a small percentage of employees feel that unions represent them, as evidenced by dwindling union membership.<sup>58</sup> The vast swathe of Australian employees work in non-unionised sectors. The committee is very much of the view that the outdated us-and-them way of viewing enterprise bargaining helps no one, and supports the bill's initiative in fostering workplace dialogue founded on the concept of mutual responsibility for mutual gain.

2.54 Evidence before the committee confirms that the bill is consistent with the spirit of the Act in promoting both fairness and economic prosperity. It is the committee's view that the proposed measures would enhance the Act by providing clarity where it is desperately needed and promoting flexibility in enterprise bargaining. The rewards are obvious—the bill would empower employees to play an active role in the future of their workplace and help build prosperity for future generations—while the drawbacks are non-existent. The committee has not heard convincing reasons to impede the progress of these reforms.

### **Recommendation 1**

**2.55 The committee recommends that the Senate pass the bill.**

**Senator Bridget McKenzie**

**Chair**

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57 Australian Chamber of Commerce and Industry, *Submission 17*, p. 11.

58 In 2013, only 17 per cent of employees overall and 12 per cent of private sector employees were union members. See Australian Bureau of Statistics data supplied by South Australian Wine Industry Association Incorporated, *Submission 5*, p. 4.

# LABOR SENATORS' DISSENTING REPORT

1.1 Labor Senators oppose the Fair Work Amendment (Bargaining Processes) Bill 2014 (the bill).

1.2 The bill is unnecessarily ambiguous, and if passed will result in the addition of red tape, expense and inconsistency at the expense of workers' democratic right to take protected industrial action.

1.3 The fifth in a series of Coalition bills proposing changes to federal workplace relations laws, like its predecessors the bill comprises nothing more than a focused attack on trade unions.

## **The bill relies on incorrect assumptions and hypotheticals**

1.4 Whilst the Chair's report for this inquiry states that submitters were largely supportive of the thrust of the amendment, twelve of the twenty three submissions to the inquiry opposed the bill. It was not in any way overwhelmingly supported, and the need to enhance productivity discussions in bargaining processes was not widely acknowledged.

1.5 Claims of 'excessive claims' are simply not supported by evidence, despite being welcomed by employer groups. Evidence submitted by bodies representing workers, who of course far outnumber employers, completely opposed this view.<sup>1</sup> In evidence, the Australian Chamber of Commerce and Industry gave evidence that issues were certainly not widespread, but more the fact that there are "outliers".<sup>2</sup>

1.6 In evidence given at the hearing, Mr Daniel Mammone, made incorrect reference to the Explanatory Memorandum (EM):

The bill is seeking to address the real problems that are occurring. They are not made-up problems. The explanatory memorandum talks about an industrial dispute in Port Hedland. The threat of that one particular dispute had the capacity to affect not only that company but other companies and their workforces. By and large, it had the capacity of \$7 million a day. That includes royalties lost – foregone – to the Western Australian government. These are not insignificant matters.<sup>3</sup>

1.7 The EM does not discuss an industrial dispute in Port Hedland. The EM makes a single reference to a decision of Fair Work Australia, *Total Marine Services Pty Ltd v Maritime Union of Australia*, and the decision only, certainly not a reference to the dispute:

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1 Maritime Union of Australia, *Submission 19*, p. 6; Australian Manufacturing Workers' Union, *Submission 15*, p. 10.

2 Mr Dick Grozier, Associate Director, Workplace Relations, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 20 March 2015, p. 8.

3 Mr Daniel Mammone, Director Government Relations, Australian Mines and Minerals Association, *Proof Committee Hansard*, 20 March 2015, p. 26.

14. This item inserts new subsection 443(1A) to provide that when considering whether an applicant for a protected action ballot order has been, and is, genuinely trying to reach an agreement, the FWC must have regard to all relevant circumstances, including a non-exhaustive list of matters which are drawn from principles of a Full Bench of Fair Work Australia decision in *Total Marine Services Pty Ltd v Maritime Union of Australia* [2009] FWAFB 368.<sup>4</sup>

1.8 Furthermore, Mr Mammone's mention of lost royalties of '\$7 million a day' is reference not to the EM, or to any industrial action that ever happened. This number is drawn from a hypothetical matter within a keynote address to the Australia Mines and Minerals Association (AMMA), delivered by Mr Nev Power, CEO of Fortescue Metals Group Limited, in 2014.<sup>5</sup>

1.9 Mr Barklamb also refers to this '\$7 million' apparently lost in dispute during the hearing:

There was a dispute last year of tugboat operators in Western Australia. From memory, 54 or 55 of them were discussing a period of industrial action. I make this comment without necessarily saying that the circumstances in that dispute are directly addressed by this bill, but I just make this point to illustrate the impact. That dispute cost \$7 million a day, and it substantially cost the Western Australian state government in terms of royalties. ... These were calculations that were done by a party affected by the dispute. I will send you the speech they were taken from.<sup>6</sup>

1.10 This is completely incorrect. The number is quoting from the same speech, from Mr Power, who was of course not a party to any dispute, as such strike action did not actually occur.

1.11 Mr Mammone and the Chair make no reference to closures of Ports by actions such as cyclonic activity, which is common each and every year in Port Hedland, and in fact far outweighs any closures from actual strike activity (and certainly hypothetical strike activity).

1.12 This hypothetical has been repeatedly recycled by the Government, the Coalition members of the Committee, and the employer groups submitting to the Committee, and misconstrued as an actual case. It is not, and should not have been relied upon as 'evidence' by the Committee.

1.13 Not content to try and mislead productivity increases by not referring to well respected reports, the Chair's draft seeks to imply by combining elements of the Department of Employment's submission and a nameless speech in the House of Representatives that no importance is attached to productivity in the almost 7,000 bargains registered each year. No evidence was led at the inquiry to substantiate this

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4 Explanatory memorandum, p. 3.

5 Mr Nev Power, Speech to the Australian Resource People Summit, 30 May 2014, video recording available at: <http://www.amma.org.au/news-media/media-center/fmg-chief-talks-ir-challenges/> (accessed 8 April 2015).

6 Mr Scott Barklamb, Executive Director, Policy and Public Affairs, Australian Mines and Metals Association, *Proof Committee Hansard*, 20 March 2015, p. 31

assertion. It cobbles together two unrelated pieces of information, one based on fact and one on fiction.

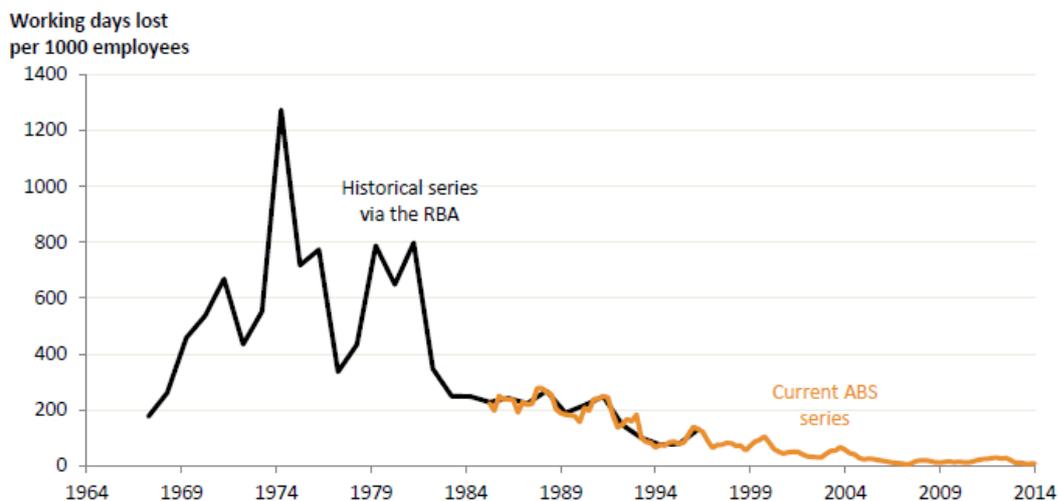
1.14 Evidence provided by the Australian Nursing & Midwifery Federation (ANMF), the Australian Workers' Union (AWU) and the Maritime Union of Australia (MUA) is ignored. All unions appearing before the Committee gave evidence that productivity improvements were part of their bargaining agreements<sup>7</sup> and the ANMF tabled a further document at the hearing which went directly to the issue of productivity.

### **The bill seeks to curtail a productivity issue that is not apparent in the workplace**

1.15 Statistics from the Australian Bureau of Statistics, referred to in submissions by Unions WA and the Australian Council of Trade Unions (ACTU) among others, clearly demonstrate that working days lost per 1000 employees in the last decade have rapidly declined and remain historically low,<sup>8</sup> and, interestingly, are dwarfed by the numbers observed during periods where all strikes were unquestionably breaches of the common law.<sup>9</sup>

*Figure 1: working days lost to industrial disputes*<sup>10</sup>

Figure 1: Working days lost to industrial disputes



Sources: Historical series from Foster, R.A. 1996, 'Australian Economic Statistics 1949–50 to 1994–95', RBA Occasional Paper No. 8, Reserve Bank of Australia, Sydney. Data available from: [http://www.rba.gov.au/statistics/frequency/occ-paper-8.html#section\\_4](http://www.rba.gov.au/statistics/frequency/occ-paper-8.html#section_4). Current ABS series from ABS 2014, *Industrial Disputes, Australia, Sep 2014*, Catalogue number 6321.0.55.001. Available from: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6321.0.55.001Sep%202014?OpenDocument>

7 Maritime Union of Australia, *Proof Committee Hansard*, 20 March 2015, p. 20; Australian Workers' Union, *Proof Committee Hansard*, 20 March 2015, p. 21; Australian Nursing and Midwifery Federation, *Submission 6*, p. 6.

8 Australian Bureau of Statistics, 6321.0.55.001 - Industrial Disputes, Australia, December 2014.

9 Australian Council of Trade Unions, *Submission 9*, p. 10.

10 Australian Council of Trade Unions, *Submission 9*, p. 10.

1.16 We also refer the committee to the 2013 Telstra Productivity Indicator Report, which found that 58 per cent of Australian CEOs in both public and private organisations could not measure productivity and had no identifiable target for it. This was despite 78 per cent of CEOs claiming that productivity improvement was a ‘key priority’.<sup>11</sup>

1.17 Yet, the amendments to the *Fair Work Act 2009* (the Fair Work Act) suggested in this bill focus on productivity as a key element.

1.18 The EM notes that the purpose of the amendment regarding productivity is to ‘enhance collective bargaining by promoting discussions about improving productivity at the workplace level’, and indicates that examples of improvements to productivity may include the elimination of restrictive or inefficient work practices.<sup>12</sup> Regardless of the justification of this amendment, the EM rightly makes no claim that the incidence of industrial action is such as to require regulatory intervention, and as such Labor Senators assert that any legislative amendments for the sake of increased workplace productivity would not prove to be reasonable, necessary or proportionate.

1.19 Whilst the Chair’s report makes reference to the importance of productivity, it makes no attempt to report on published productivity reports. One interpretation of the Chair’s report could conclude that whilst productivity improvements are necessary, improvements have not been achieved. This conclusion is not correct, and evidence from the speech by the Deputy Governor of the Reserve Bank of Australia *Demographics, Productivity and Innovation*,<sup>13</sup> discussed in the hearing,<sup>14</sup> and the MUA in giving evidence at the hearing demonstrated this:

From page 37 through to page 39 of our submission you will see that we have relied on the ACCC’s observations and surveys on productivity. You will see also that there has been a continual improvement in productivity across the five-port measure. ... I also draw your attention to page 39, where it draws some conclusions on Melbourne and Sydney container rates, which are all on the increase.<sup>15</sup>

1.20 The MUA, AWU and ANMF presented evidence to the committee that whilst productivity was difficult to quantify, it was usually, if not always, discussed as part of the bargaining process at present:

Senator LINES: Yes. Mr Doleman, the point you made at the beginning was that, rather than just talking about productivity at the bargaining table, it is included in your enterprise agreements?

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11 ‘Time to halt the productivity slide’, *Business Spectator*, 22 February 2013, <http://www.businessspectator.com.au/article/2013/2/22/time-halt-productivity-slide> (accessed 25 March 2015).

12 Explanatory memorandum, p. iv.

13 Philip Lowe, ‘Demographics, Productivity and Innovation’, speech to the Sydney Institute, 12 March 2014, <http://www.rba.gov.au/speeches/2014/sp-dg-120314.html> (accessed 8 April 2015).

14 See, e.g. *Proof Committee Hansard*, 20 March 2015, p. 3.

15 Mr Michael Doleman, Deputy National Secretary, Maritime Union of Australia, *Proof Committee Hansard*, 20 March 2015, p. 19.

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Mr Doleman: It is indeed.

...

Mr Crawford: In relation to rostering arrangements or whatever, pretty much all of our enterprise agreements contain productivity benefits for employers.<sup>16</sup>

1.21 The ANMF submits that there is no evidence or even claims by nursing and midwifery employers that productivity is not squarely on the table during enterprise bargaining negotiations. For nurses, midwives, employers groups, state and territory governments and agencies, productivity improvements in its many forms is at front of mind in agreement negotiations.<sup>17</sup>

1.22 Aside from arguments from union bodies discussing productivity measures, the Australian Lawyers for Human Rights submitted evidence similarly questioning the definition and measurability of ‘productivity’:

Labour productivity differs enormously between industries, not because some workers work harder than others but because different capital values are taken into account in the calculations ie ‘productivity’ in the economic sense is not a measure of hard work alone, as the Bill seems to imply.<sup>18</sup>

1.23 Professor David Peetz, an expert in the subject of workplace productivity and employment relations, submitted evidence completely discounting the purpose of the bill:

It is unclear what problem the Bill is seeking to solve.

A couple of anecdotal examples are used to demonstrate allegedly excessive wage claims made by particular unions in particular disputes, and thereby demonstrate the need for wage restraint and productivity improvements by using the offices of the [Fair Work Commission].<sup>19</sup>

1.24 Unions WA submitted evidence to the committee that this amendment may indeed see the opposite effect due to employers being given the power to refuse discussion about productivity until all other claims in the bargaining process are resolved, undermining the interests of their own organisations:

Because the employer knows that the [Fair Work Commission] will not approve any Agreement without a ‘productivity’ discussion that involves both sides, he or she now has the power to wilfully delay those discussions until workers agree to the employer’s other demands. There is nothing in the proposed Bill that would in any way compel an employer to begin discussions about productivity until they decide to do so.<sup>20</sup>

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16 *Proof Committee Hansard*, 20 March 2015, pp 20–21.

17 Australian Nursing and Midwifery Federation, *Submission 6*, p. 6.

18 Australian Lawyers for Human Rights, *Submission 11*, p. 2.

19 Professor David Peetz, *Submission 23*, p. 2.

20 Unions WA, *Submission 7*, p. 2.

1.25 Amendment to section 443 would provide that the Fair Work Commission (FWC) must not make a Protected Action Ballot Order (PABO) where it is satisfied that the claims of an applicant are manifestly excessive, having regard to the conditions at the workplace and the industry in which the employer operates or would have a significant adverse impact on productivity at the workplace.

1.26 According to the EM, these proposed restrictions on access to protected industrial action are aimed at encouraging sensible bargaining claims, by ensuring that bargaining representatives cannot obtain a PABO in pursuit of claims that are “out of range” or “beyond what is necessary, reasonable, proper or capable of being met by the employer” in light of workplace and industry conditions.

1.27 Labor Senators assert that the terms “manifestly excessive”, “significant” and “beyond what is necessary, reasonable, proper or capable”, are open to interpretation by the government and the FWC, and are not adequately defined in the bill or the EM.

1.28 Additionally, when considering whether an applicant for protected industrial action has been, and is, genuinely trying to reach an agreement the FWC does not disregard the matters the government has inserted in section 443(1A). By amending section 443 in this manner, the bill imposes a different and higher standard test on unions to take protected industrial action over and above the test of section 413. Labor Senators can only assume that the government is introducing the additional requirements set out in section 443(1A) in such a way because they are applicable only to those making an application for protection action – unions – as there are no corresponding additional elements placed on the employers.

### **The bill infringes on human rights**

1.29 Labor Senators note the 19th report of the current Parliamentary Joint Committee on Human Rights (PJCHR), that states:

1.30 The committee considers that this measure engages and potentially limits the right to freedom of association and the right to form trade unions (specifically the right to strike).<sup>21</sup>

1.30 The PJCHR in fact raised a number of concerns with regard to the bill, including limitations of the right to freedom of association,<sup>22</sup> placing further limits on when approval to undertake protected industrial action may be granted,<sup>23</sup> the statement of compatibility failing to demonstrate that the objectives of the bill are legitimate and justifiable for the purpose of international rights law.<sup>24</sup>

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21 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Nineteenth report of the 44th Parliament*, March 2015, p. 7.

22 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Nineteenth report of the 44th Parliament*, March 2015, p. 11.

23 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Nineteenth report of the 44th Parliament*, March 2015, p. 8.

24 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Nineteenth report of the 44th Parliament*, March 2015, p. 10.

1.31 The PJCHR also made note that that Australia already has in place substantial regulation of industrial action.<sup>25</sup>

1.32 The failure of the Statement of Compatibility to refer to internationally binding sources of the right to strike is concerning, and genuinely unnecessary considering that there are several limitations on the right to strike and requirements that must be met before strike action (or other industrial action) may be lawfully organised or engaged in by workers in under the Fair Work Act.

1.33 Even more concerning was the manner in which the Chair and other Coalition Senators attempted to lean upon unrelated Senate Standing Orders to shut down the line of questioning from the Deputy Chair on the matter:

[Senator Lines]: We have a report from the Parliamentary Joint Committee on Human Rights which clearly raises some concerns. Mr Cully has said he was aware of it. Then there was some mad whispering and suddenly Mr Cully does not really what is in it. Forgive me for being a little suspicious.<sup>26</sup>

### **Concerns with transitional elements**

1.34 Whilst the new provisions will not commence until Proclamation (which may be up to 6 months after Royal Assent), it will have effect in relation to enterprise agreements made after the day of Proclamation. A non-greenfields agreement is made when it is voted upon, meaning the amendment effectively reaches back in time to preclude the approval of agreements where productivity was not discussed during bargaining and that had commenced before the commencement of the relevant provisions of the amending Act.

1.35 Labor Senators express concerns that this created a situation where those entering into the bargaining process must follow a process that is not yet law.

### **Recommendation 1**

1.36 Labor Senators recommend that the Senate reject the bill in its entirety.

## **Senator Sue Lines**

### **Deputy Chair**

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25 Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report: Nineteenth report of the 44th Parliament*, March 2015, p. 9.

26 Senator Sue Lines, Deputy Chair, *Proof Committee Hansard*, 20 March 2015, p. 39.



# AUSTRALIAN GREENS DISSENTING REPORT

1.1 The government claims the Fair Work Amendment (Bargaining Processes) Bill 2014 makes improvements to our workplace relations laws by amending the Fair Work Act 2009 to:

- provide for an additional approval requirement for enterprise agreements that are not greenfields agreements;
- require the Fair Work Commission (FWC) to have regard to a range of non-exhaustive factors to guide its assessment of whether an applicant for a protected action ballot order is genuinely trying to reach an agreement; and
- provide that the FWC must not make a protected action ballot order when it is satisfied that the claims of an applicant are manifestly excessive or would have a significant adverse impact on workplace productivity.

1.2 Substantial evidence to the committee showed that this bill represents a substantial attack on the rights of Australian workers and their capacity to take lawful industrial action and collectively bargain.

1.3 Numerous submissions to the committee from registered organisations and others outlined the dangers of this bill.

1.4 In a submission to the committee the Australian Council of Trade Unions (ACTU) summarised these concerns in the following manner:

The outcomes that the Bill seeks to engineer are twofold: - A reduction in the incidence of lawful industrial action; and - A reduction in the likelihood that bargaining will result in the approval of a collective agreement.<sup>1</sup>

1.5 The ACTU went on to outline in some detail how the legislation would breach Australia's obligations under international law, including the Freedom of Association and Protection of the Right to Organise Convention and the International Covenant on Economic, Social and Cultural Rights.

1.6 The government has failed to make the case for these changes to our workplace relation laws.

1.7 Industrial action is at one of the lowest levels in last the fifty years and no substantial evidence was provided to the committee that showed why further restrictions on lawful industrial action are needed.

1.8 The Australian Greens are also concerned by the practical retrospective effect of the legislation in relation to the "greenfield" provisions.

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1 Australian Council of Trade Unions, *Submission 9*, p. 4.

**Recommendation 1**

**1.9 The Australian Greens will not be supporting the bill and recommend the government not proceed with the legislation.**

**Senator Lee Rhiannon**

**Australian Greens**

# **APPENDIX 1**

## **Submissions Received**

1. Motor Trade Association of South Australia Inc.
2. Queensland Nurses' Union
3. New South Wales Government
4. Australian Industry Group
5. South Australian Wine Industry Association
6. Australian Nursing and Midwifery Federation
7. Unions WA
8. Australian Public Transport Industrial Association
9. Australian Council of Trade Unions
10. UnionsACT
11. Australian Lawyers for Human Rights
12. The Australian Workers' Union
13. Australian Business Industrial and the New South Wales Business Chamber Ltd.
14. Job Watch Inc.
15. Australian Manufacturing Workers' Union
16. Department of Employment

17. Australian Chamber of Commerce & Industry
18. Master Builders Australia
19. Maritime Union of Australia
20. Australian Sugar Milling Council
21. Australian Mines and Metals Association
22. Chamber of Commerce and Industry of Western Australia
23. Professor David Peetz

## **Tabled Documents**

1. Document tabled at a public hearing in Canberra on 20 March 2015 by the Australian Nursing and Midwifery Federation (Tasmanian Branch).

## **Response to Questions on Notice**

1. Response to a question on notice from the Australian Mines and Metals Association, received 23 March 2015.
2. Response to a question on notice from the Australian Workers' Union, received 23 March 2015.
3. Responses to questions on notice from the Department of Employment, received 24 March 2015.

## **APPENDIX 2**

### **Public Hearing**

*Canberra, Friday, 20 March 2015*

**Committee Members in attendance:** Senators Lines and McKenzie

**Witnesses:**

BARKLAMB, Mr Scott, Executive Director, Policy and Public Affairs, Australian Mines and Metals Association

BELFIELD, Mr Martin, Manager, Workplace Relations, Queensland Master Builders Association

BLAKE, Mr Nicholas, Senior Industrial Officer, Australian Nursing and Midwifery Federation

BLAXLAND, Mr James, Legal Officer, Australian Council of Trade Unions

BRADFORD, Mr Tony, Principal Consultant, Australian Mines and Metals Association

CLARKE, Mr Trevor, Industrial, Policy and Research, Australian Council of Trade Unions

CRAWFORD, Mr Stephen, Senior National Legal Officer, The Australian Workers' Union

CULLY, Mr Peter, Branch Manager, Framework Policy Branch, Workplace Relations Policy Group, Department of Employment

DOLEMAN, Mr Michael, Deputy National Secretary, Maritime Union of Australia

GROZIER, Mr Dick, Associate Director, Workplace Relations, Australian Chamber of Commerce and Industry

HARNISCH, Mr Wilhelm, Chief Executive Officer, Master Builders Australia Ltd

KUZMA, Ms Janey , Senior Executive Lawyer, Bargaining and Coverage Branch,

Workplace Relations Legal Group, Department of Employment

MAMMONE, Mr Daniel, Director Government Relations, Australian Mines and Metals Association

MENALDA, Mr Tristan, Senior Adviser and Policy Adviser, Australian Mines and Metals Association

MOREHEAD, Dr Alison, Group Manager, Workplace Relations Policy Group, Department of Employment

NEAL, Mr Aaron, Senior National Legal Officer, Maritime Union of Australia

O'SULLIVAN, Mr Jeremy, Chief Counsel, Workplace Relations Legal Group, Department of Employment

SMITH, Mr Stephen, Director, National Workplace Relations, Australian Industry Group

THOMAS, Ms Lee, Federal Secretary, Australian Nursing and Midwifery Federation