

# CHAPTER 1

## Background

### Reference

1.1 On 3 December 2015, the Senate referred an inquiry into the provisions of the Fair Work Amendment (Remaining 2014 Measures) Bill 2015 (the Bill) to the Education and Employment Committee for inquiry and report by 4 February 2016.

### Conduct of 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 19 organisations, as detailed in Appendix 1.

### Background

1.3 On 27 February 2014, the Government introduced the Fair Work Amendment Bill 2014 (the 2014 Bill) into the House of Representatives. The purpose of the 2014 Bill was to make amendments to the *Fair Work Act 2009* (Fair Work Act) to implement elements of *The Coalition's Policy to Improve the Fair Work Laws*, an election commitment from the 2013 election.<sup>1</sup>

1.4 The amendments contained within the 2014 Bill were based on recommendations from the 2012 review of the Fair Work Act conducted by the Fair Work Review Panel, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation*, commissioned by the previous government.<sup>2</sup>

1.5 This committee inquired into the provisions of the 2014 Bill, with a final report tabled on 5 June 2014 recommending the Senate pass the Bill.<sup>3</sup>

1.6 The 2014 Bill contained 10 amendments to the Fair Work Act. Four of these were substantively passed by both houses – after some amendments made in the Senate and agreed to by the House of Representatives – on 11 November 2015, and Royal Assent was granted on 26 November 2015.

1.7 The four measures which passed from the 2014 Bill dealt with:

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1 Explanatory Memorandum, Fair Work Amendment Bill 2014, p. i.

2 Explanatory Memorandum, Fair Work Amendment Bill 2014, p. i.

3 Education and Employment Legislation Committee, *Fair Work Amendment Bill 2014 [Provisions]*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment/Fair\\_Work\\_Amendment/Report/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/Fair_Work_Amendment/Report/index) (accessed 16 December 2015).

- extension of period of unpaid parental leave (Part 1);
- greenfields agreements (Part 5);
- protected action ballot orders (Part 7); and
- unclaimed money (Part 10).

1.8 The government reintroduced the remaining six measures from the 2014 Bill as the Fair Work Amendment (Remaining 2014 Measures) Bill 2015 on 3 December 2015.

### **Overview of the bill**

1.9 The Bill will amend the Fair Work Act to:

- amend the National Employment Standards (NES) in relation to payment of annual leave upon termination of employment and the taking or accruing of leave while receiving workers' compensation;
- change the requirements for flexibility terms in modern awards and enterprise agreements and individual flexibility arrangements made under those terms;
- provide that there will not be a transfer of business under Part 2-8 of the Fair Work Act when an employee becomes employed with an associated entity of his or her former employer after seeking that employment on his or her own initiative before the termination of the employee's employment with the old employer;
- amend the right of entry framework, including by:
  - repealing amendments made by the *Fair Work Amendment Act 2013* that required employers to facilitate transport and accommodation arrangements for permit holders exercising entry rights at work sites in remote locations;
  - providing for new eligibility criteria that determine when a permit holder may enter premises for the purpose of holding discussions or conducting interviews with one or more employees or Textile, Clothing and Footwear (TCF) award workers;
  - repealing amendments made by the *Fair Work Amendment Act 2013* relating to the default location of interviews and discussions and reinstating pre-existing rules; and
  - expanding the Fair Work Commission's (FWC) capacity to deal with disputes about the frequency of visit to premises for discussion purposes; and

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- provide that, subject to certain conditions, the FWC is not required to hold a hearing or conduct a conference when determining whether to dismiss an unfair dismissal application under section 399A or section 587.<sup>4</sup>

## **Human rights implications**

1.10 The Bill's Explanatory Memorandum notes that the bill engages the following rights:

- the right to work under Article 6(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the right to just and favourable conditions of work under Article 7 of the ICESCR;
- the rights of parents and children under Articles 3, 5 and 18 of the Convention of the Rights of the Child (CRC) and Article 5(b) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- the right to an effective remedy under Article 2 of the *International Covenant on Civil and Political Rights* (ICCPR);
- the right to a fair hearing under Article 14 of the ICCPR;
- the right to protection against arbitrary and unlawful interferences with privacy under Article 17 of the ICCPR; and
- the right to freedom of association in Article 22 of the ICCPR.<sup>5</sup>

1.11 The Explanatory Memorandum argues that the Bill is compatible with human rights since it advances the protection of human rights, including by providing greater flexibility for working arrangements while retaining protections for workers. The Explanatory Memorandum also notes that: 'To the extent that the amendments may limit human rights, those limitations are reasonable, necessary and proportionate'.<sup>6</sup>

## **Financial impact statement**

1.12 The Explanatory Memorandum for the Bill notes that the financial impact of the measures included in the Bill will be 'nil'.<sup>7</sup>

## **Acknowledgement**

1.13 The Committee thanks those individuals and organisations who contributed to the inquiry by preparing written submissions.

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4 Explanatory Memorandum, pp v-vi.

5 Explanatory Memorandum, p. vi.

6 Explanatory Memorandum, p. xv.

7 Explanatory Memorandum, p. ii.

