

Additional Comments

The Australian Greens

The Australian Greens support the analysis and comments made in the Majority Report on the Fair Work (Transitional Provisions and Consequential Amendments) Bill (“the Fair Work Transitional Bill”). The Australian Greens also fully endorse and support all the recommendations made in the Majority Report.

We share the concerns raised in the Majority Report about a number of aspects of the Fair Work Transitional Bill including:

- the continuation of sub-standard agreements, individual and collective;
- the consequences of award modernisation for many workers;
- the modernisation of enterprise awards;
- the limitations in accessing low paid workplace determinations;
- the issues facing non-federal system employees; and
- the proposed new representation orders.

We wish to make a few short additional comments on some of these important issues.

Substandard Agreements

The Greens have held a consistent position since before the last election that substandard agreements, individual or collective, should be able to be terminated and the employee employed on the more favourable conditions of the award or superior collective agreement that covers the employer. We moved amendments in respect of the Workplace Relations (Transition to Forward with Fairness) Bill in 2008 to provide a mechanism for employees to terminate unfair AWAs. These amendments were not supported by the Government and many workers have stayed on unfair AWAs ever since.

Too many workers have been subject to inherently unfair workplace agreements due to the aberration that was Work Choices. In providing a fairer safety net comprising the National Employment Standards and modern awards, the ALP Government has an obligation to ensure that workers cannot continue to be employed on conditions that fall below the safety net.

We support the recommendation of the Majority Report that FWA is empowered to terminate or vary agreements which disadvantage employees as compared to the new safety net. We also specifically support the recommendation by the Majority Senators that a new enterprise agreement automatically replace an AWA or ITEA, without the need for conditional termination provisions.

Award modernisation

The Greens have also been concerned with the award modernisation process since it was provided for in the Workplace Relations (Transition to Forward with Fairness) Act last year. We appreciate the policy intent of the award modernisation process and recognise it is a very difficult task that the AIRC has been asked to perform in a relatively short time frame. However, some of the consequences for workers are difficult to reconcile with the Government's policy intent.

One such example was brought to the Committee's attention by the ASU and concerned the Clerks Private Sector Award. Of particular concern with that award is the setting of an exemption rate at \$44 000 a matter discussed by the Majority Senators. The Greens support the recommendation that the Minister amend the Award Modernisation Request to ensure that there can be no exemption from the award below \$100 000 as per the Fair Work Act.

We also specifically wish to mention our support for the recommendation that take home pay orders be expanded to cover significant non-financial disadvantage. Such an extension is vital for many of the most vulnerable award-reliant workers who will face potentially significant changes in their working hours due to the award modernisation process. We believe the take home pay orders are too restrictive.

We note that the two year review of modern awards, which was included in the Bill as a result of an agreement with the Australian Greens, was generally supported by the submissions to the Inquiry. The Greens believe an earlier review is important in ensuring the new award safety net is adequate.

The Australian Greens continue to be concerned about the long term consequences of the new award system under the Fair Work Act. As we stated in the debate on the Workplace Relations (Transition to Forward with Fairness) Bill in 2008 we want to see a fair, robust and relevant award system. We believe that awards should provide a comprehensive safety net for workers on an industry or occupational level that is flexible enough to allow for industry-specific conditions but secure enough to provide appropriate protections. Awards must be living documents that can adapt to the changes in community standards. Time will tell if the modern award system will provide the fairness Australian workers expect.

Low paid determinations

The Australian Greens moved an amendment in the debate on the Fair Work Act to delete the requirement that an employer must not have been covered by an enterprise agreement in the past to be subject to a low paid workplace determination. Our amendment was not supported by the Government. The Fair Work Transitional Bill extends that requirement to any collective agreement made in the past. As the Majority Report notes this includes Work Choices agreements where actual bargaining may never have occurred to single issue agreements. This provision is an

unnecessary and counter-productive limitation on accessing a low paid workplace determination.

The Greens support the low paid bargaining stream provisions. They are vitally important in encouraging and achieving genuine collective bargaining in low paid industries, often female dominated industries. We do not understand why the government would seek to limit their application.

We believe the requirement for no previous collective agreements in the Bill and the Act should be deleted and we support the recommendation in the Majority Report that Fair Work Australia be given the discretion to decide on a low paid workplace determination after considering all the circumstances.

Non-federal system employees

The Australian Greens have also been concerned for some time about the plight of non-federal system employees, especially those in the community and social services sector. As we discussed in the debate on the Fair Work Bill, many of these employees do not know if they are in the federal system or not given the technical and complicated determination of whether their employers are constitutional corporations.

If they are not in the federal system, while they may be currently covered by transitional instruments, those instruments will be terminated in 2011 and the workers will lose important protections. We appreciate the Government is attempting to deal with the jurisdictional mess by negotiating with the States to refer their powers. This does not seem guaranteed and indeed the Western Australian Government has specifically ruled out such a referral. This situation is a consequence of moving away from the conciliation and arbitration power to a reliance on the corporations power. It is an issue that is not going away and the Government must ensure those workers caught out by its laws are protected.

Representation orders

The Australian Greens oppose the provisions in the Fair Work Transitional Bill providing for a new form of representation order. We will not support provisions which have the potential to undermine workers' freedom of association. We agree with the Majority Senators that the new provisions are unnecessary.

Outworkers

The Australian Greens also fully endorse and support the comments and recommendations made by the Majority Report with respect to outworkers. We have a longstanding commitment to ensuring appropriate and robust protections for outworkers. The analysis and recommendations made by Majority Senators points to unfinished business and this Government must take this opportunity to remedy all the gaps identified and ensure the utmost protection for these most vulnerable workers.

Conclusion

The Australian Greens believe significant amendments are required to be made to the Fair Work Transitional Bill to ensure it appropriately protects workers in the shift from Work Choices to the Fair Work Act. We support all the recommendations made in the Majority Report and we are prepared to move amendments to address all these concerns.

Senator Rachel Siewert