

## Fair Work Amendment (Bargaining Processes) Bill 2014

### Second reading speech

#### Introduction

The *Coalition's Policy to Improve the Fair Work Laws* was released in May 2013, some four months before the 2013 federal election. As was stated in the policy, achieving higher living standards, better pay and more jobs all depend on having fair, productive, and effective workplaces. The reforms we have committed to will ensure that the Fair Work laws provide a strong and enforceable safety net for workers while helping business to grow, create new jobs and deliver higher real wage growth.

There has already been significant progress towards implementing the Government's reforms, with the introduction into Parliament of the Fair Work Amendment Bill 2014, the Fair Work (Registered Organisations) Amendment Bill 2014 and the Building and Construction Industry (Improving Productivity) Bill 2013.

Today I introduce the Fair Work Amendment (Bargaining Processes) Bill 2014, which further implements reforms included in our workplace relations policy. This Bill gives effect to our election commitment to ensure that negotiations for enterprise agreements are harmonious and productive.

Enterprise bargaining is an important feature of the Fair Work laws, however the current framework has led to some outcomes that fail the common sense test.

Currently the Fair Work Act allows industrial action to be taken at an early stage in negotiations, before meaningful discussions have taken place. The current provisions allow for industrial action to be taken as a step of "first resort". The current Act does nothing to encourage parties to even consider issues of workplace productivity during bargaining, despite productivity being front and centre in the objects of the Fair Work Act. The amendments to the Fair Work Act the Government is pursuing will address these issues.

#### Protected industrial action

When Labor introduced the Fair Work Act, it enabled unions to take protected industrial action before bargaining had even commenced despite promising not to do so in 2007. The Act also allows industrial action to be taken at a very early stage in negotiations, before proper, meaningful discussions have occurred or bargaining has been given a chance to get underway. When the "strike first, talk later" problem was exposed in the *JJ Richards* case, Labor chose to do nothing about it, even though it was directly contrary to its policy commitments made before the 2007 election in relation to industrial action. Labor's own Fair Work Act Review Panel recommended that the problem be rectified, but Labor still did nothing.

The Coalition Government has already moved to address this problem with the Fair Work Amendment Bill 2014, which will ensure protected industrial action cannot be taken until bargaining has commenced. The Bill I introduce today will complement this reform, ensuring that before someone seeks to take industrial action, they have at least attempted to have genuine and meaningful discussions with the employer.

In order to take protected industrial action, an employee bargaining representative must first apply for a protected action ballot order to allow a secret ballot of employees to be conducted so the employees can decide whether they wish to take industrial action. When making a protected action ballot order,

the Fair Work Commission must be satisfied that the applicant has been, and is, genuinely trying to reach an agreement. Until now, the Fair Work Act did not provide specific guidance on what it means to be 'genuinely trying to reach an agreement' for this purpose.

The Bill will fix this by requiring the Fair Work Commission to have regard to a range of factors in deciding whether an applicant for a protected action ballot order is genuinely trying to reach an agreement. This list of non-exhaustive factors include a consideration of the extent to which the applicant has communicated its claims to the employer and the extent to which bargaining has progressed.

This amendment will provide greater transparency in what applicants for a protected action ballot order need to demonstrate to show they are genuinely trying to reach an agreement. The decision on whether to issue an order will still be made by the independent Fair Work Commission.

The Bill also addresses a further problem with the Fair Work Act that allows industrial action to be taken in pursuit of almost any bargaining claim, regardless of how extreme, unreasonable or unrealistic it may be. Enterprise bargaining is a central part of the Fair Work system, but the current rules have allowed industrial action to be taken in pursuit of fanciful pay and leave increases, without any proposed productivity increases. For example, we've recently seen reports of protected action ballot orders made and protected industrial action threatened in pursuit of claims that would increase the salary package of marine engineers in Port Hedland by around 38 per cent over four years. The reports indicated the claim, which includes an additional month of annual leave, is on top of existing salary packages of between \$280,000 and \$390,000, where employees work 6 months of the year.

Similar irresponsible conduct was on show in the case of the MUA's negotiations with marine operators in the offshore oil and gas sector in Western Australia in 2010. These negotiations resulted in 30 per cent wage increases in just under four years with no productivity benefits, following industrial action being taken. Just months following this case, the MUA brought Australian ports to a halt in pursuit of a \$46,000 wage increase for workers already earning over \$100,000 for 185 days work per year.

The Government's view is that the right to take industrial action should not be used as a "first resort" tool in bargaining. This right must not be exercised capriciously. The Bill will require that the independent Fair Work Commission will not make a protected action ballot order if it satisfied that the bargaining claims:

- are manifestly excessive, having regard to the conditions at the workplace and relevant industry; or
- would have a significant adverse impact on productivity at the workplace.

### **Enterprise agreement approval**

Despite Labor's talk about how the Fair Work laws would encourage workplace productivity, there is nothing in the current bargaining provisions that requires bargaining parties to even think about productivity when they are negotiating a new enterprise agreement.

For the future prosperity of this country, we need to put productivity back on the bargaining agenda. To ensure this happens, the Bill will amend the Fair Work Act to require productivity improvements at the workplace to have been discussed during negotiations, before a new enterprise agreement can be approved by the Fair Work Commission.

There does not need to be an agreement reached about improving productivity – it may be that the workplace has already been progressively making productivity improvements. The key is to make sure parties have at least considered how productivity in their workplace could be improved. This will at least ensure productivity is part of the bargaining discussions.

### **Conclusion**

Before the last election, the Government committed to keep and improve the Fair Work laws. The Government is continuing to deliver on this commitment with the measures included in the Fair Work Amendment (Bargaining Processes) Bill 2014. The Bill will amend the Fair Work Act to promote sensible, harmonious and productive enterprise bargaining. It will make sure that industrial action is not a first-resort step in negotiations for an agreement. It will allow the Fair Work Commission to intervene where industrial action is pursued to support claims that are manifestly excessive. And finally, it will put productivity back on the agenda in enterprise agreement negotiations.

The Bill implements clearly stated election policies – nothing more and nothing less.

These reforms are needed to help build Australia's prosperity for future generations. I urge members to act to promote more harmonious and productive bargaining by supporting the modest and measured reforms included in this Bill.