

9 May 2017

Our ref (KB/IndLC)

Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

By Email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Committee Secretary

**Fair Work Amendment (Pay Protection) Bill 2017**

Thank you for the opportunity for to comment on the Fair Work Amendment (Pay Protection) Bill 2017 (**Bill**).

The Queensland Law Society (**Society**), in carrying out its central ethos of advocating for good law and good lawyers, endeavours to be an honest, independent broker delivering balanced, evidence-based comment on matters which impact not only our members, but also the broader community.

Given the short timeframes allowed for this inquiry, our comments below are not an exhaustive review of the Bill. However, we understand that the amendments to the *Fair Work Act 2009* (**Act**) that the Bill proposes would be a significant shift from the current legislative position.

If the Bill is passed, an enterprise agreement will need to maintain a rate of pay which is no less than the full rate of pay (including allowances, penalties, loadings etc) in the underlying award for the life of the agreement (as opposed to the current requirement which is that agreement rates have to keep up with base rates in the applicable award).

Whilst enterprise agreements made under the current Act are assessed against the better off overall test and therefore rates within such agreements generally meet or exceed the full rates of pay in the underlying awards, under the provisions of the current Act agreement rates may fall below the full rate of pay in the underlying award as time goes on. In addition, agreements that were made under previous industrial legislation may contain rates which are less than the current full rate of pay under the relevant award.

Whilst there may be some merit in introducing a requirement for enterprise agreements to keep up with full award rates for the life of the agreement, the Committee should give proper consideration to the implications of imposing this new requirement retrospectively on existing agreements (as is proposed under clause 30(1) of the Bill).

Further, the Society generally opposes the introduction of provisions that impose retrospective rights or liabilities on a person on the basis that these may create unjust and unforeseeable outcomes and may be contrary to section 12(2) of the *Legislation Act 2003*.

In addition, it would appear as though sub-clauses (1) and (2) of section 30 are inconsistent with each other and their intent needs to be reconsidered.

Please do not hesitate to contact our Policy Solicitor Kate Brodnik

Yours faithfully

Christine Smyth  
**President**