



Committee Secretary
Senate Education, Employment and Workplace Relations Committee
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Parliament House
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By email: eewr.sen@aph.gov.au

Friday 9 January 2009

Dear Sir/Madam

Submission to Inquiry into the Fair Work Bill 2008

Jobs Australia is the national peak body for nonprofit organisations that assist unemployed people to get and keep jobs. Jobs Australia also acts as an employer association for about a thousand nonprofit community providers of employment and other social welfare and community services across Australia.

It is in our capacity as a national employer body for nonprofit community services organisations that we wish to make this submission to the Inquiry. We will limit our comments to the draft provisions relating to the making of multiple enterprise agreements. Our view is that multiple enterprise agreements are potentially a very useful option for some employers in the nonprofit community services sector. We note that there have been media reports of concerns in some quarters that the changes go too far in facilitating the making of multiple enterprise agreements.

Bargaining in the nonprofit community sector

1. Jobs Australia welcomes the changes proposed that relate to the making of multiple enterprise agreements.
2. The nonprofit community services sector, and the employers we represent, is largely reliant on the award safety net. Where enterprise agreements exist, they generally provide rates of pay and other conditions of employment only slightly above the award safety net.
3. The main reasons for lack of bargaining in the sector include:
 - a) Reliance on external funding from government, which limits the employer's capacity to agree to above award pay and conditions; and
 - b) A range of characteristics which reflect the historical and current matters that the FWA must take into account in order to make a low-paid authorisation (s243 (2)).
4. A consequence of the lack of bargaining in the sector is that nonprofit community services are unable to provide competitive wages and conditions, compared to other employers which have been bargaining for the last decade and a half, and so are now facing a crisis in recruitment and retention.
5. Relatively low wages in an award reliant sector is a predictable outcome of a system which has allowed cumulative enterprise bargaining pay increases to outstrip award increases every year since the mid-1990s. The gap in 2009 is far larger than was the case in 1999.

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Voluntary multiple enterprise agreement making

6. Multiple enterprise agreements are a potentially attractive option for some nonprofit community services organisations where these organisations share similar funding and are not competing – in some areas these employers actively cooperate and collaborate. Multiple enterprise agreements also offer significant efficiencies in resourcing the bargaining process in such areas, where these employers would be likely to deliver very similar pay and conditions if required to bargain individually.
7. Jobs Australia has experience of making multiple business agreements under the *Workplace Relations Act*. We have assisted employers in Victoria to make two such agreements (*Neighbourhood Houses and Learning Centres Workplace Agreement 2007* and *Neighbourhood Houses and Adult Community Education Collective Agreement 2008*) covering 223 and 48 employers respectively, with three unions being parties to the agreements.
8. The process of making these agreements under the current *Workplace Relations Act* provisions proved to be administratively cumbersome and lengthy. The agreements were negotiated in a cooperative manner and there was no disputation. But the process of authorisation and meeting other requirements of the Act resulted in delays of several months in both cases. There were two main reasons for the delays:
 - a) The current legislation is unduly complex. It is inherently time consuming because of the authorisation process and the requirement for an overloaded Workplace Authority to be involved at every stage, and it is difficult to explain the arcane requirements to small employers with limited industrial relations knowledge; and
 - b) The logistics of coordinating significant numbers of employers to meet the procedural requirements of the Act has also proved difficult to comply with. Timelines are short and inflexible and the Workplace Authority has little discretion to allow any variation to the procedures to accommodate reasonable logistical issues.
9. The Bill provides for a more straightforward process where all parties are involved voluntarily.
10. In particular, we welcome the clarification in s184 that if the employees of an individual employer do not approve the multiple enterprise agreement, then the agreement is varied to remove that employer as a party.
11. We also welcome the discretion to be provided to the FWA to vary the 14 day time limit for lodgement (s185). This time limit is normally reasonable for a single enterprise agreement, or for a multiple enterprise agreement involving a handful of employers. However, our experience with multiple enterprise agreements involving significant numbers of small community based organisations (223 and 48 in the two agreements referred to above), where voluntary management committees typically only meet monthly, is that collating the results of the employee approval process is very difficult to complete within current timelines. FWA should have the discretion to extend the lodgement period where this is requested for reasonable purposes such as practical logistics.
12. We submit that it is important that the simplified provisions for multiple enterprise agreements where all parties are voluntarily involved should be retained.

Low paid bargaining stream

13. On its own the simplified process for voluntarily entering into multiple enterprise agreements, while welcome, is unlikely to be sufficient to significantly promote further bargaining in this sector, as it does not address the structural barriers to bargaining.
14. The low paid bargaining stream provides a mechanism whereby Fair Work Australia (FWA) may become involved to assist the parties in reaching agreement.
15. We believe the lack of realistic bargaining options has damaged the nonprofit community services sector in recent years. There has been no technical impediment to employers engaging in bargaining, rather there have been structural barriers, including reliance on third party funding. This is not likely to change in the near future.
16. Multiple enterprise agreements will not be suitable for all nonprofit community services employers, but they represent a useful option in some areas. However we recognise that

bargaining processes involve competing interests which do not always allow straightforward agreement making.

17. Employers and employees in other industries with a history of bargaining will operate under processes which recognise that there are competing interests and which provide a role for the FWA to assist when agreement is unable to be reached.
18. On balance we welcome the introduction of the low paid bargaining stream as providing parties in the nonprofit community sector with access to the FWA where agreement cannot readily be reached for a multiple enterprise agreement.
19. The low paid bargaining stream provides a mechanism for bringing relevant external third parties, such as funding agencies, to the table through the FWA's powers to deal with disputes. Jobs Australia welcomes this as a necessary option to help making bargaining a realistic prospect in the nonprofit community services sector.
20. Jobs Australia acknowledges that the low paid bargaining stream provides mechanisms which may expose some employers in this sector to claims which they might prefer not to have to deal with, and to the risk of a workplace determination being imposed if an agreement cannot be reached.
21. However, our experience is that generally the employers we represent recognise that the pay and conditions they can provide given current levels of investment by Government are uncompetitive and that this is harming their ability to deliver services to some of the most vulnerable people in our communities.
22. Furthermore, we believe that the widening gap between the award safety net and bargaining outcomes over the last fifteen years is likely to become wider in future in the absence of bargaining in the sector. In our view, the risks for the sector associated with that outweigh the risks associated with the low paid bargaining stream provided by the Bill.
23. We note that the Bill does not allow protected industrial action in the case of bargaining for a multiple employer agreement. Furthermore, an employer will no longer be bound by the multiple enterprise agreement if they enter into a single employer agreement.
24. Multiple enterprise agreements on their own do not address funding issues, but the Bill provides some realistic mechanisms which will facilitate bargaining if there is improved investment by Government in future.
25. Moreover, we believe it is a feature of a mature and balanced industrial relations system that there ought to be a realistic capacity for employees to make claims, with reasonable rights and protections for all parties.

Conclusion

26. Bargaining is currently not a realistic option for most employers and employees in the nonprofit community services sector. This is contributing to major workforce problems and cannot be sustained. The Fair Work Bill provides some reasonable options that may assist employers in this sector to improve their competitiveness and continue to deliver high quality services to disadvantaged Australians, if other factors such as levels of Government investment are addressed in future.

Yours Sincerely



David Thompson AM
Chief Executive Officer