

Answers to questions taken on notice by the Centre for Future Work

Question 1

CHAIR: Can you explain how Labor's section 189 in the Fair Work Act compares with the proposed section 189?

Section 189 under the present Fair Work Act states the Fair Work Commission can approve an agreement that fails the BOOT if due to "exceptional circumstances", approving the agreement is not contrary to the "public interest". The proposed section 189 adds a new public interest exemption that qualitatively changes how the BOOT is applied, with the Commission required to approve agreements that do not comply with the BOOT where both parties agree, and the business has experienced some negative impact due to COVID-19. If these very broad tests are met, the new section 189 states the approval of the below-Award agreement is "not contrary to the public interest".

The proposed section 189 differs from the present section 189 because it diminishes the arbitration powers of the Commission to determine whether negative impacts of below-Award agreements (such as suppressed wages growth) is in the public interest or not. Parallel measures proposed by the legislation to mandate 21-day approval timelines for all agreements would combine with section 189 to create a powerful impetus on the Commission to pass below-Award, non-BOOT compliant agreements.

Question 2

The second outstanding question was asked during the closing of my session. The Chair directed me to take the question on notice, however I did offer a very short response in closing ("Reject the bill" - page 7 of the transcript). Should the Committee accept a more fulsome response due to time constraints:

Senator O'Neill: A recommendation to the crossbench from an expert such as you is really important, Ms

Pennington. If you were to advise the crossbench—the five critical senators who will determine whether this bill, which you've critiqued very expertly this morning, advances and becomes the law of this country or whether it is turned around at this point to protect wages, jobs and job security—what would be your recommendation to the five crossbenchers?

Deliberate wage-boosting policies are clearly required to support a sustainable and inclusive post-COVID recovery, boost consumer spending, and strengthen confidence. But this Bill does exactly the opposite.

The overall impact of the proposed Bill will be to weaken wage growth, extend insecure work and undermine bargaining power. Therefore, this Bill should be rejected.