ACCI SUBMISSION

Senate Education, Employment and Workplace Relations Legislation Committee

Inquiry into the Fair Work Amendment Bill 2012

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ABOUT ACCI

Who We Are

The Australian Chamber of Commerce and Industry (ACCI) speaks on behalf of Australian business at a national and international level.

Australia's largest and most representative business advocate, ACCI develops and advocates policies that are in the best interests of Australian business, economy and community.

We achieve this through the collaborative action of our national member network which comprises:

- All state and territory chambers of commerce
- 29 national industry associations
- Bilateral and multilateral business organisations

In this way, ACCI provides leadership for more than 350,000 businesses which:

- Operate in all industry sectors
- Includes small, medium and large businesses
- Are located throughout metropolitan and regional Australia

What We Do

ACCI takes a leading role in advocating the views of Australian business to public policy decision makers and influencers including:

- Federal Government Ministers & Shadow Ministers
- Federal Parliamentarians
- Policy Advisors
- Commonwealth Public Servants
- Regulatory Authorities
- Federal Government Agencies

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally;
- Business representation on a range of statutory and business boards and committees;
- Representing business in national forums including Fair Work Australia, Safe Work Australia and many other bodies associated with economics, taxation, sustainability, small business, superannuation, employment, education and training, migration, trade, workplace relations and occupational health and safety;
- Representing business in international and global forums including the International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, Confederation of Asia-Pacific Chambers of Commerce and Industry and Confederation of Asia-Pacific Employers;
- Research and policy development on issues concerning Australian business;
- The publication of leading business surveys and other information products; and
- Providing forums for collective discussion amongst businesses on matters of law and policy.

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INTRODUCTION

The Australian Chamber of Commerce and Industry (ACCI) welcomes the opportunity to provide a written submission to the Standing Committee on Education, Employment and Workplace Relations inquiry into the Fair Work Amendment Bill 2012 (the Bill).

The Bill is described as a first tranche Government response to the Post Implementation Review (PIR) report titled, "*Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation*" (the Report).

This submission responds to the first tranche legislation and also provides the Committee with its views as to two other significant pieces of workplace relations legislation which have not been referred to a Parliamentary Committee for inquiry. ACCI also recommends that the Government's Transfer of Business Amendment Bill 2012 and the Fair Entitlements Guarantee Bill 2012 be referred to a Parliamentary Committee for inquiry and report. It is regrettable that these two Bills have not been referred to a Parliamentary Committee for inquiry given the significance of these measures. An inquiry is even more compelling given that a Regulation Impact Statement which was required for the Transfer of Business Amendment Bill 2012 is now the subject to an exceptional circumstances exemption granted by the Prime Minister. A PIR of this Bill will now be required two years after these measures commence.

PIR REPORT AND FIRST TRANCHE RESPONSE

ACCI and its members provided detailed evidenced based submissions as part of the PIR of the Fair Work legislation. Those submissions also addressed a range of related workplace policy issues, not limited to the operation of the Fair Work legislation which are impacting employers and business. ACCI continues to reiterate its strong support for implementing those recommendations in full.

ACCI's submission follows extensive engagement with ACCI network members, employers (small, medium and large firms representing all major sectors of the economy) and members of the wider IR/HR/legal community since 2008/09. ACCI's submission outlined major problem areas employers have experienced since the laws commenced in July 2009 and makes over 75 specific recommendations to amend the laws to ensure that they meet the Government's commitments to industry as contained in its key 2007 *Forward with Fairness* policy platform, which underpins the FW Act.

The evidence-based submission builds upon ACCI's most recent policy Blueprint dedicated to the burgeoning services sector "*Services: the New Economic Paradigm*" launched in 2011, which clearly highlighted that service sector firms need to be able to react in a more dynamic way compared to other industries. Inflexible labour rules, which operates on a "*one size fits all*" basis or a 9am to 5pm, Monday to Friday paradigm, do not reflect the evolution of the sector and specific needs of firms operating in the services sector. It also doesn't reflect the needs and capacities of the majority of Australian business employers (89.5%) which employs less than 20 employees.

In releasing the Report, the Minister for Employment and Workplace Relations, Hon. Bill Shorten MP, indicated that the Panel "*has also found the Act has not had a negative impact on productivity. I'm particularly pleased by this finding and I remain optimistic that it will be acknowledged and widely reported in the business papers.*" The Committee should note that the Government made numerous promises that its Fair Work system, particularly its new collective bargaining system, would "*promote productivity*", "*drive productivity*", "*shift the focus of negotiations towards boosting productivity*", and be "*less bound by regulation and red tape and is designed to have a positive impact on labour productivity*". The Government indicated in 2008 that the post-implementation review of the new system would be an important means of assessing the effectiveness of the new bargaining system. The Panel's Report notes that on this important score the Fair Work laws have actually not improved productivity levels and stated that productivity growth has been "*disappointing*" under the Fair Work system and that it is "*concerned that productivity growth has slowed*". The Panel ultimately recommended non-legislative changes and encouraged the Fair Work institutions "*play a more active role in encouraging productivity awareness and best practice*" to address this. The findings by the Panel that productivity has not improved under the Fair Work system is reiterated in the Australian Competition & Consumer Commission's (ACCC) latest report on the stevedoring industry, which found that both higher nominal unit labour costs increased by 7.5% during 2011-2012 and labour productivity significantly fell for the first time since 1998-99. The ACCC report also notes that industrial activity has increased since 2008, and this has been coupled with unofficial reports of "*go slow*" strategies. The ACCC warned that "*if industrial disputes become more frequent and widespread in Australian stevedoring, this could undermine investment in additional capacity and greater competition*". It concluded that it could "*put at risk the gains previously made in establishing a more productive stevedoring service and undermine the benefits of additional capacity and greater competition*".

ACCI believes that the Panel missed an important opportunity to recommend meaningful changes, with only a handful of useful recommendations inadequate to restore much needed balance to the IR system. Unfortunately, the Report, its recommendations and the first tranche response will do little to address the problems identified by Australian employers. This includes the majority of SME business owners, many of whom have mortgaged the family home whilst trying to create valuable employment opportunities and build wealth for all Australians. By simply ignoring the problems will not make them go away.

Whilst the first tranche contains a number of welcome amendments to discourage unmeritorious unfair dismissal applications, it is disappointing that the Government is delaying the introduction of more important recommendations or give effect to findings made by the Panel to restore much needed balance to the system. These include amendments to encourage greenfield agreement making, stop the capacity for unions to take industrial action before bargaining has commenced, and proposals to encourage Individual Flexibility Arrangement (IFAs) making which have flat-lined according to research commissioned by Fair Work Australia with an employer survey indicating that only 6% had used an IFA.

To reiterate, the technical amendments contained in the first tranche Bill are inadequate to address the existing problems employers are experiencing with the Fair Work laws and will be more relevant to IR practitioners than SMEs.

Finally, ACCI is concerned that the Government has also introduced significant amendments to the FW Act in this first tranche Bill, which were not recommended by the Panel. Some of these amendments have the capacity to undermine the trust and confidence in the Tribunal.

Whilst ACCI has welcomed consultations with the Panel and the Government following the release of the Panel's Report, the issues which were identified by the business community in its submissions in the PIR have not been dealt with adequately. ACCI will constructively engage with the Government as it considers the balance of the Panel's recommendations, but it will also continue to strongly advocate for reforms to the Fair Work system to restore much needed balance to the IR framework.

ANNEXURES

ACCI's response to the Bill (Schedules 1 to 11), the Transfer of Business Amendment Bill 2012 and the Fair Entitlements Guarantee Bill 2012 is contained in **Annexure 1.**

ACCI's without prejudice response to the Panel's Report on the operation of the *Fair Work Act 2009* (FW Act) and the *Workplace Relations Amendment (Transition to Forward with Fairness Act) 2008* is contained in **Annexure 2**.

ACCI's two written submissions to the Panel can be found here at the Fair Work Review website:
www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview

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ANNEXURE 1

SCHEDULE 1 – SUPERANNUATION

Subject	Summary	Response
	Schedule 1 of the *Fair Work Amendment Bill 2012* (the Bill) proposes to amend the *Fair Work Act 2009* (FW Act) to deal with default superannuation contributions to give effect to the Government's response to the report of the Productivity Commission (Commission), *Default Superannuation Funds in Modern Awards* (Report No. 60, October 2012). ACCI provided two written submissions to the Commission's inquiry.	The Commission's inquiry proceeded on the basis that modern awards would continue to regulate default superannuation funds. The Commission focused its work on member benefits: [1] > The overarching objective of the inquiry is to assess, and propose any necessary reforms to, the system such that it meets the best interests of employees who derive their default superannuation product in accordance with modern awards. The Committee should note that although parts of Schedule 1 adopt the Commission's recommendations, some of its proposed amendments to the FW Act do not. *The regulation of superannuation* Superannuation, including employers' obligations with respect to superannuation, is extensively and diversely regulated. Important, but not the only, existing legislation which is relevant to this submission includes: • the *Superannuation Guarantee (Administration) Act 1992* (SGA Act); • the *Superannuation Industry (Supervision) Act 1993* (SIS Act); and for many • the *Fair Work Act 2009* (FW Act) As well, there are several bills which impact on the Bill or upon which the Bill impacts. The main ones relevant to schedule 1 of the Bill, are: • the *Superannuation Legislation Amendment (MySuper Core Provisions) Bill 2012* (MySuper Core Bill);

[1] P 65, *Default Superannuation Funds in Modern Awards* (Report No. 60, October 2012), Productivity Commission.

Subject	Summary	Response
		• the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012* (Further MySuper Bill). *ACCI policy position on superannuation in industrial awards* It is longstanding ACCI policy that superannuation should not be regulated by awards. Superannuation is extensively legislated under the guarantee legislation. Breach incurs a superannuation guarantee charge, which is greater than the original guarantee obligation and potentially enlivens charge offences as well. The addition of award prescribed employer superannuation obligations is arbitrary because it only affects those to whom an award applies (recalling that modern awards do not apply to non-national system employers who are not bound by modern awards, ie. Western Australian employers who remain in the State IR system), is duplicitous by creating a second penalty regime and creates an ongoing potential for conflicting obligations. This position was articulated to the Commission during its inquiry in ACCI's primary submission. Perhaps the most important legacy of award prescription of superannuation arises from the centrality of awards in many workplaces, particularly in those of smaller employers. The effect is that award provisions dealing with matters are often understood as complete statements of the obligation being prescribed. Currently many awards contain provisions relating to superannuation. Section 139(1)(i) of the FW Act provides that a modern award may include terms about superannuation. Many, but not all, do. The Further MySuper Bill inserts a new s 149A into the FW Act (schedule 4, item 5 of the Further MySuper Bill) which requires a modern award to include a superannuation term permitting contributions for defined benefit members. It also inserts a new s 155A (schedule 4, item 6 Further MySuper Bill) which

Subject	Summary	Response
		identifies provisions which cannot be in a modern award. The Bill repeals both these provisions[2] (schedule 1, items 12 and 14 of the Bill) and inserts s 149B into the FW Act (schedule 1, item 13 of the Bill) which requires a modern award to contain provisions for the avoidance of the superannuation guarantee charge. *The effect of MySuper implementation* Under *Stronger Super* default contributions for a "default fund employee" (contributions made by an employer for an employee who does not have a chosen fund) will need to be made into a fund which offers a MySuper product. Section 155A of the FW Act (schedule 4, item 6 of the Further MySuper Bill) prohibits modern award superannuation terms which permit contributions for a default fund employee into a fund which does not offer MySuper with effect from 1 January 2014. This corresponds with the requirement under the s 32C(2) SGA Act (schedule 1, item 1 MySuper Core Bill) that employer contributions into a non chosen fund will need to be made into a fund offering MySuper with effect from 1 January 2014. ACCI supports the principle of MySuper. Superannuation contributions are compulsory and it is appropriate that contributions management and investments are designed around the level of member engagement with the objective of maximizing the level of retirement income and reducing costs erosion on account balances. ACCI has been closely involved in the implementation working groups associated with those aspects of *Stronger Super* which impact employers. *Default fund terms must name funds* As noted above, the MySuper Core Bill inserts a new s 32C(2)(c) into the SGA Act (schedule 1, item1 of the MySuper Core Bill) requiring that where an employee does not have a chosen fund an employer must make contributions

[2] However, the Bill's transitional provisions (schedule 11) extend their operation until the 4 yearly review of default fund terms is given effect.

Subject	Summary	Response
		into a fund which offers a MySuper product from 1 January 2014. The Bill introduces a definition of "*default fund term*". Section 149C (schedule 1, item 13 of the Bill) defines "*default fund term*" as a modern award term which requires an employer covered by the award to make contributions into a prescribed fund for an employee with no chosen fund (default fund employee). This is consistent with the obligation under s 32C(2)(c) of the SGA Act. Proposed s 149D(1) (schedule 1, item 13 of the Bill) provides that these contributions must be made into a fund which offers a generic MySuper product which is named in the award "*…in relation to that product*". ACCI understands that the intention of s 149D(1) is that funds which offer a generic MySuper product (and are determined as appropriate as a result of the review process) will be named in modern awards. The Bill's provisions about "*default fund terms*" are shaped by the standard superannuation provision currently in modern awards. This is supported by the Explanatory Memorandum (EM):[3] 31. New subsection 149D(1) provides that a default fund term must require an employer to make contributions, for the benefit of a default fund employee, to a superannuation fund that is specified in the default fund term in relation to the fund's generic MySuper product if: … 32. The requirement in new subsection 149D(1) is consistent with the model superannuation term formulated by the Australian Industrial Relations Commission in the award modernisation process and which is contained in most current modern awards. 33. It is intended that funds in relation to their generic MySuper products are specified, or named, in default fund terms.

[3] P 17, Explanatory Memorandum.

Subject	Summary	Response
		That is, the phrase "…in relation to [the fund's] generic product" operates to distinguish funds which offer a generic MySuper product from those funds which do not offer a MySuper product or offer corporate or tailored MySuper products. It is the fact of offering a *generic* MySuper product which conditions eligibility for inclusion in default fund terms. This meaning of "…*in relation to [the fund's] generic product*" is obscured in some of the Bill's provisions which deal with the 4 yearly review of default fund terms. Item 18 of the Bill inserts a new Division 4A into Part 2-3 of the FW Act which deals 4 yearly reviews of default fund terms. Section 156B(2), which deals with the first stage review requires the Expert Panel to publish a Default Superannuation List which specifies each generic MySuper *product* it has determined should be included. Section 156C(1) requires funds to apply on the basis of generic MySuper products and s 156E(1) requires the expert panel's decisions to be in respect of MySuper products. In the second stage of the review interested industrial parties may make submissions about the default fund term of an award. Section 156G(2) provides that these submissions can include requests that a *fund* whose generic MySuper product is on the Expert Panel's list be included in the award's default fund term. S 156H makes it clear that the default fund term resulting from the second stage review has funds named. This is also clear from the EM:[4] 75. New subsection 156H(1) provides that after reviewing a default fund term in a modern award, the FWC must make a determination varying the term to: • remove every superannuation fund specified in the term in relation to a generic MySuper product, and • specify at least 2, but no more than 10, superannuation funds in relation to generic MySuper products that satisfy the second stage test.

[4] P 23, Explanatory Memorandum. Paragraphs 76 – 78 are also relevant.

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		The use of "*fund*" and "*product*" in this way and distinction between them is important. A MySuper product is a rules based investment option offered by a fund. Its investment/risk strategy, likely outcomes and the adequacy of its rules determine the retirement outcomes for members whose contributions are allocated into it. The MySuper Core Bill inserts s 29WA(2) into the SIS Act (schedule 1, item 9 of the MySuper Core Bill) which will require a *fund* to allocate all incoming contributions into a MySuper *product* except to the extent that the member has directed the fund to allocate contributions into another investment option. Conversely, as noted above, employers must make contributions not made into a chosen fund into a default fund which offers MySuper. Were generic MySuper products, rather than the fund which offers the generic MySuper product, named in awards, the employer would be required to contribute into the MySuper product, not the fund. This would undercut a default fund member's right to determine how contributions made on their behalf are to be allocated for investment. A default fund employee is someone whose contributions are not made into a chosen fund, not someone whose contributions must be allocated into a MySuper product. Proposed s 159A(1) FW Act (schedule 1, item 20 of the Bill) provides for variation of default fund terms outside 4 yearly reviews. It is unclear why various paragraphs of s 159A(1) provide that default fund terms can be varied to reflect a change in, or to remove, "*…the name of the fund and/or the specified product*". **ACCI Recommendation: The removal of references to naming and removing products from modern awards should be considered.** Section 159A(1) (schedule 1, item 20 of the Bill) provides for the removal of funds from the list of funds in identified circumstances, but not addition of funds. It is appropriate that variations to the list of funds in modern awards should be confined to 4 yearly reviews except in exceptional circumstances.

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		Generally speaking, modern awards will name between two and ten funds (s 156H(1) FW Act, schedule 1, item 18 of the Bill). Where a modern award names only two or three funds it seems reasonably possible that amalgamations (and occasionally loss of authorisation) would leave the award with little or no choice of default. **ACCI Recommendation: It seems reasonable to consider whether there should be capacity to add funds from the first stage Default Superannuation List in these circumstances.** *A two-step review of default superannuation terms* In its response to the Commission's recommendations, the Government has adopted a two-step review process to determine the funds which are named in each modern award and linked the timing of the review process to the 4 yearly review of modern awards already provided for under the FW Act. It is unclear why the two step process is preferred over a single process of determining the appropriate default funds for a modern award. The constitution of the Expert Panel (schedule 2, item 43 of the Bill) to determine the Default Superannuation List comprises a majority of full time tribunal members. At present the 4 yearly review of modern awards would include a review of modern award superannuation provisions. Items 15, 19 and 20 of schedule 1 of the Bill operate to excise reviewing and varying default fund terms in modern award from the general processes under the FW Act. The review of default fund terms in modern awards is separate from the general review of modern awards. This separation is supported. The 4 yearly review of modern awards is intended to assess whether modern awards provide a fair and relevant safety net. This is not the purpose of the 4 yearly review of the default fund term. Changing a default fund imposes costs on employers. Currently default funds which are named in modern awards are generally those named in the pre-

Subject	Summary	Response
		modern awards which were displaced by the modern award when it came into operation. The existing standard modern award superannuation provision also allows employers to continue making contributions for default fund employees into funds they were contributing into prior to 12 September 2008. The start of modern awards on 1 January 2010 created very few instances where an employer had to change default fund. The general 4 yearly review of modern awards is due to start after 1 January 2014. The Bill inserts s 156A(1) into the FW Act (schedule 1, item 18 of the Bill) which requires FWA to review default fund terms in modern awards after 1 January 2014 and each 4 years thereafter. This timing is consistent with the Commission's views[5], in part based on a 1 July 2013 start to MySuper, and the difficulty of legislating the review process in time for that deadline but it is unclear why the 4 yearly review of the default superannuation term should be carried out at the same time as the general 4 yearly review. 1 January 2014 is also the first date that default contributions are made into MySuper funds and allocated into MySuper products. The Further MySuper Bill inserts s 155A(1) into the FW Act (schedule 4, item 6) which provides that a modern award must not contain a term which permits contributions for default fund employees to a fund which does not offer MySuper. This will come into effect from 1 January 2013 but modern awards will not be varied until 1 January 2014 (which coincides with the introduction of MySuper obligations). This timing itself creates some problems. It means that modern awards will continue to name funds which will not be offering MySuper up until the day that contributing into them will breach the award and superannuation guarantee legislation. In reality employers will be advised in arrears of the changed obligation. The fact that awards name funds, and thereby simplify

[5] P 222 – 223, *Default Superannuation Funds in Modern Awards* (Report No. 60, October 2012), Productivity Commission.

Subject	Summary	Response
		the task for employers of selecting a default, is a major justification for naming funds in awards.[6] Naming funds in awards determines employer behavior. Modern awards should not be expressed to potentially mislead in any manner. As noted the Bill repeals s 155A of the FW Act (schedule 1, item 14 of the Bill) with effect from 1 January 2014. However, schedule 11, item 1of the Bill inserts Schedule 3 to the FW Act and clause 2(2) of Schedule 3 continues the operation of s 155A FW Act until the modern award is varied as a result of the review of default fund terms. The effect of this scheme is that modern award terms naming funds for contributions on behalf of default fund employees will vary on 1 January 2014, and vary again as a result of the 4 yearly review. Section 156H(1) (schedule 1, item 18 of the Bill) requires that after reviewing default fund terms Fair Work Australia must remove named funds from the default fund term and specify between two and ten funds in the term. This is appropriate because it means that the appropriate funds offering generic MySuper are included in the particular modern award, but it means that it is most likely that the review of default fund terms will again give rise to changes in the list of funds which are named in at least some modern awards, and perhaps in many. The timing of the 4 yearly review of the default fund term in the Bill also seems to raise practical problems. Fair Work Australia is currently undertaking the 2 yearly review of modern awards which is required under the *Fair Work Amendment (Transitional Provisions and Consequential Amendments) Act 2009*. This transitional review was required to start after 1 January 2012. The final stage of the 2 yearly review is scheduled to be completed by 31 May 2013. Award reviews require significant amounts of work and are time and resource consuming. **ACCI Recommendation: It seems unhelpful to add significant additional work over the top of the general 4 yearly review and it may be appropriate to**

[6] Pp 15 – 16, *Default Superannuation Funds in Modern Awards* (Report No. 60, October 2012), Productivity Commission.

Subject	Summary	Response
		consider timing the 4 yearly review of default fund terms so that it is not contemporaneous with the general 4 yearly review of modern awards. *Criteria, submissions and interests* The first stage review involves a full bench which comprises three members of the Expert Panel (schedule 2, item 43 of the Bill). The Panel assesses applications made by funds with generic MySuper products. Section 156F (schedule 1 item 18) identifies the criteria against which the assessment is made. These criteria are taken from the Commission's recommendations[7] with one exception. Section 156F(d) prescribes "*net returns*" as a factor for assessment. "*Net returns*" are a measure of past performance and not all authorised generic MySuper products will replicate existing default investment options or fee structures. The point of MySuper is to change various existing forms of default investment products. The Commission said:[8] > The Commission recognises that using past investment performance as a prescriptive criterion when listing default products in awards is intuitively appealing, but has concerns about using past performance as a stand-alone basis for selection. > Regulators globally have recognised the risks to investors of using past performance as a predictor of future performance. This is reflected in the ASIC requirement that a declaration to this effect is included in promotional material for financial products and services (ASIC 2003). The nature of past performance as an 'unreliable predictor' was reflected in practice by the Australian Industrial Relations Commission in deciding which default funds to list in modern awards (chapter 7). This conclusion is supported by an extensive body of research literature revealing a lack of consensus on

[7] P 21, *Default Superannuation Funds in Modern Awards* (Report No. 60, October 2012), Productivity Commission.
[8] P 78, *Default Superannuation Funds in Modern Awards* (Report No. 60, October 2012), Productivity Commission.

Subject	Summary	Response
		performance persistence among both highly and poorly performing funds. **ACCI Recommendation: Consideration might be given to whether a product's *"net returns"* are an appropriate criterion for assessing generic MySuper products in the first stage review.** In the second stage submissions are made by the industrial parties to a full bench constituted by members who are not members of the expert panel. Section 156G(3) (schedule 1, item 18 of the Bill) requires a submitting party to declare any interest it has in any particular fund mentioned in its submission. Superannuation contributions are compulsory and superannuation funds have a significant guaranteed flow of income. Being named in an award confers significant market advantage to a fund. It is highly appropriate that submissions to the full bench arguing for the benefit of funds should be transparent about the interests of the persons making the submissions. However, parties will also make submissions against competing funds and there is no requirement for a submission which opposes the inclusion of a particular fund but does not explicitly advance a case for another fund to identify its interest. **ACCI Recommendation: It may be reasonable to consider that any person making a submission should declare any interest it has in a fund – whether named in the submission or not.** There is also a requirement for a person making submissions to the Expert panel about applications to have a generic MySuper product included in the Default Fund List. This is appropriate. S 156D(2) of the FW Act (schedule 1, item 18 of the Bill) requires the person to declare an interest in a fund which has made the application or a fund mentioned in the submission where there is one. Again, not all submissions which are intended to support a fund's application will necessarily explicitly argue for the fund. Such a submission, could, for example, go to such issues as the relative weight that the Panel should be given to various of the factors or

Subject	Summary	Response
		how they should be understood the effect of factors which, if followed, would favour some applications over others. **ACCI Recommendation: It may be reasonable to consider whether any person submitting about an application should declare any interest it has in a fund.**

SCHEDULE 2 – EXPERT PANEL

Subject	Summary	Response
	Schedule 2 amends the FW Act to provide for the constitution of an Expert Panel within the Tribunal (to be renamed the Fair Work Commission, FWC) to exercise certain functions in relation to the assessment of default superannuation funds for inclusion in modern awards and annual wage reviews. An Expert Panel will subsume the functions currently performed by the Minimum Wage Panel.	ACCI prefers the continuation of a dedicated Minimum Wage Panel and Minimum Wage Panel members. It does not oppose an Expert Panel to be constituted to deal with superannuation (see Schedule 1 response).

SCHEDULE 3 – MODERN AWARDS

Subject	Summary	Response
Part 1— Variation etc.	Schedule 3 makes technical amendments to Part 2-3 in relation to applications to the FWC to vary modern	This amendment responds to Panel recommendation 15.

Subject	Summary	Response
of modern awards	awards. This amendment aligns existing s.160 with s.158.	Strongly supported.
Part 2 — Applications to vary etc. modern awards	This amendment inserts a legislative note at the end of s.158(1) referring the reader to s.587.	This amendment responds to Panel recommendation 14. Supported.

SCHEDULE 4 – ENTERPRISE AGREEMENTS

Subject	Summary	Response
Part 1— Enterprise agreements covering a single employee	Schedule 4 amends Part 2-4 of the FW Act in relation to the coverage of enterprise agreements, requirements for employee bargaining representatives, notices of employee representation rights, and notification requirements for scope order applications. This amendment would prohibit and employer and a single employee from making an enterprise agreement.	This amendment responds to Panel recommendation 26. Opposed. There was no indication in the *Forward with Fairness* policy documents, second reading speech, explanatory materials that the FW Act was intending to displace the capacity to make an enterprise agreement with one employee. This has remained the case since enterprise agreement making has existed in the federal IR system. All agreements are subject to the Tribunal being satisfied that the agreement meets the Better Off Overall Test, whether the agreement applies to one employee or 100 employees. If the Government believes that enterprise agreement making is at the heart of its Fair Work system, there remains no logical reason as to why agreement making cannot occur between an employer and a single employee, subject to the existing protections for employees.

Subject	Summary	Response
Part 2—Bargaining representatives	This amendment makes clear that an official of an employee organisation cannot be a bargaining representative for an employee where the official's employee organisation is not itself entitled to represent the employee. "*Official*" is defined under s.12 of the FW Act to mean a person who holds office in, or is an employee of, an industrial association.	This amendment responds to Panel recommendation 21. Strongly supported with a further amendment. To maintain the integrity of this amendment, the amendment should also preclude "*officers*" as defined by s.12 of the FW Act to ensure that non-employee representatives are also captured by the prohibition (ie. delegates, agents or representatives of the union). Without this amendment, it would be possible to subvert the intention of this change by the non-eligible union authorising a third party to act on its behalf.
Part 3—Unlawful terms	This amendment would create a new "unlawful term" under s.194 to cover a term of an enterprise agreement that would enable an employee or an employer to "opt out" of coverage of the agreement.	This amendment responds to Panel recommendation 23. Opposed. One of the Panel's reasons for proposing this recommendation is that "*these clauses undermine the collective nature of an enterprise agreement*" (p.161). The agreements referred to in the Panel's Report which features an opt-out clause, were ultimately the subject to a vote of employees. The majority of employees voted in support of the agreement. There was no indication in the *Forward with Fairness* policy documents, second reading speech, explanatory materials that the FW Act was intending to displace the capacity to include opt-out clauses in agreements. Given that it is a feature of a minority of collective agreements, there is no reason to suggest that such clauses will become "*more common*" (p.161) or that it will undermine the collective nature of an enterprise agreement. The operation of these clauses should continue to be monitored rather than rendered unlawful.
Part 4—Scope orders	This amendment would provide for a bargaining representative to take all reasonable steps to notify the other relevant bargaining representatives of their concerns in writing, instead of a requirement to notify all bargaining representatives.	This amendment responds to Panel recommendation 16. ACCI has not received feedback that suggests that the existing provisions are causing substantial difficulty.

Subject	Summary	Response
Part 5—Notice of employee representational rights	This amendment would provide that a notice of employee representational rights must only contain the content prescribed by the regulations and must not contain any other content.	This amendment responds to Panel recommendation 19. Opposed. The Panel's Report illustrates that it was concerned with possible *"confusion and any opportunities for malpractice",* with employers modifying the content or form of the s.173 notice (p.144). It found that *"the evidence does not demonstrate that the practice is widespread"* but it is *"concerned that there have been several instances of this conduct"* (p.144). The amendment would mean that an employer would be precluded from even inserting contact details of a relevant contact person within the organisation for employees to contact (Regulation 2.05 and Schedule 2.1 of the FW Regulations only allows the employer's name to be inserted).

SCHEDULE 5 – GENERAL PROTECTIONS

Subject	Summary	Response
Part 1—Time limits for making applications	This amends s.366(1)(a) to shorten the current 60 day time limit for applying to the FWC to mediate or conciliate a dispute about a dismissal allegedly in contravention of Part 3-1. The new time limit will be 21 days.	This amendment responds to Panel recommendation 49, and will align the timeframe for lodging dismissal-related general protections claims with the new 21 day time limit for lodging unfair dismissal applications. Supported.
Part 2—The persons protected by the general protections	This amendment inserts a new subsection 336(2) to make clear that the protections in Part 3-1 are provided to a person (whether an employee, employer or otherwise) depending on the particular protection and the circumstances.	ACCI supports this clarifying amendment which avoids any doubt concerning the original policy intent of Part 3-1.

SCHEDULE 6 – UNFAIR DISMISSAL

Subject	Summary	Response
Part 1—Time limits for making applications	This amendment extends the timeframe for lodging unfair dismissal applications to the FWC from 14 days to 21 days (from the time of the dismissal taking effect).	This amendment responds to Panel recommendation 40. Conditional support for the FW Act to be amended to allow an extension from 14 days to 21 days if the existing exceptional circumstances provisions are removed in line with ACCI's written submission/recommendations to the Panel.
Part 2—Power to dismiss applications	This amendment would provide the FWC the power to dismiss an unfair dismissal application where the FWC is satisfied that the applicant has unreasonably (by an act or omission): - Failed to attend an FWC conference or hearing	This amendment responds to Panel recommendation 42. Supported with further clarification in the FW Act or EM. There is no definition of "*settlement agreement*". The Panel accepted ACCI's recommendation in (at p.156 of ACCI written submission to the Panel) relation to giving power to FWA to dismiss an application in circumstances described by the Federal Court in

Subject	Summary	Response
	relating to the application; - Failed to comply with an FWC direction or order relating to the application; or - Failed to discontinue the application after a settlement agreement has been concluded.	*Australian Postal Corporation v Gorman* [2011] FCA 975. The Court indicated that the common law doctrine of "*accord and satisfaction*" was not displaced by the FW Act. A statutory note or the EM (at p.36) should refer to this case as the definition of a "*settlement agreement*" may be contestable and cause uncertainty for the parties to an unfair dismissal proceeding.
Part 3—Costs orders against parties	This amendment inserts a new s.400A to enable the FWC to order costs against a party to an unfair dismissal matter if it is satisfied that the party caused the other party to incur costs by an unreasonable act or omission in connection with the conduct or continuation of the matter.	This amendment responds to Panel recommendation 45. Supported. However, this should be monitored to ensure that employer respondents are not penalised for robustly defending itself against a claim for unfair dismissal.
Part 4—Costs orders against lawyers and paid agents	This amendment repeals subsection 401(1) and replaces it with new subsection 401(1) and (1A) to provide the FWC power to order costs against a lawyer or paid agent if: - An application for an unfair dismissal remedy has been made under s.394; - A lawyer or paid agent (the representative) has been engaged by a party to represent them in the matter; and - The party is required to seek the FWC's permission under s.596 to be represented. Costs are available where the FWC is satisfied that the representative caused costs to be incurred because: - The representative encouraged the person to start, continue or respond to the matter and it should have been reasonably apparent that	This amendment responds to Panel recommendation 46. Supported.

Subject	Summary	Response
	the person had no reasonable prospect of success in the matter; or - Of an unreasonable act or omission of the representative in connection with the conduct or continuation of the matter.	

SCHEDULE 7 – INDUSTRIAL ACTION

Subject		
Part 1— Electronic voting in protected action ballots	Summary of Schedule 7: amends Part 3-3 to clarify that protected action ballots can be conducted by electronic voting methods, clarify the eligibility requirements for employees who are union members and acting as a bargaining representative and to require protected action ballots to be conducted expeditiously. Allow protected action ballots to be conducted by electronic voting.	This amendment responds to Panel recommendation 32(a). ACCI has generally opposed recommendation 32 of the Panel's Report as there does not appear to be sufficient evidence to suggest that the existing provisions have not worked as intended.
Part 2— Employees to be balloted in protected action ballots	These amendments will enable employees who represented themselves in bargaining to vote on and take protected industrial action if they are members of an employee organisation that applied for the protected action ballot. The amendments also enable an employee to be eligible to be included on the roll of voters for a protected action ballot after the order was made, but	This amendment responds to Panel recommendation 32(b) and (c). ACCI has generally opposed recommendation 32 of the Panel's Report.

Subject		
	before the close of the roll of voters if they are otherwise eligible to vote in the protected action ballot (ie. new employees).	
Part 3—Conducting protected action ballots	This amendment will require a ballot agent to conduct a protected action ballot as expeditiously as practicable.	This amendment responds to Panel recommendations 32(d). Whilst ACCI has opposed recommendation 32 of the Panel's Report, it does not oppose this amendment which does not appear to create new substantive rights.

SCHEDULE 8 – THE FAIR WORK COMMISSION

Subject	Summary	Response
Part 1—Stay orders	Summary of Schedule 8: amends Part 5-1 to make changes to the structure and processes of the FWC. It provides for the appointment of two Vice Presidents, creates a mechanism to refer matters to a Full Bench, establish a framework for complaints against members, provides for the appointment of Acting Commissioners and appointment of the FWC General Manager by the Governor-General on the nomination of the FWC President. This amendment will enable any Presidential Member of the FWC to stay a decision pending review or appeal by the FWC.	This amendment responds to Panel recommendation 52. This was one of two issues that Justice Hon. Iain Ross raised with the Panel (p.252). Supported.
Part 2—Conflicts of interest	This amendment will require the FWC Member to disclose a conflict of interest to a person making submissions in a matter, in addition to the President.	This was not recommended by the Panel. It is unclear why these amendments are necessary or required.

Subject	Summary	Response
Part 3—Referral of matters to Full Bench etc.	This will insert ss.615A, 615B and 615C into the FW Act. Section 615A will require the President to direct a Full Bench to perform a function or exercise a power in relation to a matter if: the parties apply to the FWC to have a Full Bench perform or exercise a function or power in relation to the matter; and the President is satisfied that it is in the public interest to do so. Section 615B provides for the transfer of a function or power to a Full Bench from an FWC Member. Section 615C provides for the transfer of a function or power to the President from an FWC Member or a Full Bench.	This was not recommended by the Panel. It is unclear why these amendments are necessary or required.
Part 4—Appointing acting Commissioners	This amendment would enable the Governor-General to appoint an Acting Commissioner for a specified period where the Minister is satisfied that the appointment is necessary to enable the FWC to perform its functions effectively.	This amendment responds to Panel recommendation 53. This was one of two issues that Justice Hon. Iain Ross raised with the Panel (p.252).
Part 5—Appointing the General Manager	This amendment would provide for the appointment of the General Manger of the FWC to be made by the Governor-General on the nomination of the President of the FWC.	This amendment responds to Panel recommendation 51. The term *"nomination"* should be substituted with the term *"recommendation"*.
Part 6—Vice Presidents	This amendment would provide for the appointment of two (2) statutory Vice Presidents to be appointed by the Governor-General.	This was not recommended by the Panel. It is unclear why these amendments are necessary or required and are opposed without amendments. The Government's policy intention, as evinced in the Forward with Fairness policy documents and the Fair Work legislation, indicated that the new Tribunal would be comprised differently to the Australian Industrial Relations Commission (AIRC). The Government's legislation removed the former statutory Vice President positions, for which there was two positions under the

Subject	Summary	Response
		Workplace Relations Act 1996 and prior to this under the *Industrial Relations Act 1988.* The Government retained all members of the AIRC and created transitional provisions for Senior Deputy Presidents and Vice Presidents, given the new structure removed these two statutory levels within the FWA hierarchy. Schedule 18 of the Transitional Act provided for the transfer of members of the Commission to Fair Work Australia on the basis that the then existing Vice Presidents, Senior Deputy Presidents and Deputy Presidents were appointed as Deputy Presidential members of Fair Work Australia (Schedule 18, item 1 Transitional Act). These transferring appointees retained the seniority they had in the AIRC, their designations and their remuneration (schedule 18, items 2 and 4 Transitional Act). The Minister's second reading speech (30 October) to the Bill indicates that "*the bill also includes additional measures relating to the internal structure of the Fair Work Commission that the government considers will improve the operation and integrity of the body*" and that the measures "*will assist in attracting senior practitioners to the commission, a highly desirable outcome given the significance of the matters that the commission deals with, and will ensure assistance can be provided to the president in managing the work of the commission as required*". There is no further justification for the re-creation of two Vice Presidential positions, which was removed by the Government in 2009. There is no indication as to why the Government has not moved to re-create the former Senior Deputy President roles upon the same or similar basis. The following is an extract from chapter 10 to the Government's "*Forward with Fairness – Implementation Plan*":

Subject	Summary	Response
		10. APPOINTMENTS TO FAIR WORK AUSTRALIA **Labor will ensure that all appointments to its new industrial umpire, Fair Work Australia, are based on merit and go through a bipartisan process.** As Julia Gillard announced to the National Press Club on 30 May, Labor intends its new industrial umpire, Fair Work Australia, will not be a return to the days of the old industrial relations club where governments of all persuasions appointed their mates to industrial courts and tribunals. Fair Work Australia will be independent of unions, business and government because appointments will not favour one side over another. Labor will achieve this by requiring that the Minister responsible for Employment and Industrial Relations will only be able to make an appointment after completing the following processes. The shortlist of candidates will be scrutinised by a panel comprising: • a senior official from the Department of Employment and Industrial Relations (who will chair the panel); • a senior official from the Australian Public Service Commission; and • a senior official from each State (and Territory) Department of Industrial Relations that wishes to participate. The Minister will be required to consult with the opposition spokesperson for industrial relations and the head of Fair Work Australia prior to making any decision about appointments to recommend to Cabinet. Labor's process will be rigorous and provide for bipartisan involvement. It will ensure that all appointments made to Fair Work Australia are themselves fair, balanced and made on merit alone.

Subject	Summary	Response
		Labor's plan is something new in Australian politics and Australian industrial relations. Never before has a political party volunteered to take the bias out of the industrial relations system as we are proposing to do. Fair Work Australia will be a body that serves the nation because that is what Labor's balanced, centrist industrial relations system demands. ... ACCI is concerned that these amendments would cast doubt on the integrity, respect, impartiality and authority of the Tribunal as the existing incumbent Vice Presidents (whom retained their titles) would be required to apply for these positions. The incumbents are both former senior legal practitioners who prior their appointments to the AIRC had significant experience and senior positions. These former "s*enior practitioners*" were attracted to, applied and were successful in being appointed to the AIRC as Vice Presidents. In announcing the appointment of Justice Ross as the President of FWA, the Minister expressed confidence with existing Members of FWA (presumably indicating confidence for all incumbents) indicating on 24 February 2012: I am confident that under Justice Ross and his team, FWA will continue to build on its excellent reputation for impartial arbitration, expert advice on workplace relations issues, an important role in strengthening the Australian economy and the practical enforcement of entitlements for employers and employees. Justice Iain Ross was also a former Vice President of the AIRC prior to resigning from the AIRC in 2006. It is a matter of the public record that His Honour was appointed to the AIRC in the capacity as Vice President in March 1994 at the age of 35. He had previously served as an assistant secretary of the ACTU. His Honour has now since served as a senior legal practitioner, judge and President of various judicial institutions in Victoria prior to his appointment to

Subject	Summary	Response
		FWA. It is unclear why the existing Vice Presidents would not be suitable for re-appointment to the new statutory Vice Presidential roles. ACCI would only support the re-creation of two statutory Vice Presidential roles if the existing incumbents are appointed to the proposed statutory positions. To do otherwise would be contrary to the expectations that the Government created in 2007 and would seriously undermine the trust, confidence and standing of the Tribunal.
Part 7— Handling complaints	This amendment provides for the Minister to handle complaints about FWC members and gives new powers and procedures to the President in relation to complaints made against FWC Members. New s.581A(1)(b), the President will have new powers to "*take any measures that the President believes are reasonably necessary to maintain public confidence in the FWC, including (but not limited to) temporarily restricting the duties of the FWC Member.*" This power operates whether or not there has been a complaint. The President may determine a Code of Conduct for FWC members following consultation with FWC Members. The President requires a complaint to be referred to the Minister if the President is satisfied that the circumstances that gave rise to the complaint have been substantiated and that the complaint is serious enough to justify Parliamentary consideration of the termination of the FWC Member's appointment. New s.641A will enable the Minister to handle a complaint about the performance of an FWC Member.	This was not recommended by the Panel. It is unclear why these amendments are necessary or required. ACCI does not believe that there is evidence to demonstrate that the existing provisions are not working in a manner which suggests reform is required to the existing provisions applying to Members of the Tribunal. There is no evidence that there is a need to create unprecedented new powers that would enable the President to "*take any measures that the President believes are reasonably necessary to maintain public confidence in the FWC*", which is not limited to restricting statutory duties of any Tribunal Member. This has the potential to affect the statutory independence of Members of the Tribunal.
Part 8—	This amendment clarifies that FWC Members and the	This was not recommended by the Panel. It is unclear why these amendments

Subject	Summary	Response
Engaging in outside work	General-Manager are prohibited from engaging in any form of paid work outside their duties without the President's approval.	are necessary or required.

SCHEDULE 9 – CHANGING THE NAME OF FAIR WORK AUSTRALIA

Subject	Summary	Response
Part 1— Amendments to Fair Work legislation	This Schedule amends the FW Act to change the name of Fair Work Australia to the Fair Work Commission. This Part makes consequential amendments to reflect the change of name.	The EM indicates that this amendment responds to Panel recommendation 50. However, the Panel recommended changing the name of Fair Work Australia "*to a title which more aptly denotes its functions*" and that the new title contain the word "*Commission*" and no longer contain the words "*Fair Work*". On 18 April and in a speech to the Australian Labour and Employment Relations Association in Canberra, ACCI Chief Executive Peter Anderson, called for a change in the name of the Tribunal to a more neutral and traditional name such as the Australian Industrial Relations Commission or Australian Workplace Relations Commission. It is regrettable that the Government has not fully adopted the recommendation of the business community, the President of the Tribunal (noting his Honour's preference was to drop the "*Fair Work*" out of a new name) and ultimately the Panel. The call for a name change confers significant consequences. It will impose costs on employers as they are required to ensure, for example, that they provide the most up to date Fair Work Information Statement under National Employment Standards.

Subject	Summary	Response
		The opportunity to create a neutral change in the Tribunal's name which does not depend on the name of its underpinning legislation should not be missed.
Part 2—Other amendments	Technical amendments.	
Part 3—Contingent amendments	Technical amendments.	
Part 4—Transitional provisions	Technical amendments.	

SCHEDULE 10 – OTHER AMENDMENTS

Subject	Summary	Response
Part 1—Costs orders in court proceedings	This amends section 570 of the FW Act as a result of a Federal Court decision of *CFMEU v CSBP No.* 2 [2012] FCAFC 64, which found that s.570 only applied to proceedings exercising jurisdiction under the FW Act. This amendment would amend s.570 to ensure that it operates in relation to matters arising under the FW Act, rather than in relation to courts exercising jurisdiction under the FW Act.	This was not recommended by the Panel. The effect of this amendment will mean that matters which are successfully appealed by employers to the High Court for example will not be subject to costs unless s.570(2) applies.
Part 2— Technical correction	Technical amendments.	

SCHEDULE 11 – APPLICATION, TRANSITIONAL AND SAVING PROVISIONS

Subject	Summary	Response
Misc application, transitional and saving provisions	Technical amendments.	

OTHER LEGISLATION

Subject	Summary	Response
Transfer of Business Amendment Bill 2012	The Government wrote to ACCI seeking views on the Government's decision to amend the FW Act to protect the workplace entitlements of public sector workers where a transfer of business occurs. ACCI's correspondence to the Minister indicated its strong opposition against the proposals. The Bill amends the FW Act to: provide for the transfer of employees' terms and conditions of employment from an old public sector employer to a national system employer where there is a connection between the two; and enable Fair Work Australia to make orders that modify the general effect of the transfer of business rules in these circumstances; it makes consequential amendments to the *Fair Work (Registered Organisations) Act 2009* and *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. The Government introduced the Fair Work Amendment (Transfer of Business) Bill 2012 into the House of Representatives on 11 October. It passed the House of Representatives on 1 November. It has not been referred to a Committee for inquiry and report.	This Committee should recommend that the Bill be referred to a Committee for inquiry and report, particularly as a result of a the Prime Minister granting an exemption from the requirement for a Regulation Impact Statement to be prepared for the measures. A PIR will occur two years after the measures have already commenced.
Fair Entitlements Guarantee Bill	On 30 October 2012, the Fair Entitlements Guarantee Bill 2012 passed the House of Representatives with two Government amendments. The Bill replaces the	ACCI supports the existing GEERS. In summary, ACCI's position is that it does not believe that a statutory based scheme is warranted given that the GEERS framework has operated without any major difficulties and remains fit

Subject	Summary	Response
2012	administrative General Employee Entitlements and Redundancy Scheme (GEERS) which currently provides protection for unpaid employee entitlements when people lose their job due to liquidation or bankruptcy of their former employer. The Bill does not amend the FW Act.	for its intended purpose. On a preliminary analysis of the implications of this Bill, ACCI's two major concerns are that: - The creation of an administrative scheme into a statutory one will result in a significant loss of discretion that is currently available to the Commonwealth under the existing Operational Arrangements when assessing claims; - Provides for the capacity for industrial disputation and fiscal risk to the Commonwealth as a result of the new statutory scheme changing the level of protection, particularly for above safety-net level redundancy entitlements. This Committee should recommend that the Bill be referred to a Committee for inquiry and report.

ANNEXURE 2

ACCI RESPONSE TO RECOMMENDATIONS

TOWARDS MORE PRODUCTIVE AND EQUITABLE WORKPLACES: AN EVALUATION OF THE FAIR WORK LEGISLATION

The Australian Chamber of Commerce and Industry (ACCI) has reviewed the recommendations of the three-member panel contained in its report, *"Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation"* (2012), on the operation of the *Fair Work Act 2009* (FW Act) and the *Workplace Relations Amendment (Transition to Forward with Fairness Act) 2008.*

ACCI and its members provided detailed submissions as part of the Post Implementation Review of the legislation. Those submissions also addressed a range of related workplace policy issues, not limited to the Fair Work legislation which are also impacting employers and business. ACCI reiterates its strong support for implementing those recommendations in full.

ACCI's response to the panel's recommendations is without prejudice to ACCI or its members' further consideration.

Recommendation	Response
1.	ACCI's recommendations, if implemented, would achieve these policy goals and objectives.
2.	Strongly supported.
3.	Opposed.
4.	Opposed.
5.	Opposed.
6.	Strongly supported.
7.	Under consideration.
8.	Support in-principle subject to consideration of detailed amendments.
9.	Conditional support for the better off-overall test in s.144(4)(c) and s.203(4) amended to expressly permit an individual flexibility arrangements to confer a non-monetary benefit on an employee in exchange for a monetary benefit. This should apply equally to s.193 of the FW Act. Oppose other limb of recommendation.
10.	Strongly opposed.
11.	Conditional support for the FW Act to be amended to provide a defence to an alleged contravention of a flexibility term under s.145(3) or s.204(3) where an employer believed on reasonable grounds, that all relevant statutory requirements are met. Oppose other requirements which are linked to recommendation 10.

12. Support in-principle. However, this should be amended in line with ACCI's written submissions/recommendations.

13. Opposed. Section 341(3) currently applies to the issue.

14. Support in-principle subject to consideration of detailed amendments.

15. Strongly supported.

16. Under consideration.

17. Strongly opposed.

18. Strongly opposed.

19. Opposed.

20. Strongly opposed.

21. Strongly supported.

22. Opposed.

23. Opposed.

24. Strongly supported. This should be amended in line with ACCI's written submissions/recommendations.

25. Supported.

26. Opposed.

27. Opposed. Amendments to address greenfield agreement making should be amended in line with ACCI's written submissions/recommendations.

28. Strongly opposed.

29. Opposed. Whilst the problem of greenfield agreement making has been correctly identified by the panel, amendments to address greenfield agreement making should be amended in line with ACCI's written submissions/recommendations.

30. Opposed. Whilst the problem of greenfield agreement making has been correctly identified by the panel, amendments to address greenfield agreement making should be amended in line with ACCI's written submissions/recommendations.

31. The first paragraph of the recommendation is strongly supported. The second paragraph of the recommendation is strongly opposed.

32. Opposed.

33. Strongly opposed.

34. Opposed.

35. Support in-principle subject to consideration of detailed amendments.

36. Strongly opposed.

37. Strongly opposed.

38. Supported. Amendments to address transfer of business provisions should be made in line with ACCI's written submissions/recommendations.

39. Opposed.

40. Conditional support for the FW Act to be amended to allow an extension from 14 days to 21 days if the existing exceptional

circumstances provisions are removed in line with ACCI's written submission/recommendations.

41. Opposed.

42. Support in-principle subject to consideration of detailed amendments.

43. Support in-principle subject to consideration of detailed amendments.

44. Strongly supported. No requirement to amend FW Act to implement.

45. Support in-principle subject to consideration of detailed amendments.

46. Supported.

47. Strongly supported. Amendments to address general protections' provisions should be made in line with ACCI's written submissions/recommendations.

48. Strongly opposed.

49. Conditional support to amend FW Act to align time limit for lodging a general protections claim relating to a termination of employment with unfair dismissal applications.

50. Relevant to institutional framework and supported in-principle.

51. Relevant to institutional framework and supported in-principle.

52. Supported.

53. Supported.