Opening Statement
Senate Committee Inquiry
Fair Work Amendment Bill 2013
22 April 2013

The Fair Work Amendment Bill 2013 (the Bill) includes a range of measures to alleviate some of the pressures on families and encourage them to participate in the workforce.

The Bill implements the Government's response to a further five recommendations of the Review Panel and other changes arising from consultation with stakeholders following the release of the Review report. These are:

- Recommendation 1 – extending the functions of the Fair Work Commission (FWC) to include the encouragement of productive workplaces
- Recommendation 4 – providing that taking unpaid special maternity leave does not reduce an employee's entitlement to unpaid parental leave
- Recommendation 5 – expanding eligibility for the right to request flexible working arrangements to include a broader range of employees
- Recommendation 35 – giving FWC greater power to resolve disputes about frequency of right of entry visits, and
- Recommendation 36 – including new rules for the location of discussions and interviews for right of entry purposes.

Family friendly and related provisions

With regard to the changes to support families, the Bill will:

- introduce new family friendly arrangements including expanding the scope of the right to request flexible working arrangements provisions under the National Employment Standards, in line with Recommendation 5 of the Fair Work Act Review Panel. The right to request flexible working arrangements will be extended to:
    a) employees who are parents, or who have responsibility for the care, of a child who is of school age or younger;

b) employees who are carers (within the meaning of the *Carer Recognition Act 2010*);
    - As recommended by the Productivity Commission Reports into *Disability Care and Support* and *Caring for Older Australians*.

c) employees with a disability;
    - As supported by the Australian Human Rights Commission Report, *WORKability*.

d) employees who are 55 or older;
    - As recommended by the Advisory Panel on the Economic Potential of Senior Australians.

e) employees who are experiencing violence from a member of the employee's family; and

f) employees who provide care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.
    - As recommended by the Australian Law Reform Commission report, *Family Violence and Commonwealth Laws*.

- establish new consultation requirements to ensure that employers genuinely consult with employees about changes to regular rosters and working hours. Employers will still be able to implement new rosters and working hours arrangements. However, they will now have to take genuine account of how changes will impact employees, particularly in relation to their family and caring responsibilities
- ensure that a pregnant employee can transfer to a safe job where one is available regardless of their length of service
- increase the length of concurrent unpaid parental leave to 8 weeks, in line with the outcome of the 2005 family provisions test case, and allow greater flexibility about when it can be taken in the 12 months after the birth of the child,
- provide that taking unpaid special maternity leave does not reduce an employee's entitlement to unpaid parental leave, in line with Recommendation 4 of the Fair Work Act Review Panel, and

- provide employees with an express right to request part-time work on return from parental leave.

In addition to the amendments outlined in the Bill, the Government will amend the Fair Work Information Statement, to ensure new employees are aware of their rights to request flexible working arrangements.

Some organisations have claimed that the Bill has introduced new entitlements for special maternity leave and paid transfer to a safe job leave.

This is incorrect. These provisions have a long history in Australian workplace relations legislation.

The concepts of special maternity leave and paid transfer to a safe job leave were first introduced into Victorian workplace legislation through the Victorian *Employee Relations Act 1992*. These provisions were inserted into the federal *Workplace Relations Act 1996* when Victoria referred its workplace relations powers to the Commonwealth. At this time the provisions continued to apply only to Victorian employees.

In 2005, the *Workplace Relations Amendment (Work Choices) Act 2005* extended the special maternity leave and transfer to a safe job provisions to apply to all employees covered by the federal workplace relations system.

These entitlements continued in the Fair Work Act.

Right of Entry

With regard to right of entry provisions, the Bill will:

- provide FWC with greater power to deal with disputes about the frequency of right of entry visits,
- provide greater clarity over the location of interviews and discussions where the parties cannot agree, and
- include special provisions regarding access to remote work sites.

The Government has also responded to one further recommendation – recommendation 37 which related to union access to employee records after the employment has ended. On the basis that there was no strong support for this recommendation from stakeholders and opposition from certain stakeholders, the Government has decided not to implement this recommendation.

The provisions regarding access to remote work sites are not about employers paying for transport and accommodation. They provide a mechanism to deal with circumstances where the only means for a union official, the permit holder, to reach a work site in a remote area is by transport provided by the occupier and/or where the only accommodation in the area is provided by the occupier, and the parties cannot come to an agreement on access and costs.

The provisions do not require an occupier to bear the costs of transport and/or accommodation for the permit holder.

A concern has been raised that the right of entry amendments in relation to remote sites will require occupiers to pay for incidentals costs (such as training costs) in relation to the provision of transport or accommodation.

The costs of incidental matters other than the direct transport or accommodation costs will not be regulated by the new provisions. The costs amendments will only apply where the occupier is required under proposed s. 521C(2) or s. 521D(2) to enter into an 'accommodation arrangement' or 'transport arrangement'. The amendments will provide that the fees for accommodation or transport under such arrangements must not be more than is necessary to cover the cost to the occupier of providing the accommodation or transport, or causing it to be provided.

For incidental costs, the amendments are not intended to alter the current position, which is any other costs are to be borne by the permit holder or organisation. This means that there would be no requirement for the occupier to cover costs of matters such as helicopter escape training or any limit on the fee that may be charged for such

training should an occupier choose to provide it. This is confirmed by paragraphs 167 and 173 of the Explanatory Memorandum to the Bill.

Penalty Rates

The Bill will insert a new modern awards objective to ensure that FWC considers the need for extra remuneration for working weekends, shift work and other unsocial hours in its maintenance of the modern award framework. FWC will retain the ability to determine whether or not the remuneration level in a modern award is appropriate and the level it should be set at based on the evidence presented to it.

These changes have been developed following extensive consultation with key workplace relations stakeholders both during and after the Fair Work Act Review.

Bullying provisions

The Bill also responds to one of the key recommendations from the report by the House of Representatives Standing Committee on Education and Employment - *Workplace Bullying "We just want it to stop"*.

During the Inquiry, the Committee heard that people who have been bullied often have great difficulty in finding a quick and effective way to stop the bullying so they are not placed at risk of further harm and can do their job in a harassment-free environment.

The Committee found that bullying is regulated by many areas of law at both Commonwealth and State and Territory levels such as industrial laws, work health and safety laws, criminal law and anti-discrimination laws.

It also found that people who have been bullied find the current legal arrangements complex and confusing with some bullying matters falling between the different pieces of legislation.

The Committee concluded that many people who have been bullied want to be more pro-active in protecting their own health and wellbeing but there is a gap in terms of the legal options open to individuals to achieve this.

For these reasons, the Committee recommended that the Government introduce an individual right of recourse for people who have been bullied at work

The Bill establishes a new individual right of recourse to the Fair Work Commission to have the matter heard quickly and inexpensively.

The Bill defines bullying as repeated unreasonable behaviour directed towards a worker, or group of workers of which the individual is a member, that creates a risk to health and safety.

This definition aligns with the one recommended by the Committee. In considering a definition, the Committee looked at existing definitions across jurisdictions and found that there were three criteria that were common – that the behaviours have to be repeated, unreasonable and cause a risk to health and safety.

The Bill provides that reasonable management action conducted in a reasonable manner is not bullying.

In order to assist people to resolve matters quickly and resume productive working relationships, the Bill requires the Fair Work Commission to begin to deal with applications within fourteen days.

The Fair Work Commission will publish information on its website to assist workers and employers understand what is meant by bullying, and the role, and jurisdiction of the Commission, and the types of outcomes available when making an application.

It is expected applications will be completed on line.

Following an application, Commission staff will start to deal with a matter within 14 days. This might include making contact with the applicant to ensure the applicant

understands the process and the outcomes available, to request further information from the parties, as well as ensuring all the relevant parties are identified.

The Commission staff will then make a recommendation to a Fair Work Commission Member about how the matter should proceed. Options could include mediation by a Fair Work Commission conciliator or a hearing before a Fair Work Commission Member.

Mediation would involve a conference involving the parties which is a voluntary process. If the matter proceeds to a hearing, the Member can make an order.

In terms of orders, the Fair Work Commission is required to have regard to the outcomes from any other investigation into the matter and any procedures available to the worker to resolve the dispute, or outcomes from the dispute resolution process.

The Fair Work Commission is consulting with state and territory work health and safety regulators as part of its process for developing protocols around the intake, assessment, management and referral of bullying matters.

This will help to ensure its procedures for dealing with bullying matters are consistent with the enforcement of workplace health and safety laws.

Consultation

Prior to the introduction of the Bill, the Hon Bill Shorten MP, Minister for Employment and Workplace Relations, consulted with employer organisations, unions via the National Workplace Relations Consultative Committee (NWRCC). The department also consulted on the details of the amendments at a number of separate meetings with NWRCC, the Committee on Industrial Legislation and state and territory officials.

Minister Shorten has noted his commitment to working with stakeholders on further changes to the Fair Work system. In particular, the Minister has publicly indicated the Government's support for the Review Panel recommendation which provides for the FWC to determine the content of a greenfields agreement in limited circumstances and

has noted the intention to work with employers and unions on options in this area as well as to resolve other intractable disputes.