
**INQUIRY INTO THE FAIR WORK AMENDMENT BILL 2014**

**SENATE EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE**

**SUBMISSION BY VICTORIAN FARMERS FEDERATION INDUSTRIAL ASSOCIATION**

**DATE: 24 APRIL 2014**

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**Inquiry into the Fair Work Amendment Bill 2014**

The Bill proposes to amend the Fair Work Act 2009 (Fair Work Act) to respond to the Fair Work Review Panel's Recommendations. These recommendations are listed below:

- **Recommendation 2**- The panel recommends that s.130 be amended to provide that employees do not accrue annual leave while absent from work and in receipt of workers' compensation payments;

- **Recommendation 3 –**The Panel recommends that s.76 be amended to require the employer and the employee to hold a meeting to discuss a request for extended unpaid parental leave, unless the employer has agreed to the request;

- **Recommendation 6**-The Panel recommends that s.90 be amended to provide that annual leave loading is not payable on termination of employment unless a modern award or enterprise agreement expressly provides to that effect;

- **Recommendation 9**- The Panel recommends that the better off overall test in s.144 (4) (c) and s.204 (4) be amended to expressly permit an individual flexibility arrangement to confer a non-monetary benefit on an employee in exchange for a monetary benefit, provided that the value of the monetary benefit foregone is specified in writing and is relatively insignificant, and the value of the non-monetary benefit is proportionate;

- **Recommendation 11**- The Panel recommends that the FW Act be amended to provide a defence to an alleged contravention of a flexibility term s.145(3) or s.204(3) where an employer has complied with the notification requirements proposed in Recommendation 10 and believed, on reasonable grounds, that all other statutory requirements (including the better off overall test) has been met;

- **Recommendation 12**- the Panel recommends that s.144(4)(d) and s.203(6) be amended to require a flexibility term to require an employer to ensure that an individual flexibility arrangement provides for termination by either the employee or the employer giving written notice of 90 days, or a lesser period agreed between the employer and employees, thereby increasing the maximum notice period from 28 days to ninety days;

- **Recommendation 24**- The Panel recommends that s.203 be amended to require enterprise agreement flexibility terms to permit individuals flexibility arrangements to deal with all matters listed in paragraph 1(a) of the model flexibility term in Schedule 2.2 of the FW Regulations, along with any additional matters agreed by the parties;

- **Recommendation 28**- The Panel recommends that the FW Act be amended to require employers intending to negotiate a s.172(2)(b) greenfields agreement to take all reasonable steps to notify all unions with eligibility to represent relevant employees;

- **Recommendation 31**-The Panel recommends that Division 8 of Part 3-3 be amended to provide that an application for a protected action ballot order may only be made when bargaining for a proposed agreement has commenced, either voluntarily or because a majority support determination has been obtained. The Panel further recommends that the FW Act expressly provide that bargaining has commenced for this purpose despite any disagreement over the scope of the agreement;

- **Recommendation 43**- The Panel recommends that the FW Act be amended to provide that FWA is not required to hold a hearing when exercising powers to dismiss an application under s.587, nor when exercising the recommended powers to dismiss an application involving a settlement agreement or a failure by an applicant to attend a proceeding or comply with an FWA direction or order. In each of those circumstances, FWA must be required to invite the applicant and the employer to provide further information before making a decision to dismiss the application or not.

**Recommendation 2**- The panel recommends that s.130 be amended to provide that employees do not accrue annual leave while absent from work and in receipt of workers' compensation payments.

The VFFIA supports the panel's recommendation that section 130 should be amended to provide that employees do not accrue annual leave while absent from work and in receipt of workers' compensation payment.

**Recommendation 3 –**The Panel recommends that s.76 be amended to require the employer and the employee to hold a meeting to discuss a request for extended unpaid parental leave, unless the employer has agreed to the request;

In the Government's Regulation Impact Statement on the Fair Work Amendments-option one in the discussion paper mentions, the objective of this amendment is to promote meaningful discussion and ensure due consideration of requests for extensions of unpaid parental leave before an employer makes a final decision about such requests. Employers will continue to be able to refuse such requests on reasonable business grounds.

The VFFIA supports option one- maintain the status quo. The VFFIA does not believe that a mandatory meeting between the parties should be legislated for. The parties should be able to address their concerns without a requirement that a meeting be held. If the parties want to meet face to face or communicate by phone or email let the parties decide themselves without legislative interference.

**Recommendation 6**-The Panel recommends that s.90 be amended to provide that annual leave loading is not payable on termination of employment unless a modern award or enterprise agreement expressly provides to that effect;

There has been a lot of confusion caused by s 90 where an award and section 90 conflict. The VFFIA supports the recommendation to amend this clause to provide that annual leave loading is not payable on termination of employment unless a modern award or enterprise agreement expressly provides to that effect.

Section 90 conflicts with the prior position were leave loading was not payable on termination unless expressly provided for in the relevant industrial instrument. Any new provisions legislated into workplace laws should not automatically be inserted without a full analysis. By inserting this clause there was additional costs to some employers without consultation. Employers before the introduction of the Fair Work Act (Act) did not have to pay annual leave loading on the employee's termination of employment, and since the new Act employers have had to pay an additional cost in paying out annual leave. During the modern award process Minister Gillard, Minister for Employment and Workplace Relations indicated that no worker or employer would be worse off under the new awards. Yet this section introduced new costs to some employers.

**Recommendation 9**- The Panel recommends that the better off overall test in s.144 (4) (c) and s.204 (4) be amended to expressly permit an individual flexibility arrangement to confer a non-monetary benefit on an employee in exchange for a monetary benefit, provided that the value of the monetary benefit foregone is specified in writing and is relatively insignificant, and the value of the non-monetary benefit is proportionate;

The VFFIA would be in support of this recommendation. In the regional areas it is not uncommon for an employee to receive meat, petrol and accommodation, electricity and other services. It should be up to the individual employee to decide and whether it is in his/her best interests to enter an individual flexibility agreement with the employer.

**Recommendation 11**- The Panel recommends that the FW Act be amended to provide a defence to an alleged contravention of a flexibility term s.145(3) or s.204(3) where an employer has complied with the notification requirements proposed in Recommendation 10 and believed, on reasonable grounds, that all other statutory requirements (including the better off overall test) has been met;

The VFFIA would support this recommendation as employers are not experts in the industrial area and sometimes they may not understand all aspects of the legislation. If they believe on reasonable grounds that they have complied then this would be a reasonable test.

**Recommendation 12**- the Panel recommends that s.144 (4) (d) and s.203 (6) be amended to require a flexibility term to require an employer to ensure that an individual flexibility arrangement provides for termination by either the employee or the employer giving written notice of 90 days, or a lesser period agreed between the employer and employees, thereby increasing the maximum notice period from 28 days to ninety days;

The VFFIA supports this recommendation to increase the notice period, or to a lesser period agreed between the parties under and individual flexibility agreement.

**Recommendation 24**- The Panel recommends that s.203 be amended to require enterprise agreement flexibility terms to permit individuals flexibility arrangements to deal with all matters listed in paragraph 1(a) of the model flexibility term in Schedule 2.2 of the FW Regulations, along with any additional matters agreed by the parties;

The VFFIA supports this recommendation as currently the legislation allows the content of flexibility terms in enterprise agreements to be narrow in scope than the model flexibility term. The VFFIA supports the view that matters covered by the model flexibility term should be included in all

enterprise agreements. Additional matters agreed by the parties over and above the matters listed in paragraph 1(a) of the model flexibility term in Schedule 2.2 of the FW Regulations may need to be looked at further.

**Recommendation 28**- The Panel recommends that the FW Act be amended to require employers intending to negotiate a s.172 (2)(b) greenfields agreement to take all reasonable steps to notify all unions with eligibility to represent relevant employees;

New projects are of vital importance to the Australian economy. The previous rules surrounding greenfield agreements introduced during workchoices were more conducive to business investments then the current rules now in place. The Fair Work Panel in its report stated at page 171 that,

*"However, based on evidence we have received in submissions and consultations, and a review of the data associated with greenfields agreements above, we consider that there is a significant risk that some bargaining practices and outcomes associated with greenfields agreements threaten future investment in major projects in Australia. This is because the existing provisions effectively confer on a union (or unions) with coverage of a majority of prospective workers a significant capacity to frustrate the making of an appropriate greenfields agreement at all or at least in a timely way…"*

While the panel proposes recommendations to address these issues the VFFIA supports the option of having employer greenfield agreements as these agreements promoted investment and reduced or eliminated the current problems that are now occurring, eg delay costs.

**Recommendation 43**- The Panel recommends that the FW Act be amended to provide that FWA is not required to hold a hearing when exercising powers to dismiss an application under s.587, nor when exercising the recommended powers to dismiss an application involving a settlement agreement or a failure by an applicant to attend a proceeding or comply with an FWA direction or order. In each of those circumstances, FWA must be required to invite the applicant and the employer to provide further information before making a decision to dismiss the application or not.

The VFFIA supports the view that the Fair Work Commission should be able to dismiss applications that are totally lacking in merit, or when an applicant has failed to attend a processing, adhere to a settlement or comply with directions.

**The right of entry**

The VFFIA does not support the recent amendments introduced by the *Fair Work Amendment Act 2013*. The right of entry in the recent amendment to the FWA has broadened the right of entry by unions. The VFFIA prefers the previous legislation that applied to union entry. In the Regulation Impact Statement on the Fair Work Act Amendments, the VFFIA prefers option two, where unions can enter workplaces for discussion purposes. Workplace access rights will be based on the principles of a union having a recognized representative role at the workplace and employees wishing to have discussions with that union.

**Provide the Fair Work Ombudsman to pay interest on unclaimed monies**

The VFFIA supports the view for the Ombudsman to pay interest on unclaimed monies.