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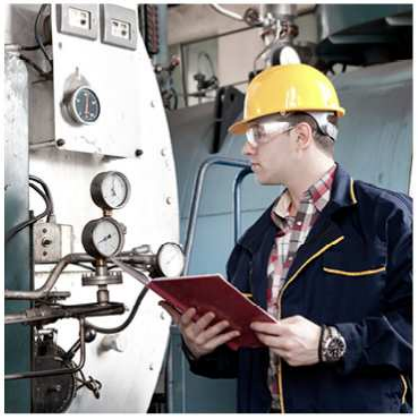



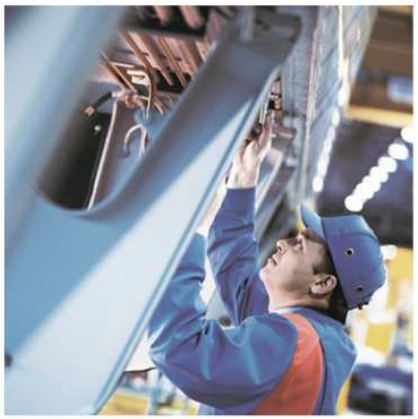


Fair Work Amendment Bill 2013

18 April 2013

Submission to the House Standing Committee on Education and Employment

Summary of Ai Group's position

The Australian Industry Group (**Ai Group**) is very disappointed with the content of the *Fair Work Amendment Bill 2013* (**Bill**).

As the Committee is aware, the *Fair Work Amendment Bill 2012* implemented mainly technical changes to the *Fair Work Act 2009* (FW Act) which neither unions nor employers particularly objected to. We hoped that the Government's second tranche of amendments to the FW Act following the Fair Work Act Review, would address well-recognised problems in the Act and deliver a more productive, flexible and fair workplace relations system. The Bill fails to achieve this.

The content of the Bill is extremely lopsided. The Bill does does not even attempt to strike a balance in addressing issues of concern to employers and employers. The Bill expands the entitlements of employees and unions in numerous areas including: union right of entry, bullying claims, award penalty rates, the right to request flexible work arrangements, parental leave, hours of work and rosters. Employers' issues of concern are not addressed in the Bill, and the absence of any attempt at balance is glaring.

There are number of problems with the FW Act which virtually all of the major business groups have identified, and which Ai Group has been pressing to have addressed. These include:

- Narrowing the scope of bargaining claims to matters that fall within the employment relationship;
- Addressing the greenfields agreement provisions which currently enable unions to hold employers to ransom until their claims are met;
- Implementing a more workable structure for Individual Flexibility Arrangements (IFAs);
- Tightening the General Protections to ensure that they operate fairly for all parties; and
- Addressing problems with the transfer of business laws which are currently inhibiting the restructuring of businesses.

We hoped that these issues would be comprehensively addressed through the Fair Work Act Review which was undertaken last year. Unfortunately, even though some of the issues were addressed to some extent, the Review Panel's recommendations did not go far enough to address the key problems. Even more unfortunately, despite some useful recommendations being made by the Panel in some of the key areas, including IFAs, the general protections and transfer of business, the Bill does not implement the Panel's recommendations in these key areas.
Since the FW Act was introduced in 2009, it has been a one way street with unions being granted increasingly more power. This Bill would grant even more power to unions, with a corresponding reduction in employers' rights. When the FW Act was introduced union power was increased in over 120 areas; the number of areas has now increased to **nearly 160**, taking into account this Bill (see **Annexure A**).

We urge the Committee to recommend that the Bill be rejected by Parliament. The lead up to a Federal Election is not an appropriate time to make major changes to workplace relations laws which would have a substantial, negative impact upon industry.

Ai Group's views on the specific amendments proposed in the Bill are set out in the following table.

Provisions of the Bill	*Ai Group's position*	*Comments*
Schedule 1 – Family-friendly measures		
Part 1 – Special maternity leave The Bill would ensure that any special maternity leave does not reduce an employee's entitlement to unpaid parental leave. **(Items 1-11)**	This provision would appear to have few adverse impacts upon employers	
Part 2 – Parental Leave The Bill would expand employees' entitlements in relation to unpaid parental leave taken concurrently by the two parents **(Items 12-15)**	This provision would appear to have few adverse impacts upon employers	

Provisions of the Bill	*Ai Group's position*	*Comments*
Part 3 – Right to request flexible working arrangements The Bill would expand the right to request flexible work arrangements under s.62 of the FW Act, with the following employees then having such rights: • A parent or a person who has responsibility for the care of a child of school age or younger; • A carer (ie. an individual who provides personal care, support and assistance to another individual who needs it because that other individual has a disability, or has a medical condition (including a terminal or chronic illness), or has a mental illness, or is frail and aged); • An employee with a disability; • An employee who is 55 or older; • An employee experiencing family violence; and	Opposed	Ai Group supports the existing 'right to request' provisions of the FW Act. The current provisions provide a formal right to request flexible working arrangements to employees with children below school age and/or with a disability below the age of 18, but do not preclude other employees from making informal requests for flexible working arrangements to their employer. This was acknowledged in the explanatory memorandum to the *Fair Work Bill 2008*: "*270. An employee who is not eligible to request flexible working arrangements under this Division (e.g. because they do not have the requisite service) is not prevented from requesting flexible working arrangements, However, such a request would not be subject to the procedures in this Division*". In practice, many workers request and are granted flexible work arrangements without using the right to request provisions. For example the Fair Work Commission (FWC) *General Manager's Report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave 2009-2012* ('FWC Report') identified that over half of the employees surveyed who made a request for flexible working arrangements since 1 January 2010 made an verbal (informal) request and of these employees 63 per cent had their request accepted. Notably only 0.7 percent of the employees who made an informal request had done so because they were ineligible to make a formal request under the 'right to request' provisions. These findings clearly question the necessity of expanding the circumstances in which an employee has a right to request flexible working arrangements. The proposed amendments would simply impose unnecessary red tape on employers.

Provisions of the Bill	*Ai Group's position*	*Comments*
• An employee providing care or support to a member of his or her family or household who is experiencing family violence. **(Items 16 and 17)**		Clause 258 of the explanatory memorandum for the *Fair Work Bill 2008* explained that "*the intention of these provisions is to promote discussion between employers and employees about the issue of flexible working arrangements*". The current 'right to request' provisions appear to be achieving this intent. For example, page 50 of the FWC Report identifies that "*[o]f the employees who were considered to have made a written request for flexible working arrangements under the NES, around 84 per cent indicated they had discussed the request with their employer first*".
The Bill would clarify the term 'reasonable business grounds'. **(Item 18)**	Opposed	Ai Group is of the view that it is not necessary to define the term 'reasonable business grounds'. If the term is to be defined, the following amendments should be made to the avoid imposing an overly high bar on employers who need to reasonable refuse requests, and to avoid interpretation problems: • In (5A)(a), delete 'too'; • In (5A)(b), replace 'no capacity' with 'little or no reasonable capacity' • In (5A)(c), replace "impractical" with 'impractical or unreasonable' • In(5A)(d), delete 'significant'; and • In (5A)(e), delete 'significant'.
Part 4 – Consultation about changes to rosters or working hours The Bill would require that modern awards and enterprise agreements include a clause requiring employers to consult employees about a change to their regular roster or	Opposed	The proposed requirement to consult about any change to a regular roster or ordinary hours of work is problematic. The term 'regular roster' is not defined. This makes it uncertain as to when the employer's obligation to consult would be triggered. The explanatory memorandum provides little guidance and merely indicates that the intention of the provision is to capture cases where an employee has an understanding that their working

Provisions of the Bill	*Ai Group's position*	*Comments*
ordinary hours of work, including inviting them to give their views about the impact in relation to their family and caring responsibilities. **(Items 19-21)**		arrangements are regular and systematic. The employee's understanding may be very different to the employer's understanding. The FW Act does not currently require modern awards to contain consultation clauses, nonetheless the Full Bench of the Australian Industrial Relation Commission decided to include a model consultation clause in all modern awards. The modern award consultation clause requires employers to notify employees and unions at the workplace of any definite decision to introduce major changes to production, program, organisation, structure or technology that are likely to have significant effects on employees and discuss with employees and unions these changes and any measures to avert or mitigate any adverse effects that may result from them. The model consultation clause is detailed and imposes strong obligations on employers to consult with employees and unions at the workplace about the effects of major workplace changes, including the effects on employee rosters and hours of work. A similar consultation clause is required to be included in all enterprise agreements. Section 205 of the FW Act requires that all enterprise agreements include a consultation clause which requires the employer to consult with employees and their representatives about major workplace changes that are likely to have a significant effect on the employees. The *Fair Work Regulations 2009* contains the model enterprise agreement consultation clause in Schedule 2.3. The proposed legislative amendments would impose an additional and unnecessary layer of regulation on employers. The amendments would lead to uncertainty and disputation.

Provisions of the Bill	*Ai Group's position*	*Comments*
Part 5 – Transfer to a safe job The Bill would expand the right for pregnant women to transfer to a safe job. **Items 22-30**	Opposed	Ai Group opposes the proposed amendment to provide employees with less than 12 months service and short-term casual employees with the entitlement to 'transfer to a safe job' or receive 'unpaid no safe job leave'. Currently, section 81 of the FW Act requires that employers provide pregnant employees who have accumulated a minimum of 12 months service or who are long term casuals and who are fit for work but unable to continue working in their current role because of illness, risks arising out of the pregnancy, or hazards connected with the position, to transfer to a safe job, or if a 'a safe job' is not available, to 'paid no safe job leave'. Ai Group opposed the paid 'no safe job leave' provisions when they were first introduced into the *Workplace Relations Act 1996* and later when the provisions were replicated in the FW Act, on the basis that they significantly altered the longstanding award provisions that enabled the employee to elect, or the employer to require, a pregnant employee to commence **unpaid** parental leave if no 'safe job' was available. The current FW Act 'no safe job leave' provisions operate unfairly for employers in the lead and other industries where the nature of the work may not be safe for pregnant employees. The provisions provide a significant disincentive for employers in hazardous industries to employ females of child-bearing age. Extending the 'transfer to a safe job' provisions to employees with less than 12 months' service is problematic. For example, a pregnant employee in the first month of pregnancy would be able to commence employment with an employer and then immediately present a medical certificate stating that she is unfit to work in the job that she was hired to perform. If the employer did not have a safe job available, the employer would be required to provide unpaid leave for the following eight months until the birth of the child.

Provisions of the Bill	*Ai Group's position*	*Comments*
Schedule 2 – Modern awards objective		
The Bill would insert a new element into the modern awards objective requiring the FWC to consider, when making or varying a modern award, the need to provide additional remuneration for employees working overtime, unsocial, irregular or unpredictable hours, weekends, public holidays, or shift work. **(Item 1)**	Opposed	The proposed amendment is an ill-conceived response by the Government to recent FWC *Penalty Rates Case* which reviewed the penalty rates in some modern awards, including the *Fast Food Industry Award 2010* (**FFI Award**). The *Penalty Rates Case* considered an Ai Group application made on behalf its Members in the fast food industry, including Competitive Foods, Australia (Hungry Jacks), McDonald's Australia Ltd, Quick Services Restaurants (Red Rooster, Chicken Treat and Oporto), and Yum! Restaurants Australia Pty Ltd (Pizza Hut and KFC) for the review of penalty rates inserted into the FFI Award during the award modernisation process. The introduction of the FFI Award imposed significant cost increases on employers in the fast food industry through much higher penalty rates. A separate submission has been submitted to the Committee on behalf of Ai Group's Members in the fast food industry, including those companies listed above. The proposed amendment would severely impede the FWC's ability to assess the merits of any applications to review penalty rates in the future. Furthermore, the requirement that the FWC consider *the need to provide additional remuneration* for overtime, shifts, weekend work, public holidays and the working of irregular hours fails to recognise that some awards apply to professional staff and do not include penalty rates because employees in these jobs are typically paid annual salaries. Also, numerous awards include the flexibility for an employer and an employee to reach agreement on an annual salary arrangement rather than paying penalty rates. There is the significant risk that these vital flexibilities will be lost if the ill-conceived legislative change is made.

Provisions of the Bill	*Ai Group's position*	*Comments*
Schedule 3 – Anti-bullying measure		
The Bill would give the FWC the jurisdiction to deal with bullying complaints including: • Defining bullying in terms of repeated unreasonable behaviour by an individual or group of individuals towards a worker or group of workers where the behaviour creates a risk to health and safety; • Clarifying that bullying does not include 'reasonable management action carried out in a reasonable manner'; • Enabling a worker to apply for an order if the worker reasonably believes that he or she has been bullied at work; • Enabling the FWC to make any order it considers appropriate (other than an order for payment of a pecuniary amount) to prevent the bullying; • Requiring the FWC when considering the terms of an order to take into account outcomes from any investigation conducted by the employer or other	Opposed	Industry recognises the significant costs and other negative impacts of workplace bullying. It is an issue that employers take very seriously. However, workplace bullying is not an industrial relations issue. It is primarily a work health and safety issue, which is regulated by work health and safety laws. Where workplace bullying is identified in the workplace, the employer is obliged to control or eliminate the hazard where practicable. If workplace bullying results in an injury or illness to a person, then workers' compensation is available to that person to assist them with the management and recovery from the illness and/or injury. Work health and safety laws regulations and codes have a strong preventative focus and they are the most appropriate regulatory approach to address workplace bullying, not the FW Act and the FWC. The Bill would increase the existing widespread confusion about what workplace bullying is, and increase disputation within workplaces. The House of Representatives Standing Committee on Education and Employment Inquiry report, *Workplace Bullying "We just want it to stop"* made a number of recommendations to address workplace bullying, many of which are of a preventative and facilitative nature. Such recommendations should be given priority. Bullying complaints and the high community cost of bullying can best be addressed by a renewed emphasis on prevention. Governments should devote more resources to working with industry groups and other stakeholders to educate employers, employees and the community on what workplace bullying is and how it should be prevented and dealt with.

Provisions of the Bill	*Ai Group's position*	*Comments*
body, any relevant procedure available to the worker (eg. a procedure within a company policy which deals with bullying), and any outcomes arising from a relevant procedure; and • Requiring the FWC to start to deal with an application within 14 days of the application being made. **(Items 1-6)**		
Schedule 4 – Right of entry		
The Bill would amend the right of entry laws to provide for interviews and discussions to be held in a room or area agreed between the employer and the union official or, in the absence of agreement, in the room or area where the employees ordinarily take their meal break. **(Item 7)**	Opposed	Ai Group opposes the proposed amendments to mandate that meal rooms or break areas are default locations for union officials to conduct interviews or hold discussions with employees. In effect the proposed amendments remove employers' right to reasonably request that interviews be conducted and discussions held in a particular area of the workplace. The proposed amendments provide no incentive for unions to enter into sensible discussions with employers about a reasonable location. Lunch rooms (and other break areas) are used by all employees, including those who are not union members and those who do not wish to participate in union discussions. Only a minority of employees are union members, about 13 per cent in the private sector.[1]

[1] 6310.0 - Employee Earnings, Benefits and Trade Union Membership, Australia, August 2011

Provisions of the Bill	*Ai Group's position*	*Comments*
		Under the current provisions, unions have the right to challenge the location proposed by the employer in the FWC if they regard it as unreasonable. There have been very few disputes about this issue over the years because employers typically are reasonable. The location of union meetings has been an extremely contentious issue between employers and unions over many years. While employers recognise that unions have the right to represent their members and to meet with them during meal breaks to discuss relevant issues, this right needs to be balanced against the rights of non-union members to relax during their lunch breaks and not be forced to listen to union officials if they remain in the lunch room. Currently, employers have the right to determine the location of union meetings in their workplace provided that the location is reasonable. Unions have the right to challenge the location in the Fair Work Commission if they regard it as unreasonable. There have been very few disputes about this issue over the years because employers typically are reasonable. The Federal Government has given a series of public commitments not to expand union entry rights and, until now, the Government has consistently rejected the unions' claim for a right to meet in lunch rooms. The following developments are relevant: • The Labor Party's *Forward with Fairness Implementation Plan*, released in August 2007 stated that 'Labor will maintain the existing right of entry rules'. The Plan also stated that the 'Right of entry laws balance the right of employees to be represented by their union with the right of employers to get

Provisions of the Bill	*Ai Group's position*	*Comments*
		on with running their business.'[2] • Even though the previous link between union entry rights and the coverage of industrial instruments was abolished in the FW Act, the previous rights of unions and employers regarding the location of union meetings were retained. • During the development of the *Fair Work Bill,* the unions pressed for expanded union entry rights but the Government honoured the public commitment that it had given regarding the location of union meetings under the right of entry laws. • During the Senate Committee inquiry into the *Fair Work Bill*, union entry rights were the subject of more debate than any other provisions of the Bill. In the final report of the Government Senators, the abovementioned commitments in Labor's *Forward with Fairness Implementation Plan* were reproduced to reject employer concerns about expanded union entry rights'.[3] In answering a question on notice, the Department of Employment, Education and Workplace Relations confirmed that the Federal Government regarded the limitations on right of entry in the *Fair Work Bill* as consistent with Australia's international obligations. • During the Fair Work Act Review, the unions pressed for the right to meet with employees in lunch rooms. This proposal was not adopted by the Fair Work Act Review Panel. Instead, the Panel recommended:

[2] *Forward with Fairness Implementation Plan,* August 2007, p.23.
[3] Final Report, Inquiry into the *Fair Work Bill 2008*, Senate Standing Committee on Education, Employment and Workplace Relations, 27 February 2009, paragraph 7.14.

Provisions of the Bill	*Ai Group's position*	*Comments*
		Recommendation 36: *The Panel recommends that s.492 and s.505 be amended to provide FWA with greater power to resolve disputes about the location for interviews and discussions in a way that balances the right of unions to represent their members in a workplace and the right of occupiers and employers to go about their business without undue inconvenience.*
The Bill would: • Require that an employer enter into an 'accommodation arrangement' with a union official if the official wishes to exercise entry rights to premises located in a place where accommodation is not reasonably available unless the employer provides the accommodation, with the employer prohibited from charging the union any more than the cost to the employer of providing the accommodation; • Require that an employer enter into an 'transport arrangement' with a union official if the official wishes to exercise entry rights to premises located in a place that is not reasonably accessible	Opposed	Ai Group opposes the proposed amendment to require employers to provide accommodation and transport to union officials in remote locations for the purpose of conducting interviews and holding discussions with employees. The proposed provisions are structured such that where the employer and the permit holder cannot agree, the default position is that the employer (or occupier) must enter into an accommodation and/or transport arrangement with the permit holder and the employer (occupier) is responsible for the cost of the accommodation and/or transport. The default position removes any incentive for the permit holder and the organisation of which the permit holder is an official to negotiate a sensible accommodation and/transport arrangement which suits all parties, including the employer.

Provisions of the Bill	*Ai Group's position*	*Comments*
unless the employer provides the transport, with the employer prohibited from charging the union any more than the cost to the employer of providing the transport. **(Items 1, 2, 14 and 15)**		
The Bill would enable the FWC to deal with disputes about accommodation arrangements, transport arrangements and the frequency of visits by union officials to workplaces to hold discussions with employees. **(Items 12 and 13)**	The provision is inadequate to address the problem identified by the Fair Work Act Review Panel	The Fair Work Review Panel identified that union visits to workplaces to hold discussions with members and employees have become more frequent since the commencement of the FW Act. At page 194 of their report, the Panel expressed its concern that the increased frequency of union visits may be motivated by entry not consistent with entry authorised by the FW Act. The Panel also expressed concern that the FWC does not have the necessary discretion to deal with a dispute relating to excessive workplace visits and recommended providing FWC with greater power. The proposed section 505A does not adequately address the problem. The proposed amendment gives the FWC a very limited discretion to deal with a dispute about the frequency of visits. The statutory test in subsection 505(4) requiring the employer to explain how the frequency of visits of the permit holder would be an unreasonable diversion of the occupier's critical resources, would place a very onerous evidentiary burden on the employer. The inclusion of the word 'critical' imposes a test that would be virtually impossible to meet.

Arbitration

The Minister for Education, Employment and Workplace Relations the Hon Bill Shorten MP, has stated publicly that the Government is considering introducing legislative amendments to give the FWC increased arbitration powers regarding greenfields bargaining and 'protracted bargaining'.

Ai Group has strong and deeply held objections to the proposal long pressed by unions that they be given the ability to force employers to submit to arbitration after protracted bargaining This proposal, if implemented, would overturn outcomes that Parliament implemented after a very hard fought Government consultation process with industry and union representatives.

The Unions' arbitration proposal is incompatible with Australia's enterprise bargaining system. In an open economy, Australia's interests are best served by employers and employees reaching agreement on wages, conditions and workplace flexibilities which suit their own unique circumstances.

The Unions' proposal would implement a major change to Australia's enterprise bargaining system and one that Ai Group and other industry representatives have argued vigorously against for many years. The following context is relevant:

- In July 2006, the ACTU announced a bargaining policy which included a right for unions to force employers into arbitration after protracted bargaining. Ai Group played a leading role in the public debate about the ACTU's proposal, arguing strongly against it.

- In April 2007, the Labor Party released its *Forward with Fairness Policy*. Given the public debate generated by the ACTU's policy and the strong opposition of Ai Group and other industry representatives, Labor's policy did not include a right for unions to access arbitration after protracted bargaining but included a right to access arbitration if industrial action was causing significant harm to the bargaining participants.

- From January 2008 to November 2008, the Government consulted widely during the development of the *Fair Work Bill.* Ai Group played a leading role as a Member of the National Workplace Relations Consultative Council, the Committee on Industrial Legislation (COIL) and the Business Advisory Group. Ai Group also made numerous submissions to the Government on bargaining matters. The

powers of the Tribunal to arbitrate during bargaining were major issues of contention between employers and unions. Ai Group strongly opposed any expansion of the powers of the Tribunal to arbitrate during bargaining, beyond the longstanding circumstances where industrial action was threatening to damage the economy or harm the welfare of the population.

- During October and November 2008, Ai Group played a leading role in representing industry during the COIL process where the terms of the *Fair Work Bill* were considered in great detail. Again, the powers of the Tribunal to arbitrate during bargaining were one of the major issues of contention between employers and unions.

- In December 2008, the *Fair Work Bill* was introduced into Parliament. Despite Ai Group's opposition, the Tribunal's powers to arbitrate were expanded to include circumstances where employees were 'low paid' and where industrial action was threatening to cause significant harm to the bargaining parties.

- In January 2009, the *Fair Work Bill* was the subject of a Senate Committee inquiry. In its submissions, Ai Group proposed changes to wind-back the proposed expanded arbitration powers. Despite Ai Group's submissions, the relevant provisions of the Bill were not amended and the Tribunal's arbitration powers were expanded.

- From late-2011 to mid-2012, the Fair Work Act Review was conducted. During the Review, the unions pressed for the Panel to recommend that the arbitration powers of the Tribunal be expanded to include circumstances where an agreement is not reached after protracted bargaining. The unions focussed heavily on bargaining at the leading Australian manufacturer Cochlear – an Ai Group Member. Ai Group strongly opposed the unions' proposed expanded arbitration powers and ensured that the Panel was aware of the facts surrounding bargaining at Cochlear.

- In the Review Panel's final report, released by the Government in August 2012, the Panel rejected the unions' proposal for expanded arbitration powers:

  > *'Accordingly, we are not inclined to recommend providing any additional avenues for arbitration, with the exception of greenfields agreements, which we deal with separately in 6.5.'*[4]

[4] Final Report of the Fair Work Act Review, p.148.

Australia had a compulsory arbitration system for 90 years. By the early 1990s it had become incompatible with Australia's open economy and was replaced with a system of enterprise bargaining. Compulsory arbitration of bargaining disputes is clearly inconsistent with the whole notion of enterprise bargaining. The outcome of arbitration is not an enterprise agreement, but rather a determination which all parties must comply with. The proposal is effectively little more than a back door reintroduction of compulsory arbitration.

A hard-fought and vital principle in the FW Act is that employers are not required to make concessions during bargaining or enter into agreements they do not support. The Unions' proposal would negate this important principle.

When compulsory arbitration is available, there is less incentive to search for a solution which is acceptable to all parties. Unions would have the ability to pursue speculative, ambit claims in order to achieve a favourable outcome. For example, a union might seek a wage increase of 15% per annum where an employer is offering 5%, with the aim of achieving a 10% arbitrated settlement. Outcomes awarded by the FWC would flow on to other enterprises through the doctrine of precedent. Flow-on would also occur because unions would regard arbitrated outcomes as a new floor for subsequent claims. This would fuel inflation and stifle innovative workplace relations.

Given the need to maintain a fair safety net for all workers, compulsory arbitration is available for award conditions. It is also available where a dispute is threatening to damage the economy or an important part of it, or where the health, safety or welfare of the population is threatened. In these circumstances the interests of the community outweigh the interests of the bargaining parties. In addition, compulsory arbitration is available where industrial action is causing significant harm to the bargaining parties, and in the low paid bargaining stream. The FW Act has stretched to the limit the list of circumstances where compulsory arbitration can be accessed under our enterprise bargaining system. The proposed further expansion is not warranted.

Australia's productivity performance needs to improve, and our relatively high wages growth has pushed unit labour cost growth to a pace well above that of most other developed countries. The high currency has exacerbated the impacts. Australia has become a high cost country compared to our trading partners. There is an imperative to drive productivity growth in order to close the cost gap. Workplace flexibility has an important role to play and flexibility is best achieved through genuine agreement-making not forcing parties to accept arbitrated outcomes.

The Unions' arbitration proposal would be very damaging and needs to be strongly opposed by all political parties.

ANNEXURE A

SOME AREAS OF NEW OR EXTENDED UNION RIGHTS UNDER THE *FAIR WORK ACT*

(as at 15 April 2012)

	Provision of FW Act	***New or extended union rights***
As at 5 March 2012		
1.	S.3	The FW Act objectives further employer unions by declaring that individual statutory agreements will not be part of the FW system and by emphasising enterprise-level collective bargaining.
2.	S.12	Definition of "objectionable term" is more favourable to union
3.	S.12	Definition of "relevant employee organisation" gives unions substantial rights and powers in respect of greenfields agreements.
4.	S.19	Definition of "industrial action" means a union no longer bears the onus of proof when alleging to be engaging in industrial action on the basis of a reasonable concern for the imminent health and safety of employees.
5.	S.27(2)	More State laws are preserved, include many which contain union rights.
6.	S.32	Unions have substantial new powers re. foreign flagged ships.
7.	S.44	Unions can apply for a penalty for a breach of the NES re. members and non-members.
8.	S.47	Extended rights for a union to have an award "apply" to it.
9.	S.48	Extended rights for a union to be "covered" by an award.
10.	S.52	Extended rights for a union to have an enterprise agreement "apply" to it.

11.	S.53	Extended rights for a union to be "covered" by an enterprise agreement.
12.	S.124	All new employees are to be given a Fair Work Information Statement which, amongst other aspects, contains information about their right to join a union.
13.	S.139	Extended content in awards permitting clauses dealing with trade union training, consultation with unions etc.
14.	S.146	Award dispute settling clauses permitted to give extended rights to unions.
15.	S.156	Unions can pursue new award standards during "4 yearly reviews".
16.	S.157	A union can apply for minimum wages to be increased for "work value reasons" outside of the 4 yearly reviews.
17.	Ss.158 – 160	Expanded rights for unions to apply to vary, revoke or make a modern award.
18.	S.172(1)	Definition of "permitted matters" allows wide scope for union clauses to be inserted into agreements and industrial action to be taken over claims.
19.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements dealing with employer deductions from wages.
20.	S.172(1)	Definition of "permitted matters" allows for terms regarding the deduction of union dues to be included in an enterprise agreement.
21.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements dealing with the provision of paid leave to employees to attend training provided by a union.
22.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements dealing with the provision of paid leave to employees to attend union meetings.
23.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements about the renegotiation of a proceeding enterprise agreement.

24.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreement dealing with the rights of unions to represent employees bound by the agreement in a dispute under the enterprise agreement.
25.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements dealing the use of contractors by the employer.
26.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements dealing with the use of labour hire workers by the employer.
27.	S172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements requiring the employer to disclose information about employees bound by the agreement.
28.	S172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements requiring the employer to disclose information about contractors, labour hire or outsourcing arrangements.
29.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements requiring the employer to encourage union membership and membership action.
30.	S.172(1)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements that limit the scope for employers to enter into individual flexibility arrangements with individual employees.
31.	Ss.172(1) and 194(f)	Definition of "permitted matters" allows unions to negotiate clauses in enterprise agreements dealing with right of entry beyond the provisions of Part 3-4 of the FW Act.
32.	S.172(2)	Even if a union has only one member in the workplace it is entitled to be covered by the enterprise agreement unless that member appoints another person as a bargaining representative.
33.	S.172(3)	Restrictions on unions bargaining at the multi-enterprise level removed.
34.	S.172(4)	An employer, if making a greenfields agreement, must make that agreement with a union, and cannot make an employer greenfields agreement.

35.	Ss.173 and 174	An employer who will be covered by a proposed enterprise agreement must notify each employee of representational rights.
36.	S.174(3)	A union is deemed a default bargaining representative for any member of that union in respect of the negotiation of an enterprise agreement.
37.	S.175	An employer must give each relevant union notice of the employer's intention to make a greenfields agreement.
38.	S.176(1)	For agreements other than greenfields agreements, where an employee is a member of a union, the union is a default bargaining representative.
39.	S.176(2)	For a proposed multi-enterprise agreement for low paid employees, the union is taken to be a bargaining representative in wide circumstances.
40.	S.177	A relevant union in relation to a proposed greenfields agreement is a bargaining representative for the agreement.
41.	S.179	An employer must not refuse to recognise or bargain with a union bargaining representatives.
42.	S.182	A greenfields agreement cannot be made without the signature of the relevant union.
43.	S.183	A union which is a bargaining representative for a proposed enterprise agreement will be covered by the agreement if the organisation notifies FWC that it wants to be covered.
44.	S.185	A union may apply to FWC for approval of an agreement.
45.	S.187(2)	To approve an agreement where there is a scope order in operation, FWC must be satisfied that approving the agreement would not be inconsistent with or undermine good faith bargaining by one or more bargaining representatives.
46.	S.188(a)(ii)	Employer must not request employees to approve an enterprise agreement until 21 days after notice of representational rights is given.
47.	S.194	Narrow definition of unlawful terms permits wide range of union clauses to be inserted into agreements.

48.	S.194	The definition of "unlawful term" allows unions to negotiate clauses in enterprise agreements dealing with right of entry so far as such clauses are not inconsistent with Part 3-4 of the FW Act.
49.	S.194	The definition of "unlawful term" allows unions to negotiate clauses in enterprise agreements dealing with unfair dismissal so far as such clauses are not inconsistent with Part 3-2 of the FW Act.
50.	S.205	Every enterprise agreement must contain a consultation term that requires the employer to consult with unions (employee representatives) about major workplace changes.
51.	S.226	When an application to terminate an agreement is made, FWC is to take into account the views of the unions covered by the agreement.
52.	S.228	Good faith bargaining requirements require negotiation with union bargaining representatives.
53.	S.229	A union bargaining representative may apply for a bargaining order.
54.	S.234	A union bargaining representative may apply to FWC for a serious breach declaration, which may lead to the making of workplace determination.
55.	S.236	A union bargaining representative may apply for a majority support determination, which triggers good faith bargaining requirements.
56.	S.238	A union bargaining representative may apply for a scope order where it considers that the scope of the proposed agreement is not appropriate.
57.	S.240	A union bargaining representative may apply to FWC to deal with a dispute about a proposed enterprise agreement.
58.	S.242	A union that is entitled to represent the industrial interests of an employee may apply to FWC for a low paid authorisation.
59.	S.246	Where a low paid authorisation is in operation, Fair Work Australia is permitted to provide assistance to a bargaining representative, such as a union, to facilitate bargaining of an agreement or with the dealing of a dispute.
60.	S.247-252	Unions may bargain with a group of employers which are single interest employers.

61.	S.254	Expanded rights for union bargaining representatives to make various applications.
62.	Ss.260	Union bargaining representatives may apply to FWC for a low paid workplace determination if it cannot reach agreement with the employer.
63.	S.261	FWC must make a low paid workplace determination to a bargaining representative, such a union, if it is satisfied that the bargaining representative made all reasonable efforts to agree on the terms of the agreement.
64.	S.266	Circumstances in which FWC must make an industrial action related workplace determination – where a termination of industrial action instrument has been made and the bargaining representatives have not settled all of the matters.
65.	S.267	Industrial action related workplace determinations must be expressed to cover bargaining representatives.
66.	S.269	Circumstances in which FWC must make a bargaining related workplace determination – where a serious breach declaration has been made and the bargaining representatives have not settled all the matters.
67.	S.270	Bargaining related workplace determinations must be expressed to cover union bargaining representatives.
68.	S.273	A workplace determination must include the model consultation clause, which gives unions an expansive right on the issues to which they must be consulted regarding workplace change.
69.	S.274	FWC must insert terms that have been agreed between bargaining representatives.
70.	S.277	A workplace determination can be expressed to cover a union.
71.	S.281	Expanded rights for union bargaining representatives to make various applications.
72.	Ss.302-306	A union may apply for an equal pay order for both members and non-members.
73.	S.318	A union may apply for an order relating to instruments covering the new employer and transferring employees.
74.	S.319	A union may apply for an order relating to instruments covering the new employer and non-transferring employees.

75.	S.320	A union may apply to FWC for variation of transferable instruments for ambiguity or uncertainty.
76.	Ss.323	A union may apply for a penalty relating to payment of wage requirements for members and non-members.
77.	Ss.328	A union may apply for a penalty re. guarantee of annual earnings for members and non-members.
78.	s.341	A union can bring a General Protections claim against an employer who, in response to industrial action, reasonably modifies business and operating policies and procedures during a period of the action.
79.	s.341	A union can bring a General Protections claim against an employer who, in response to industrial action, offers overtime to individual employees who have not taken strike action during the previous week, but not to those who have.
80.	s.341	A union can bring a General Protections claim against an employer who, in response to industrial action, withdraws discretionary benefits to those employees engaging in the action.
81.	s.341	A union can bring a General Protections claim against an employer who, in response to industrial action, requires employees who are taking industrial action to return company property such as a vehicle, telephone or computer so that other employees who are not taking industrial action can use them to service customers.
82.	s.341	A union can bring a General Protections claim against an employer who, in response to industrial action, prevents employees utilising company email and telecommunications systems during periods of industrial action.
83.	s.341	A union, on behalf of an employee, can bring a General Protections claim against an employer who, in response to misconduct, decides to discipline or terminate the employee.
84.	s.341	A union, on behalf of an employee, can bring a General Protections claim against an employer who, in response to unexplained or unsubstantiated absences from work, decides to discipline or terminate the employee.
85.	s.341	An employer, who disciplines an employee who is also a union delegate for reasons relating to performance or misconduct can allege that the employer has engaged in adverse action because the person is a union delegate. It is up to the employer to prove otherwise.

86.	s.341	An employer, who terminates an employee who is also a union delegate for reasons relating to performance or misconduct can allege that the employer has engaged in adverse action because the person is a union delegate. It is up to the employer to prove otherwise.
87.	Ss.340-359	Prohibition against adverse action because a person has a workplace right, where "workplace right" would cover any number of rights relating to union membership or activity set out in workplace laws etc and "adverse action" has a very broad meaning. Unions can pursue penalties for members and non-members.
88.	s.347	A union officer or member engaging in unlawful industrial activity is protected from any adverse action in relation to the unlawful industrial activity from the employer.
89.	S.350	Enables to employer to encourage union membership and member action, as long as the employer's behaviour does not amount to inducement.
90.	S.351	Unions can pursue a much wider range of discrimination actions on behalf of employees.
91.	S.360	An employee who is a union member or delegate can argue that a reason for the employer's adverse action was the fact they are a union member or delegate despite this not being the real, conscious or dominate reason for the action.
92.	S.361	After making a General Protections application to FWC, a union (being the applicant or acting on behalf of the employee) need not prove that a breach of the General Protections actually occurred. Rather the employer is obliged to prove that the breach did not occur.
93.	S.389	A termination is not a genuine redundancy if the employer did not comply with any obligation in a modern award regarding consultation with employees / unions.
94.	S.389	A termination is not a genuine redundancy if the employer did not comply with any obligation in an enterprise agreement regarding consultation with employees / unions.
95.	S.411	An employer can no longer lock-out employees in a dispute unless it is in response to industrial action by employees.
96.	S.423	A union may apply for a determination if industrial action is threatening to harm the employer and employees.

97.	S.429	A union is free to recommence employee claim action after a suspension period has ended without having to undertake a further protected action ballot, regardless of whether the dates authorised by the original protected action ballot had passed during the suspension period.
98.	S.437	A union is free to apply for (and be granted) a protection action ballot order before an employer has agreed to bargain or a majority support determination has been made.
99.	s.437	A union is free to apply for (and be granted) a protected action ballot order while engaging in pattern bargaining.
100.	S.438	Ballot orders may be applied for 30 days before an agreement expires.
101.	S.443	Ballot orders are no longer conditional upon a union not pattern bargaining or pursuing unlawful content.
102.	S.464	Commonwealth liable for full cost of secret ballots (ie. union not liable for any costs).
103.	Ss.481-482	Rights of entry to investigate suspected breaches no longer linked to a requirement that union be bound by the award or agreement.
104.	S.483A	Unions are free to enter workplaces to investigate suspected contraventions relating to TCF outworkers.
105.	Ss.483A-483C	Unions are free to access records and documents relevant to a suspected contravention relating to a TCF outworker.
106.	Ss.483A-483C	Unions are free to access non-member records and documents relevant to a suspected contravention relating to a TCF outworker.
107.	Ss.483D-483E	Unions are free to enter premises (not being the employer's premises) to access records and documents relevant to a suspected contravention relating to a TCF outworker.
108.	S.484	Entry to hold discussions has been broadened – requirement that union be bound by an award or agreement which is binding on the employees has been removed.

109.	S.484	Unions are free to enter premises to hold discussions within one or more TCF outworkers, regardless whether the TCF outworkers are members of the union.
110.	S.493	The right of entry into residential premises is expanded under the FW Act.
111.	S.524	Unions are free to negotiate terms into enterprise agreements which limit the rights employers have to stand down employees under s.524.
112.	S.526	FWC may arbitrate in respect of a stand-down dispute on application by a union.
113.	Ss.537-572 and 540	Unions have much wider powers to pursue penalties and other remedies relating to breaches affecting members and non-members.
114.	Ss.537-572 and 540	Unions have powers to pursue penalties and other remedies relating to breaches affecting outworkers.
115.	S.539	A union may apply for a penalty against an employer for breaching an equal pay order, for both members and non-members.
116.	S.539	Unions can pursue penalties for members and non-members for adverse action by an employer because a person has a workplace right.
117.	S.539	Unions can apply for a penalty for a breach of the NES re. members and non-members.
118.	S.539	A union may apply for a penalty relating to payment of wage requirements for members and non-members.
119.	S.539	A union may apply for a penalty re. guarantee of annual earnings for members and non-members.
120.	S.539	Unions may apply for a penalty relating to discrimination actions for members and non-members.
121.	S.606	FWC does not have the power to issue a stay order relating to a protected action ballot order.
122.	Ss.772-773	A union is permitted to apply to FWC on behalf of an employee to deal with a dispute arising under s.772 of the FW Act.

As at the commencement of the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012 (15 April 2012 and 1 July 2012)		
123.	Ss.483A-483B	Unions are free to access records and documents relevant to a suspected contravention relating to an employee whose work is covered by a TCF award, not just a TCF outworker.
124.	Ss.483A-483B	Unions are free to access non-member records and documents relevant to a suspected contravention relating to an employee whose work is covered by a TCF award, not just a TCF outworker.
125.	s.789CC	A union is permitted to pursue demand for payment from an indirectly responsible entity behalf of a TCF outworker.
126.	Ss.789BA-789BC	A union has many additional rights as a consequence of outworkers being deemed to be employees for numerous purposes of the FW Act.
127.	Ss.789CA-789CF	A union has the right to pursue recovery of unpaid outworker entitlements from companies in the supply chain
128.	Ss.789DA-789DD	A union has the right to pursue a TCF Outwork Code
As at the commencement of the Fair Work Amendment Act 2012 (4 December 2012 and 1 January 2012, excluding Default superannuation changes)		
129.	S.160	A union is permitted to apply to vary, revoke or make a modern award (including outworker terms in a modern award) to remove an ambiguity, uncertainty or to correct an error.
130.	S.174	Notices of employee representational rights much contain only the prescribed wording.
131.	S.194	Clauses which allow employees to opt-out of union agreements have been outlawed.
132.	S.283(3)(a)	A union is not obliged to give written notice setting out its concerns about the scope of a proposed single-enterprise agreement to the employer and other bargaining representatives. The union need only take all reasonable steps to provide written notice.

133.	S.400A	A union is permitted to apply to FWC for a costs order against the other party to a proceeding.
134.	S.401	A union is permitted to apply to FWC for a costs order against a lawyer or paid agent of the other party to a proceedings.
135.	Ss.437(5)(b) and 453(b)	A union may apply for a protected action ballot on behalf of self-represented employee bargaining representatives who are also union members.
136.	S.437(5)(b)	Employee bargaining representatives can participate in union organised protected action ballots.
137.	s.433(3A)	Union organised protected action ballots to be conducted as expeditiously as practicable
138.	Ss.450-462	Protected action ballots sought by unions may be conducted electronically
As at the commencement of the Fair Work Amendment (Transfer of Business) Act 2012 (5 December 2012)		
139.	S.359	A union may apply for a penalty against an employer for failing to comply with a copied State instrument.
140.	S.359	A union may apply for a penalty against an employer for failing to comply with a take-home pay order under s.768BS of the FW Act.
141.	Ss.768AG-768AM	A union may be "covered" by a copied State instrument that applies to transferring employees.
142.	S.68AX	A union may apply to the FWC for variation of a copied State instrument.
143.	S.768BA	A union may apply for an order that a copied State instrument may or may not apply to a transferring employee and the new employer.
144.	S.768BB	A union may apply to the FWC for an order that a copied State instrument will or will not apply to the union or another union with members at the workplace.

145.	S.768BG	A union may apply to the FWC for an order that a copied State instrument for a transferring employee also is, or will be, a copied State instrument for one or more non-transferring employees who perform, or are likely to perform, the transferring work (consolidation order).
146.	768BH	A consolidation order may apply to a union in relation to a non-transferring employee.
147.	768BS	A union may apply to the FWC for take-home pay orders for transferring State employees to whom a modern award applies.
If the Fair Work Amendment Bill 2013 is enacted		
148.	S.65	A union has enhanced rights to argue that an employer's reason for refusing an employee's request for flexible work arrangements does not constitute 'reasonable business grounds'.
149.	S.134(1)(d)	A union has enhanced rights to apply to vary an award to insert new penalty rate obligations.
150.	S.145A	An employer must consult with employees and their union representative/s at the workplace about changes to employee rosters and hours of work.
151.	S.205(1)(a)	An enterprise agreement must contain a consultation clause which requires employers to consult employees and their union representative/s at the workplace about changes to employee rosters and hours of work.
152.	S.492	A union is permitted to conduct interviews or hold discussions in a room or area where meals or other breaks ordinarily take place at the workplace if the union and employer are unable to agree on an area.
153.	Ss.521A and 521C	An employer must provide accommodation or cause accommodation to be provided to a union to enable the union to enter a workplace in a remote location.
154.	Ss.521B and 521D	An employer must provide transport or cause transport to be provided to a union to enable the union to enter a workplace in a remote location.
155.	s.539(2)	A union has the right to pursue a civil penalty against an employer for breaching the right of entry provisions regarding remote locations.

156.	Part 6-4B	A union has the right to pursue bullying claims on behalf of a worker or group of workers
157.	s.539(2)	A union has the right to pursue a civil penalty against an employer for breaching a workplace bullying order.

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