Godfrey Hirst Australia Pty Ltd ABN 58 000 849 758

Head Office
7 Factories Road
South Geelong 3220
Victoria Australia
Email: ghirst@godfreyhirst.com
www.godfreyhirst.com

Postal Address
PO Box 93
Geelong 3220
Victoria Australia
Telephone: +61 (3) 5225 0222
Facsimile: +61 (3) 5222 3885

Submission Number: 13
Date Received: 16/04/2013

Submission to the House of Representatives Standing Committee on Education and Employment

Inquiry into the Fair Work Amendment Bill 2013

Submission by Godfrey Hirst Australia Pty Ltd to the House of Representatives Standing Committee on Education and Employment's inquiry into the Fair Work Amendment Bill 2013.

April 2013

GODFREY HIRST AUSTRALIA PTY LTD
Head Office
P.O.Box 93
SOUTH GEELONG
Victoria Australia 3220

Godfrey Hirst offers a wide range of high quality residential and commercial carpets.
As Australasia's largest carpet supplier, we have operations in Australia, New Zealand and North America.
Our range of modular carpet tiles and broadloom carpet is extensive and provides a variety of floor covering options in nylon, triexta and wool carpets are all produced by Godfrey Hirst.

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16 April 2013

Committee Secretary
Standing Committee on Education and Employment
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600
Australia

By email: ee.reps@aph.gov.au

Dear Committee Secretary,

Submission on the Fair Work Amendment Bill 2013

On 21 March 2013, the Fair Work Amendment Bill 2013 (the **Bill**) was referred to the House of Representatives Standing Committee on Education and Employment for inquiry.

The Standing Committee on Education and Employment has invited interested persons and organisations to make submissions addressing the Bill by 18 April 2013.

Godfrey Hirst Australia Pty Ltd and its Australian subsidiaries (collectively **Godfrey Hirst**), welcomes the opportunity to provide a written submission to the Standing Committee on Education and Employment's inquiry into the Bill.

Reforms to the *Fair Work Act 2009* (Cth) (the **Act**), the legislative framework that governs Australia's national workplace relations system, are of great interest to Godfrey Hirst.

Godfrey Hirst recognises that the national workplace relations system is a critical piece of legislation.

Godfrey Hirst supports meaningful changes being made to the current legislation in order to promote and encourage productive, innovative and profitable Australian workplaces. Godfrey Hirst also champions changes being made to the current legislation which assists in fostering balance and fairness, and amendments which also seek to enhance and strengthen Australia's national competitiveness and business/workplace productivity.

Godfrey Hirst has concerns with a number of the provisions contained within the Bill, as detailed in our submission which follows.

We would be please to provide the Standing Committee with further information in relation to our submission, should it be required.

Yours sincerely,

Susan Rechenberg-Dupe
Company Secretary

Godfrey Hirst Group

Established in 1865 on the banks of the Geelong's Barwon River, Godfrey Hirst Australia Pty Ltd has a rich history in textile manufacturing being one of Victoria's first textile mills.

With over 150 years of manufacturing experience, Godfrey Hirst Australia Pty Ltd and its associated Australian subsidiaries (**Godfrey Hirst**), is one of Australia's largest remaining textile manufacturers.

As a privately owned company, Godfrey Hirst is the largest carpet manufacturer, distributor and exporter in the Southern hemisphere, and is recognised as one of the top 10 carpet manufacturers in the world. Driven by manufacturing excellence and innovation, Godfrey Hirst is the only Australian carpet manufacturer to fully integrate its operations from extrusion to the delivery of the finished product.

Through a number of wholly owned subsidiaries including Riverside Textiles Pty Ltd, Feltex Carpets Pty Ltd and Fibremakers Australia Pty Ltd, Godfrey Hirst produces high quality residential and commercial carpets using wool, nylon, polypropylene, polyester, triexta and blends.

Godfrey Hirst employs over 800 employees in Australia, operates five manufacturing facilities in Victoria, including Geelong in regional Victorian, a central warehouse and distribution facility, and various state sales offices throughout Australia.

The longevity and success of Godfrey Hirst can be attributed to its willingness to embrace change and invest in world class technology. Godfrey Hirst has successfully combined innovation and skill to produce a diverse range of product offerings for all market segments under brands including Godfrey Hirst Carpets, Hycraft Carpets, Eco+, Godfrey Hirst Modular, Feltex Carpets, Feltex Reserve, Redbook Carpets, Redbook Green, Minster and Invicta.

Apart from manufacturing and distributing carpets to all parts of Australia, Godfrey Hirst has a number of wholly owned subsidiary companies in the New Zealand, United States of America, Canada and Singapore, in addition to exporting carpet ranges to many parts of the world, including North America, South East Asia, United Kingdom, New Zealand and Europe.

The majority of employees are employed under a various enterprise agreements registered under the Act. Those employees not covered and employed under enterprise agreements are employed on common law contracts.

Fair Work Amendment Bill 2013

The Bill attempts to implement further recommendations of the Fair Work Act Review Panel's (the **Panel**).

Godfrey Hirst has a number of concerns with the potential changes to the Act as contained within the Bill, as the changes may result in limitations on an employer's ability to structure their workplace to suit the business needs and their employees.

Right of Entry

Recommendation 36 of the Panel was that ss 492 and 505 be amended to provide the Commission with greater powers to resolve disputes about the location of interviews and discussions union officials have with employees at workplaces, to achieve a balance between the right of unions, right of occupiers and employers and also the right of employees.

The Bill proposes to amend Part 3-4 right of entry provisions by regulate the location of discussions and interviews by permit holders. The Bill provides that interviews and discussions may be held in areas as agreed between the occupier and the permit holder or, failing agreement, in an area

ordinarily used for meal or other breaks. The Bill also enables the Commission to deal with disputes about the frequency of entry to premises for discussion, allowing the Commission to place limitations on the number of visits.

The employment of most of the Godfrey Hirst production workers are governed by collective agreements to which unions are a party, and the unions regularly visit the Godfrey Hirst sites to meet with members before and after shifts or during meal breaks. Most of our production employees have paid crib breaks.

At Godfrey Hirst's largest manufacturing facility in Geelong, meal/rest breaks are taken in a variety of areas located throughout the facility, and are stagged to ensure continuity of production. Many of these areas are in quite close proximity to production areas. Under Godfrey Hirst OH&S policies, any visitor is required to be accompanied by management to access these areas. Most of the meal/break areas/facilities have little privacy and are accessed by a variety of personnel including supervisory staff and management personnel.

When unions seek access for meetings, private rooms are made available in locations convenient for most departments, central for employees on site. In the past unions have actively sought access to the meal areas, however, it has been considered by Godfrey Hirst, primarily to maintain the quality of rest for employees and for security and safety reasons, access to meal areas has been inappropriate.

Godfrey Hirst has little doubt the impact of the proposed changes would be that the unions would seek to hold all future meetings with employees in meal/kitchen facilities/areas, which are not fit for such purpose.

Godfrey Hirst has serious concerns in respect to the changes to the right of entry provisions as reflected in the Bill. Godfrey Hirst believes that the existing provisions regarding permit holders conducting interviews or hold discussions in a particular room or take a particular route are important and balanced provisions, balancing the "right[s] of employees to be represented by their union with the right of employers to get on running their business".[1] Further, Godfrey Hirst believes that recommendation 36 of the Panel is sensible and appropriate and supports the inclusion of recommendation 36, as opposed to the changes proposed in the Bill.

While Godfrey Hirst acknowledges that permit holders can only hold discussions with employees during their meal or other breaks, we do not agree that this should automatically translate to a legislated right to hold these discussions in the meal or break room, if the parties do not agree on a location. As set out above, many of Godfrey Hirst's employees are on paid crib breaks, and in many worksites, this does not result in meetings being held in a canteen or public dining room, but may result in meetings being held in a noisy, public crib/kitchen area, on the edge of a manufacturing area and/or traffic thoroughfares.

The provisions of the Bill also fail to acknowledge that employees should be allowed to take their meal breaks and freely exercise their rights to not be a part of a union or engage in discussions during their meal/rest breaks in the meal/lunch rooms, expressing their freedom of association and freedom of choice. Employees are entitled to relax during their lunch break and eat in peace rather than face the prospect of being forced to listen to union officials.[2] This is especially important for employees who work 12 hour shift in a manufacturing environment. Employees have a right to have their lunch/breaks in peace and for those who do not wish to participate in discussions/interviews with union officials, they may be unnecessarily inconvenienced, especially in workplaces where there are no other facilities for meals/breaks (but other suitable facilities for conducting discussions/interviews), meaning employees would not be able to use the meal/break room

[1] Rudd, K & Gillard J, 2007, *Forward with Fairness: Policy Implementation Plan* (ALP, Canberra), 23.
[2] See *Somerville Retail Services Pty Ltd v Australasian Meat Industry Employees' Union* [2011] FWA 120, Vice President Watson and Deputy President Sams.

undisturbed. It should the choice of an employee whether they wish to meet with the union rather than those employees who do not wish to participate in discussions being forced from their meal/break area. As set out above, the Bill also fails to acknowledge that premises meal/break rooms can be used by many persons including employees, individuals those who are not union members, individuals who are not eligible to be union members and non-employees such as contractors, visitors and volunteers. The current provisions allow for an employer to consider and balance the rights of unions to access their premises and hold discussions/interviews with employees and also the interests of employees who may not wish to be involved in those discussions and be disturbed during their meal/rest breaks.

Furthermore, the Bill does not impose any obligations upon the parties to genuinely attempt to agree on a room or area, or require the parties to disclose their reasons for objecting to a particular room; it should not be simple enough that the proposed room is not a meal/break room should mean that parties are unable to agree. Should the proposed amendments in their current form be included in the Act, Godfrey Hirst believes that the provisions should be amended to include a 'reasonable persons test' on the suitability of the room, as the simple fact that a proposed room/area of the premises to conduct interviews and hold discussions is not preferred by a union and may not be a location employees ordinarily use for their meal/rest breaks does not make it unreasonable. There should be a requirement to genuinely consider proposed rooms/areas and seek genuine agreement.

Likewise, should the provisions in the Bill be implemented, it is recommended that provision be included to allow the Commission to deal with a dispute regarding the operation of s 492(1); that is, to deal with disputes as to whether proposed room/area was reasonable and where the agreement of one party was unreasonably withheld.[3]

Anti-bullying Measures

Employees who believe that have been subject to workplace bullying are currently protected by OH&S, anti-discrimination, workers' compensation and criminal legislation. The *Crimes Act 1958* (Vic) was amended in 2011 to incorporate 'Brodie's Law'[4] which broadened the definition of stalking to include serious forms of bullying such as threats and abusive words.[5]

The anti-bullying provisions within the Bill adds another layer of complexity for employees and create confusion and additional unnecessary red tape. It is considered that, given the existing overlapping legislation, adding a further avenue for recourse only serves to frustrate and confuse employees who are subject to workplace bulling. Further, the overlapping of jurisdictions, each providing their own information and advice, this only further adds to the potential confusion and unnecessary overlap.

This further "protection" is not required and if anything, further dilutes responsibility for management and control of this issue while confusing bullied employees, probably already under considerable stress, as to how to best pursue their problem.

If passed, it is hoped the government will provide to the Fair Work Commission sufficient resources to manage the anticipated demands, however Godfrey Hirst query whether this monetary commitment may be better spent in community education on the issue to assist in utilisation of the existing available remedies.

The Bill provides that an employee may bypass their employer and go straight to lodging a claim with the Commission when they reasonably believe they have been the subject of bullying behaviour. Godfrey Hirst believes that the Bill should encourage employees to raise issues at the workplace and

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[3] Noting that s 505(1) of the Bill only permits the Commission to deal with disputes regarding ss 491, 492A and 499.

[4] *Crimes Amendment (Bullying) Act 2011* (Vic).

[5] *Crimes Act 1958* (Vic) s 21A.

utilise internal resources before raising matter with the Commission, and it is only once such resources exhausted or are unable to resolve the matter or the behaviour continues should the employee then be able to lodge the matter with the Commission.

It is also unclear if the provisions apply to past/former employees as there is no statute of limitations, and whether previous complaints/issues, raised and dealt with, will be excluded.

Family-friendly Measures

The Bill seeks to include a number of measures designed to promote family-friendly workplace practices.

Right to Request Flexible Working Arrangements

There are several changes proposed in the Bill to s 65. The expanded categories of employees who may make flexible working arrangements requests may result in significant costs to employers. It is however noted that employers can decline such requests on reasonable business grounds.

Within our factories Godfrey Hirst employs quite a large percentage of females and employees over 55 years old, many of whom seek flexible working arrangements. However, in a manufacturing context, with large capital investment, many of our machines have minimum manning requirements, and we are seeking to continue operation seamlessly. A number of our collective agreement provide for job sharing arrangements which has assisted a number of employees with family responsibilities but are considered on an employee by employee basis, as our ability to accommodate flexible working arrangement is quite limited.

Godfrey Hirst is concerned that the Bill is seeking to extend those with a right to request flexible working arrangements to:

- employees who have "responsibility for the care of a child of school age" (emphasis added),[6] broadening the coverage from employees with pre-school children to those who have children from primary school through to secondary school. It is also noted the rights to request flexible working arrangements is not limited to the 'primary care giver' or even 'legal guardian'; in that it would be possible for an employee couple, who have responsibilities for care of a child, to both request flexible work arrangements. In addition, the application of the change could also apply and include grandparents who have some responsibility to care for the child, such as before/after school care;
- employees who have a disability, even though the Bill contains no definition of "disability". Godfrey Hirst recommends that, for the avoidance of doubt and potential disputes regarding s 65(1A)(c), the Bill be amended to be "*employee with a disability* (meaning the person is qualified for a disability support pension as set out in s 94 or 95 of the *Social Security Act 1991* (Cth))". The inclusion of a definition would be consistent with and in the same vein as s 65(1A)(b) for the meaning of a carer;
- employees subject to family violence. It is believed that the line between what constitutes a workplace issue and a private issue may be unclear, making it difficult to define appropriate employer action. In order to assist in providing this clarity, it is recommended that s 65(1A)(e) require an employee to provide some form of proof, such as a document issued by the police, a court, a medical practitioner or counselling professional or a domestic violence support service, and clarification via an inclusion of a note that any personal information given to an employer may be regulated under the *Privacy Act 1988* (Cth); and
- employees aged 55 years or over. It is undisputed that Australia's population is undergoing a dramatic shift; becoming increasingly older. Godfrey Hirst recognises and understanding the importance of engaging and maintaining a mature aged workforce and the valuable

[6] *Fair Work Amendment Bill 2013* (Cth) s 65(1A)(a).

contribution that mature aged workers can provide to a workplace, but Godfrey Hirst is concerned that it may, inadvertently, act as a disincentive and deterrent for employers to engage mature aged workers; especially given the restriction of employee being required to completed at least 12 months of continuous service now being removed.

Processing of and consideration of applications for flexible working arrangements is time consuming. Our experience has been that employees fail to appreciate it is a right to request, but rather assume it is a right per se, and accordingly, a refusal on reasonable business grounds often leads to a dispute.

It is noted the Bill includes a non-exhaustive list of what may constitute reasonable business grounds to assist employees in understanding what grounds an employer may rely upon when declining an application for flexible working arrangements. However, Godfrey Hirst is concerned that these grounds would appear to be placing quite an onerous obligation on the employer – for example:

- (a) refers to "too costly" – how much cost should an employer bear to accommodate flexible working arrangements? This seems to imply that employers are obliged to bear additional costs associated with flexible working arrangements – which for one or two employees may be acceptable, but if the range of those entitled to request is widened so dramatically – when does it become "too costly"?;
- (b) and (c) mentions "no capacity to change the working arrangements of other employees" or "impractical to change" which appears to imply an obligation on employers to seek to change working arrangements of other employees should one employee seek flexible working arrangements;
- (d) refers to the new working arrangements being likely to result in a "significant loss in efficiency or productivity". Is this of the employee or the business? If the business it is highly unlikely any request would have that impact; and
- (e) refers to "significant negative impact on customer service".

It is noted, most of these grounds may be reasonable if only one or two employees were entitled to request flexible working arrangements, but the broadening to include all employees with any responsibility for care of a child at school and all employees over 55 year old, in any particular workplace it is likely the majority of employees will fall within these 2 groups. With one employee the impact may not be "significant", but as the numbers seeking flexibility increase, these applications will become more and more time consuming from an administrative perspective, and more and more difficult to accommodate, such that those with young children returning from maternity leave may find their applications unable to be accommodated due to a wide range of other groups being accommodated.

It is vital that as a community we clearly prioritise those employees (and their families) who we believe are most likely to benefit from flexible working arrangements, and ensure they are not disadvantaged by a too wider broadening of the groups entitled to request.

In respect to other family friendly aspects of the Bill, Godfrey Hirst briefly note as follows:

- *Transfer to a Safe Job* – The Bill does not identify who determines if the available jobs are "appropriate", as there is no definition of "safe job". Employers have an obligation under Occupational Health and Safety legislation to maintain work environments that is free for risks to health and safety. The Commission has no automatic right to determine a dispute in relation to whether a proposed job is considered to be an appropriate safe job. Godfrey Hirst suggests inclusion of the ability to refer disputes regarding appropriate safe jobs to the Commission.

- *Special Maternity Leave* – Special maternity leave is available to employees who have a pregnancy-related illness or the employee's pregnancy has ended within 28 weeks of the

expected birth. Godfrey Hirst assumes the special maternity leave provision is intended to be available to pregnant employees when they have exhausted their paid personal/carer's leave entitlements, the Bill seeks the inclusion of a second note (Note 2) in s 80(1) which states that if an employee has an entitlement to paid personal/carer's leave, the employee "may" take the paid personal/carer's leave instead of unpaid special maternity leave. It is suggested that unpaid maternity leave should only be available once paid personal/carer's leave has been exhausted.