

**THE SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT  
AND WORKPLACE RELATIONS**

**Inquiry into the Fair Work Amendment Bill 2013**

**Submission by the United Services Union**

**15 April 2013**

The United Services Union ('the Union') is one of the two NSW branches of the Australian Services Union. The Union represents members in the energy industry, in utilities and in clerical and administrative positions across NSW who are in the federal industrial relations jurisdiction and covered by the Fair Work Act 2009 (Cth). The Union also represents members in local government and the ambulance service in NSW who are covered by the NSW industrial relations jurisdiction and the NSW Industrial Relations Act 1996.

**Schedule 1 – Family-friendly measures**

The Union supports the amendments in the Bill that seek to increase the family friendliness of the Fair Work Act 2009 including the following measures:

- Ensuring that an employee's entitlement to unpaid parental leave will not be reduced by any special maternity leave taken by an employee.
- Increasing the amount of concurrent leave parents are able to take from 3 weeks to 8 weeks.
- Enhancing the ability of employees who are parents or carers to request changes in working arrangements.
- Requirements that ensure that employers must consult regarding the impact of changes in rosters or working hours on an employee's family and caring responsibilities.

The issue of managing work and family responsibilities is a significant issue that most people will face at some point in their lives, if not on an ongoing basis. It is something that particularly impacts on women. Women continue to undertake the majority of caring duties in Australia and are more likely to take parental leave following the birth of a child.

The Union supports the above measures as they will help ensure that employees with carer's responsibilities have greater access to participation in the workplace. In particular, the Union supports the requirement in Part 4 for employers to consult regarding the impact of changes in rosters or working hours on an employee's family and caring responsibilities. What the employer might view as a minor change in working hours can have a significant impact on family responsibilities and cause hardship for working parents. The availability of child care arrangements, the start and finishing times of school and the timing of medical appointments are often matters that are out of parent's hands, and can be difficult to manage when hours are changed. The obligation to consult in this Bill will go some way towards addressing this problem.

Item 18 of the Bill introduces a number of grounds under which an employer can refuse, on reasonable business grounds, a request for flexible working arrangements. The Union supports the addition of these grounds, as it will assist in clarifying and defining the circumstances under which a reasonable refusal can be made. However, it is important that employees have the right to appeal the refusal under the Fair Work Act 2009 (Cth). Without this right of appeal some employees will be subject to unreasonable refusals and will have no access to recourse. Amending section 65 of the Act

to allow for the Fair Work Commission to conciliate and arbitrate any disputes in relation to this section will ensure that there is an independent means of testing whether a refusal is genuinely reasonable or not. It is also likely to encourage employers to seriously consider their response, with the knowledge that it could be tested in court. There is no justifiable reason for not allowing a right of appeal in this matter. The Union strongly recommends that the Committee to consider a right of appeal, as we are concerned that the most negative impacts of not having a right of appeal will fall on low paid women workers, who may not have the bargaining power to negotiate access to flexible arrangements.

### **Schedule 2 - Modern awards objective**

The Union is aware that in certain industries it is becoming more common for employers to expect employees to work additional hours without remuneration. This expectation erodes employee's conditions of employment. Shift work and weekend work is also becoming more common. Such work needs to be properly remunerated to ensure that employees are compensated for the disadvantage that comes with such work –disruption of family life, impact of shift work on health. As such, the Union strongly supports Item 1 and its addition into the modern awards objectives.

The Union further recommends that consideration is given to the removal of individual flexibility agreements from modern awards and enterprise agreements. Individual flexibility agreements allow the employer and employee to agree to changes in arrangements for when work is performed, overtime rates, penalty rates and allowances, all of which are important in ensuring that the objective in Item 1 is met. Whilst section 144, 4(b) states that the agreement must be genuinely agreed to between the employer and the employee, the Union remains concerned that there is opportunity for unscrupulous employers to pressure employees, especially those who are low paid and from non-English speaking backgrounds, into accepting individual flexibility agreements. It is also the view of the Union that allowing individual flexibility agreements to vary arrangements for when work is performed, overtime rates, penalty rates and allowances could be result in agreements that contradict the stated objective in Item 1.

### **Schedule 3 –Anti-bullying measure**

The Union supports introducing the capacity for FWC to deal with issues of workplace bullying. Bullying is a significant problem as has been recognised by “Workplace Bullying: We just want it to stop” report of the House of Representatives Standing Committee on Education and Employment. The Union has assisted our members in situation of workplace bullying and we recognise the devastating effect that it can have on employee's health and family life. Workplace bullying often has an impact on other workers within the workplace and can result in high staff turnover, low morale and reduced productivity.

The FWC is an accessible source of dispute resolution. The Union also supports the proposed section 789FE that would require FWC do deal with an application under this section within 14 days. This recognises that bullying is a serious issue and that allowing it to continue will have significant impacts on the employee/s involved.

### **Schedule 4 –Right of Entry**

Unions have experienced difficulties in accessing members at certain workplaces. One important issue that consistently arises is right of entry for the purpose of holding discussions under section 484. The Union is supportive of measures that increase the ability of unions to meet with their members. As such, Item 7 goes some way in facilitating this and in ensuring that unions are able to access the meal room in circumstances where the parties have not been able to come to another

arrangement. The Union does have some concerns however about the impact of Item 12. Unions may be required to enter a site frequently in circumstances in which there are shift workers or where the site is large and spread out. The idea of what counts as 'frequently' is likely to differ between employer and the union. The Union supports the addition of Item 14. This item will assist in ensuring that employees at remote areas are able to access union representation.

### **USU Recommendations**

The Union supports a number of the measures in this Bill as described above. However there is further work that must be done to ensure that employees are protected at work. In particular the following recommendations are made:

1. That employees have the right to appeal a refusal for flexible working arrangements from an employer under section 65.
2. That there be a requirement that there be guaranteed access to arbitration in all modern awards and enterprise agreements.
3. That there be guaranteed access to arbitration for long running and protracted bargaining disputes.
4. That the requirement for individual flexibility agreements in modern awards (section 144) and enterprise agreements (section 203) be removed.