



Dissenting Report—Mr Rowan Ramsey MP, Mrs Karen Andrews MP, Mr Alan Tudge MP, Ms Nola Marino MP

The Coalition Members of the House Standing Committee on Education and Employment do not support the government members recommendation that this bill be passed.

Introduction

The bill, supposedly a response to the Review of Fair Work Australia goes far beyond the review's recommendations in areas which grant greater power to the unions and in areas which address possible productivity gains it is silent.

It departs significantly from the government's mandate in these areas and contradicts earlier commitments from the government.

Lack of Proper Process

Additionally the bill, which the government seems intent on passing in the dying days of the 43rd parliament, proposes significant changes to the industrial system and as there is little likelihood of any of the provisions being implemented before the election its passage should not be considered until after the election.

Further, the dissenting members are deeply concerned that the avalanche of legislation currently before the Parliament is overwhelming the Parliamentary Committee system and due consideration is being subjugated by that surge.

House of Representatives Standing Committees are given the very important task of exploring legislation to identify deficiencies and flaws before bills are considered by the parliament. It is a great concern to the Coalition Members that such wide-ranging legislation received such short consideration.

The committee received 41 submissions and held just a half day hearing in Melbourne where three roundtables were conducted. The Coalition Members are of the opinion that this hearing was not sufficient to explore the implications of a bill which among other matters proposes increased right of entry to unions, increased obligations to employers to provide transport to union officials, increased leave entitlements, extends negotiation requirements over roster changes, attempts to reduce flexibility in the workplace by enshrining penalty rates and introduces compulsory arbitration for workplace bullying claims.

The Coalition Members were also deeply concerned the bill was specifically exempted from issuing a Regulatory Impact Statement and were not provided with any cohesive argument as to why this was justified. Neither was the bill considered for a cost/benefit analysis.

A Poor Case for Change

It is quite clear that this legislation flies in direct contradiction to earlier commitments from the Prime Minister who at her August 28th 2007 press conference stated: "We will make sure that the current right of entry laws stay". Further it was demonstrated that industry had not been sufficiently consulted or included in the negotiation of the bill. This was expressed by, Mr Stephen, Director, National Workplace Relations, Australian Industry Group (Melbourne hearing)

"We had high hopes that this particular bill would address some well-recognised problems with the legislation and deliver a more productive, flexible and fair workplace relations system. Unfortunately the bill fails to address that. It is extremely lopsided, in our view, it does not even attempt to strike a balance. It expands the entitlements of employees and unions in numerous areas, and employers issues of concern are not addressed at all".

Business SA had this to say in its written submission:

"These proposed changes were not as a result of the Review Panel's recommendations but rather they are changes that the Government has formulated of its own motion.

In fact, a number of these proposed amendments are changes that the trade union movement has been calling for, and such changes are simply enhancing the unions' power base and assisting them in the area of membership recruitment".

Family Friendly Measures

The Coalition Members are not opposed in principle to some of the clauses in the family friendly section and are disappointed they are included in the same bill as the clauses granting greater power to the unions thus guaranteeing the Coalition Members are not able to explore how they may have been made acceptable to all parties.

However the Coalition Members draw attention to the section proposing extensive consultation on roster changes. The members are of the opinion that proper consultation is what already happens in most workplaces and support such management, but are concerned that the possible monitoring of such operations should not become an impediment to operating an efficient workplace.

The South Australian Wine Industry Association Incorporated submission supported this view:

“The wine industry cannot safely predict the exact time when grapes will be ready to be picked and need to be crushed, so there is a need in the industry to be able to change rosters and possibly introduce shifts within a short time frame. To impose the additional burden of further consultation with employees regarding changes in their regular rostered hours, which in turn creates further administration to maintain the evidence of consultation, creates barriers for wine industry employers who are striving to maintain competitiveness and efficiency”.

Anti-Bullying Measure

The Coalition Members recognise that work place bullying is a real and damaging part of some workplaces. Mr Ramsey, Ms Andrews and Mr Tudge participated in the Education and Employment committee’s extensive inquiry into this subject, ‘Workplace Bullying, I Just Want it to Stop’ and were moved in particular by the personal testimonials from individuals who had suffered as a result of unresolved conflict in the workplace.

That report made 23 recommendations to government, however this bill picks up just one of those, recommendation 23, which calls for an unspecified individual right of recourse.

This was one of just a few recommendations the Coalition members dissented on and their views are encapsulated in this passage:

“Further, the Coalition Members are concerned that enabling individuals to take such action will open the door to potential abuse of the device. Frivolous actions, or even worse, actions

driven by malicious intent would have the ability to tie employers up in rolling court actions for extended periods”.

Workplace Bullying is already addressed under the Workplace Health and Safety Act and the Coalition Members are concerned that this bill proposes an alternative forum for these issues to be pursued: This problem was highlighted in the National Farmers submission:

“The NFF is of the view that the proposed amendments will encourage forum shopping, when the same subject matter is currently already dealt with under the umbrella of health and safety. We view this amendment as adding to the regulatory burden of time and resource poor farmers predominately running small to medium enterprises (SMEs)”.

Modern Awards Objective and Right of Entry

At the heart of this bill is the proposal stipulating that if an employer and the union cannot agree on a suitable place for the representative to meet with union members, then the default option is any room or area in which employees take meal or other breaks and is provided by the employer for that purpose.

The Coalition Members are concerned that this clause delivers exactly the preferred option of the unions, that is access to the lunchroom, where the union official will ultimately come into contact with every other worker on the worksite and provide an opportunity for the official to pressure the worker to join the union.

The Australian Mines & Metals Association (submission) said:

“In simple terms, if this Bill passes it will no longer be up to employers to designate a reasonable onsite meeting place for unions. This represents a huge winding back of employers’ control of third-party intrusion onto their premises which was not recommended by the Fair Work Act review panel”.

Further the bill proposes employers are responsible to supply transport to union officials to and from remote sites. The mining industry tells us that this may cost anywhere up to \$30k in the case of an off shore oil rig and that the visiting officials are not trained or inducted to be in that space.

Summary

The Coalition Members are of the strong opinion that this bill has been put up for political purposes to further tilt the balance in the workplace towards the unions.

The Coalition Members believe the breadth of the amendments will impact on every workplace in Australia and as such the process of examination of the impact has been insufficient. This was supported by Mr Dick Grozier, Director, Industrial Relations, Australian Business Industrial, and Director, Workplace Policy, New South Wales Business Australia:

“In case it is unclear, we remain of the view that the appropriate recommendation from this committee is that the bill not be proceeded with. In our view, it has been hastily drafted – and we think there are a number of signs of that in the bill, as we are adverted to in our written submissions. It has not been subject to an impact assessment, and we think that is a very important omission. It has not been subject to anything like proper consultation. In the main, where it draws upon or purports to draw upon recommendations either of the expert panel or of the House committee, the proposals are inconsistent with those recommendations. So it remains our view that the recommendation from this committee should be that the bill not be proceeded with.”

In some cases the case for change is weak and contradicts earlier government commitments, particularly in the area of increased rights for entry, in others such as workplace bullying the concerns are genuine, but the Coalition Members believe the government’s proposed solution cannot be fully justified.

The Coalition Members recommend that the bill not be passed.

Coalition Members

Rowan Ramsey MP (Deputy Chair)

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Nola Marino MP

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