

Chapter 1

1.1 The Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017 (the bill) was introduced into the House of Representatives on 1 March 2017 by the Hon Peter Dutton MP, Minister for Immigration and Border Protection.¹

1.2 On 23 March 2017, the Senate referred an inquiry into the provisions of the bill to the Senate Education and Employment Legislation Committee (the committee) for inquiry and report by 9 May 2017.²

Conduct of the inquiry

1.3 Details of the inquiry were made available on the committee's website. The committee also contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 37 individuals and organisations, as detailed at Appendix 1.

1.4 The committee held two public hearings:

- 12 April 2017 in Canberra; and
- 13 April 2017 in Sydney.

1.5 The witness lists for these hearings can be found at Appendix 2.

Structure of the report

1.6 Chapter 2 outlines the background to the genesis of the bill, and briefly outlines the measures contained in the bill.

1.7 Chapter 3 considers one of the key measures in the bill raised by submitters; that of making franchisors and holding companies responsible in certain circumstances for underpayment of employees by their franchisees or subsidiaries. In particular the chapter covers matters relating to the definition of 'franchise' used in the bill, as well as concerns raised about the expanded accessorial liability provisions.

1.8 Chapter 4 examines the views of submitters in regard to the strengthening of evidence-gathering powers of the Fair Work Ombudsman proposed in the bill.

1.9 Chapter 5 turns to several other parts of the bill raised by submitters, including:

- the higher scale of penalties for 'serious contraventions' of workplace laws;

1 *Votes and Proceedings*, No. 37, 1 March 2017, p. 587.

2 *Journals of the Senate*, No. 34, 23 March 2017, p. 1147.

- the increased penalties for record-keeping failures; and
- the amendment expressly prohibiting employers from unreasonably requiring their employees to make payments.

Compatibility with human rights

1.10 The bill's statement of compatibility of with human rights states that the bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.³

Scrutiny of Bills Committee

1.11 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny of Bills Committee) considered the bill in its Scrutiny Digest 3 of 2017.

1.12 The Scrutiny of Bills Committee drew attention to two matters in the bill: the privilege against self-incrimination in Schedule 1, item 39 of the proposed new section 713; and the reversal of evidential burden of proof in Schedule 1, item 48, proposed paragraph 707A(2)(b).⁴

Financial Impact Statement

1.13 The Explanatory Memorandum did not contain a financial impact statement.⁵

Acknowledgements

1.14 The committee thanks those individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at the public hearing.

1.15 References in this report to the Hansard for the public hearings are to the Proof Hansard. Please note that page numbers may vary between and proof and official transcripts.

3 Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, Statement of Compatibility with Human Rights, *Explanatory Memorandum*, p. 1.

4 For more detail on these matters see Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 3/17*, 22 March 2017, pp. 19–22.

5 Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017, Financial Impact Statement, *Explanatory Memorandum*, p. i.