2008-2009

The Parliament of the Commonwealth of Australia

THE SENATE

Fair Work Bill 2008

(Amendments to be moved by Senator Abetz on behalf of the Opposition in committee of the whole)

Objects of the Act

(1) Clause 3, page 3 (line 34), omit “enterprise-level”, substitute “workplace-level”.

Small business definition

(2) Clause 23, page 41 (line 31), omit “15 employees”, substitute “25 employees”.

(3) Clause 23, page 42 (line 5), at the end of subclause (2), add: ; and (c) the number is to be calculated in terms of full-time equivalent positions, not as an individual head count of employees; and (d) the regulations must prescribe a method for the calculation of full-time equivalent positions for the purposes of this section.

Independent contractors

(6) Clause 6, page 6 (line 10), omit “independent contractors and”.

[Copies]
(7) Clause 12, page 18 (lines 10 and 11)(definition of industrial association), omit “or independent contractors, or both”.

[independent contractors]

(8) Clause 12, page 18 (lines 14 and 15)(definition of industrial association), omit “, or independent contractors, or both”.

[independent contractors]

(9) Clause 12, page 18 (lines 17 and 18)(definition of industrial association), omit “, or their interests as independent contractors (as the case may be)”.

[independent contractors]

(10) Clause 12, page 18 (line 21)(definition of industrial association), omit “and/or independent contractors”.

[independent contractors]

(11) Clause 12, page 26 (lines 20 and 21)(definition of registered employee association), omit “or independent contractors, or both,”.

[independent contractors]

(12) Clause 12, page 30 (line 31)(definition of registered employee association), omit paragraph (c) of the definition.

[independent contractors]

(13) Clause 194, page 183 (line 13), at the end of the clause, add:

; or (h) any matter that restricts, controls or dictates the use or non-use of independent contractors.

[independent contractors]

(14) Clause 342, pages 297 to 298 (table items 3 and 4), omit the table items.

[independent contractors]

(15) Clause 342, page 298 (table item 6), omit the table item.

[independent contractors]

Award modernisation

(16) Clause 12, page 21 (line 2)(definition of modern award), omit the definition, substitute:

modern award means:
(a) a modern award made under Part 2.3; and
(b) any industrial award that is in effect immediately before the commencement of this Act, whether preserved or not.

[definition: modern award]

(17) Clause 134, page 132 (after line 13), after paragraph (1)(d), insert:

(da) the requirement not to disadvantage employees; and
(db) the requirement not to increase costs for employers; and

[modern award requirements]

Superannuation and modern award terms
(18) Clause 139, page 138 (line 14), after “superannuation”, insert “, but ensuring employers can nominate any complying superannuation fund as the default fund”.

[employers to nominate default superannuation fund]

Greenfield agreements

(19) Clause 175, page 165 (line 13) to page 166 (line 10), TO BE OPPOSED.

[greenfield agreements]

(20) Clause 177, page 168 (lines 3 to 17), TO BE OPPOSED.

[greenfield agreements]

Workplace determinations—Compulsory arbitration

(21) Clause 179, page 169 (after line 19), at the end of the clause, add:

3 Subsection (1) does not require bargaining representatives:
   (a) to make concessions during bargaining for the agreement; and
   (b) to reach agreement on the terms that are to be included in the agreement.

[workplace determinations—compulsory arbitration]

(22) Clause 262, page 235 (after line 28), at the end of the clause, add:

Genuine agreement

6 FWA must be satisfied that the making of a determination is by consent of the bargaining representatives and that such consent was reached by genuine agreement.

[workplace determinations—compulsory arbitration]

(23) Clause 269, page 241 (line 12), after paragraph (1)(c), insert:

and (d) the bargaining representatives have genuinely agreed to seek a workplace determination;

[workplace determinations—compulsory arbitration]

Right of entry—access to non-member records

(24) Clause 482, page 393 (after line 6), at the end of subclause (1), add:

(d) paragraph (c) does not apply in relation to any record or document pertaining to any person who is not a member of the permit holder’s organisation, unless:
   (i) the person provides consent in writing to the occupier or affected employer; or
   (ii) the permit holder has obtained an order pursuant to paragraph 483A(1)(a).

[access to non-member records]

(25) Clause 483, page 393 (after line 28), after subclause (1), insert:

2 Subclause (1) does not apply in relation to any record or document pertaining to any person who is not a member of the permit holder’s organisation, unless:
   (a) the person provides consent in writing to the affected employer; or
   (b) the permit holder has obtained an order pursuant to paragraph 483A(1)(b).

[access to non-member records]
(26)  Page 394 (after line 17), at the end of Subdivision A, add:

483A  Application to FWA for access to non-member records

   (1) The permit holder may, for the purposes of investigating the suspected contravention, apply to FWA for either or both of the following orders:

   (a) an order to allow the permit holder to enter the premises and to inspect, and make copies of, any record or document pertaining to a person who is not a member of the permit holder’s organisation that is relevant to the suspected contravention;

   (b) an order to require an affected employer to produce, or provide access to, such records for inspection.

   (2) FWA may make such an order if it is satisfied that the order is necessary to the investigation of the suspected breach. Before doing so, FWA must have regard to the conditions (if any) that apply to the permit holder’s permit.

   (3) An application for an order under this section:

      (a) must be in accordance with the regulations; and

      (b) must set out the grounds on which the application is made.

[access to non-member records]

Right of entry – holding discussions

(27)  Clause 484, page 394 (lines 20 to 25), omit the clause, substitute:

484  Entry to hold discussions

   (1) Subject to subsections (2) and (3), a permit holder may enter premises to hold discussions with one or more persons:

      (a) who perform work on the premises; and

      (b) whose industrial interests the permit holder’s organisation is entitled to represent; and

      (c) who wish to participate in those discussions.

   (2) If each person mentioned in subsection (1) is a member of the permit holder’s organisation—the requirements of this section are satisfied.

   (3) If any of the persons mentioned in subsection (1) is not a member of the permit holder’s organisation, the permit holder must not enter the premises for the purpose of holding discussions with such persons, and must not hold discussions with such persons if otherwise authorised to enter the premises, unless:

      (a) the occupier of the premises authorises the permit holder, in writing, to do so; or

      (b) the majority of persons who perform work on the premises agree that the permit holder may do so, and that agreement is communicated to the permit holder, in writing, by the occupier of the premises; or

      (c) the permit holder obtains a majority support entry determination.

484A  Majority support entry determinations

   (1) A permit holder may apply to FWA for a determination (a majority support entry determination) that a majority of persons who perform work on the premises support the entry of the permit holder to hold discussions.
(2) The application must:
   (a) specify that the permit held by the applicant is valid; and
   (b) specify that the permit holder’s organisation is entitled to represent the industrial interests of one or more persons with whom discussions are sought; and
   (c) contain a declaration that the permit holder has requested, but not obtained, the express authorisation of the occupier of the premises; and
   (d) be made in accordance with the regulations.

484B When FWA must make a majority support entry determination

(1) If a permit holder has applied for a majority entry support determination under section 484A, FWA must make the determination if it is satisfied that:
   (a) a majority of persons who perform work on the premises genuinely authorise the permit holder to enter and hold discussions; and
   (b) the permit holder’s organisation is entitled to represent the industrial interests of the employees with whom discussions are sought; and
   (c) the historical coverage and representation by employee organisations of persons at the premises will not be disturbed.

(2) For the purposes of paragraph (1)(a), FWA may work out whether a majority of employees authorise the permit holder to enter and hold discussions using any method that FWA considers appropriate.

(3) For the purposes of paragraph (1)(c), FWA must have regard to:
   (a) the industrial instrument or instruments covering the employees at the premises to which entry is sought; and
   (b) the history of enterprise agreement making at the premises to which entry is sought; and
   (c) the rules of the permit holder’s organisation.

Transmission of business

(28) Heading to subclause 311(1), page 269 (line 9 and 10), omit “and transferring work”, substitute “, transferring work and time of transmission”.

(29) Clause 311, page 269 (lines 18 to 22), omit paragraph 311(1)(d), substitute:
   (d) the new employer has become the successor, transmittee or assignee of the business or part of the business in which the employee worked for the old employer.
   (e) the time at which the new employer becomes the successor, transmittee or assignee of the business being transferred is the time of transmission.

(30) Clause 311, page 269 (line 25), omit “paragraphs (1)(a), (b) and (c)”, substitute “paragraphs (1)(a), (b), (c) and (d)”.

(31) Clause 311, page 269 (line 22) to page 271 (line 2), omit subclauses 311(3) to (6), substitute:
   (3) A person is also a transferring employee for the purposes of this Part if:

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(a) the person is employed by the old employer at any time within the period of 1 month before the time of transmission; and

(b) the person’s employment with the old employer is terminated by the old employer before the time of transmission for redundancy reasons or for reasons that include redundancy; and

(c) the person becomes employed by the new employer in the business being transferred within 2 months after the time of transmission.

(4) A reference to a particular state of affairs existing in relation to a transferring employee immediately before the time of transmission is to be read as a reference to that state of affairs existing immediately before the person last ceased to be an employee of the old employer.

[transmission of business]

(32) Page 272, after line 2, after clause 313, insert:

313A Coverage of a transferable instrument

(1) Subject to subsection (3), a transferable instrument that covers the new employer and the transferring employee because of section 313 (or any other person because of another provision of this Part) ceases to have coverage on the earlier of:

(a) the date the instrument ceases coverage under its own terms;

(b) 12 months after the transfer time.

(2) Subject to subsection (3), after the transferable instrument ceases to have coverage in accordance with subsection (1), the new employer and the transferring employee are covered by:

(a) the modern award which is expressed to cover the new employer and the transferring employee; or

(b) the enterprise agreement which is expressed to cover the new employer and the transferring employee;

whichever is most beneficial to the employee.

(3) If the redundancy pay provisions in the transferable instrument are more beneficial to the employee than the provisions in the instrument which would otherwise take effect under subsection (2), the redundancy pay provisions in the transferable instrument continue to cover the transferring employee until 24 months after the transfer time.

[transmission of business]

(33) Clause 314, page 272 (lines 3 to 23) TO BE OPPOSED.

[transmission of business]

(34) Clause 319, page 276 (lines 23 to 31), omit paragraphs (1)(a) and (b).

[transmission of business]

(35) Clause 319, page 277 (lines 14 and 15), omit paragraph (2)(b).

[transmission of business]

(36) Clause 319, page 277 (lines 19 to 22), omit paragraph (2)(d).

[transmission of business]