2008-2009

The Parliament of the Commonwealth of Australia

THE SENATE

Fair Work Bill 2008

(Government)

(1) Clause 12, page 14 (line 22), at the end of the definition of employee claim action, add “and paragraph 471(4A)(c)’’.

[meaning of employee claim action]

(2) Clause 12, page 14 (line 29), at the end of the definition of employee response action, add “and paragraph 471(4A)(d)’’.

[meaning of employee response action]

(3) Clause 19, page 37 (after line 8), at the end of the clause, add:

Note: In this section, employee and employer have their ordinary meanings (see section 11).

[industrial action]

(4) Clause 409, page 336 (line 17), before “about”, insert “only”.

[protected industrial action]

(5) Clause 409, page 336 (line 18), after “to”, insert “only”.

[protected industrial action]

(6) Clause 413, page 341 (line 22), omit “Neither”, substitute “None”.

[protected industrial action]

(7) Clause 413, page 341 (line 24), omit “the industrial action”, substitute “industrial action in relation to the agreement”.

[protected industrial action]

(8) Clause 413, page 341 (line 26), omit “the industrial action.”, substitute “industrial action in relation to the agreement;”.

[protected industrial action]
Clause 413, page 341 (after line 26), at the end of subclause (7), add:

; (c) a serious breach declaration in relation to the agreement.

Clause 417, page 344 (lines 17 and 18), omit “to whom the agreement or determination applies”, substitute “who is covered by the agreement or determination”.

Clause 417, page 344 (lines 19 and 20), omit “to which the agreement or determination applies”, substitute “that is covered by the agreement or determination”.

Clause 426, page 355 (line 7), after “disrupt”, insert “, for an extended period,”.

Clause 426, page 355 (line 9), before “reduce”, insert “significantly”.

Clause 426, page 355 (after line 11), after subclause (4), insert:

Requirement—harm is imminent

(4A) If the protected industrial action is threatening to cause significant harm as referred to in subsection (3), FWA must be satisfied that the harm is imminent.

Clause 438, page 363 (line 5), omit “apply to”, substitute “cover”.

Clause 470, page 383 (lines 19 to 31), omit subclause (4), substitute:

(4) If the industrial action is, or includes, an overtime ban, this section does not apply, in relation to a period of overtime to which the ban applies, unless:

(a) the employer requested or required the employee to work the period of overtime; and

(b) the employee refused to work the period of overtime; and

(c) the refusal was a contravention of the employee’s obligations under a modern award, enterprise agreement or contract of employment.

(5) If:

(a) the industrial action is, or includes, an overtime ban; and

(b) this section applies in relation to a period of overtime to which the ban applies;

then for the purposes of this section, the total duration of the industrial action is, or includes, the period of overtime to which the ban applies.

Clause 471, page 384 (lines 28 to 30), omit paragraph (4)(c), substitute:

(c) the employer gives to the employee a written notice stating that, because of the ban:

(i) the employee will not be entitled to any payments; and
(ii) the employer refuses to accept the performance of any work by the employee until the employee is prepared to perform all of his or her normal duties;

[non-payment for protected partial work bans]

(19) Clause 471, page 384 (after line 32), after subclause (4), insert:

(4A) If:
   (a) an employer has given an employee a notice under paragraph (4)(c); and
   (b) the employee fails or refuses to attend for work, or fails or refuses to perform any work at all if he or she attends for work, during the industrial action period;
then:
   (c) the failure or refusal is employee claim action, even if it does not satisfy subsections 409(2) and 413(4), if the related industrial action referred to in paragraph (4)(a) is employee claim action; or
   (d) the failure or refusal is employee response action, even if it does not satisfy subsection 413(4), if the related industrial action referred to in paragraph (4)(a) is employee response action.

[meanings of employee claim action and employee response action]

(20) Clause 474, page 387 (after line 25), after subclause (2), insert:

(2A) If:
   (a) the industrial action is, or includes, an overtime ban; and
   (b) this section applies in relation to a period of overtime to which the ban applies;
then, for the purposes of this section:
   (c) the total duration of the industrial action is, or includes, the period of overtime to which the ban applies; and
   (d) if paragraph (1)(b) applies—the period of 4 hours mentioned in that paragraph includes the period of overtime to which the ban applies.

[non-payment for overtime bans]

(21) Clause 539, page 433 (table item 14, paragraph (c) of column 2), omit “to which the enterprise agreement or workplace determination concerned applies”, substitute “covered by the enterprise agreement or workplace determination concerned”.

[protected industrial action]