2008-2009

The Parliament of the
Commonwealth of Australia

THE SENATE

Fair Work Bill 2008

(Amendments to be moved by the Leader of the Family First Party, Senator Fielding, in committee of the whole)

Definition of small business

(1) Clause 23, page 41 (line 31), omit “15 employees”, substitute “20 employees”.

(2) 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.

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(3) Page 219 (after line 25), after clause 241, insert:

241A Application of this Division

This Division does not apply in relation to small business employers or their employees.

Right of Entry

(4) Clause 479, page 390 (line 23), after “ordinary meanings”, insert “subject to section 480A”.

(R5) Page 391 (after line 9), at the end of Division 1, add:
480A Application of this Part

(1) This Part, other than Subdivision B of Division 2 and any provisions relating to that subdivision, does not apply in relation to small business employers or their employees.

(2) In this Part:

member of the permit holder’s organisation does not include an employee of a small business employer.

premises does not include premises occupied by a small business employer.

(3) Nothing in this Part authorises a permit holder to enter premises occupied by a small business employer.

[exemption of small business from right of entry provisions]

(R6) Clause 481, page 392 (after line 22), at the end of the clause, add:

Note: A permit holder who seeks to exercise rights under this Part without reasonably suspecting that a contravention has occurred, or is occurring, is liable to be penalised under subsection 503(1) (which deals with misrepresentations about things authorised by this Part).

[right of entry: misuse of entry rights]

(7) Clause 482, page 393 (line 1), before “require”, insert “subject to subsection (1A), ”.

[no union access to non-member records]

(8) Clause 482, page 393 (after line 10), after subclause (1), insert:

Permit holder must not access non-member records

(1A) The permit holder may not require, inspect, or make copies of any employee record (however described) of an employee who is not a member of the permit holders organisation, except with the written consent of the employee.

[no union access to non-member records]

(9) Clause 483, page 393 (line 25), omit “The”, substitute “Subject to subsections (1A) and (1B), the”.

[no union access to non-member records]

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

Conditions relating to non-member records

(1A) The permit holder may not require, inspect or make copies of any employee record (however described) of an employee who is not a member of the permit holder’s organisation, except with the written consent of the employee.

(1B) If the record or document is an employee record (however described) of an employee who is not a member of the permit holders organisation, the permit holder may apply to FWA for an order requiring the affected employer to provide a copy of the record or document to FWA.

(1C) FWA may make any order it thinks appropriate in relation to an application made under subsection (1B).
(1D) If FWA orders under subsection (1B) that the affected employer must provide a copy of a record or document:
   
   (a) the affected employer must provide a copy of the record or document to FWA within the period specified in the order; and
   (b) FWA must determine whether, and in what form, to provide the permit holder access to information contained in that record or document.

   [no union access to non-member records]

(11) Clause 487, page 396 (lines 11 and 12), omit “24 hours”, substitute “72 hours”.

   [72-hour notice of intention to enter premises]

(12) Clause 494, page 400 (after line 22), at the end of the clause, add:

   Permit holder must not access non-member records

   (4) The permit holder may not require, inspect or make copies of any employee record (however described) of an employee who is not a member of the permit holder's organisation, except with the written consent of the employee.

   [no union access to non-member records]

(13) Clause 495, page 400 (line 30), omit “24 hours”, substitute “72 hours”.

   [72-hour notice of intention to enter premises]

(R14) Clause 508, page 406 (lines 18 and 25), omit subclause (4), substitute:

   (4) Without limiting subsection (1), an official misuses rights exercisable under this Part if:
   
   (a) the official exercises those rights repeatedly with the intention or effect of hindering, obstructing or otherwise harassing an occupier or employer; or
   
   (b) in exercising a right under Subdivision B of Division 2 of this Part, the official encourages a person to become a member of an organisation and does so in a way that is unduly disruptive:
   
   (i) because the exercise of the right is excessive in the circumstances; or
   
   (ii) for some other reason.

   [right of entry: misuse of entry rights]