2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Fair Work Amendment Bill 2013

(Amendment to be moved by Mr Bandt)

(1) Schedule 1, page 14, at the end of the Schedule (after proposed Part 8), add:

Part 9—Orders suspending or terminating protected industrial action: requirements

Fair Work Act 2009

36 After subsection 423(6)

Insert:

Requirement—permitted matters capable of settlement

(6A) For an order terminating protected industrial action, the FWC must be satisfied that:

(a) terms to deal with all the permitted matters at issue during bargaining for the proposed enterprise agreement could be included in an industrial action related workplace determination; or

(b) all the bargaining representatives for the proposed enterprise agreement have agreed to settle all the permitted matters at issue during bargaining for the proposed enterprise agreement by another means by which a binding settlement of those matters might be achieved.

Example: For paragraph (b), the bargaining representatives might have agreed to conciliation by the FWC and to the inclusion in the proposed enterprise agreement of any terms recommended by the FWC to settle the permitted matters at issue.

(6B) For an order suspending protected industrial action, the FWC must be satisfied, in relation to any permitted matters at issue during bargaining for the proposed enterprise agreement that cannot be dealt with by including terms in an industrial action related workplace determination, that:
(a) there is a means by which a binding settlement of those matters might be achieved (if all of the bargaining representatives for the proposed enterprise agreement agreed to settle those matters by that means); and

(b) if the protected industrial action is employee claim action or employee response action—the bargaining representatives of the employee or employees who are engaging in the industrial action have not agreed to settle all of those matters by that means; and

(c) if the protected industrial action is employer response action—the bargaining representatives of the employer or employers who are engaging in the industrial action have not agreed to settle all of those matters by that means.

37 Subsection 424(1)

After “The FWC must”, insert “(subject to subsections (1A) and (1B))”.

38 After subsection 424(1)

Insert:

(1A) The FWC must not make an order terminating industrial action of a kind mentioned in subsection (1) unless the FWC is satisfied that:

(a) terms to deal with all the permitted matters at issue during bargaining for the proposed enterprise agreement could be included in an industrial action related workplace determination; or

(b) all the bargaining representatives for the proposed enterprise agreement have agreed to settle all the permitted matters at issue during bargaining for the proposed enterprise agreement by another means by which a binding settlement of those matters might be achieved.

Example: For paragraph (b), the bargaining representatives might have agreed to conciliation by the FWC and to the inclusion in the proposed enterprise agreement of any terms recommended by the FWC to settle the permitted matters at issue.

(1B) The FWC must not make an order suspending industrial action of a kind mentioned in subsection (1) unless the FWC is satisfied, in relation to any permitted matters at issue during bargaining for the proposed enterprise agreement that cannot be dealt with by including terms in an industrial action related workplace determination, that:

(a) there is a means by which a binding settlement of those matters might be achieved (if all of the bargaining representatives for the proposed enterprise agreement agreed to settle those matters by that means); and

(b) if the protected industrial action is employee claim action or employee response action—the bargaining representatives of the employee or employees who are engaging in the industrial action have not agreed to settle all of those matters by that means; and

(c) if the protected industrial action is employer response action—the bargaining representatives of the employer or employers who are engaging in the industrial action have not agreed to settle all of those matters by that means.

[requirements for orders terminating protected industrial action]