The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017

(Mr Bandt)

(1) Schedule 1, heading to Part 1, page 3 (lines 2 to 4), omit the heading, substitute:

Part 1—Contraventions of civil penalty provisions
[reversing onus of proof where records not produced]

(2) Schedule 1, page 3 (after line 8), after item 1, insert:

1A  At the end of section 535

Add:

Note: If an employer does not comply with an obligation under the regulations dealing with the inspection of records, the onus of proof may be reversed in proceedings in relation to a contravention of certain civil remedy provisions.

[reversing onus of proof where records not produced]

(3) Schedule 1, item 13, page 7 (after line 18), after section 557B, insert:

557C  Failure to allow records to be inspected—reversal of onus

(1) If:

(a) an application is made under this Part in relation to a contravention by an employer of a civil remedy provision referred to in subsection (2); and
(b) a matter is alleged in the application in respect of which the employer is required under section 535 to make and keep employee records; and
(c) the employer has not complied with a requirement under the regulations for the inspection of the records by an employee, or former employee, to whom the application relates;
it is presumed that the matter is as alleged by the applicant, unless the employer proves otherwise.

(2) The civil remedy provisions are the following:
(a) subsection 44(1) (which deals with contraventions of the National Employment Standards);
(b) section 45 (which deals with contraventions of modern awards);
(c) section 50 (which deals with contraventions of enterprise agreements);
(d) section 280 (which deals with contraventions of workplace determinations);
(e) section 293 (which deals with contraventions of national minimum wage orders);
(f) section 305 (which deals with contraventions of equal remuneration orders);
(g) subsection 323(1) (which deals with methods and frequency of payment);
(h) subsection 323(3) (which deals with methods of payment specified in modern awards or enterprise agreements);
(i) subsection 325(1) (which deals with unreasonable requirements to spend amounts);
(j) any other civil remedy provisions prescribed by the regulations.

(3) Subsection (1) does not apply where, despite all reasonable care having been taken by the employer, the employer is unable to comply with a requirement in the regulation for the inspection of records due to exceptional circumstances beyond the employer’s control.

[reversing onus of proof where records not produced]

(4) Schedule 1, item 14, page 8 (after line 6), after the definition of franchised entity, insert:

indirectly controlled employer: see subsection 558AA(2).

indirectly responsible entity: see subsection 558AA(1).

[indirectly responsible entities]
(5) Schedule 1, item 17, page 9 (after line 16), after section 558A, insert:

558AA Meaning of indirectly responsible entity and indirectly controlled employer

(1) A person is an indirectly responsible entity for an employer if:
   (a) the employer, or an employee of the employer, directly or indirectly supplies goods or services to the person; and
   (b) the person has influence or control over the employer’s affairs; and
   (c) that influence or control includes influence or control over the conditions under which work is done by employees of the employer, the amount paid for work done by employees of the employer or the way in which employees are paid for work done for the employer.

(2) An employer for which there is an indirectly responsible entity is an indirectly controlled employer.

(6) Schedule 1, item 17, page 10 (after line 26), after subsection 558B(2), insert:

Indirectly responsible entities

(2A) A person contravenes this subsection if:
   (a) an employer contravenes a civil penalty provision referred to in subsection (7); and
   (b) the person is an indirectly responsible entity for the employer; and
   (c) the person has failed to take all reasonable steps to ensure that a contravention by the employer of the same or a similar character was likely to occur.

(7) Schedule 1, item 17, page 10 (line 29), omit “subsection (1) or (2)”, substitute “subsection (1), (2) or (2A)”.

(8) Schedule 1, item 17, page 10 (line 30), omit “paragraph (1)(a) or (2)(b)”, substitute “paragraph (1)(a), (2)(b) or (2A)(a)”. 

[indirectly responsible entities]
(9) Schedule 1, item 17, page 10 (line 35), omit “franchisee entity or subsidiary”, substitute “franchisee entity, subsidiary or indirectly controlled employer”.

[indirectly responsible entities]

(10) Schedule 1, item 17, page 11 (line 3), omit “franchise or body corporate”, substitute “franchise, body corporate or indirectly responsible entity”.

[indirectly responsible entities]

(11) Schedule 1, item 17, page 11 (line 7), omit “paragraph (1)(a) or (2)(b)”, substitute “paragraph (1)(a), (2)(b) or (2A)(a)”.

[indirectly responsible entities]

(12) Schedule 1, item 17, page 11 (after line 22), after subparagraph 558B(4)(e)(ii), insert:

or (iii) the trading arrangement entered into between the indirectly responsible entity and the indirectly controlled employer;

[indirectly responsible entities]

(13) Schedule 1, item 17, page 11 (line 31), omit “paragraph (1)(a) or (2)(b)”, substitute “paragraph (1)(a), (2)(b) or (2A)(a)”.

[indirectly responsible entities]

(14) Schedule 1, item 17, page 13 (line 3), omit “558B(1) or (2)”, substitute “558B(1), (2) or (2A)”.

[indirectly responsible entities]

(15) Schedule 1, item 17, page 13 (line 4), omit “franchisee entity or subsidiary”, substitute “franchisee entity, subsidiary or indirectly controlled employer”.

[indirectly responsible entities]