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## **KEY WR BILLS IN THE 45<sup>th</sup> FEDERAL PARLIAMENT**

Several important pieces of WR legislation were tabled, re-tabled or returned to the notice paper when parliament resumed on 31 August 2016 under the newly elected Federal Government.

Parliament next sits on 12 September 2016.

Below is a summary and snapshot of the status of key WR Bills before the 45<sup>th</sup> parliament.

### **GOVERNMENT WORKPLACE RELATIONS BILLS TABLED IN THE HOUSE OF REPRESENTATIVES LAST WEEK**

#### **Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 NEW**

The Federal Government tabled this new Bill in parliament on 31 August 2016, following earlier announcements it would pursue this legislation as a priority.

The Explanatory Memorandum states that the Bill will amend the Fair Work Act to implement the government's commitment to protect emergency services bodies and their volunteers. The Bill will seek to do that by providing that an enterprise agreement cannot include terms that undermine the capacity of volunteer emergency services bodies to properly manage their volunteer operations, and can also not include terms that are inconsistent with state or territory laws regulating such bodies.

Under the Bill, an enterprise agreement covering a "designated emergency management body" cannot include an objectionable term that:

- **Restricts or limits** the body's ability to:
  - Engage or deploy its volunteers;
  - Provide support or equipment to those volunteers;

- Manage its relationship with or work with any recognised emergency management body in relation to those volunteers;
  - Otherwise manage its operations in relation to those volunteers.
- **Requires** the body to consult or reach agreement with any other person or body before taking any action for the purposes of:
  - Engaging or deploying its volunteers;
  - Providing support or equipment to those volunteers;
  - Managing its relationship with or work with any recognised emergency management body in relation to those volunteers;
  - Otherwise managing its operations in relation to those volunteers.
- **Restricts or limits** the body's ability to recognise, value, respect or promote the contribution of its volunteers to the wellbeing and safety of the community; or
- **Requires or permits** the body to act other than in accordance with a law of a state or territory, so far as the law confers or imposes on the body a power, function or duty that affects or could affect its volunteers.

The Bill also provides an entitlement to certain volunteer bodies to make submissions to the Fair Work Commission in relation to matters about enterprise agreements or workplace determinations that could affect the volunteers of a designated emergency management body.

The Bill has been referred to the Senate Education and Employment Legislation [Committee](#) which will report on 10 October 2016. Submissions close on 12 September 2016.

To view the Bill, click [here](#).

## **Building & Construction Industry (Improving Productivity) Bill 2013 (No 3)**

The Federal Government tabled a third version of this Bill in federal parliament on 31 August 2016, after previous versions failed to pass through the Senate prior to this year's federal election.

A previous identical version of the Bill was voted down ("negatived") in the Senate on 18 April 2016 by a vote of 36 Senators to 34. Of the eight Senate cross-benchers, four voted in favour of the Bill (Day, Leyonhjelm, Wang and Xenophon) while four voted against it (Lazarus, Madigan, Lambie and Muir).

This consequently provided Prime Minister Malcolm Turnbull with the necessary double dissolution trigger for the federal election which happened on 2 July 2016.

The newly re-tabled Bill, as with previous versions, seeks to reinstate the former powers of the Australian Building & Construction Commission (ABCC) along with the former provisions of the Building & Construction Industry Improvement Act (BCII Act), with some modifications.

In particular, the Bill seeks to restore those parts of the BCII Act that provided for:

- higher penalties for unlawful conduct by building industry participants;
- stronger prosecutorial powers for the inspectorate and its director;
- a broader definition of building work;
- greater scope for injunctions to stop unlawful industrial action;
- stronger anti-coercion measures;
- more effective compulsory information gathering powers; and
- greater independence of the inspectorate.

Other provisions in the Bill seek:

- its regulation to be extended to some offshore construction projects;
- strict rules around unlawful picketing;
- bolstered rules around taking industrial action that sought to hold unions more accountable for their members' conduct; and
- a reverse onus of proof applied to some coercive and unlawful activities as well as to individuals seeking to stop work on alleged health and safety grounds.

The legislation, if and when it passes through the current parliament, would repeal and replace the Fair Work (Building Industry) Act 2012 as well as regulate various aspects of building industry conduct currently regulated by the Fair Work Act 2009 (but formerly regulated by the BCII Act).

In the meantime, the Bill has been referred to the Senate Education and Employment Legislation [Committee](#) which will report on 14 October 2016. Submissions close on 27 September 2016. To view the newly re-tabled Bill, click [here](#).

## Fair Work (Registered Organisations) Amendment Bill 2014 (No 4)

A fourth version of the Fair Work (Registered Organisations) Amendment Bill was re-tabled by the Federal Government in parliament on 31 August 2016.

It was identical to an earlier version of the Bill that did not pass through the Senate prior to this year's federal election.

The Fair Work (Registered Organisations) Amendment Bill 2014 (No 4) seeks to amend the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009 to:

- **Establish** a Registered Organisations Commission and provide it with investigation and information-gathering powers to monitor and regulate registered organisations (replacing the Fair Work Commission in relation to that function only);
- **Change** the requirements on officers' disclosure of material personal interests; and
- **Increase** financial accounting and disclosure obligations for registered organisations and their officers.

The Bill has been referred to a Senate Education and Employment Legislation [Committee](#) which is due to report on 14 October 2016. Submissions close on 27 September 2016.

To view the newly re-tabled Bill, click [here](#).

## **PRIVATE MEMBERS' WORKPLACE RELATIONS BILLS RESTORED TO THE SENATE NOTICE PAPER LAST WEEK**

### **Fair Work Amendment (Gender Pay Gap) Bill 2015**

This Bill was restored to the Senate notice paper on 31 August 2016 after an identical version of the Bill lapsed in the previous parliament prior to the federal election.

The Private Members Bill, sponsored by Greens Senator Larissa Waters, seeks to prohibit clauses in employment contracts that prevent workers talking about their pay with colleagues.

According to Senator Waters, pay secrecy can help hide discrimination, unconscious bias and bad decision-making such as two people being paid differently to do the same job.

The Bill seeks to ban "gag" clauses in employment contracts going forward and, if passed, would deem existing clauses unenforceable.

The Bill has been referred to the Senate Education and Employment Legislation Committee which is due to report on 14 November 2016.

To view the newly restored Bill, click [here](#).

### **Fair Work Amendment (Penalty Rates for Small Business Exemption) Bill 2015**

This Private Members Bill was restored to the Senate notice paper on 31 August 2016.

A previous identical version of the Bill did not pass through the previous parliament and lapsed in the lead-up to the federal election.

The Bill is sponsored by independent Senators Bob Day and David Leyonhjelm.

The restored Bill, as with the earlier version, seeks to reduce regulation of the relationship between small businesses and their employees by reducing instances where certain small businesses are required to pay penalty rates.

The Bill seeks to allow small businesses (defined as comprising fewer than 20 employees) in the restaurant and catering, retail and hospitality industries, to operate more viably, the Bill's Explanatory Memorandum states.

To achieve that, the Bill states that for small businesses in the specified industries, modern awards cannot require penalty rates to apply unless at least one of three conditions are met:

- The work is in addition to 10 hours of work in a day;
- The work is on a public holiday; or
- The work is on a weekend and in addition to 38 hours of work over a seven-day period.

To view the newly restored Bill, click [here](#).

## **Fair Work Amendment (Protecting Australian Workers) Bill 2016**

This Private Members Bill was restored to the Senate notice paper on 31 August 2016 after an earlier identical version of the Bill failed to pass through the previous parliament.

The Bill is sponsored by Labor Senator Doug Cameron and, if passed, would amend the Fair Work Act 2009 to:

- **Clarify** the application of the Act to skilled migrants, making it clear the Act applies to all employees irrespective of their migration status;
- **Require** Fair Work Information Statements to contain information for employees about their rights under the Fair Work Act 2009, the relationship between workplace laws and the Migration Act 1958, and the rights of overseas workers to seek redress for contraventions of workplace laws;
- **Provide** additional protection from adverse action taken against employees who question whether a workplace right exists or whether they are employees and not independent contractors;
- **Introduce** a “reasonable person” test in determining whether an employer has engaged in sham contracting;
- **Enable** the courts to make orders requiring directors of phoenix companies to pay unpaid wages and other entitlements when a company of which they are a director is “phoenixed”;
- **Increase** the maximum penalties available for certain breaches of the Act in circumstances where the size of a business, the sophistication of its management systems and its existing statutory duties in respect of its conduct should mitigate against the breaches occurring;

- **Give** the courts power to make orders disqualifying persons from managing a corporation for a period in relation to certain civil contraventions of the Act if the court is satisfied that disqualification is justified; and
- **Introduce** new offences for serious contraventions of the Act that involve the use of coercion or threats. Criminal offences, including up to two years' imprisonment, would be available.

To view the newly restored Bill, click [here](#).