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Chamber of Commerce and Industry WA

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To the Committee,

CCIWA submission to Senate Inquiry into the Secure Jobs and Better Pay Bill 2022

CCIWA is the peak body advancing trade and commerce in WA. We want the best for communities across the State. Our members are of all sizes and come from all industries and regions, from small early childhood education and care providers in regional towns, to medium sized manufacturers in the Perth metropolitan area.

At the outset, we wish to convey our deep concerns about the process that has been adopted for developing and introducing the Bill.

The changes that introduce compulsory multi-employer bargaining and compulsory arbitration represent seismic shifts in our workplace relations system and neither were raised by Government as areas for reform until the Jobs & Skills Summit only two months ago. The Government has not developed the policy and associated bill in good faith and has done so largely behind closed doors.

The nature of the changes, combined with the lack of a fulsome public, transparent consultation process will lead to unintended consequences which have the potential to significantly undermine Australia's economy. The changes will endanger the viability of businesses, risk jobs and create unnecessary complexity. And this is to say nothing of the changes that expose the economy to sector-wide strikes, which will disrupt supply chains and key industries at a time of extraordinary global volatility.

While the amendments introduced on 9 November indicate some willingness to make changes that could reduce the risk of outcomes like these — albeit in our view many of the amendments actually heighten the risk — the Government has allowed less than 48 hours for stakeholders to consider them. This is grossly inadequate given their potential impacts.

In light of these issues, we do not consider the bill fit to pass in its current form. We urge the Government to split the bill, so all affected parties have more time to consider its most contentious elements.

Single-interest employer bargaining cannot be justified based on growing wages

The Government has promoted the Bill chiefly as a fix to increase wages in low-paid industries such as early childhood education and care, aged care and cleaning.

According to the Government, the changes to the "supported bargaining" stream (which strengthens the bargaining position of those who have traditionally struggled with the enterprise bargaining system) and equal remuneration orders will work together to boost wages for low-paid employees.

But the changes to the "single-interest employer" stream are not directed at the low -paid. They cannot be justified on this basis.

In fact, forcing businesses to adopt one-size-fits-all terms and conditions stifles productivity and will endanger business viability and increase unemployment — the antithesis of an environment that will lead to sustainable wages growth.

International comparisons that attempt to link multi-employer bargaining with wage increases are misguided: Australia is the only country in the world that already has a system of compulsory industry specific terms and conditions of employment, in the form of modern awards.

Single-interest employer bargaining threatens small businesses

The changes to "single-interest employer" bargaining will mean that businesses in the same industry, or the same area, or subject to the same regulations can be dragged into the same, one-size fits-all deal.

A hairdressing salon and a hardware store could be forced to bargain together because of their "common interest" of being tenants in the same shopping centre. So could a pharmacy in Queensland and a pharmacy in Victoria because they offer similar services and operate within the same regulatory framework.

These deals go further than just pay and dictate all aspects of the employment relationship, including, for example, hours of work and shift patterns, leave arrangements, staffing levels, flexibility, work health and safety, categories of employment and matters related to the employer-union relationship.

This effectively binds how an employer can manage their business for the term of the deal.

Small and medium businesses don't have the time or resources to properly engage in a process that requires them to negotiate not only with different groups of employees, but amongst other employers to arrive at a common position.

Negotiating will almost certainly fall to the bigger and better resourced employers leaving smaller employers stuck with terms they cannot afford and that aren't suited to their circumstances. This is a particular problem for competitors who can be compelled to bargain together under the Bill. The changes will assist larger businesses in locking out smaller competitors from the market.

And exempting businesses with less than 15 employees will not adequately protect smaller businesses. The exclusion is calculated by headcount (not full time equivalent) and includes regular casuals so won't even capture a busy coffee shop.

In light of these issues, the single-interest employer bargaining stream must remain voluntary.

The scope of the supported bargaining stream is too uncertain

According to the Government, the changes to the "supported bargaining" stream are aimed at achieving wages growth for 'low paid workers'.

However, the tests identified in the bill for determining who can take part in supported bargaining do not give employers or employees any clarity over who a 'low paid worker' is or which industries they work in.

The Government refers to funded sectors such as aged care and child-care when talking about this stream; but on the face of the Bill, it is not completely clear the test would apply to them. Further, it is not clear whether the test could extend to cover other non-funded sectors such as retail and hospitality.

More certainty is needed over the scope of the supported bargaining stream.

Employees' agency should not be subject to a centralised union veto

The bill appears to require that agreements (and variations to agreements) cannot be put to a vote of employees without the agreement of unions.

We do not support these changes.

Employees are quite capable of making their own judgements on the terms and conditions under which they work — their agency should not be subject to a centralised union veto, exercised by the officials running unions. Under the changes, those union officials may not even have any relationship with the employees (i.e. the employees might not be members of the union).

Unions should not have a veto over the terms which are put to employees before a vote for a multi-employer agreement.

Allowing just one employee to initiate enterprise agreement bargaining is not necessarily in the interest of all employees

Currently unions cannot initiate bargaining without the agreement of the employer or after obtaining a majority support determination, which demonstrates that a majority of employees wish to commence bargaining.

Changes in the bill give more power to unions in certain circumstances, including power to initiate bargaining without demonstrating that the majority of employees wish to bargain or where the employer has agreed. (This applies only for enterprise agreements, not multi-employer or greenfields agreements.)

There are legitimate reasons why employees may not wish to bargain for a new agreement, including that they are happy to remain on the most recent, expired agreement. For instance, an expired agreement may include positive rostering arrangements, around which employees have structured their lives. If bargaining reopens the agreement, then employees would be risking the existing, favourable terms.

If the employer does not consent, bargaining should only commence if the majority of employees are in favour of doing so, not because one union representing one employee wants to.

Re-examining enterprise agreements will stifle investment in the WA economy

The Bill opens up the possibility of a review of whether an enterprise agreement meets the better off overall test within the life of the agreement. Enterprise agreement terms would be capable of continuous challenge or scrutiny if there is any prospect of employees being worse off under the agreement when compared to the modern award.

Western Australia's economy is built on long construction projects, particularly in the mining sector. Opening up the possibility of a change to an enterprise agreement will increase the risk premia to investing in Western Australia's economy and will threaten its future economic development.

And for any business, allowing the Fair Work Commission to vary an agreement during its term creates uncertainty in terms of employment costs and arrangements, undermining the primary benefit of enterprise bargaining for employers.

The possibility to open up enterprise agreements mid-term must be removed.

Compulsory arbitration will only delay parties reaching agreement

The return to an arbitral-based workplace relations system, not seen in this country since the 1990s, is another seismic shift in need of greater scrutiny than the Government is allowing with its rush to legislate this year.

Under the current FW Act, parties cannot typically apply to the FWC to seek a binding decision on what terms should or should not be included in a collective agreement. The terms of an agreement are for the parties to agree to or for the employer to determine and put to an employee vote.

The introduction of "unilateral arbitration" into single enterprise bargaining and all streams of multi-employer bargaining will mean that one party can disagree to the claims made in bargaining and seek to have terms imposed on all parties.

This discourages agreement being reached between the parties who know the business best — the employer and employees — in favour of a third-party. A system where agreements are made in the workplace between people who know the business best, will deliver the best results for employer and employees, and will deliver sustainable gains for both based on their priorities. This is how people work together cooperatively and sustainably, not by resorting to compulsory arbitration.

Arbitration is also a time consuming and costly exercise, particularly for small businesses that may now be compelled to bargain for multi-employer agreements: the more parties involved in the dispute, the more costly the arbitration.

We also object to the introduction of compulsory arbitration for employees that have caring responsibilities (e.g. parents, carers, those aged over 55, among others) and have had a request for flexible work arrangements rejected.

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These changes effectively make the FWC the final decision maker for matters involving workplace arrangements. The FWC is a no-costs jurisdiction, so there is no disincentive for employees automatically seeking to have the FWC decide the matter when the employer has refused the request.

The most recent report on the operation of the provisions in the National Employment Standards relating to requests for flexible work show that the status quo works. Introducing arbitration in this context is therefore a solution in search of a problem.

Further exemptions from limits on fixed term contracts are needed

The proposed laws limit the use of fixed term contracts for the same role beyond two years or two consecutive contracts (whichever is shorter), including contract renewals. Contracts in breach of this will be unenforceable by the employer, and employees will become permanent once the two years (or two consecutive contracts) is up.

There are several exemptions, including, for example, where the contract is funded by government for a period of more than two years and there are no reasonable prospects the funding will be renewed; contracts for specialist skills; high income earners; and where the contract is in place for a peak period of demand.

We are concerned the bar is far too high to gain an exemption for where the contract is funded by government. Many of our members in the community services industry face uncertainty over whether government funding will be renewed and in turn uncertainty over their future staffing needs. The requirement that there be "no reasonable prospect" of funding being renewed would mean these providers do not qualify for an exemption and would therefore not be able to offer staff a further fixed term contract. The effect is that providers will turn to casual employment instead.

The lack of an exception for visa workers could also result in employers being in breach of these provisions. For example, whilst a working holiday visa is only for 12 months, other visa types (e.g. those covered by Labour Agreements) can extend beyond two years. This would give rise to breaches of the new provisions should an employer engage a visa worker on a fixed term contract for the duration of such visas. An exemption should be added for contracts entered into where the employee is in Australia on a temporary visa.

To address the concerns set out in our submission, we support the Australian Chamber of Commerce and Industry's recommendations, as set out in its submission to the Senate Inquiry. We also support the positions on and recommendations to address the additional concerns set out in ACCI's submission.

Yours sincerely,

Chris Rodwell

CEO CCIWA

Chamber of Commerce and Industry WA