



**AUSTRALIAN CHAMBER OF COMMERCE  
AND INDUSTRY (ACCI)**

**Opening Statement by  
Chief Executive Peter Anderson**

**to the**

**Senate Standing Committee on Education,  
Employment and Workplace Relations Inquiry  
into the *Fair Work (Transitional Provisions  
and Consequential Amendments) Bill 2009***

**Thursday, 30 April 2009**





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As senators would be aware both from our submission on this Bill and earlier submissions on the Fair Work Bill, employers through ACCI have had a number of significant concerns with the government and the parliament on the policy frameworks and content of the Fair Work system. Although a few of these concerns were remedied in the legislative and pre-legislative process, many remain in whole or in part.

As strongly as many in industry hold those views, it is equally our view that the new system, which is a reality, should be given every chance to operate in as smooth a manner as possible. That would be in the interests of the economy. In itself that would be no small challenge, given the dimensions of the recession impacting our economy and labour market, and the terms of the new IR system.

Communication and information programs by governments and business organisations have an important role to play. The government's recent announcements in this regard are welcome.

But for the Fair Work system to commence with a minimum of fuss, self evidently rules need to be set as to the status of industrial arrangements in place immediately prior to the operation of the Fair Work system, and those rules need to be fair and practical.

This is where the Senate comes in, this is the focus of the Bill, and we believe a transitional Bill needs to be enacted.

The Bill before us is complex, in some cases necessarily so; for example, because there have been so many system changes in the past, because some past systems too were complex, because we are still trying to integrate State IR systems into a national system, and because rules need to be made for many different forms of past industrial relations instruments that exist in the economy.

In other cases though the Bill is unnecessarily complex. Perhaps the most avoidable complexity is that under the Bill we face two transitional periods. A set of rules for six months July to December 2009, and then a different set of rule from January 2010. This is a direct consequence of government deciding to bring large parts of the Fair Work system into operation 6-months earlier than the originally intended date of 1 January 2010.

We consider this a mistake in policy terms; bringing forward labour market re-regulation in a time of recession is hard to fathom. In operational terms it simply adds to complexity. We believe the Senate ought provide one common operative date – the first full-pay period on or after 1 January 2010.

The Bill has been the subject of some consultation. Some of its provisions are agreed. However, we differ from the government in a number of areas and the Senate should amend the Bill accordingly. None of the amendments we

seek affect in any way the integrity of government policy. They would make the transition fairer and smoother. Unless the transition is fair and smooth the system will get off on the wrong track with many employers, even amongst those who take no interest the policy debates we have in this place, and the political debates that senators have.

Our submission provides details of these matters.

I will simply refer to three major points.

Firstly, we do not agree with the terms of lawful existing agreements being retrospectively varied on wages or conditions by new wage rates in modern awards or the new legislated conditions, called the National Employment Standards.

We believe this is unfair, as this proposed arbitrary rule would alter the balance of negotiations on wages and conditions that employers, unions and employees settled on for the duration of those agreements.

If the Senate does not agree with the primary amendment we suggest to cure this problem, we have proposed a number of lesser amendments. Our attempt is to provide a constructive way through. These matters are addressed in paras 22 to 68 of our submission.

Secondly, we believe it is necessary that both of the ministerial directions - that the new 'modern awards' protect employee disadvantage and that they are not intended to increase employer costs - be legislated. The Bill only proposes to legislate the employee guarantee through 'take home pay orders'. In doing so it is unbalanced and unfair.

This is no small or hypothetical matter. We know from the draft modern awards that some key industry sectors, with many small business characteristics, face significant direct and indirect labour cost increases simply as a consequence of what was meant to be a regulatory clean-up. Even many past consent awards between unions and employer bodies are to be set aside. Those businesses expect the honouring of the ministerial commitment and the protection of their parliament, as much as employees do. In some cases that will occur, but in many cases it will not. These issues are expanded on in paras 71 to 96 of our submission, with para 94 again setting out some alternative positions.

Thirdly, representation orders should be able to be made in advance of a demarcation dispute actually arising; and agreement-making processes and commercial contracts completed or largely completed prior to 1 July should not have to be repeated or re-negotiated. To do so would be a waste of time and resources, and create uncertainty where none need exist. The Bill generally applies this principle well, but fails to do so in two areas – bargaining and rules on the transfer of business. Paras 113 to 119, and 128 to 133 of our submission address this point.

In each of these areas of concern the Senate can prevent the transitional rules of the Fair Work system adding their own extra compliance and start up costs, beyond those that aspects of the substantive Bill will over time impose.

Unless we fix some of these problems now, an unnecessary degree of angst is likely to be felt by many employers, despite the government's intention to start the system off on the right note, and to make it durable.

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