



Treasurer  
Minister for  
Industrial Relations

Reference: P15-55

Ms Julie Agostino  
Secretary  
Senate Education and Employment Committee  
Parliament of Australia

By email [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

Dear Ms Agostino

### **Inquiry into the Fair Work Amendment (Bargaining Process) Bill 2014**

Thank you for your letter to the Premier dated 17 December 2014 inviting the NSW Government to make a submission to the Senate Education and Employment Committee's inquiry into the Fair Work Amendment (Bargaining Process) Bill 2014. The Premier has asked me as Treasurer and Minister for Industrial Relations to respond on behalf of the NSW Government.

The Bill proposes to amend the *Fair Work Act 2009* (Fair Work Act) to:

- provide a new additional approval requirement for enterprise agreements which are not greenfields agreements, that "the FWC must be satisfied that, during bargaining for the agreement, improvements to productivity at the workplace were discussed";
- provide further guidance regarding the circumstances in which a protected action ballot order can be made, to ensure that the Commission takes account of all relevant circumstances including the following:
  - (a) the steps taken by each applicant to try to reach an agreement;
  - (b) the extent to which each applicant has communicated its claims in relation to the agreement;
  - (c) whether each applicant has provided a considered response to proposals made by the employer;
  - (d) the extent to which bargaining for the agreement has progressed; and
- provide that the Fair Work Commission must not make a protected action ballot order where it is satisfied that the claims of an applicant are manifestly excessive or would have a significant adverse impact on productivity in the workplace.

The Bill seeks to give effect to commitments made in the Coalition's election policy on workplace relations 'Improving the Fair Work Laws' (commitment 12: Harmonious, Sensible and Productive Enterprise Bargaining).

The NSW Government supports this Bill. In particular, the NSW Government supports the renewed focus on productivity improvement as an important outcome of bargaining. While

the Bill does not require productivity measures to be included in the agreement that is submitted for approval (which we would argue that it should) it does ensure that the parties have turned their minds to the issue.

NSW also strongly supports those elements of the bill that encourage the parties to engage in meaningful discussions and negotiations before any resort to industrial action. Industrial relations in this country is far too adversarial, with parties often staking extreme positions and able to threaten and take strike action far too readily. Old concepts like 'ambit claims' should have been left behind when the national system moved away from the need to identify the parameters of an industrial dispute, and evolved into a good faith enterprise bargaining model.

It is important to note that this was the position of the ALP's "Forward with Fairness" policy, but it was never enacted into law.

NSW is interested in exploring other ways that allow parties to negotiate directly with each other such that they do not need to involve industrial commissions. Such a system at both state and national levels can encourage meaningful dialogue between the parties with a view to identifying their mutual interests, and to prevent escalation of disputes.

Other parts of our community have experienced positive outcomes when people begin to talk, without constantly reverting to traditional panels that can impose outcomes. It has been known to result in better understanding of each party's position, more moderate behaviour and outcomes that are better suited to individuals both employees and employers. Compared to the current adversarial system, we believe this to be much better.

Measures such as those proposed in the bill go some way to re-focusing the parties on participating in processes that can help them to identify what they can achieve together through their bargaining.

In particular, by requiring the parties to have had discussions about productivity improvements the bill focuses their attention on a potential source of mutual benefit. Sustainable improvements in wages and conditions can only arise from improved workplace productivity. Job security of employees and the promise of future jobs depend on businesses being flexible enough to respond to and thrive in changing and challenging environments. It is in the interests of both parties to pursue productivity.

Through its disciplined approach to state finances, the NSW Government has succeeded in returning NSW to number one amongst the states. As I said in my Budget speech in June 2014:

When we came to office New South Wales lagged on all economic fronts. We were lagging on jobs growth, productivity, housing approvals and business confidence. We were facing years of deficits and high net debt courtesy of the legacy left by those opposite.

We took on the challenge of repairing the budget and rebuilding New South Wales.

We took on the challenge of reining in spending and putting policies to work such as the Jobs Action Plan and the Building the State housing strategy to grow the economy, and restore New South Wales to Number 1. ...

We now enter the new financial year with a confidence and the capacity to invest where we need to, to unleash the opportunities for improved productivity and economic growth.

The proposed amendments to the Fair Work Act would assist in ensuring that employers and employees in the private sector in NSW are able to take full advantage of these opportunities through meaningful, productivity focused discussions and negotiations. For these reasons, the NSW Government supports the measures proposed in the Fair Work Amendment (Bargaining Processes) Bill 2014, and urges the Senate to pass the legislation.

Yours sincerely

 21/1/15  
THE HON ANDREW CONSTANCE MP