



**Parliament of Australia  
Senate Parliamentary Business**

**Submission to the Education and Employment Legislation Committee for  
Inquiry from Master Grocers Australia**

**Fair Work Legislation Amendment  
(Secure Jobs, Better Pay) Bill 2022**

**November 2022**

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## **Submission to the Senate Education and Employment legislation committee for Inquiry by Master Grocers Australia Ltd**

1. Master Grocers Australia Ltd (**MGA**) is an employer association registered with the Fair Work Commission of Australia and welcomes the opportunity to comment on the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (the Bill)*. The Bill seeks to amend the *Fair Work Act 2009 (Cth) (FW Act)* to modify existing provisions or to introduce new provisions. The provisions of the Bill are now the subject of a Senate Inquiry and comments have been called for in respect of the contents. MGA welcomes the opportunity to respond to the contents of the Bill.

### **About Master Grocers Australia Ltd**

2. MGA is a national employer industry association representing independent grocery, liquor, and other retail outlets including timber and hardware, in all States and Territories. These businesses range in size from small, to medium and large, and make a significant contribution to the retail industry, accounting for approximately \$15 billion in retail sales.
3. There are 2,700 branded independent grocery stores, trading under brand names such as: Supa IGA, IGA, IGA Xpress, Drakes, Farmer Jacks, FoodWorks, Foodland, Friendly Grocers and SPAR, with a further approximately 1,300 independent supermarkets trading under their own local brand names. In addition, there are numerous independent liquor stores operating throughout Australia and trading under names such as: Cellarbrations, The Bottle O, Bottlemart, Duncans, and Local Liquor, which are either single or multi-store owners. Our members also own independent hardware stores that trade under brand names including Mitre 10, Home Timber and Hardware, Thrifty Link and True Value Hardware. These stores which collectively employ more than 120,000 staff are comparatively much smaller when juxtaposed against the large supermarket chains of Coles, Woolworths and Bunnings, which combined represent approximately 80 per cent of the retail supermarket, liquor and hardware industries.
4. MGA is a member of the Council of Small Businesses Organisations of Australia (COSBOA) which has made its concerns with the Bill known to representatives of the Australian Government and the Australian Parliament.

### **Introduction**

5. MGA holds significant concerns regarding the haste with which the Bill is being considered and the proposed expedited timetabling of consultation and subsequent vote within Federal Parliament. The volume of complex provisions which seek to amend or add to the FW Act will have significant implications on the Australian industrial relations landscape and on the

business operations of MGA members. MGA urges the Australian Parliament to allow several additional months for stakeholders like MGA to carefully consider the Bill and to provide further views through industry consultation.

6. MGA is cognisant the Bill represents significant and deep changes to the currently well understood complex Australian industrial relations landscape which is consequently likely to lead to foreseen and also unforeseen generational impacts on business conditions in Australia and in turn the Australian economy and its performance relative to other countries. MGA is concerned those impacts and risks have not been properly assessed.
7. The Bill represents a fundamental shift insofar it further constrains business autonomy and allows for interference in business operations which is likely to have the impact of deterring and disincentivising future Australian employment and economic growth.
8. MGA is concerned with several provisions as they are currently drafted within the Bill and for the reasons provided in this submission, opposes some of those provisions.
9. MGA is disappointed the Bill does not address the needs of small and medium sized businesses operating within the retail sector. MGA has been vocal with its views that its members require simplification of the industrial relations system in Australia and the industrial instruments which operate within it to make it easier to employ workers within the retail sector. Unfortunately, the reforms proposed in the Bill will significantly increase the complexity and cost of employing workers and act as a disincentive to expand the retail workforce. Regrettably, MGA considers the proposed reforms in the Bill will not contribute to increasing employment within the Australian economy, which presumably is an objective of the Australian Government.

### **Proposed reform measures in the Bill**

10. There are many reforms proposed in the Bill that will be addressed by MGA which would, if they are passed into law, have a significant negative effect on the Australian industrial relations framework. These reforms would be far reaching and likely damage business confidence and industrial relations harmony.

### **Better Off Overall Test**

11. MGA is concerned the provisions in the Bill which seek to amend the Better Off Overall Test (**BOOT**) will increase uncertainty for its members when engaging in enterprise agreement bargaining.
12. The proposed 'global assessment' when applying the BOOT is not sufficiently defined and means that until the Fair Work Commission issues decisions which engage with the practical application and meaning of the 'global assessment', those who are engaging in enterprise agreement bargaining will not have a clear understanding of what considerations must be given when

bargaining. This could lead to the Fair Work Commission refusing to approve enterprise agreements and lead to significant work by the parties to the proposed enterprise agreement being discarded.

13. Recommendation:

MGA recommends the BOOT provisions within the Bill be amended to ensure a clear definition of 'global assessment' is included so those parties who choose to bargain are clear on what is expected of them.

### **Multi-employer bargaining**

14. MGA is opposed to the proposal in the Bill to allow for multi-employer bargaining, particularly within the 'single interest employer' stream.
15. MGA's members are inherently a diverse range of businesses whose commonality is that they trade in the consumable, fast moving and often perishable retail sector.
16. Every MGA members' business is unique with its own challenges and competitive advantages.
17. Many MGA members operate under an inherently different business model than major entrenched store chains and large businesses. MGA members usually do not have the benefit of multi-million or multi-billion dollar budgets from diverse revenue sources which can be used to optimise and reduce certain business costs to enable the offsetting of other costs which are mandated at minimum levels in accordance with law.
18. MGA considers multi-employer bargaining, particularly if covered employers would include those who are not MGA members, to be detrimental to MGA members as the terms of any proposed enterprise agreement are unlikely to properly consider the unique circumstances of each business. This would particularly be exemplified in circumstances where MGA members are forced to bargain collectively with large established businesses with considerable market share and power. It is entirely conceivable MGA members may be forced to adhere to terms of enterprise agreements it had opposed which will make those businesses unviable.
19. MGA is especially concerned by the prospect of the proposed reforms in the Bill leading to industrial action occurring across multiple employers. MGA considers the proposed reforms in the Bill will increase MGA members' exposure to industrial action and consequently threaten the operations and viability of their businesses.
20. Bargaining streams proposed in the Bill which target "low-paid" sectors are undefined in the Bill. The lack of a clear definition which lists the various industries or sectors those provisions should apply to leads to significant current and future business uncertainty. Critical terms such as "low-paid" must be properly defined in legislation to enable businesses to understand the impact of legal provisions on their operations.
21. MGA opposes all forms of non-voluntary multi-employer enterprise agreement bargaining.

22. Recommendation:

MGA recommends all multi-employer bargaining provisions in the Bill be abandoned.

### **Requests for flexible working arrangements**

23. MGA members support the right of employees to request flexible working arrangements in accordance with s 65 of the FW Act.
24. MGA members recognise the benefit of such arrangements which mutually suit the needs of the employee and the employer.
25. MGA members further recognise that flexible working arrangements are an essential tool to attract and retain employees and do engage in good faith discussions with employees when requests are made to explore whether they can be accommodated.
26. Many MGA members are small businesses with lean operations which are time sensitive. For example, many MGA members regularly receive deliveries of perishable items which require cold storage at times which are unilaterally decided by their suppliers. To ensure those products are promptly received and stored, it is imperative those businesses can reliably employ staff at certain times to avoid spoilage and loss. In some instances, such as the one provided in this example, it may not be operationally possible for an employer to accommodate a request for flexible working arrangements.
27. MGA considers it is essential for its members to have the final decision-making power when requests for flexible working arrangements are made, subject to existing limitations such as 'reasonable business grounds'.
28. Should a decision to impose a flexible working arrangement on an MGA member be made, MGA is concerned its members may be placed in a position where they are unable to sustain necessary business operations and may consequently become unviable.
29. MGA opposes the proposal to grant the Fair Work Commission or any other judicial body the jurisdiction to impose flexible working arrangements on employers. MGA prefers employers and employees to operate under the existing system of attempting to reach a mutually acceptable agreement, if possible, without external intervention.
30. Recommendation:  
MGA recommends the provisions in the Bill which establish a jurisdiction which can impose flexible working arrangements on employers to be abandoned.

### **Agreement terminations**

31. MGA is concerned by the proposed provision relating to the sunseting of so called 'zombie' agreements.

32. A significant proportion of MGA members are operating under enterprise agreements which were approved prior to the commencement of the FW Act.
33. Notwithstanding the proposed powers of the Fair Work Commission to extend the life of those agreements in certain circumstances for up to four years, MGA is concerned that the starting proposition of 12 months for the termination of 'zombie agreements' is administratively unrealistic and would likely lead to significant hardship for employers who would need to undertake administratively complex tasks to transition employees to an alternative industrial instrument.
34. Employers would be expected to educate themselves on the intricacies of an entirely new industrial instrument, implement payroll system changes and accept the risk of inadvertent non-compliance with an unfamiliar industrial instrument in an unrealistic timeframe.
35. MGA is opposed to the automatic termination of enterprise agreements as such a system fails to consider the unique circumstances of each employer.
36. Recommendation:  
MGA recommends the current system where a party may make an application to the Fair Work Commission to terminate an enterprise agreement is retained as the only mechanism to terminate an enterprise agreement. In the alternative, if provision of the automatic termination of enterprise agreements must become a feature of the FW Act, MGA recommends a period of four years to transition to an alternative industrial instrument.

### **Prohibiting sexual harassment**

37. MGA supports the rights of employees and employers to enjoy a workplace which is safe and free from sexual harassment.
38. MGA welcomes any reasonable measure which attempts to reduce, or preferably eliminate, sexual harassment in the workplace.
39. MGA is concerned the proposed defence in the Bill which establishes a liability defence for principles that '...took all reasonable steps to prevent the employee or agent from doing acts...' is not defined and its vagueness opens the defence to broad interpretation.
40. Recommendation:  
MGA recommends establishing a clearly articulated list of measures in legislation which would be considered 'reasonable' to prevent sexual harassment in the workplace.

### **Small claims monetary threshold**

41. The Bill proposes to lift the monetary cap for what is considered a 'small claim' from \$20,000 to \$100,000.

42. MGA supports the small claims jurisdiction for the resolution of small claims, particularly as such a jurisdiction allows for the timely and cost-effective resolution of matters.
43. MGA considers \$100,000 to not be a 'small claim' and an amount which is suitable for being addressed through the small claims jurisdiction.
44. Even just one \$100,000 claim potentially poses as an existential threat to some MGA members, particularly small family run businesses which operate under a business model of low margins and high turnover.
45. MGA accepts the value of \$20,000 today is not the same as it was in 2009 when the FW Act commenced operation.
46. Recommendation:  
MGA recommends increasing the \$20,000 cap by an amount no greater than the rate of inflation.

## **Conclusion**

47. MGA urges the Australian Parliament to carefully consult and consider the provisions contained within the Bill and especially the matters raised in this submission over a longer period to ensure the significant impacts on businesses are carefully considered and mitigated.
48. MGA urges the removal of elements contained within the Bill which have been identified in this submission as ones of concern whilst further consultation on those matters continues.
49. Unfortunately, the Bill does not seek to simplify Australia's highly complex industrial relations framework and regrettably its proposals are likely to increase complexity which adversely increases the cost, risk of non-compliance and prospect of less workplace industrial harmony for MGA members and their employees.
50. MGA urges the Australian Parliament to amend or otherwise abandon elements within the Bill in accordance with this submission.
51. MGA thanks the members of the Inquiry for the opportunity to make this submission.



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