

# INDUSTRIAL RELATIONS UPDATE

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## Keeping the cat in the bag



A plumbing company has failed to convince the Fair Work Commission to suppress its name, and the names of its employees caught up in a bullying claim, potentially causing it some embarrassment.

Fair Work has dismissed an attempt by the company for suppression orders saying the principle of open justice outweighed any discomfort the employer, or indeed some of the employees, might suffer as a result of the airing of their behaviour.

The company argued that some of the accusations made in private were very serious, including claims of criminal conduct. It argued these unsubstantiated claims could cause severe embarrassment and cause untold damage to reputation.

The FWC said however that, unless the claims made in the formal hearing could not be substantiated or were defamatory, then in the interests of open justice, he would not suppress any information or details about the parties to the dispute.

This is an unsurprising reaction especially in a preliminary stage, and the approach is consistent with other decisions made by the tribunal. It highlights the importance of employers making sure complaints and disputes are dealt with at source and in a prompt manner before they get into the public domain. It has never been easier to find out about legal and quasi-legal proceedings that a company or business is, or has been, involved in.

[Hankin v Plumbers Supplies Co-Operative Ltd T/A Plumbers Supplies Co-Op; Ben Ridgeway; Simon Ballingal; Chris Henry; David Power; Grant Crawford; Stephen Wells \[2014\] FWC 8402 \(1 December 2014\)](#)

## Fourth Time Lucky for Federal Government?

With the introduction to parliament this month of the Bargaining Processes Bill, the government will have four workplace relations bills sitting in the Senate, either blocked or being reviewed.

This latest attempt to modestly modify the law centres on ensuring that unions and their members are obliged to genuinely engage in enterprise agreement negotiations rather than merely file pro-forma documents and then go on strike – the so called “strike first, bargain later” problem.

This lacuna in the legislation was identified by the previous federal government’s hand-picked panel which reviewed the Fair Work Act and made a specific recommendation to fix this problem, so it is interesting to see the Opposition now working against this proposition. And the ACTU.

Another minor change proposed is the requirement that parties seeking Commission approval for an enterprise agreement must demonstrate that productivity trade-offs were discussed during the negotiations. This is a something of a token change since there is no requirement to have actually achieved any productivity trade-offs, merely to have discussed them.

[Fair Work Amendment \(Bargaining Processes\) Bill 2014](#)  
[Explanatory memorandum](#)  
[Second reading speech by Leader of the House Christopher Pyne, November 27, 2014](#)



**ANY QUESTIONS OR QUERIES?**

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## Rocky road ahead for confectionary company

Relocations may not be such a sweet affair, as a confectionary company found out when the Fair Work Commission (FWC) full bench ruled, on appeal, that they had breached their rights under their enterprise agreement while attempting to relocate their production workers to a site which was 34 kilometres away from their original workplace.



When the company was taken over by a new confectioner, it required their employees to sign a new contract, which allowed the company to transfer them to a new work location in the event that it moved its production operations.

In the original decision, FWC found that the company had engaged in a “paltry and shabby exercise” when it required transferring employees to sign new, inferior contracts under duress. FWC said the company also misled their employees into thinking they would not be entitled to redundancy payments if they refused to sign the contracts.

Given this, FWC ruled the relocation did not constitute acceptable alternative employment and the transferring employees should be awarded redundancy pay.

On appeal, the FWC full bench upheld the original decision, finding that the employees had been made redundant. In addition to this, the bench found that the enterprise agreement, which covered the production workers employment did not permit the relocation and therefore, the new contractual term allowing such relocation was “displaced and rendered inoperative.”

The full bench said the relocation repudiated the employee’s contracts due to the “distance between sites, the additional travel time and the disruption to the long-established patterns of the employee’s personal lives.”

This decision demonstrates that employers can get themselves into a sticky situation if inconsistencies arise between their enterprise agreements and employment contracts. In circumstances like this case, employers may avoid big cash outs for redundancy if they ensure that the industrial instruments that govern their worker’s employment have clear provisions that allow the company to be flexible for the purposes of business efficacy.

[DL Employment Pty Ltd v Australian Manufacturing Workers' Union \[2014\] FWCFB 7946 \(1 December 2014\)](#)

From all the team at FirstIR  
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CHRISTMAS

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Thank you for using our services in 2014

