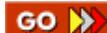




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Senate votes up executive pay bill

The Federal Government's executive pay legislation has been voted up by the Senate, without the three-year sunset clause independent Senator Nick Xenophon initially got through as an amendment.

The [Corporations Amendment \(Improving Accountability on Termination Payments\) Bill 2009](#) - with the accompanying regulations - will now take effect the day after receiving Royal Assent.

Senator Xenophon had last month, with the Opposition's backing, got up an amendment that would have forced the government to come back to parliament within three years with a new bill requiring even greater accountability.

But the House of Representatives rejected the amendment, and the Coalition's Senator Helen Coonan yesterday told the Senate ([see](#) from page 24 of Hansard) it now appeared "tolerably clear" that adopting the sunset provision would restrict companies' ability to provide certainty to their executives during the next three years. The Coalition as a result voted with the Government when it moved that the Senate not insist on the amendment.

Senator Xenophon yesterday accepted the "numbers are against me in relation to that, to put it mildly". However, he said that given the Productivity Commission was yet to release its final report on executive pay, it was a "lost opportunity" to ensure the bill had an inbuilt mechanism for review.

The legislation:

- **makes** termination benefits for company directors and executives that exceed one year's average base salary subject to shareholder approval;
- **expands** the scope of requirements on termination benefits to include senior executives or key management personnel of a disclosing entity;
- **requires** a broad interpretation of the term "benefit", and that substance should prevail over its legal form;
- **introduces** new regulation-making powers to specify what types of payment are, or are not, a termination benefit, and to define "base salary";
- **mandates** immediate repayment of unauthorised termination benefits, along with an increase in the penalty provisions; and
- **retains** the existing requirement for the giving of the benefit to be approved by a resolution passed at a general meeting.

Minister for Financial Services, Superannuation and Corporate Law, Chris Bowen, welcomed the passage of the legislation, saying it will empower shareholders to reject excessive termination payments and promote responsible remuneration practices.

FWA lifts ban on Autoliv action

The AMWU has won a stay of last week's Fair Work Australia decision suspending industrial action at car parts manufacturer Autoliv Australia, pending its appeal of the ruling.

Commissioner Wayne Blair made [orders](#) under [s424](#) of the Fair Work Act suspending all protected action approved by workers at the plant ahead of a proposed three-day strike (see [Related Article](#)).



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But Senior Deputy President Ian Watson on Friday found the balance of convenience favoured granting the union's application for a stay of the suspension order.

He said a major issue in the appeal would be whether Commissioner Blair's order extended to protected action beyond that identified in Autoliv's s424 application.

"It is arguable, as the AMWU contends, that the statutory matters in s.424 of the Act must be applied in the context of the particular form of authorised industrial action identified in a s.424 application," he said.

On the employer's argument that other sources of power existed that would have enabled Commissioner Blair to make the order he made, Senior Deputy President Watson said such an order might also attract a challenge.

And while Autoliv Australia's interests would be prejudiced if he granted the stay, it could avoid that prejudice by seeking a new s424 order if the AMWU notified further protected industrial action.

Senior Deputy President Watson made orders staying Commissioner Blair's suspension order, to the extent that it went beyond suspending the three-day strike the union had notified, until the full bench can hear the appeal.

[AMWU v Autoliv Australia Pty Ltd \[2009\] FWA 1104 \(16 November 2009\)](#)

Coalition withdraws disallowance motion, after Gillard gives ground

The Coalition has withdrawn its Senate bid to disallow regulations that extend the Fair Work Act to foreign-owned permit vessels operating off the coast, after the Government committed to changing them so they only apply to ships regularly entering Australian waters.

The disallowance motion (see [Related Article](#)) was due to be debated in the Senate yesterday afternoon, but the Coalition didn't proceed with it, after receiving a [letter](#) from Workplace Relations Minister Julia Gillard late last month, in response to [concerns raised](#) by Shadow Minister Michael Keenan.

Gillard said in the correspondence that after the industry raised similar issues, she sought advice on options for excluding foreign-crewed vessels that only "intermittently" carry coastal cargoes.

She said the Government would amend the regulations "as soon as is practicable" to clarify coverage.

The effect of the changes, Gillard, said, "would be to ensure that all ships operating under licences or continuing voyage permits would be covered by the Act, but ships operating under single voyage permits that only occasionally visit Australia would be excluded from coverage".

Keenan said that while the impact of the regulations had been eased, "the industry still has serious concerns over the impact these regulations will have in the long run".

"Our amendments may have blunted the blade, but these regulations could still force the industry to cut jobs as it adjusts to the increased operating costs", he said.

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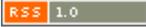
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