

**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION  
LEGISLATION COMMITTEE**

**2003-2004 BUDGET ESTIMATES HEARING – 2 and 3 JUNE 2003**

**EMPLOYMENT AND WORKPLACE RELATIONS PORTFOLIO**

**QUESTIONS ON NOTICE**

**Outcome:** 2 Higher productivity, higher pay workplaces

**Output Group:** 2.1 Workplace relations policy and analysis

**Outputs:** 2.1.1 Policy advice and legislation development

**Question Number:** W089-04

**Question:**

Senator Sherry asked at *Hansard* page 89:

In regard to interventions by the Minister in industry cases before both the Courts and the Australian Industrial Relations Commission (as listed by the Department in hearing on 2 June 2003), could a list be provided on:

- the objective of the intervention;
- the position of the Commonwealth; and
- the estimated costs involved in each of the interventions.#

# *The costs referred to are those of external legal service providers. Costs are those invoiced to 23 June 2003 unless otherwise stated. It is impossible to estimate total costs of an incomplete intervention.*

**Answer:**

**Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union v  
Electrolux Home Products Pty Limited [2002] FCAFC 199 (21 June 2002)**

*Objective of the Commonwealth:*

In the public interest, to assist the Federal Court in interpreting the *Workplace Relations Act 1996*.

*Position of the Commonwealth:*

The Minister intervened to argue that protected industrial action may only be taken in pursuit of matters that can be included in an agreement; that an agreement can only contain matters that pertain to the employment relationship; and that a bargaining agent fee is not a matter that pertains to that relationship.

*Costs involved:* \$140,016.45

## **Woodside Energy Limited (ABN 63005482986) v Joseph McDonald**

### *Objective of the Commonwealth*

In the public interest, to assist the Federal Court in interpreting the *Workplace Relations Act 1996*.

### *Position of the Commonwealth*

The Commonwealth submitted that the federal right of entry regime (as set out in the *Workplace Relations Act 1996*) covers the field to the exclusion of any inconsistent State laws (per s109 of the Constitution). The Minister also submitted that the Western Australian right of entry provisions were inconsistent with the relevant federal certified agreements.

*Costs involved:* \$69,965.31

## **Maintenance Resource Engineering Pty Ltd (MRE) v Construction, Forestry, Mining and Energy Union (CFMEU)**

### *Objective of the Commonwealth*

In the public interest, to assist the Full Bench of the Commission in interpreting s285C of the *Workplace Relations Act 1996*.

### *Position of the Commonwealth*

The Minister made submissions on the application of section 285C(1)(a) - that it was a condition of that provision that the award must also bind the employer.

*Costs involved:* \$18,170.00

**s.45 appeal by NUW re Health Minders Limited and National Union of Workers Comprehensive Enterprise Agreement 2002; s.45 appeal by NUW re Goodman Fielder Mills Limited (Ballarat) Enterprise Agreement 2002-2004 and another; s.45 appeal by CEPU re SGM Electrical Pty Ltd Enterprise Bargaining Agreement 2000-2003 and others; s.45 appeal by CEPU re Graeme L & Chris Herbert Enterprise Bargaining Agreement 2000-2003 and others.\***

### *Objective of the Commonwealth:*

In the public interest, to assist the Full Bench of the Commission in the interpretation of section 170LI and Part XA of the *Workplace Relations Act 1996*.

### *Position of the Commonwealth*

The Minister made submissions that section 170LI requires that each term of a certified agreement must pertain to the relationship between an employer and its employees. The Minister also submitted that the relevant bargaining agents fee clause and union notification clause did not pertain the relationship between employers and employees.

*Costs involved:* \$106,245.15 (actual cost, no further costs to be incurred)

**The Australian Industry Group (AIG) v Automotive, Food, Metals, Engineering, Printing & Kindred Industries Union (AFMEPKIU) (“Emwest”)**

*Objective of the Commonwealth*

In the public interest, to assist the Federal Court in interpreting section 170MN of the *Workplace Relations Act 1996*.

*Position of the Commonwealth*

The Minister made submissions that the proper construction of section 170MN of the Act is that protected industrial action is not be available when a certified agreement, which has not passed its nominal expiry date, is in place. This prohibition applies to the existence of any certified agreement which is in place and is not altered by the initiation of negotiations for a new or additional agreement on a different subject matter. The Minister also submitted that the Court should make a declaration that the threatened industrial action by Emwest employees was not protected action within the meaning of the Act.

*Costs involved:* \$50, 759.73

**Transfield v AMWU & Ors; Basin Oil v CEPU & Ors\***

*Objective of the Commonwealth*

In the public interest, to assist the Federal Court in interpreting section 127 of the *Workplace Relations Act 1996*.

*Position of the Commonwealth*

The Minister intervened to support applications for injunctions under section 127 of the WR Act against a picket at the Patricia Baleen onshore gas processing facility construction site in Victoria. The Federal Court issued an interim injunction. The Court found that the purpose of the picket was to make the plant operators drop the AWAs it had entered into with its employees at the plant.

*Costs involved:* \$46,952.27

**AMOU & Ors v CSL Pacific Shipping Inc\***

*Objective of the Commonwealth*

In the public interest, to assist the Commission in properly interpreting the extraterritorial operation of the *Workplace Relations Act 1996*.

*Position of the Commonwealth*

The Minister made submissions about the proper construction of section 5(3)(b) of the WR Act. That section provides that certain matters are industrial issues for the purposes of the Act. As a matter of statutory construction section 5(3)(b) applies only to industrial issues that have a real and substantial connection to Australia. In related High Court proceedings the Attorney-General has submitted that the High Court's decision in *R v Forster; ex parte Eastern*

*and Australian Steamship Co Ltd* (1959) 103 CLR 256 requires that s 5(3)(b) be read down to apply only to industrial issues that have a 'real and substantial' connection with Australia.

The Minister also submitted that it was not in the public interest for the Commission to vary the respondency of the Award while the jurisdiction of the Commission to do so is a live issue before the High Court.

*Costs involved:* \$9,030.24 total cost (no further costs to be incurred)

### **Re: Grocon Pty Ltd Enterprise Agreement (Victoria)**

#### *Objective of the Commonwealth*

In the public interest, to seek review under section 109 of the *Workplace Relations Act 1996*, by the Full Bench, of an award or order or a decision relating to the making of an award or order made by a single Commissioner.

#### *Position of the Commonwealth*

The Minister sought to review the decision of the AIRC to allow a union to intervene in a hearing for an agreement made under s. 170LK of the *Workplace Relations Act 1996* even though representation by the union had not been requested by employees covered by the agreement.

*Costs involved:* \$36,466.52

### **Burgess v Mt Thorley Operations Pty Ltd**

#### *Objective of the Commonwealth*

In the public interest, to assist the NSW Industrial Relations Commission in Court Session in interpreting the *Workplace Relations Act 1996*.

#### *Position of the Commonwealth*

The Minister along with the Attorney-General intervened in this matter before the NSW Industrial Relations Commission in Court Session to clarify the operation of orders made under the unfair contracts jurisdiction of the *Industrial Relations Act 1999 (NSW)* in relation to federal awards.

*Costs involved:* \$41,340.05

### **Australian Sports Drug Agency (ASDA) and Australian Fisheries Management Authority (AFMA)**

#### *Objective of the Commonwealth*

In the public interest, to assist the High Court in interpreting the *Workplace Relations Act 1996*.

*Position of the Commonwealth*

The Minister sought constitutional writs against decisions by the Commission to vary awards to insert redundancy provisions which would increase entitlements to above those provided by the Termination, Change and Redundancy (TCR) Case standard. The Minister submissions are that such redundancy provisions would be inconsistent with the intention of the *Workplace Relations Act 1996* that awards should only provide minimum entitlements.

*Costs involved:* \$22,165.87

**MEWRSB v AIRC & Ors (Darwalla) \***

*Objective of the Commonwealth*

In the public interest, to assist the High Court in interpreting the *Workplace Relations Act 1996*.

*Position of the Commonwealth*

The Minister appealed to the High Court a decision of the Full Bench of the Commission that it need not consider section 111AAA of the *Workplace Relations Act 1996* in relation to matters which were before the Commission prior to the commencement of this section on 31 December 1996. The Minister opposed the view that the unions had an accrued right to have part heard matters determined without regard to the operation of section 111AAA.

*Costs involved:* \$5,065.45

**Re: State of Queensland FIAAQ & QCCI (related to the Darwalla case above) \***

*Objective of the Commonwealth*

In the public interest, to assist the Commission in interpreting the *Workplace Relations Act 1996*.

*Position of the Commonwealth*

This matter involved applications under section 111AAA of the *Workplace Relations Act 1996* for the AIRC to cease dealing with an application by the CFMEU to extend Federal award coverage to the furnishing industry in Queensland. The Minister intervened to submit that the Commission should not proceed with the roping in award because of the operation of section 111AAA. Following the High Court decision in the Darwalla case, the Full Bench handed down a decision that it would cease dealing with the matter and removed the relevant employers as respondents to the awards.

*Costs involved:* Refer to previous matter.

## **CFMEU v Bulga Coal \***

### *Objective of the Commonwealth*

In the public interest, to assist the Commission in interpreting the *Workplace Relations Act 1996*.

### *Position of the Commonwealth*

The CFMEU appealed against a decision of the Commission to issue a section 127 order in relation to industrial action being taken to advance claims made in relation to a new certified agreement even though a current agreement which had not passed its nominal expiry date was in operation. The Minister intervened to seek the referral of a question of law relating to the correct interpretation of section 170MN of the *Workplace Relations Act 1996* to the Federal Court under s. 109 of the *Workplace Relations Act 1996*.

*Costs involved:* \$109,874.34 total cost (no further costs to be incurred)

## **Broken Hill Chamber of Commerce and Ors v CFMEU \***

### *Objective of the Commonwealth*

In the public interest, to assist the NSW Industrial Relations Commission in Court Session in interpreting the *Workplace Relations Act 1996* and the *Commonwealth of Australia Constitution Act 1900*.

### *Position of the Commonwealth*

In this matter, the Commonwealth intervened in an appeal before the NSW IRC in Court Session to question the jurisdiction of the NSW IRC to make an interim order which purported to restrain employers from offering federal certified agreements to their employees. The Commonwealth submitted that because of the operation of the Constitution, provisions for the making of certified agreements in the *Workplace Relations Act 1996* prevailed to the extent of any inconsistency, with the interim order.

*Costs involved:* \$31,493.51 total cost (no further costs to be incurred)

## **Kellogg (Aust) Pty Ltd v National Union of Workers\***

### *Objective of the Commonwealth*

In the public interest, to assist the NSW Industrial Relations Commission in Court Session in interpreting the *Workplace Relations Act 1996*.

### *Position of the Commonwealth*

In this matter, the Commonwealth intervened to oppose the making of orders in the NSW IRC to prevent employers from proceeding to have a federal agreement certified. The Minister intervened to make constitutional arguments in opposition to the proposed orders. At the same time, the employers with the Minister intervening in support, applied to the AIRC for an order

under section 128 of the *Workplace Relations Act 1996* to restrain the NSW IRC from dealing with the federal matter.

*Costs involved:* \$9,829.45 total cost (no further costs to be incurred)

### **Gribbles Radiology Pty Ltd v Health Services Union of Australia ('Gribbles')**

#### *Objective of the Commonwealth*

In the public interest, the Minister intervened in a matter in the Federal Court involving Gribbles Radiology Pty Ltd. The matter is the subject of a Special Leave application in the High Court. The Minister is a party to the proceedings in the High Court.

The objective of the intervention in the Federal Court was to put arguments in the public interest on points of law related to the transmission of business provisions of the *Workplace Relations Act 1996* (WR Act).

#### *Position of the Commonwealth*

The position of the Commonwealth before the Federal Court was that the trial judge erred in law in finding that section 149(1)(d) of the WR Act operated to bind the employer to the award in question as a successor, assignee or transmittee of part of the business of another employer.

*Costs involved:* \$51,609.65

### **Amcors Ltd v Construction, Forestry, Mining and Energy Union ('Amcor')**

#### *Objective and Position of the Commonwealth*

In the public interest, the Minister intervened in a matter before the Federal Court involving Amcor Ltd. The matter is the subject of a Special Leave application in the High Court. The Minister is a party to the proceedings in the High Court.

The objective of the intervention in the Federal Court was to put arguments in the public interest on a point of law related to the circumstances in which employees are to be entitled to severance pay.

*Costs involved:* \$91,725.63

### **Chubb Security Australia Pty Ltd v Australian Liquor, Hospitality and Miscellaneous Workers Union ('Chubb Security')\***

#### *Objective of the Commonwealth*

In the public interest, the Minister intervened in an appeal to the Full Bench of the Australian Industrial Relations Commission by *Chubb Security Australia Pty Ltd*.

The objective of the intervention in the Federal Court was to put arguments in the public interest on a point of law relating to the operation of section 170FA and related provisions of the WR Act.

*Position of the Commonwealth*

The position of the Commonwealth is that, on a proper interpretation of the Act, the award process is an alternative mechanism under section 170FC.

The Full Bench handed down its decision on 3 April 2003 generally agreeing with the public interest arguments put by the Commonwealth.

*Costs involved:* \$36,209.26 total cost (no further costs to be incurred)

**National Building & Construction Industry Award 2000, Metal Engineering and Associated Industries Award 1998 (C2002/5778 & C2002/926)**

*Objective of the Commonwealth:*

In the public interest, to assist the Commission to determine whether the awards should be varied to include provisions for school-based apprenticeships.

*Position of the Commonwealth:*

The Commonwealth is supporting the introduction of award provisions that will enable the employment of school-based apprentices under these awards.

*Estimated costs involved:*

No external legal service providers.

**Pilots' Supplementary Airlines Award 1998**

*The objective of the Commonwealth:*

In the public interest, to support a review by the Commission of the Pilots Supplementary Airlines Award 1988 pursuant to Item 51 of the *Workplace Relations and Other Legislation Amendment Act 1996* (WROLA).

*Position of the Commonwealth:*

The Commonwealth provided input and comments on the draft award and written submissions to the AIRC as to how the award should be varied to meet the requirements of Item 51 of WROLA

*Costs involved:* \$36,749.43

## **Federal Redundancy Test Case**

### *Objective of the Commonwealth:*

In the public interest, to assist the Commission to determine appropriate redundancy provisions for federal awards.

### *Position of the Commonwealth:*

The Commonwealth:

- supports in principle the package of amendments agreed by the key parties in this case (ACTU, ACCI and AiG) regarding a number of the standard redundancy provisions;
- supports the retention of the key elements of the existing redundancy standard, and therefore opposes the key ACTU claims to:
  - increase the level of severance pay,
  - remove the exemption for small businesses with less than 15 employees
  - apply a 25 per cent loading to severance pay for employees 45 years and over
  - extend severance pay to long-terms casuals, and
  - introduce a new allowance for retrenchees for professional services; and
- supports in principle variations that are primarily designed to clarify and strengthen the existing provisions, including the AiG proposal to restructure the redundancy standard by separating insolvency-related redundancies from other redundancies; but
- does not support the ACCI claims to reduce the current scale of severance pay entitlements.

### *Costs involved:*

No external legal service providers.

## **Queensland State Redundancy Test Case**

### *Objective of the Commonwealth:*

In the public interest to assist the Queensland Industrial Relations Commission to determine appropriate redundancy provisions for Queensland State awards.

### *Position of the Commonwealth:*

The Commonwealth supports the retention of the key elements of the existing redundancy standard, and therefore opposes the key union claims to:

- increase the level of severance pay,
- remove the exemption for small businesses with less than 15 employees
- apply a 25 per cent loading to severance pay for employees 45 years and over, and
- extend severance pay to long-terms casuals.

*Costs involved:*

External legal advice was obtained from Counsel in February 2002 at a cost of \$6,526.

### **2003 Safety Net Review**

*Objective of the Commonwealth:*

In the public interest, to assist the Australian Industrial Relations Commission in determining the Safety Net Review adjustment.

*Position of the Commonwealth:*

The Commonwealth did not oppose a moderate increase of up to \$12 per week in the award rates up to an including the equivalent of the tradespersons rate – C10 in the Metal Industries Award.

*Costs involved:*

No external legal service providers.

### **s.113 application by ASU to vary the Victorian Local Authorities Award with respect to child care workers in local government child care centres**

*Objective of the Commonwealth:*

In the public interest, to assist the Australian Industrial Relations Commission in determining minimum wages for child care workers covered by the Victorian Local Authorities Award 2001.

*Position of the Commonwealth:*

The Minister made a submission providing information on the application for the claim, of the *Workplace Relations Act 1996* and the AIRC's wage fixing principles.

*Costs involved:*

No external legal service providers.

### **Shop, Distributive and Allied Employees Association**

*Objective of the Commonwealth:*

In the public interest, to preserve established levels of employment in Victorian retail.

*Position of the Commonwealth:*

The Commonwealth opposed the Commission making the proposed award in view of its concerns about potential for significant job loss if the roping-in award proposed by the SDA was made.

*Costs involved:*

No external legal service providers.

### **Community and Public Sector Union v Australian Taxation Office (ATO)**

*Objective of the Commonwealth:*

In the public interest, the Minister intervened before the Commission to ensure the proper application of the Public Service Act and Regulations in relation to non-ongoing employment in the ATO.

*Position of the Commonwealth:*

The Commonwealth opposed the making of any order by the Commission which would override the reasonable access and merit selection values under the *Public Service Act 1999*.

Costs involved:

No external legal service providers.

### **National Tertiary Education Industry Union v University of Adelaide and Others**

*Objective of the Commonwealth:*

The Minister intervened in Commission proceedings in the public interest to support the continued availability of a flexible workforce for responding to business in the sector.

*Position of the Commonwealth:*

The Commonwealth's submissions in this case will be consistent with ensuring that the enterprise focus of the workplace relations framework is maintained.

Costs involved:

No external legal service providers.

\* Matters marked with the asterisk are completed.