INTRODUCTION

THE WORKPLACE RELATIONS LEGISLATION AMENDMENT (MORE JOBS, BETTER PAY) BILL 1999

Progress of the Bill

On 11 August 1999 the Senate referred to the Committee for Employment, Workplace Relations, Small Business and Education for inquiry, the provisions of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 which had been introduced to the House of Representatives on 30 June 1999. On 29 September 1999 the Government successfully moved 52 amendments to the Bill in the Consideration in Detail stage of debate in the House. The Bill passed its third reading in the House on this day and the Bill was introduced to the Senate on 14 October 1999. Further consideration of the second reading of the Bill was adjourned to the first sitting day of the 1999 summer sittings.

Workplace relations reform – the next phase

As described in Chapter 1, the provisions of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999, builds on the changes introduced through the *Workplace Relations and Other Legislation Act 1996* and are in accordance with the policy directions outlined in the Government's pre-election statement on industrial relations – *More Jobs, Better Pay* released in September 1998. These changes continue the evolutionary process toward a more flexible and responsive industrial relations system in Australia.

The Australian economy has enjoyed a healthy rate of growth in recent years despite being faced with a difficult international economic environment throughout 1998. Buoyant economic conditions provide ideal opportunities to implement reform measures which help the economy adjust and adapt to changing economic circumstances. The 1996 workplace relations reforms were an important and necessary component of this Government's overall reform process: one intended to ensure that Australian businesses and Australian workers are able to reap the benefits of more stable, long-term economic growth.

In preparation for the drafting of the Bill, the Government prepared and circulated a number of discussion papers in 1998 and early 1999, inviting interested parties to debate and make comment on the proposals. The Government also took into account reports into and statistics on the operation of the workplace relations' system and current provisions and formulated amendments to improve the operational aspects of the legislation. Consultation included discussions in the National Labour Consultative Council, its Committee on Industrial Legislation and meetings with business, community, church and women's groups.

The provisions of the Bill

The main aim of the amendments to the *Workplace Relations and Other Legislation Act 1996* (henceforth the WR Act) contained in the Bill, as summarised in the Explanatory Memorandum, are to:

- reinforce the new workplace relations framework introduced by the *Workplace Relations and Other Legislation Amendment Act 1996* by amending the Principal object of the Act to emphasise the basic safety net role of awards, choice as to jurisdiction, the role of the courts and Commission in stopping or preventing unprotected industrial action (Schedule 1);
- change the name of the Australian Industrial Relations Commission to the Australian Workplace Relations Commission and revise its structure, change the name of the Australian Industrial Registry to the Australian Workplace Relations Registry and increase the focus of both the Commission and the Registry on improving access to their services by employers, employees and organisations (Schedule 2);
- establish a distinction between voluntary and compulsory conciliation by the Commission, with compulsory conciliation being available only in relation to matters where arbitration powers may be exercised. Voluntary conciliation would be available in respect of a wider range of matters on payment of a fee. (Schedule 4);
- provide for the voluntary use of mediation in industrial disputes for use as an alternative or supplement to the processes of the Australian Workplace Relations Commission and provide for a national accreditation scheme for workplace relations mediators and create the role of the Mediation Adviser to oversee and facilitate the use of mediation to resolve workplace disputes (Schedule 5);
- reinforce the role of awards as a safety net of basic minimum entitlements by amending the principal object and the objects of Part VI of the WR Act, by further limiting the allowable award matters and encouraging the acceleration of the award simplification process and by strengthening the presumption in favour of existing forms of regulation and introduce new requirements in relation to logs of claims (Schedule 6);
- reform the termination of employment provisions to ease the burden that unfair dismissal applications impose on employers, reinforce disincentives to speculative and unmeritorious unfair dismissal claims, and introduce greater rigour into processing by the Australian Workplace Relations Commission of unfair dismissal applications (Schedule 7);
- streamline the requirements for certification of agreements, including allowing applications to be made to the Workplace Relations Registrar for certification of agreements in cases where there is no need for scrutiny by the Australian Workplace Relations Commission (Schedule 8);

- simplify the processes for the making and approval of AWAs by consolidating the existing assessment of 'filing requirements' and 'approval requirements' into a one step approval process, and by giving parties access to a streamlined approval process for AWAs providing remuneration in excess of $68000 per year (Schedule 9)
- clarify rights and responsibilities relating to industrial action by distinguishing more clearly between protected and unprotected action, requiring protected industrial action to be preceded by secret ballots, providing access to cooling off periods and strengthening the remedies against unlawful industrial action and clarifying the 'strike pay' provisions of the WR Act (Schedules 1, 11 and 12);
- reform the right of entry provisions of the WR Act consistent with the principle that unions should act as representatives of their members and be accountable to those members, and not act as uninvited quasi-inspectors at the workplace (Schedule 13).
- strengthen the operation of freedom of association provisions of the WR Act by extending the existing prohibitions to cover a broader range of conduct and prohibited reasons and by prohibiting the inclusion in certified agreements and awards of provisions which encourage or discourage union membership, or which indicate support for unionism or non-unionism (Schedule 14);
- clarify the operation of provisions of the Act which preserve aspects of the previous Victorian system and provide for the expanded operation in Victoria of provisions contained in other Parts of the Act (Schedule 15); and
- repeal the provisions that allow the Federal Court to vary or set aside contracts made with independent contractors (Schedule 16).

Schedules 3, 10, 17 and 18 to the Bill introduce a range of consequential and technical amendments.

Government Amendments to the Bill

On 29 September the Government successfully moved 52 amendments to the Bill. In introducing these amendments to the House of Representatives the Minister for Employment, Workplace Relations and Small Business stated that:

> [m]ost of the amendments are technical in character, designed to ensure that the provisions of the Bill operate in the manner intended. The remaining amendments result from consultations with a range of groups, including employer and employee representatives, women's groups, church groups, legal practitioners and industrial advocates.[1]

1 The Hon. Peter Reith MP, *House of Representatives Hansard*, 29 July 1999, p. 8265

The Committee's inquiry

The terms of reference for the inquiry require the Committee not only to consider the provisions of the new legislation but also the operation of the WR Act. The Committee received 542 written submissions including a significant proportion from private citizens, mostly from Victoria. The Committee also conducted eight public hearings, in four states where it heard evidence from over 70 witness groups comprised of employer organisations, unions, academics and research organisations, government departments and statutory bodies, community groups, legal organisations, and individuals.

Much of the evidence received by the Committee on both the operation of the WR Act and the potential impacts of the provisions contained in the current Bill was unfavourable. Union groups in particular, argued that recent changes to industrial relations law in Australia has reduced the working conditions of the average Australian worker. They claimed that this had resulted in increased insecurity of employment, greater inequality in the distribution of income, increased difficulties in balancing both family and employment responsibilities and a shift to a more adversarial employment relationship. Individuals who wrote to the Committee were concerned about the potential for a reduction of wages and other employment conditions as a result of the new legislation. Some stated that they were not comfortable with individual negotiations with their employer and preferred collective bargaining arrangements. As in all cases when the Senate refers Bills to its standing committees, critics of the legislation have a much more direct intent in voicing their dissatisfaction than those who are advantaged by the new measures, or who are unaffected.

Other witnesses, including the business community supported the Government's industrial relations reform agenda and highlighted to the Committee the importance of having a progressive and flexible industrial relations system. It was argued that the WR Act was an important step in ensuring that Australia would be able to compete more effectively in a global market place and that the amendments contained in the current Bill were a further significant development. Some witnesses, while generally happy with the broad direction of the Government's reforms, were of the view that they did not go far enough, claiming that further deregulation would be required if Australia was to substantially reduce its structural unemployment rate.

As this report makes clear, this Bill can be regarded as a step in a policy evolution toward a decentralised and deregulated arrangement for industrial relations management. It is an evolution which began before the coalition were returned to power in 1996 and which has been accelerated since. This policy is consistent with other elements of government policy which are intended to promote growth and prosperity across the whole productive sector in Australia, and should be seen as complementing other economic reform measures.

The Government party majority on the Committee commends this Bill to the Senate.