# CHAPTER 1

# OVERVIEW

## Australian Workplace Relations in Context

1.1 A comprehensive commentary on the development of Australian employment law and practice is available in the earlier report of the Senate Economics References Committee, tabled in the Senate before the introduction of the Workplace Relations Amendment and Other Legislation Bill in 1996.[1]

*An evolutionary set of reforms?*

1.2 Evidence provided to the Committee during the course of public hearings indicates that there is a divergence of views about the nature of this Bill, and whether the reforms it contains are evolutionary, or broader in scope.

1.3 The Government describes the Bill as part of an evolutionary set of reforms, a further step in an incremental shift from centralised regulation of employment to a deregulated labour market environment.

1.4 Evidence presented to the Committee by employer groups supports this view. The Australian Chamber of Commerce and Industry, in emphasising the moderate nature of the Bill's amendments, notes that that there is scope for considerably more fundamental labour market reform:

> Both the 1996 Bill and this current Bill were essentially evolutionary sets of amendments. They retained the award system, they retained the Industrial Relations Commission and they retained all the existing features of the labour relations system. As such, our policy does not involve that. It does involve major substantial changes to the existing key features of the labour market. So those comments apply both to the 1996 Bill and to this Bill…We are dealing here with an evolutionary, moderate Bill that makes amendments and refinements relating to existing labour market institutions, rather than making wholesale radical change to them.[2]

1.5 The Business Council of Australia also supports this view:

> We see the Bill as a progressive evolutionary step after the 1996 workplace relations reforms…We believe that there are no grounds for consideration of a policy shift back to a more highly regulated and

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1 *Consideration of the Workplace Relations and Other Legislation Amendment Bill 1996*, Report of the Senate Economics References Committee, August 1996, Appendix 4

2 Evidence, Mr Reginald Hamilton, Canberra, 1 October 1999, pp. 35-6

> centralised system. Rather, looking to the future, the main game should be encouraging high performing workplaces with more and more employees negotiating workplace agreements…This Bill is primarily addressing problems exposed since the passage of the 1996 amendments.[3]

1.6 Unions and employee associations reject the 'evolutionary' description of the Bill. The Secretary of the Victorian Trades Hall Council made the following comments:

> We say that indeed this package of legislation is not, as claimed by the minister in his second reading speech, a matter of evolution. We believe you do not need a 300-page Bill to tinker with legislation. We believe this is fundamental change that is proposed and it is, in our view, to take workers in the industrial system backwards in terms of regulation.[4]

1.7 Given this divergence of views about the significance of the Bill's provisions, it is necessary to place the Bill in its recent historical context to shed further light on the issue.

*Recent historical context*

1.8 In the last 20 years, Australian wage fixation has moved incrementally from a centralised model of awarding national wage increases to match increases in the cost of living, to a much more devolved system, where wages are primarily set at the workplace level, based on improvements in productivity.

1.9 This shift first started to occur in 1987, with the Commission's introduction of the Restructuring and Efficiency Principle[5], was reinforced (albeit at an industry level) by the Structural Efficiency Principle[6] which accelerated following the development of the Enterprise Bargaining Principle in 1991[7].

1.10 From this time, the Commission's decisions and the Government's legislative reforms (most significantly through the *Industrial Relations Reform Act 1993* and the *Workplace Relations and Other Legislation Amendment Act 1996*) have facilitated this shift in focus from national and industry level wage fixation to workplace level wage fixation. These changes were made necessary by structural changes to the Australian economy, which have required Australian businesses to become more internationally competitive.

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3 Evidence, Mr David Buckingham, Melbourne, 7 October 1999, p. 103

4 Evidence, Mr Leigh Hubbard, Melbourne, 7 October 1999, p. 63

5 National Wage Case Decision, Full Bench, 10 March 1987, Print G6800

6 National Wage Case Decision, Full Bench, 12 August 1988, Print H4000

7 National Wage Case Decision, Full Bench, 30 October 1991, Print K0300

*Workplace Relations Act 1996*

1.11 Following the Coalition's election in March 1996, the Government introduced the *Workplace Relations and Other Legislation Amendment Act 1996*, which renamed and significantly reformed the *Industrial Relations Act 1988*. The amendments focused on achieving wage increases linked to productivity at the workplace level. The new name of the Act reflected this, as did new provisions relating to negotiating and certifying agreements. The Act also introduced a new form of agreement, Australian Workplace Agreements, which could be made between an employer and an individual employee.

1.12 Two other significant reforms were to restrict the Commission's ability to make awards in relation to matters outside a core of 20 'allowable award matters' set out in section 89A, and the introduction of provisions requiring the Commission to review and simplify awards to remove all provisions falling outside these 'allowable award matters' after a transitional period of 18 months. These provisions achieved what the Commission had decided it could not do itself under the former legislation, this is, limit the contents of the award safety net to a set of core minimum conditions.[8]

1.13 The role of the Commission, and that of its awards, have developed to reflect the increasing emphasis on setting wages and conditions by agreement at the workplace. It was inevitable that the scope for arbitration by the Commission would be reduced in line with these changes, and the Commission itself had recognised this earlier.[9]

1.14 The limitation of the Commission's arbitral powers to 'allowable award matters' represents a logical development from the introduction of the concept of awards as a safety net of minimum wages and conditions in 1994. If parties are to be encouraged to set pay and conditions at the workplace level, then it is necessary to remove from awards the matters on which parties are expected to bargain. Matters left in awards are those appropriate to the award safety net, as defined by legislation, and by the Commission in its interpretation of section 89A of the *Workplace Relations and Other Legislation Amendment Act 1996*.

1.15 Award simplification also represents a logical development after the earlier award review requirements established under section 150A of the *Industrial Relations Act 1988*.

*Conclusion*

1.16 The detail of the Bill's provisions needs to be considered in the context of this background. The Bill, and in particular provisions of the Bill that are designed to:

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8 Safety Net Adjustment and Review Decision, Full Bench, 21 September 1994, Print L5300, p. 39

9 National Wage Case Decision, Full Bench, 30 October 1991, Print K0300

- encourage employers and employees to reach employment agreements that best suit the needs of their enterprises in terms of flexibility and productivity;
- reduce the reliance of employers and employees on the Commission to determine wages and conditions; and
- reinforce the safety net role of awards and simplify award provisions,

can be described as evolutionary steps, continuing the progressive developments of the last 20 years.