CHAPTER 4

SCHEDULE 1 - OBJECT OF THE WORKPLACE RELATIONS ACT

4.1 Schedule 1 of the Bill contains amendments to:

- the principal object of the WR Act set out in section 3; and
- the WR Act's objects and the Commission's functions relating to dispute settlement and prevention, contained in Part VI of the WR Act.

Outline of proposed amendments

Amendments to the principal object

4.2 Item 1 expands the principal object to emphasise that employers and employees have the ability to choose the most appropriate jurisdiction for regulation of their employment relationship. This amendment is designed to ensure 'that the Act does not create a presumption in favour of the extension of Commonwealth regulation.'[1]

4.3 Item 2 amends the role of awards as set out in the principal object. Under subparagraph 3(d)(ii), it is an object of the WR Act to provide 'the means to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment'. The amendment replaces the concept of a 'fair and enforceable safety net' with a new focus on ensuring that awards provide 'basic minimum wages and conditions of employment', and that awards do not contain wages and conditions above the safety net. The amendment also emphasises that the role of awards is to help address the needs of the low paid.

4.4 Item 3 expands the principal object of the Act to specifically provide that industrial action which is prohibited by the WR Act (so-called 'unprotected action') should be countered by timely measures to stop and prevent unprotected action from taking place. The amendment also recognises the new procedures proposed in the Bill for conducting secret ballots of employees before protected industrial action can occur.

4.5 Item 4 amends the principal object to recognise amendments to:

- limit the Commission's ability to conduct compulsory conciliation of industrial disputes to those disputes where the Commission could potentially arbitrate (generally, the Commission can only arbitrate in relation to 'allowable awards matters' set out in section 89A of the WR Act);

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1 Explanatory Memorandum, p. 3

- introduce a new system of voluntary conciliation by the Commission to resolve industrial disputes and facilitate agreement-making; and
- legislatively recognise private mediation as an option for resolving industrial disputes and facilitating agreement-making.

Amendments to Part VI

4.6 Item 5 of Schedule 1 amends section 88A of the WR Act, which sets out the objects of the Act with regard to preventing and settling industrial disputes. The amendments relate to the making of awards, and remove the requirement that awards 'act as a safety net of fair minimum wages and conditions of employment', and replace this with a new paragraph specifying that awards are to operate as a safety net of 'basic minimum wages and conditions of employment in respect of appropriate allowable award matters'.

4.7 The practical effect of the change will be to require the Commission to take a different approach to making safety net adjustments, to ensure, for example, that wage increases are not uniformly applied to all wage rates contained in an award, but only those which represent 'basic minimum wages'. See paragraphs 1.23 – 1.26 below for a more detailed explanation of this amendment.

4.8 This amendment also emphasises that awards are intended to assist in addressing the needs of the low paid, and must not provide for wages and conditions of employment that are above the safety net. Item 5 complements the amendment contained in item 2.

4.9 Item 6 amends section 88B, and relates to the performance of the Commission's functions to prevent and settle disputes. This amendment also replaces the concept of a safety net of 'fair minimum wages and conditions of employment' with a safety net 'providing basic minimum wages and conditions of employment in respect of appropriate allowable award matters', as discussed above.

4.10 Item 7 inserts a new section 88C into the WR Act, which provides that the Commission is not to have regard to the maintenance of relativities within awards when exercising its dispute prevention and resolution functions. This amendment is designed to reinforce the principle that awards provide only a safety net of basic minimum wages and conditions. The role of awards is not to be regarded as providing for a range of skill-based classification pay points.

Evidence

No presumption in favour of the extension of federal regulation

4.11 The Department's submission states that the amendment in item 1 will '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….choice as to jurisdiction..'[2]

4.12 This amendment to the principal object complements more detailed changes to be made to section 111AAA and associated provisions. The proposed changes will strengthen the presumption in favour of State employment regulation, including by legislative minimum conditions. Legislated minimum conditions of employment are a relatively new phenomenon in Australia. There are currently two examples: the Western Australian *Minimum Conditions of Employment Act 1993* and Schedule 1A of the WR Act, which applies to Victorian employees.

4.13 These changes were foreshadowed in the Minister's More Jobs, Better Pay Implementation Discussion Paper, which proposed amendments to the WR Act to:

> …give greater recognition to cases where an employment relationship is subject to statutory minimum employment conditions. Recognising the special circumstances in Victoria (which has referred certain of its workplace relations powers to the Commonwealth), the Government (in consultation with Victoria) will examine how a wider range of employment arrangements provided for by the previous State law can be brought within the scope of the stronger presumption.[3]

4.14 The proposed amendment to the principle object enables both employers and employees to choose the most appropriate jurisdiction to regulate their employment relationship.

4.15 Jobwatch Inc estimated that approximately 40% of Victorian workers are not presently covered by federal awards and rely on the minimum conditions established by Schedule 1A:

> '…the 1996 hand over of most industrial relations powers to the Commonwealth created a situation where not all Victorian workers were automatically covered by federal awards. We still have a number of workers who are not within the federal award system…in Victoria, 40 per cent of Victorian workers only have five rights… In Victoria there is a huge disparity in the employment conditions between those covered by federal awards and agreements and those covered by schedule 1A. It is a situation of great injustice where some Victorian workers have conditions that are so much better than others, and the ones with the worst are the ones that are the most vulnerable and the ones that are not organised—they are not in unions.'[4]

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2 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2321

3 *The Continuing Reform of Workplace Relations: Implementation of More Jobs, Better Pay*, May 1999, p. 13

4 Evidence, p. 176, Ms W Tobin, Jobwatch Inc.

4.16 The ability to move to federal award coverage was not such an important issue for unions and employees in other States, even in Western Australia, where minimum conditions are set under State legislation. Western Australian unions were less emphatic that their members would be better off under federal awards, as the following Hansard excerpt indicates:

> 'Senator MURRAY—Is it your belief that the Workplace Relations Act 1996, the federal legislation, is better than the state legislation you fall under?
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> Ms Mayman—It has a better no disadvantage test than the state legislation. I am prepared to go that far.
>
> Senator MURRAY—There are 20 allowable matters in the federal legislation that you are under. How many minimum conditions?
>
> Ms Mayman—The minimum safety net here in this state at the moment on wages, for example, is $40 lower than the minimum award provision.
>
> Senator MURRAY—So workers would be better off under federal legislation?
>
> Ms Mayman—Workers are better off in terms of their minimums under federal legislation.'[5]

4.17 The Western Australian Branch of the Community and Public Sector Union stated:

> 'With respect to conditions of employment and pay, all things being equal, we maintain awards that have virtually every condition of employment in them for our membership and we can continue to maintain those awards in the state (Western Australian) system, on top of which, of course, there might—and I stress might—be enhancements in an enterprise bargaining agreement. That has served our members very well. It has been positive and we have generally been able to achieve reasonable outcomes under the state legislation. I think our members would generally see that in terms of pay and conditions they have been pretty well served in the state system.'[6]

4.18 The Committee received evidence that some employees currently enjoy conditions well above award standards, so are less likely to want federal award coverage. For example, the Australian Mines and Metals Association (AMMA) supported strengthening the presumption in favour of State regulation, making the following comments:

> Combined with the proposed s111AAA(1), the object appears to extend the protection afforded to employees and companies operating under various

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5 Evidence, p. 307, Ms S Mayman, Trades and Labour Council of Western Australia.

6 Evidence, p. 324, Mr D Robinson, Community and Public Sector Union.

> state jurisdictions. Considerable time and expense is incurred by businesses fending off unwanted attempts by unions seeking to rope those organisations into the federal system. Employers and employees deserve greater protection when a strategic choice has been made by such organisations and their employees to operate under a particular state instrument.[7]

4.19 The AMMA submission highlights their members' advanced employment relations policies and pay levels well above award standards.[8] In this context, attempts by unions to 'rope' employers into federal awards are probably unlikely to be supported by either the affected employers or employees.

4.20 The Committee was provided with examples of unions attempting to use the current provisions of the WR Act to 'rope' employers into the federal system. For example, the Australian Chamber of Commerce and Industry provided several case studies in their submission to the Committee.[9] Some unions also provided evidence on this point.

Conclusion

4.21 Item 1 implements the Government's objective of preventing unions from artificially extending the coverage of the federal jurisdiction to displace State regulation, where federal instruments provide higher wages and conditions.

4.22 A majority of the Committee supports this objective and **recommends** that the amendment contained in item 1 of Schedule 1 be enacted.

Award safety net of basic minimum wages and conditions

4.23 The Bill requires the Commission to alter its approach to safety net wage adjustments. The Safety Net Review decisions made under the WR Act to date are referred to in the Department's submission:

> The issue of internal relativities in relation to safety net has been the matter of consideration in safety net review issues. Given the additional focus now being placed on the low paid, it is appropriate to reinforce in the legislation the fact that the maintenance of internal relativities is not a factor to be taken into account in safety net considerations. Relativities between awards would however continue to play an important part in the adjustment and operation of the safety net.[10]

4.24 The amendments in Schedule 1 of the Bill, along with the amendment to remove 'skill-based career paths' from the list of allowable matters in section 89A,

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7 Submission No. 381, Australian Mines and Metals Association Inc., vol. 13, p. 2842

8 i*bid*., p. 7

9 Submission No. 399, Australian Chamber of Commerce and Industry, vol. 15, pp. 3331–40

10 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2344

will require the Commission, when reviewing the award safety net, to focus on adjusting minimum pay points for award classifications, rather than maintaining vertical relativities within award classifications.

4.25 Over time, this would mean that award pay rates for employees performing work within a classification at higher skill levels would be subsumed into minimum pay rates for their classification:

> A consequence of targeting protection on the low paid (eg through flat, differential or capped increases) is that there will be some compression of internal relations within awards. This was comprehended by the WR Act – which specifies that the Commission is to have regard to 'the need for any alterations to wage relativities *between* awards to be based on skill, responsibility and the conditions under which work is performed (emphasis added),' without referring to relativities *within* awards.[11]

4.26 The Department points out that these amendments reinforce the Government's understanding of how the WR Act would operate. The Minister's speech and the Joint Governments' submissions to the Safety Net Review cases indicate that it was originally intended that, through an incremental process of compressing internal award relativities, awards would become a true minimum safety net of wages and conditions. Wages and conditions above this basic safety net were intended to be set by agreement.

4.27 Some witnesses and submissions opposed the proposed amendments. A representative example is provided by the ACTU's submission:

> The amendments to paragraph 3(d) remove the concept of fairness from the safety net, an extraordinary admission by the Government that it sees fairness as an unreasonable requirement. The redefinition of the safety net as comprising basic minimum conditions which address the needs of the low paid is directed at removing from awards any provisions which might be seen as other than 'basic', reinforced by the requirement that awards do not provide for wages and conditions above that 'basic' safety net. The notion that awards exist only to protect the very lowest paid, rather than to ensure fairness for all employees, and ensure that disputes are resolved after considering the interests of all parties, is strongly opposed by the ACTU.[12]

4.28 The Human Rights and Equal Opportunity Commission also opposed the proposed amendments, because in their view a disproportionate number of women, compared to men, rely on awards to set their actual pay and conditions:[13]

> The current WR Act object provides scope for the AIRC to consider the impact of safety net increases on all employees relying on awards to

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11 *ibid*.

12 Submission No. 423, Australian Council of Trade Unions, vol. 19, p. 4440

13 See Table 6, Submission No. 472, Human Rights and Equal Opportunity Commission, vol. 23, p. 5827

> determine their actual pay and conditions with an emphasis on the low paid….HREOC supports retaining the AIRC's current discretion to consider both the low paid and the award dependent when awarding safety net increases as both aspects impact on the ability of the AIRC to minimise gender based inequitable pay outcomes.[14]

4.29 The Committee was given evidence suggesting that parts of the workforce remain unable to make agreements with their employers, and rely solely on awards to regulate their pay and conditions. It was suggested that these employees seem to be concentrated in service industries and rural and regional areas, with low levels of unionisation:

> Thirty per cent of the industries we cover do not have enterprise agreements; they rely strictly on the award system. These industries include fruit growing and packing, horse training, shearing, the amusement parlour and entertainment industries, sportsgrounds, nurseries, primary production and dairies, ski resorts and catering companies. These are difficult to service, small, isolated workplaces. Union employee interaction tends to occur only when problems arise. Because of this, the employees in the above industries depend heavily on the goodwill of their employers and any safety net decisions made by the Australian Industrial Relations Commission.[15]

4.30 The Business Council of Australia suggested that it is only in exceptional cases that employers and employees are unable to bargain, but evidence presented by other witnesses, including the Queensland Government, suggests that the problem is much broader than this, particularly affecting rural workers, small business employees and women.

4.31 The Australian Chamber of Commerce and Industry supported the proposed amendments as a means of imposing restraint on safety net increases to awards by the Commission:

> The proposed amendments are more than justified because of the way union claims and AIRC awarded increases have accelerated in recent years. If the labour relations award system is to be a true safety net, there has to be an appropriate level of restraint. It is time that this longstanding threat to the private sector is terminated by appropriate amendments to the objects of the Act, and for awards.[16]

4.32 The Business Council of Australia submitted:

> The [safety net] system should make available basic terms and conditions of employment that are a sufficient guarantee of fair and reasonable treatment

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14 *ibid*., p. 5865

15 Evidence, Mr Bill Shorten, Melbourne, 8 October 1999, p. 146

16 Submission No. 399, Australian Chamber of Commerce and Industry, vol. 15, p. 3274

> in exceptional circumstances where (formal or informal) enterprise bargaining does not apply.
>
> Minimum wages and conditions should not be linked or act as a disincentive to enterprise bargaining – that generally reward specific gains in productivity. Under enterprise bargaining wage increases reflect economic circumstances. Firms doing well will pay well, and firms doing poorly will pay less.[17]

Conclusion

4.33 An objective of the proposed amendments is to ensure that safety net wage increases are not generally applied to all wage rates in awards, but are specifically targeted at the low paid. If awards focus on basic minimum pay and conditions they will encourage agreement making, linking increases in wages and conditions to productivity and establishing terms of employment that suit the circumstances of the particular workplace. The Committee supports this objective, as consistent with the aim of providing a floor under wages, which takes modern economic imperatives into consideration and puts responsibility for workplace relations where it belongs: with employers and employees.

4.34 A majority of the Committee also supports the objective of encouraging the Commission to exercise restraint in awarding safety net increases, as suggested by the Australian Chamber of Commerce and Industry, as safety net increases do not necessarily reflect improvements in productivity.

4.35 There is considerable evidence that employees covered by agreements enjoy better pay and conditions than those employees on awards. Little evidence was presented to the Committee to suggest that employees are choosing to remain on awards, or that awards are acting as a disincentive to bargaining.

Recommendation

4.36 A majority of the Committee **recommends** that the amendments in items 2, 5, 6 and 7 of Schedule 1 be enacted.

Unprotected industrial action inconsistent with Act

4.37 This amendment makes it clear that unprotected industrial action is contrary to the objects of the Act. The amendment incorporates a reference to the proposed secret ballot provisions in the principal object. The Committee's majority conclusions on the secret ballot amendments are discussed in detail in Chapter 11.

Conclusion

4.38 A majority of the Committee notes the absence of any real concerns regarding this amendment, which would merely reinforce the existing provisions of the Act

17 Submission No. 375, Business Council of Australia, vol. 12, p. 2581

regarding protected industrial action. The majority of the Committee **recommends** that this amendment be enacted.

Arbitration, compulsory conciliation, voluntary conciliation and mediation

4.39 The Committee's majority views on these amendments are set out in detail in Chapter 6.