CHAPTER 5

SCHEDULE 2 - RENAMING AND RESTRUCTURING THE AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION AND REGISTRY

5.1 This Chapter discusses proposed amendments to the Australian Industrial Relations Commission (the Commission), and the Australian Industrial Registry (the Registry). The Committee received many submissions and a great deal of evidence dealing with the name of the Commission and Registry and the proposal to allow fixed term appointments to the Commission.

Outline of proposed amendments

Change of name for Commission and Registry

5.2 Item 8 and other consequential amendments set out in Schedule 2 propose to rename the 'Australian Industrial Relations Commission' as the 'Australian Workplace Relations Commission'. Similarly item 45 and other consequential amendments set out in Schedule 2 will rename the 'Australian Industrial Registry' as the 'Australian Workplace Relations Registry'. Item 85 and other consequential amendments set out in Schedule 2 will rename the 'Industrial Registrar' and 'Deputy Industrial Registrars' as the 'Workplace Relations Registrar' and 'Deputy Workplace Relations Registrars'.

5.3 Items 14 and 15 amend the provisions of the Act setting out the requirements for appointment to the Commission to replace 'skills and experience in the field of industrial relations' with 'skills and experience in the field of workplace relations'.

Simplification of the Commission's Presidential structure

5.4 Items 9 and 202, and various other consequential amendments set out in Schedule 2, simplify the Commission's Presidential member structure by collapsing the current three tiers of Vice Presidents, Senior Deputy Presidents and Deputy Presidents into one level. All Presidential members, except for the President, would be designated 'Vice Presidents', and would be paid the same new Vice President salary (Item 25). Transitional provisions set out in item 204 would maintain salary rates for those Presidential members currently paid more than the proposed Vice President salary rate.

5.5 Item 16 amends section 11 of the Act, so that in the case of future appointments, Vice Presidential members will hold seniority according to their date of appointment. However, Item 205 preserves the current Presidential members' existing seniority arrangements.

Presidential members with legal qualifications

5.6 Item 12 amends the WR Act to entitle Presidential members or former Presidential members who have appropriate legal qualifications to the same designation as a Judge of the Federal Court.

Fixed term appointments to the Commission

5.7 Item 18 amends the WR Act to allow the Governor-General to appoint Commissioners for a fixed term of seven years, in addition to normal life tenure arrangements established under section 16 of the Act

Appointment of acting Commissioners

5.8 Item 21 inserts a new section 18A into the WR Act to allow the Governor-General to appoint acting Commissioners, where the Governor-General is satisfied that the appointment is necessary to enable the Commission to effectively perform its functions.

Annual training program for Commissioners

5.9 Items 22 amends the WR Act to require the President of the Commission to develop a training and professional development program for Commissioners, and the amendment in item 23 requires all Commissioners to participate in the program.

User-friendly systems and procedures

5.10 Items 36 – 38 and item 61 amend the Act to require the Commission to have greater regard to the needs of employers, employees and other users of the Commission's services in performing its functions, and to provide user-friendly systems and procedures. Items 48 and 101 make equivalent amendments to require the Registry to provide user-friendly systems and procedures.

Harmonising administration of the Commission and Registry

5.11 Item 100 and various other items amend the Act to give the President of the Commission greater control over the administration of the Registry. In addition, item 38 requires the President of the Commission to report on the performance and efficiency of both the Commission and the Registry in the President's annual report. The requirement for the Registrar to make a separate annual report would be repealed (item 96).

Harmonising Registry appointments

5.12 Item 118 facilitates greater harmonisation of appointments to the federal Registry and State Registries, by allowing employees of State Registries to be appointed as Deputy Workplace Relations Registrars, and by exempting these appointees from the requirement in section 83 of the WR Act that Deputy Registrars be employed under the Federal Public Service Act.

Evidence

Change of name for Commission and Registry

5.13 The Department provided evidence that the proposed change of name:

> is intended to reflect the changes in, and the evolution of, the Commission's role and functions. The Commission is evolving to become more attuned to the current and proposed workplace relations framework where the primary responsibility for addressing matters affecting the employer/employee relationship is focused at the workplace level, but with a safety net of minimum wages and conditions.[1]

5.14 Some witnesses disagreed with this assessment, suggesting that the Commission's primary functions continue to be focused on setting industry-wide safety net award standards, with diminishing involvement in 'workplace' level arrangements set through agreements:

> First, there is the renaming of the commission from the Industrial Relations Commission to the Workplace Relations Commission. Some may think this is mere nomenclature but words are the lexicon of our life and nomenclature is of enormous importance. The notion of an industrial relations commission bespeaks of a body that sets minimum wage rates and work rules and that occasionally certifies industry wide agreements. The nomenclature of workplace relations bespeaks of a body which is confined to the operations of the domis of a single enterprise. That, in essence, is why I believe a name change is unnecessary.[2]

> The ACTU is opposed to the use of the term 'workplace relations' to replace the term 'industrial relations' in the Act. While in one sense, this is not a substantive change, it does symbolise a major shift in the Act's focus to the individual enterprise and, more significantly, towards the individualising of the employment relationship at the expense of employee rights to collective bargaining and union representation. While the ACTU is aware that, to a certain extent, this change in focus has already occurred, the Commission has so far retained an ability to make industry-wide awards, to certify multi-employer agreements and to resolve disputes involving more than one workplace. In that sense, the change in the descriptive term is misleading.[3]

5.15 Employer groups submitted that the name change was appropriate because the new name would reflect the workplace focus of the overall federal system:

> The focus of the labour relations system should be on the workplace, rather than on other possible levels including award, industry or the national level.

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1 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2323

2 Evidence, Professor Ronald Clive McCallum, Sydney, 26 October 1999, p. 349

3 Submission No. 423, Australian Council of Trade Unions, vol. 19, p. 4441

> The Commission does perform functions at all levels, particularly at the award and industry levels. Nevertheless, the focus of Commission policy priorities should be on providing greater scope for workplace level decisions, and this proposed change is consistent with that objective.[4]
>
> (The renaming) will reflect the increased focus of the system on the workplace. Also a change in title may provide impetus in some small way for the recognition by the Commission and the parties who appear before it that statutory changes also require institutional and cultural changes.[5]

5.16 The Australian Council of Social Services agreed that the proposal to change the name would lead to a change in culture and priorities for the Commission, but did not agree that this change would be positive:

> The effect of the 1996 amendments to the Act has been to limit substantially the powers of the Commission in relation to the setting of minimum wages and conditions and in the resolution of disputes. In this context the renaming of the Australian Industrial Relations Commission is significant. It reflects a vision of a reduced and narrow role for this body. It is a movement away from a concern with the social and economic objectives for society to the primacy of market-driven workplace arrangements.[6]

5.17 Another suggestion put by the Department in favour of the proposed name change was that the name of the Commission and Registry should reflect the name of their enabling legislation.[7]

5.18 In other Australian jurisdictions, the names of relevant tribunals do seem to correspond with their enabling legislation, as demonstrated in the examples below. The retaining of an 'industrial' emphasis, rather than 'workplace', most likely reflects the historical development of the jurisdiction in Australia.

- in New South Wales, the *Industrial Relations Act 1996* creates the 'Industrial Relations Commission of New South Wales';
- Victoria no longer has an equivalent tribunal, since the referral of Victorian industrial relations powers to the Commonwealth. However, the former *Employee Relations Act 1992* established the most recent Victorian tribunal - the 'Employee Relations Commission of Victorian';
- in Queensland, the *Industrial Relations Act 1999* establishes the 'Queensland Industrial Relations Commission'; and

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4 Submission No. 399, Australian Chamber of Commerce and Industry, vol. 15, p. 3275

5 Submission No. 375, Business Council of Australia, vol. 12, p. 2583

6 Submission No. 476, Australian Council of Social Services, vol. 23, p. 6074

7 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2324

- in Western Australian, the *Industrial Relations Act 1979* establishes the 'Western Australian Industrial Relations Commission'.

In South Australia and Tasmania, the names of the relevant tribunals do not exactly match the names of their enabling legislation:

- in South Australia, the *Industrial and Employee Relations Act 1994* establishes the 'Industrial Relations Commission of South Australia'; and
- in Tasmania, the I*ndustrial Relations Act 1984* establishes the 'Tasmanian Industrial Commission'.

5.19 An alternative option for renaming the Commission, similar to the former Victorian tribunal, was suggested during the Committee's public hearings:

> It has been suggested to us that, if we must look at changing the name, a more appropriate alternative would be the Employment Relations Commission. Do you have any comment on that suggestion?
>
> I would agree with that. I would prefer industrial relations because it is a well understood term, but I think employment relations is far more accurate than workplace relations.[8]

5.20 Evidence presented to the Committee regarding the proposed change of name for the Registry was limited. The Department submitted that the name of the Registry should reflect the name of the Commission it services, particularly as the Bill proposes to further integrate the Commission and Registry, and give the President of the Commission greater responsibility for managing the work of the Registry (see paragraphs 1.76 to 1.82 below).[9]

5.21 Little evidence was presented to the Committee about the proposal that appointees to the Commission should have experience in 'workplace relations', rather than 'industrial relations'.

Conclusion

5.22 The name of the Commission should ideally reflect its functions, to avoid confusing members of the public who use its services.

5.23 Suggestions by employer groups that the Commission's name should be altered to promote cultural change away from the Commission's historical concentration on industry-wide arrangements are persuasive.

5.24 A majority of the Committee accepts the Department's submission that the name of the Registry and Registrars should reflect that of the Commission.

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8 Evidence, Professor Keith Hancock, Canberra, 28 October 1999, pp. 515-6

9 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, pp. 2322-3

Recommendation

5.25 That the provisions of Schedule 2 be enacted.

Simplification of the Commission's Presidential structure

5.26 The Commission currently has four levels of Presidential members: (in order of hierarchy) the President, Vice Presidents, Senior Deputy Presidents and Deputy Presidents. The Bill proposes to abolish the offices of Senior Deputy President and Deputy President, so that all Presidential members (except the President) would become Vice Presidents.

5.27 Submissions to the Committee generally supported the proposed changes. It was indicated that the current structure was unnecessarily complex, the result of confusing historical events and legislation,[10] and has not been reviewed since 1991.[11]

5.28 The Business Council of Australia, in support of the amendments, submitted:

> This will provide for a flatter, more contemporary structure, bearing in mind the AIRC is a non-judicial body. The existing number of levels seems to be a product of history.[12]

5.29 Professor Isaac, a former Commissioner who appeared before the Committee, also supported the proposed simplification of the Presidential structure:

> This change in effect reverts to the structure which prevailed before the 1993 Act and is to be commended as removing an unwarranted and artificial hierarchy of Presidential members.[13]

5.30 The Bill contains transitional provisions to ensure the continuity of appointment of the current Presidential members, and to maintain current arrangements regarding seniority.

5.31 The new salary rate for Vice Presidents (equivalent to the salary of a Federal Court judge) would be slightly lower than the salary that current Vice Presidents are entitled to (103% of the salary of a Federal Court judge). However, Schedule 2 includes a transitional salary maintenance provision for the two current Vice Presidents.

5.32 The new Vice President salary rate is the same as Senior Deputy Presidents are currently paid, and higher than the salary that the Commission's single Deputy

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10 Detailed in Submission No. 399, Australian Chamber of Commerce and Industry, vol. 15, pp. 3275-6

11 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2326

12 Submission No. 375, Business Council of Australia, vol. 12, p. 2583

13 Submission No. 377, Professor J Isaac AO, vol. 12, p. 2686

President[14] is currently paid (95% of the salary of a Federal Court judge). In effect, no current Presidential member would be financially disadvantaged by the proposed amendments, and the Commission's remaining Deputy President will receive a significant pay increase.

Conclusion

5.33 The amendments simplify the Commission's staffing structures, in line with contemporary developments in both the public and private sectors, and would simplify the Commission's personnel administration. In addition, the proposed amendments would have the benefit of considerably simplifying Division 1 of Part II of the WR Act.

5.34 Comprehensive transitional arrangements are contained in the Bill to ensure that no Presidential members are disadvantaged either financially or in terms of seniority. In fact, the current Deputy President will receive an increase in salary. There has been no suggestion that the amendments would affect the standing or prestige of the Presidential members or of the Commission.

Recommendation

5.35 That the amendments in Schedule 2 to alter the Commission's Presidential structure be enacted.

Presidential members with legal qualifications

5.36 Prior to 1988, section 7 of the *Conciliation and Arbitration Act 1904* provided that Presidential members of the Commission with appropriate legal qualifications were entitled to the designation 'Justice'. This provision was removed with the enactment of the *Industrial Relations Act 1988*, although existing members at that time were entitled to retain their designation under transitional provisions set out in the *Industrial Relations (Consequential Provisions) Act 1988*.[15]

5.37 The Department submitted that the amendment to restore this entitlement to Presidential members with legal qualifications 'is designed to operate as an attraction and recruitment measure, to assist in attracting highly qualified legal practitioners to the Commission.'[16]

5.38 Professor Isaac did not support the proposed amendment asserting that the Commission is not a judicial body – it exercises arbitral, rather than judicial, powers

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14 Note that there are more Deputy Presidents appointed to the Commission, however, the other Deputy Presidents are dual appointees from State tribunals and are paid by their respective State tribunals.

15 Section 80

16 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2327

under the Constitution[17] and that this amendment will create two classes of people doing exactly the same thing.[18]

5.39 However the Committee notes that two classes of Commissioners (Justices and non-Justices) already exist. The current President, two Senior Deputy Presidents and eight Deputy Presidents are styled Judge or Justice, meaning that almost 40% of current Presidential members (including dual appointees from State tribunals) are already entitled to the designation.[19]

Conclusion

5.40 Presidential members and other Commissioners are required to perform functions in a manner analogous to judges.[20] They hear evidence, apply legislative provisions and legal precedents, and make binding decisions affecting the rights of parties. They must also write and publish reasons for their decisions in a manner similar to judges writing and publishing judgements of a court.

5.41 The Commission performs its functions in a quasi-judicial manner, and it is an advantage to the Commission to have a contingent of Presidential members and Commissioners with high-level legal qualifications and training, in addition to experience in industrial and workplace relations.

5.42 Entitling legally qualified Commissioners to be styled 'Justice' will recognise the special 'quasi-judicial' nature of the Commission, increase the esteem in which the Commission is held, and promote the Commission as a prestigious place to work for members of the legal profession. A majority of the Committee believes that it is reasonable to assume that reinstating the designation will prove beneficial in attracting eminent and respected lawyers to the Commission.

Recommendation

5.43 That the amendment in item 12 of Schedule 2 be enacted to allow Presidential members with requisite legal qualifications to elect to have the same designation as a Judge of the Federal Court.

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17 See majority judgement of Dixon CJ, McTiernan, Fullagar and Kitto JJ in *The Queen v. Kirby; Ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254

18 Evidence, Professor Joe Isaac, Canberra, 1 October 1999, p. 58

19 Australian Industrial Relations Commission website: *http://www.airc.gov.au/my_html/members.html*, 3 November 1999

20 See, for example, minority judgement of Taylor J. in *The Queen v. Kirby, ex parte Boilermakers' Society of Australia* (1956) 94 CLR 254: '(The special character of the arbitral functions) bear little, if any resemblance to executive or legislative functions as generally conceived; on the contrary, both in their nature and exercise they present a number of features which are characteristic of judicial functions.'

Fixed term appointments

5.44 Item 18 will not require all future appointments to the Commission to be on a fixed term basis. The normal system of appointments for life would continue under section 16 of the WR Act. Item 18 will simply introduce the option for the Governor-General to make Commission appointments for a fixed term of seven years, with an option to reappoint.

5.45 The Department submitted that fixed term appointments to the Commission would:

> …allow for the Commission to respond more flexibly to changing workloads and pressures…The possible introduction of temporary and fixed term appointments was foreshadowed in the Ministerial discussion paper released in July 1998, *Improving access and service delivery: administration of the AIRC and the Registry*. The proposed provisions will, in part, meet these commitments by providing the Government with greater flexibility to assist the Commission, in terms of staffing numbers and required expertise, to meet changes in its workload.[21]

5.46 The Business Council of Australia and the Australian Wool Selling Brokers Employers' Federation agreed that the option of fixed term appointments would contribute to a more flexible human resource framework for the Commission.[22]

5.47 The Chamber of Commerce and Industry Western Australia made the following submission:

> We are conscious of the need for the maintenance of judicial independence…However, judicial independence is not the sole consideration...There is a need to ensure that members of the Commission are not immune from expectations of reasonable performance. Currently Commissioners are able to avoid termination of their appointments other than in the most extreme circumstances. This mechanism of seven year appointments also potentially allows for fresh perspectives to be included in the personnel of the Commission and so ensures that the Industrial Commission as a whole remains abreast of contemporary workplace relations practices and issues.[23]

5.48 Other employer groups such as ACCI and AIG were more cautious about the proposal.

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21 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2327

22 Submission No. 375, Business Council of Australia, vol. 12, p 2584; Submission No. 397, Australian Wool Selling Brokers Employers Federation, vol. 14, p. 3221

23 Submission No. 474, Chamber of Commerce and Industry Western Australia, vol. 23, p. 6013

5.49 Submissions made by employees, unions, lawyers and academics opposed the amendment, on the basis that fixed term appointments would compromise the independence of the Commission, or at least weaken public perceptions of the independence of the Commission:

> The Australian Nursing Federation (SA Branch) believes that the proposed introduction of fixed term appointments to the Commission will remove its independence and authority. Members of the Commission will, in exercising the jurisdiction, be mindful of the effects on the likelihood of them continuing with a further appointment.[24]

> ...fundamental to the effective operation of the AIRC is the public's perception that decisions of the AIRC have been made independently, that they have not been influenced by outside or irrelevant considerations and that they have not in any way been influenced by the government of the day (or any alternative government). The introduction of fixed term appointments to the AIRC has the potential to disturb this perception as concerns may arise that the AIRC is not adequately protected from external influences, and in particular the influences of the executive government.[25]

5.50 The Business Council of Australia provided the Committee with many examples of fixed term appointments for members of non-judicial statutory bodies, including Auditors General, Ombudsmen, anti-discrimination tribunals and anti-corruption commissions.[26]

5.51 There are many precedents of tribunals, and even courts, operating with fixed term members, and the Committee was not provided with evidence pointing to a lack of independence within these bodies. In addition, the Department provided information about fixed term appointments to State industrial tribunals:

> Section 35 of the South Australian *Industrial and Employee Relations Act 1994* provides for 6 years initially, renewable for a further 6 years or until 65. Section 83 of the Western Australian *Workplace Agreements Act 1993* provides for appointment to the Workplace Agreement Commission for terms not exceeding 5 years (renewable). Section 6 of the Tasmanian *Industrial Relations Act 1984* provides for appointments after 1992 to be for a period of 7 years and for Enterprise Commissioners section 61ZA provides for appointments for a period not exceeding 7 years. Prior to 1 July 1999, section 272 of the Queensland *Workplace Relations Act 1997* provided for terms of 7 years initially, thereafter for periods not exceeding 7

24 Submission No. 458, Australian Nursing Federation (SA Branch), vol. 22, p. 5454

25 Submission No. 460, International Centre for Trade Union Rights, vol. 22, pp. 5501-2

26 Submission No. 375, Business Council of Australia, vol. 12, p. 2584 and Attachment D

> years. However, term appointments have now been replaced by tenured appointments in Queensland.[27]

5.52 The Commission has had its own fixed term appointees: under section 16(1A), the former President of the Commission, Deidre O'Connor, was appointed for a fixed term, and Commissioners who are appointed under section 16(2) (dual appointments for members of State industrial authorities) may also be appointed for fixed terms.

5.53 The Department also drew the Committee's attention to an example of judicial fixed term appointments.[28] Section 13 of the New South Wales *Local Court Act 198*2 provides:

> Where the Governor considers it appropriate that a Magistrate should be appointed for a particular term of office, the Governor may, in the commission of the Magistrate's appointment:
>
> (a) by a reference to dates, specify the term of office (not being a term continuing past the date on which the Magistrate will attain the age of 70 years) for which the Magistrate is appointed…

Conclusion

5.54 A majority of the Committee accepts that it is of vital importance to maintain public confidence in the impartiality and independence of the Commission.

5.55 A majority of the Committee also accepts that it would be of benefit to provide more flexible arrangements for appointments to allow the Commission to temporarily increase its complement of Commissioners to deal with major projects.

5.56 A majority of the Committee believes that the proposed amendments reconcile the two objectives of maintaining independence and allowing more flexibility in appointments.

Recommendation

5.57 That item 18 of Schedule 2 be enacted to allow the Governor-General to make appointments to the Commission for fixed seven year terms.

Appointment of acting Commissioners

5.58 Item 21 allows the Governor-General to appoint acting Commissioners, where the Governor-General is satisfied that the appointment is necessary to enable the Commission to effectively perform its functions.

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27 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2328

28 i*bid*.

5.59 Existing sections 17, 17A, 17B and 18 of the WR Act allow the Governor-General to appoint, respectively, Acting Presidents, Acting Vice Presidents, Acting Senior Deputy Presidents and Acting Deputy Presidents to the Commission. The Governor-General may appoint anyone to these acting positions who meets the ordinary requirements for permanent appointment to the Commission, and there is no requirement that the acting appointments be made from current members of the Commission. The proposed amendment extends these arrangements to permit acting non-Presidential Commissioners.

5.60 The Business Council of Australia submitted that the proposal, in combination with the proposal to introduce fixed term appointments, would:

> …provide a more flexible human resource framework for the Commission that assists cover cyclic, sudden, and short or long term fluctuations in the demand for service.[29]

5.61 There was some suggestion that the appointment of acting Commissioners would undermine the independence of the Commission:

> The proposed s16(1A) of the Bill to provide for 7 year appointments and acting Commissioners (s18A of the Bill) represent an undesirable and unwarranted intrusion into the Commission's independence.[30]

Conclusion

5.62 This proposal is a technical amendment to bring provisions regarding the appointment of non-Presidential Commissioners into line with provisions allowing appointment of acting Presidential members.

5.63 The Committee received no evidence that the existing provisions of the WR Act or acting Presidential members had affected the independence or integrity of the Commission.

5.64 The ability to appoint acting Commissioners will allow the Commission to manage periods of leave and illness more effectively, to maintain levels of service. It will also allow the appointment of additional Commissioners to deal with short term fluctuations in work load.

Recommendation

5.65 That item 21 of Schedule 2 be enacted to allow the Governor-General to appoint acting Commissioners.

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29 Submission No. 375, Business Council of Australia, vol. 12, p. 2584

30 Submission No. 468, Law Council of Australia, vol. 22, p. 5732

Annual training program for Commissioners

5.66 The Bill requires the President of the Commission to develop an annual training and professional development program for Commissioners, and all Commissioners to participate in this program.

5.67 Submissions to the Committee generally supported this amendment. For instance, the Business Council of Australia submitted:

> In the words of the Australian National Training Authority – '*Today's and tomorrow's workers must never stop learning: learning is not just for children and young adults: it is lifelong. Only lifelong learning can guarantee that individual Australians will be prepared for change*'. The provisions will enable members of the Commission to publicly model vocational training arrangements that need to apply (in varying degrees) to the entire Australian workforce.[31]

Conclusion

5.68 Continuing training and professional development will benefit Commissioners' personal development and lead to a culture of continuous improvement and excellence in service.

Recommendation

5.69 That items 22 and 23 of Schedule 2 be enacted to require Commissioners to participate in an annual training and professional development program to be developed by the President.

User-friendly systems and procedures

5.70 Parts of Schedule 2 amend the WR Act to require the Commission and the Registry to focus on the needs of employers and employees in performing its functions, and to provide user-friendly systems and procedures.

5.71 The Department submitted:

> The conduct of the Commission has important commercial and industrial ramifications for parties that use its services. Concerns expressed by industry during the preparation of (*Time for Business: the Report of the Small Business Deregulation Taskforce* – the Bell Report) suggest that more needs to be done to ensure that Commission and Registry processes and practices are not too demanding or inconvenient for participants of the system. The Bell Report found that 'The Australian Industrial Relations Commission is seen as process driven and not user friendly. Accessible forums and simple transparent processes are needed' (page 5). The Bell Report also noted that 'small business operators say that AIRC hearings are held at unsuitable times and locations, its proceedings and documentation

31 Submission No. 375, Business Council of Australia, vol. 12, p. 2584

> too formal, and legal representation is essential in order to participate in the process' (page 49.[32]

5.72 The Tasmanian Chamber of Commerce and Industry pointed to difficulties faced by local businesses because there is only one Commissioner, based in Hobart, to handle the Commission's work in Tasmania. This causes delays and difficulties for businesses outside Hobart.[33] More flexible processes using the full range of current communications technology could assist in alleviating these problems. However, some witnesses thought that increased use of technology would pose problems, for example:

> The minister has foreshadowed internet and electronic mail submissions, increased use of telephone and video conferencing and the possibility that the performance of AIRC members will be linked to case turn-around time. He has also indicated that the AIRC's role increasingly will be focused on the provision of information and advice. While these changes are designed to deliver flexibility in AIRC functioning, they also have the potential to render tribunal processes perfunctory.'[34]

Conclusion

5.73 The amendments to simplify the Commission's processes and procedures form part of the Government's continuing implementation of the recommendations of the Small Business Taskforce.

5.74 The focus on the needs of those who use the Commission's services, particularly employers and employees who may not have had much experience in dealing with the Commission's procedures, is consistent with the primary objectives of the Act to devolve responsibility for industrial relations to parties at the workplace level. A majority of the Committee considers that the Commission has the ability to develop simpler, user-friendly processes and procedures while still ensuring that it properly fulfils its functions under the WR Act.

Recommendation

5.75 That the amendments in the Bill which requires the Commission to have greater regard to the needs of employers, employees and organisations in performing its functions, and to provide user-friendly systems and procedures, be enacted.

Harmonising administration of the Commission and Registry

5.76 Various items in Schedule 2 amend the WR Act to give the President of the Commission greater control over the administration of the Registry, and require the

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32 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, pp. 2324-5.

33 Submission No. 481, Tasmanian Chamber of Commerce and Industry Ltd, vol. 24, p. 6144

34 Submission No. 299, Ms Bernadine Van Gramberg, Victoria University and Associate Professor Julian Teichner, Monash University, vol. 7, p. 1436

President to report on the performance and efficiency of the Registry in the President's annual report, rather than the Registry preparing a separate annual report.

5.77 The Business Council of Australia submitted that these measures would increase accountability and transparency and:

> …add to public confidence in the operations of those bodies. Consideration should be given to prescribing key performance indicators in legislation, with scope for additional indicators to be introduced from time to time or for specific purposes by regulation. Legislated performance indicators should extend to reporting on complaints about service delivery and the manner in which complaints were resolved.[35]

5.78 The Department submitted that the proposed amendments would:

> …allow for greater harmonisation, integration and simplification of practices and procedures. The Workplace Relations Registrar will report directly to the President rather than to the Minister, as is currently the case. The Registrar will continue to be a statutory office holder.[36]

5.79 The Committee did not receive any submissions or evidence opposed to these amendments.

Conclusion

5.80 The amendments streamline management and administration of the Registry, and ensure that the activities of the Registrar are more closely aligned with the work of the Commission.

5.81 The amendments shift the Registry's lines of accountability from the Minister to the Commission. One of the Registry's primary functions is 'to act as the registry for the Commission and to provide administrative support to the Commission'[37], so the Committee believes that strengthening the Registry's accountability to the Commission is appropriate.

Recommendation

5.82 That the amendments contained in Schedule 2, which give the President of the Commission greater responsibility for the performance of the Registry's functions, be enacted.

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35 Submission No. 375, Business Council of Australia, vol. 12, p. 2584,

36 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2325

37 Paragraph 63(1)(b) of the Workplace Relations Act

Harmonising Registry appointments

5.83 Item 118 of Schedule 2 inserts a new section into the Act regarding the dual appointment of employees of State industrial tribunals to the Commission as Deputy Registrars or acting Deputy Registrars.

5.84 The Department submitted that this amendment would remove a technical impediment to further harmonisation of the administration of Australian State and Federal industrial tribunals:

> The WR Act provides for the functions of the Australian Industrial Registry (section 63) and allows it to act as the registry for State industrial bodies. However, the WR Act contains an impediment to allowing State registries to undertake the full range of federal Registry functions by restricting the appointment or staffing of the Registry to persons employed under the Public Service Act 1922. The WR Act is being amended to remove this impediment to allow staff employed by a State Registry to be appointed as a (Deputy Registrar). Such an appointment would be subject to the Minister reaching agreement with the appropriate State authority and to the terms of the industrial law of that State. This will accelerate the harmonisation of service delivery between the Commission and State industrial tribunals with a service delivery mix of federal and State resources that provide the most effective outcome.[38]

Conclusion

5.85 A majority of the Committee supports further administrative harmonisation of Australia's six different industrial relations jurisdictions. A great deal of evidence was heard regarding the complexity for employers and employees of operating within different State and Federal systems.

5.86 The amendment is a technical amendment to provide for a minor exemption from the barrier to appointment of Registry staff who are not federal public servants (subsection 83(1)). The exemption would only apply in the case of dual appointments of staff employed in State industrial tribunals to the statutory positions of Deputy Registrar.

Recommendation

5.87 That the amendment in item 118 of Schedule 2 to allow dual appointment of the staff of State industrial tribunals as federal Deputy Registrars or acting Deputy Registrars be enacted.

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38 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2330