

Chapter One

Majority Report

1.1 This bill proposes the amendment of the *Workplace Relations Act 1996* (WR Act) to require the Australian Industrial Relations Commission to give primary consideration to the needs of the low paid, and to the employment prospects of the unemployed, when considering safety net adjustments to awards. The proposed amendments are also consistent with Government policy to have pay and working conditions determined wherever possible at the workplace level, leaving the Commission to look to the rights of the most vulnerable and needy employees. The bill specifically proposes that the Australian Industrial Relations Commission (the Commission) consider the following matters when adjusting the safety net:

- as a primary consideration, the needs of the low paid, including their need for employment;
- the employment prospects of the unemployed; and
- the capacity of employers to meet increased labour costs.

1.2 This bill reinforces the Government's stated determination to ensure that agreement making in the workplace offers the best hope of maintaining higher levels of sustained employment growth. While the federal workplace relations system long ago began the move to enterprise level agreements, there are remnants of the former centralised wages bargaining processes that, according to the Government, continue to frustrate policy which is aimed at maximizing employment. The Commission is already required under section 88B of the WR Act to have regard for the needs of the low paid when making adjustments to the wages safety net, but the Government believes this particular consideration to be in need of reinforcement. The Act when amended will make the needs of the low paid a primary consideration for the Commission.

The inquiry process

1.3 The bill was introduced to the House of Representatives on 13 February 2003 and the debate adjourned at second reading. The Senate referred the provisions of the bill to the committee on 19 March 2003 through the adoption of the Selection of Bills Committee Report No 3 of 2003, 19 March 2003, which set out the principal issues for consideration by the committee. These included:

- identification of those depending on the Safety Net Review and the effect of the bill on the material needs of those people;
- previous consideration of the issues raised by the bill by the Commission in Safety Net Review decisions;

- the probable effect of the legislation on the Commission's consideration of the Safety Net Review;
- examination of the provisions of the bill in the context of the debate about whether current Commission living wage processes are adequate;
- consideration of whether cost of living wage increases to employers is high and whether the disposable income benefits to low-income workers is low; and
- whether the bill is adequate without making the welfare/tax intersection less onerous.

1.4 While the bill is limited in its scope, the committee has not given full consideration to all of the issues suggested by the Selection of Bills Committee, some of which are highly complex. For instance, the matter of the welfare and tax intersection is a highly contentious policy area extending far beyond the scope of the relatively minor amendments proposed in this bill. The committee notes lengthy discussion and advocacy of policy changes in relation to these matters, in submissions from the Australian Industry Group and the Australian Chamber of Commerce and Industry, among others. While the views expressed in these submissions will be briefly noted, the committee majority sees its task as addressing the immediate substance of the amendments rather than making comment on policy changes which would require extensive policy review.

1.5 The committee received 23 submissions and conducted a public hearing in Canberra on 27 May 2003. In preparing this report the committee has drawn on evidence it received at that hearing and from the submissions received. Lists of submissions and witnesses are to be found in appendices to this report.

1.6 The tabling date for this report was originally set for 5 May 2003. The committee lodged an interim report out of session, advising the Senate of its need for more time. The Senate approved an extension of the tabling date to 19 June 2003.

Awards and the Safety Net

1.7 In fixing the award safety net, the Commission continues to maintain its historic role in influencing wages movements through the flow-on of its safety net review decisions. The committee majority notes claims that this role has significantly less relevance today than it did in the past, as only about 20 per cent of the workforce still relies on awards as their pay-setting method for wage increases. As will also be noted however, evidence to the committee demonstrates that the influence of safety net adjustments has a flow-on effect through those sectors of the workforce that are on either over award pay or pay rates negotiated through enterprise bargaining. The role of awards within the industrial framework has been simplified under the WR Act, which allows only a limited number of allowable award matters.

1.8 As noted earlier, the Commission is required to have regard to the low paid when adjusting the safety net. Since 1997 the Commission has based its judgments on three characteristics which it has identified as constituting a workable definition of low-paid workers: where wages are not prescribed in workplace or enterprise

agreements; where award classifications are toward the lower end of the award structure; and, where either no over award payments, or only small over award payments are being received.¹ Nothing in the amendments proposed would prevent the Commission from continuing to use this definition.²

1.9 Evidence to the committee on the significance of the award safety net was, not surprisingly, divided along clear lines. In broad terms, the ACTU and individual unions, and state governments argued that awards were essential to protect the most vulnerable employees, an increasing proportion of whom are employed part-time or as casuals. They argued in favour of award relativities as providing some recognition for skills and some semblance of a basis for a career structure. The ACTU argued that awards underpinned enterprise agreements through the operation of the ‘no disadvantage’ test.³ In several submissions, for instance from the Association of Professional Engineers, Scientists and Managers Australia (APESMA), there was comment to the effect that small business employers (and their employees) would continue to rely on the administrative convenience of awards in preference to enterprise agreements.

1.10 Employer organizations, that is, ACCI and the AiGroup, accepted the need for awards but in a more limited way. Both organizations expressed concerns about the flow-on effects of award decisions. ACCI regarded awards as an out-of-date method of putting a floor under wages, and AiGroup, as will be shown later, was more explicit in espousing a ‘social wage’ solution to the problem of addressing the needs of the low paid.

1.11 Government policy has made clear the fundamental distinction to be made between enterprise and workplace agreements on the one hand, and award adjustments on the other. Safety net reviews of award wages have come to be regarded as processes for fixing minimum wages for the unskilled workforce engaged in low wage employment. There is no argument that this is a necessary measure to counter unscrupulous employment practices resulting in the exploitation of vulnerable employees. For other purposes, however, the Government argues that it is in other respects a very clumsy mechanism for setting the wages and conditions for the great majority of employees in most workplaces. As the Commonwealth has argued before the Commission, the safety net review process is not designed to reflect wage increases employees obtain through enterprise or individual agreement. When this occurs it has the effect of raising the floor on wages negotiated through those agreements.⁴ As a result it discourages bargaining and any improved productivity that could occur.

1 Australian Industrial Relations Commission, *Safety Net Review Wages 1997*, Section 7.6

2 Submission No.21, Department of Employment and Workplace Relations, p.5

3 Submission No.4, ACTU, p.3

4 *ibid.*, p.80

1.12 The committee majority notes that in many award-reliant industries there is only a small differential between the pay rates for workers on awards and those on collective agreements, often less than \$3 a week in favour of workers on agreements.⁵ Such a small differential is evidence that collective or enterprise agreements are vulnerable to the effects of increases in award judgements which take no account of local economic circumstances.

1.13 Evidence presented by the Commonwealth at the 2003 wage case hearings before the Commission argued that if employees in industries with lower productivity growth receive wage increases based on high aggregate productivity growth, then real unit costs in the low productivity industries will increase as a consequence. This is becoming evident in retail trade and in the cafe, restaurant and hotel industries. Yet it is also the case that workers in low productivity employment benefit from productivity growth in other industries. That is, workers in slow productivity growth industries, including those on awards, also benefit from the lower price rises resulting from efficiencies and competition in higher productivity industries. The committee majority notes the tendency for the more efficient sectors of the workforce to carry the less efficient. The importance of this legislation in attempting to address this imbalance focus on the needs of the low paid as a primary consideration in wage fixing arrangements becomes obvious in this context.⁶

1.14 References to the requirement for the Commission to consider the needs of the unemployed have attracted comment. Argument has focused on how best to deal with the fine divide between the unemployed and the marginally employed and unemployed. There appears to be some agreement that this fragile cohort can be taken as presenting a singular problem. The ACTU has argued that as the Commission has rejected argument from the Commonwealth in its 1999 decision by rejecting the inclusion of the unemployed from award consideration, that should be the end to it. The ACTU argues that the effect of this amendment, if passed, would restrict the scope of the Commission to make adequate minimum awards. The committee majority takes the view that this provision does not fetter the discretion of the Commission, but serves to guide the Commission in its deliberations.

Wages policy and its economic context

1.15 The committee has always considered the evolution of workplace relations policy to lie within the broader context of economic growth and its employment outcomes. Submissions to this inquiry from all sources have highlighted this concern. The WR Act reflects this policy perspective, and amendments which have been proposed over the past four years have been intended to strengthen the nexus between wages policy and employment outcomes. This bill is the Government's latest legislative attempt to further refine this policy.

5 *ibid.*

6 Safety Net Review – Wages 2002-03, Commonwealth Submission, pp.79-81

1.16 The committee notes that evidence presented by the Commonwealth at the 2003 wage case hearings before the Commission argued that if employees in industries with lower productivity growth receive wage increases based on high aggregate productivity growth, then real unit costs in the low productivity industries will increase as a consequence. This, it was claimed, is becoming evident in the retail trade and in the cafe, restaurant and hotel industries. Yet it is also the case that workers in low productivity employment benefit from productivity growth in other industries. That is, workers in slow productivity growth industries, including those on awards, also benefit from the lower price rises resulting from efficiencies and competition in higher productivity industries. The argument continued that there was a tendency for the more efficient sectors of the workforce to carry the less efficient. The Government's stress on the importance of this legislation in attempting to address this imbalance to focus on the needs of the low paid as a primary consideration in wage fixing arrangements becomes obvious in this context.⁷

1.17 In evidence to the 2003 hearings of the Commission, the Commonwealth argued that, to the extent that wage increases result in job losses and lowers the rate of economic growth, the effect is most pronounced among the less skilled and less productive workers. Less skilled workers were more likely to be laid off because they are easier to replace than higher skilled workers. Employers were also reluctant to take on less skilled workers and job seekers in the face of rising wages costs through across the board award increases, thereby weakening the employment prospects of this group.⁸

1.18 It was argued that employees on awards are highly represented in this vulnerable group. They are generally concentrated in lower skilled occupations compared to those who are paid under enterprise agreements. The committee notes the 2003 Commonwealth submission to the Commission arguing that low skilled workers are less likely to achieve sizeable productivity improvements and were therefore more likely to be affected by reductions in employment. ABS survey data indicates that 75 per cent of employees under awards are covered by four broad occupation groups of intermediate and elementary skill levels, and that 73 per cent of these workers had only school level qualifications or less. In contrast, only 10 per cent of higher skilled occupations are covered by awards, and of these, 78 per cent have post-school qualifications.⁹

1.19 The committee received significant evidence from the Australian Industry Group (AiGroup) concerning the effect of the 2002 Safety Net increases on wages generally. The AiGroup submission states:

While it is true that the 2002 decision did not prove to be a wrecking-ball flattening the entire economy, the survey evidence demonstrates that the

7 Safety Net Review – Wages 2002-03, Commonwealth Submission, pp.79-81

8 *ibid.*, p.25

9 *ibid.*

negative effects on employment arising from an increase in the order of \$18.00 per week are not limited to those sectors in which a high proportion of workers are award reliant. Other sectors, such as the metal and engineering industry, where there is a relatively high incidence of both formal and informal over award arrangements are likely to suffer negative economic impacts, including lower employment levels.¹⁰

1.20 The submission continues, in regard to flow-on effects:

The indirect costs of any safety net adjustment are not limited. The evidence demonstrates that there is a substantial flow-on of the increases to non-award and over award employees. Safety net increases are not limited to the 25 per cent of the workforce who are exclusively dependent on award rates of pay. The level of adjustment sets a minimum benchmark for movements across the entire Australian wages system.¹¹

1.21 The flow-on effects surveyed by the AiGroup indicated that a high proportion of employers passed the \$18 Safety Net increase on to over award employees, even though there was no obligation on them to do so. Employers reported lower profits and reductions in full-time positions, and an increasing number of casual positions created. Small employers were particularly affected.¹²

1.22 Data from the AiGroup also showed that 484 company responses to the 2002 safety net decision indicate that 10.1 per cent would reduce the number of overall employee numbers as a result of the high flow-on wages of that year. This evidence may also be cited in relation to claims made in submissions from the ACTU and from the Queensland Government that there is no data to show that award increases had any effect on employment.

1.23 The submission from the Australian Chamber of Commerce and Industry (ACCI) also identified the problems faced by small business in relation to safety net increases. Most small businesses are reliant on awards. They stand outside the agreement making process. Although most small businesses are owner operated, many are also labour intensive businesses. As the submission states, they are the employers who can help make serious inroads into the levels of unemployment if labour is not priced out of the market.

1.24 Evidence presented by the Commonwealth at the 2003 wage case hearings before the Commission argued that if employees in industries with lower productivity growth receive wage increases based on high aggregate productivity growth, then real unit costs in the low productivity industries will increase as a consequence. This is becoming evident in retail trade and in the cafe, restaurant and hotel industries. Yet it is also the case that workers in low productivity employment benefit from productivity growth in other industries. That is, workers in slow productivity growth industries,

10 Submission No.18, AiGroup, p.35

11 *ibid.*

12 *ibid.*, annexure 3, pp.38-39

including those on awards, also benefit from the lower price rises resulting from efficiencies and competition in higher productivity industries. The committee majority notes the tendency for the more efficient sectors of the workforce to carry the less efficient. The importance of this legislation in attempting to address this imbalance focus on the needs of the low paid as a primary consideration in wage fixing arrangements becomes obvious in this context.¹³

1.25 Restaurant and Catering Australia has submitted that contrary to the effect desired by the Commission, the 2002 Safety Net decision has meant a drop in average weekly earnings for restaurant employees. It argues that the tight margins experienced in this growth industry require that a fixed amount be expended on wages. The effect, therefore, of hourly rate increases (in 2002 accompanied by a 1 per cent increase in superannuation) is that the number of hours and number of employees is cut. The result has been that employment has been reduced in cafes and restaurants as well as in hotels.¹⁴The submission points out:

The very high number of employees receiving penalty rate payments means that the likely flow on of safety net adjustments, to workers in the restaurant industry is greater than the all industry average. Restaurant & Catering Australia contends that a flow on of 2.7% (one estimate of the projected overall impact of the 2002 decision) was around 3.85% for restaurants, in hourly rate terms.¹⁵

1.26 ACCI also argues that the Commission is at risk of being unwittingly led to conclude that higher increases can be awarded than would otherwise be the case simply because the aggregate cost effect of the claim across the economy reduces year on year as the percentage of award governed employers and employees decline. That award percentage is now about 20.4 per cent of employees, down from about 67 per cent ten years ago. The ACTU has argued that this means that (in 2003) a claim for a \$24.60 rise on 20 per cent of the workforce has less effect in aggregate terms than it would if it was paid to 67 per cent of the workforce. ACCI argues, as does AiGroup, that this masks the real effect on the employers who are the subject to the orders made. The committee majority recognizes that it is the effect on those employers that ought to be taken into consideration by the Commission. It notes ACCI's concern that the ACTU can cloak an irresponsible claim in a mask of semi respectability by relying on the traditional aggregate impact analysis.¹⁶

The welfare – tax intersection

1.27 One of the terms of reference invites consideration of whether this bill is adequate without making the welfare – tax intersection less onerous. The committee majority's view on the relevance of this issue to this inquiry has already been stated.

13 Safety Net Review – Wages 2002-03, Commonwealth Submission, pp.79-81

14 Submission No 1, Australian Restaurants and Catering, p.6

15 *ibid.*

16 Submission No 11, ACCI, pp.4-5

Nonetheless, comment has been made in submissions from AACI and the AiGroup, both of which argue that in determining safety net adjustments, the Commission should take into account recent developments in the broader social safety net. The AiGroup was pleased to note that the Commission had formally accepted its arguments that if significant changes are made to the taxation and social security systems to provide a more equitable outcome for the low paid, as well as employers, then the commission may be prepared to take such changes into account in future safety net review proceedings.¹⁷

1.28 This issue of wages policy being considered in isolation from taxation policy was taken up with the ACTU at the inquiry hearings. The evidence suggests that there is little or no research done to assist the Commission, or any parties making submissions, toward an understanding of the tax-welfare effects of any particular wage rate movement on different kinds of small business or particular demographics of employees.¹⁸ The committee majority notes the comment made by the Minister, Hon Tony Abbott MP, on taxation and welfare issues in relation to wages policy, but cannot offer any comment on the status of any policy debate on this issue. It does note however, the evidence that informed comment needs to be assisted by better targeted research.

1.29 In relation to taxation, the committee notes the view from the ACTU that the effective marginal tax rate is a problem, and should be addressed by changes to the tax and transfer systems, including by tax credits. The ACTU argues that this is an issue for government tax policy, not the industrial relations system or the Commission.¹⁹

1.30 The Australian Industry Group has also argued that the income support system is a much more effective way of delivering assistance to low income households that is the wages system. AiGroup makes the point that income support, unlike wage increases flowing from the safety net wages cases, provide levels of assistance appropriate to the particular circumstances of the household. Most such benefits are not taxed.²⁰ The committee majority notes the strength of this argument in any debate on issues which may arise from this bill, but extend far beyond the scope of this inquiry. It also notes ACCI's comments on the obsolescence of award wage arrangements,²¹ but cautions against any tendency to see issues of low pay and employment conveniently relegated to the social welfare solutions category.

Maintaining the independence of the Commission

1.31 The committee majority considers it necessary to report its concern about representations it has received that the bill threatens the independence of the

17 Submission No.18, Australian Industry Group (AiGroup), p.5

18 See Hansard transcript, 27 May 2003, pp3-5

19 Submission No.4, ACTU, p.16

20 Submission No.18, AiGroup, pp.15-16

21 Submission No.10, ACCI, p.26

Commission. This view was put to the committee in a number of submissions, and at the public hearing, principally by the representative of the Shop, Distributive and Allied Employees' Association. It has been alleged that the principal amendment will have the effect of fettering the discretion of the Commission to weigh the arguments made before it in relation to the primary role of awards and the relative importance of the needs of the low paid.

1.32 The submission from the Department of Employment and Workplace Relations clarifies this issue:

The bill will not impose impermissible limitations of the discretion of the Commission, nor prevent it from making awards that are appropriate for the resolution of an industrial dispute. The amendments to the object of the WR Act and the object of Part VI will not alter the general framework under which the Commission performs its dispute prevention and settlement function. Placing more importance on one factor than others does not place an impermissible fetter on the discretion of the Commission. Nor does including additional matters for the Commission to have regard to, such as the employment prospects of the unemployed and the capacity of employers to meet additional labour costs.²²

1.33 In evidence to the committee the Department of Employment and Workplace Relations reiterated its advice that the bill conformed to the constitutional restraints that exist to protect the independence of the judicial system. The committee majority is assured that the bill does nothing more than provide guidance to the Commission in matters to which it should direct its attention in considering safety net award claims. As the department's Chief Counsel explained:

The government would hope that it would have some impact on the way in which the Commission might exercise its discretion, but it would not direct the Commission to a particular outcome or mandate a particular outcome. It would be conceivable that, if the Commission found in all the circumstances that the same outcome was justified, having taken into account the new elements that it is required to take into account, it could do so.²³

1.34 The committee majority does not view this proposed legislation as reflecting in any way on the competence of the Commission to exercise its judgement and its responsibilities, but as a principal party to the Commission's deliberations, and having responsibility to implement its workplace relations policy, the Government feels itself obliged to legislate as it has done. The Government has made the point that Commission adherence to the amended guidelines would strengthen its role in encouraging bargaining at the workplace level.²⁴

22 Submission No.21, DEWR, p.4

23 Mr James Smythe, *Hansard*, p.39

24 Hon Tony Abbott MP, *Hansard* (House of Representatives), 13 February 2003

Other matters

1.35 The committee's scrutiny of the evidence to the inquiry was necessarily selective, but it covered a range of issues which need to be referred to briefly. These have to do with criticisms of the proposed legislation offered in several of the submissions.

1.36 The committee majority notes that a consistent theme in arguments from the ACTU and from individual unions to this and other amending bills has been the view that all proposed amendments to the WR Act have the purpose of reducing employment rights and entitlements and to restrict the bargaining power of those workers who belong to well organized unions.²⁵ To the extent that this true, it applies only in those circumstances where there is demonstrable evidence that the conduct of workplace relations has seen the public interest – including the interests of employees – jeopardized by practices which the Government believes are out of date.

1.37 Comment has also been made about the necessity of introducing such a bill when under current provisions the Commission is obliged to consider the employment prospects of the low paid when making their decisions. The ACTU has argued that the Commission may be compelled to abandon its practice of awarding increases to all classifications, thereby hastening the move toward the irrelevance of the award system.²⁶ The committee majority believes that such an outcome would require far more radical legislation than is proposed here.

Conclusion

1.38 The committee majority accepts that what is proposed in this bill will serve to refine the role of the awards safety net as an essential mechanism to protect the low paid.²⁷ The overall increase in the minimum safety wage has now increased by 19 per cent or \$82 since 1996.²⁸ However, the Commission has extended those award wage increases significantly beyond the role of a safety net for the low paid. In fact, in its 2001 decision it awarded higher wage increases for higher wage earners than the low paid.²⁹ The Commission's 2003 safety net decision reversed this with low paid workers receiving a slightly higher increase.³⁰

1.39 The link between wage fixation and macro-economic goals has been evident in the long history of argument in industrial courts in both Commonwealth and state

25 Submission No.4, ACTU, p.1

26 Submission No.4, ACTU, p.10

27 EM, p.2

28 Submission No.11, ACCI, p.3

29 Safety Net Review, Wages Decision, May 20201, Print PR002001, [140], ACCI, p.10

30 Submission No.21, DEWR, p.6

jurisdictions. The WR Act requires the Commission to consider such economic factors as levels of productivity and inflation; employment, including youth employment; and the needs of the low paid.³¹ This bill strengthens this requirement by reinforcing guidelines in regard to employer's capacity to pay and the employment needs of the low paid.

1.40 Those businesses which rely upon awards are primarily small and medium businesses and many of them are labour intensive businesses in the growing service sectors of the economy, or are not for profit sector businesses. ACCI point out that employer-on-costs for these businesses can conservatively be estimated at 20 per cent. Increases to awards rates affect overtime and penalty rates, annual leave loadings, payroll tax, superannuation, and workers compensation.³²

1.41 Most academic studies of wages policies and practices in OECD countries have found a significant negative relationship between minimum wage increases and employment. This is confirmed by the majority of Australian studies on aggregate real wage growth and employment. The government believes unemployed people should be given the best possible opportunity to secure employment. Therefore, the most compelling reason for placing greater emphasis on the capacity of employers to afford safety net adjustments is the devastating consequences of neglecting to do so.³³

1.42 The productivity growth rate of the economy over the last six years has been less than the nominal change to the federal minimum wage. By granting arbitrary wage increases without negotiated productivity improvements, businesses are exposed to greater economic vulnerability, leading to reduced employment opportunities through business closures, job shedding and adverse effects on hiring and investment decisions.³⁴

1.43 The committee majority fully supports the continued efforts of the Government to improve the employment prospects and job security of the low paid and unemployed.

1.44 The committee majority **recommends** that this bill be passed without amendment.

John Tierney
Chair

31 WR Act, Section Part VI Division 1, 88B

32 Submission No.11, ACCI, pp. 5-6

33 Submission No.21, DEWR pp.6-7

34 *ibid.*

