



**SENATE EMPLOYMENT, WORKPLACE RELATIONS AND
EDUCATION LEGISLATION COMMITTEE**

Inquiry into the

Workplace Relations Amendment
(Protecting the Low Paid) Bill 2003

**Submission by the Department of Employment and Workplace
Relations**

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OVERVIEW

1. The Workplace Relations Amendment (Protecting the Low Paid) Bill 2003 (the Bill) was introduced into the House of Representatives on 13 February 2003. The Bill was debated and passed by the House of Representatives on 5 March 2003. The Bill was referred to the Senate Employment, Workplace Relations and Education Legislation Committee on 19 March 2003.
2. The Bill proposes amendments to the *Workplace Relations Act 1996* (the WR Act) to emphasise the needs of the low paid in the principal object relating to the award safety net, thereby clarifying the matters the Australian Industrial Relations Commission (the Commission) has regard to when adjusting the safety net. The Bill also proposes that the needs of the low paid, including their employment needs, the employment prospects of the unemployed and the capacity of employers to meet increased labour costs become specified considerations when safety net adjustments are made by the Commission.
3. The Bill is part of the Government's policy to maintain and improve the employment prospects of the low-paid, low-skilled and unemployed. It is also consistent with the Government's policy commitment to have pay and working conditions determined at the workplace level wherever possible.

SUMMARY OF PROVISIONS

Principal objects

4. The Bill proposes an amendment to the principal object listed in section 3 of the WR Act to specify that the primary focus of the award safety net is to address the needs of the low paid. Paragraph 3(d)(i) aims to provide the means for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, built upon a foundation of minimum standards. Paragraph 3(d)(ii) aims to provide the means to ensure that an effective award safety net of fair and enforceable minimum wages and conditions of employment is maintained. The Bill would amend paragraph 3(d)(ii) to provide that the effective award safety net of fair and enforceable minimum wages and conditions of employment is to be maintained primarily to address the needs of the low paid.

Commission's role

5. Part VI of the WR Act deals with the Commission's role in furthering the object of the Act and establishing and maintaining a safety net of fair minimum wages and conditions of employment. Paragraph 88A(d) of Part VI provides that the Commission's functions and powers in relation to making and varying awards must be performed and exercised in a way that encourages the making of agreements at the workplace or enterprise level and protects the competitive position of young people in the labour market. The Bill proposes that the Commission's functions and powers also be performed in a way that recognises that the primary role of awards is to address the needs of the low paid.

6. In addition, in establishing and maintaining a safety net of fair minimum wages and conditions under subsection 88B(2) of Part VI the Commission must have regard to the living standards generally prevailing in the Australian community, economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment. When adjusting the safety net in accordance with paragraph 88B(2)(c) the Commission must have regard to the needs of the low paid.
7. The Bill proposes an amendment to paragraph 88B(2)(c) so that the Commission would be required to have regard to the following three factors: as a primary consideration, the needs of the low paid, including their need for employment; and the employment prospects of the unemployed; and the capacity of employers to meet increased labour costs.
8. The Bill will provide additional legislative guidance to the Commission when it exercises powers under Part VI of the WR Act. Part VI relies for its validity mainly on the conciliation and arbitration power in section 51(xxxv) of the Constitution. High Court authority with respect to this power has established that the Parliament cannot direct an arbitrator as to the outcome of arbitration. This means that the Commission must be left with the discretion to make whatever award it considers appropriate for the resolution of the dispute over which it is exercising arbitral powers.
9. 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.
10. The current WR Act already requires the Commission to have regard to the needs of the low paid when adjusting the award safety net (paragraph 88B(2)(c)). The amendment proposed by Item 3 of the Bill would provide more specific guidance to the Commission than the current provision; that the needs of the low paid are a primary consideration. 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.
11. The legislation as amended by the Bill would not purport to give an exhaustive statement of the matters to be considered by the Commission. The factors that the Commission will be required to have regard to are consistent with the scheme of the Act. These features assist in ensuring that the Commission retains appropriate discretion to make award adjustments, having regard to the relevant matters that are set out in the WR Act.

POLICY RATIONALE

Workplace agreements

12. Since the early 1990s there has been general support for moving the focus of the workplace relations system away from the centralised determination of wages and conditions of employment through industry and occupational level awards to the setting of wages and conditions through agreements reached at the enterprise and workplace level. This shift has occurred both in the Federal and State and Territory workplace relations jurisdictions.

13. In 1996 the Government introduced changes to further focus Australia's workplace relations system on agreement making, giving employers and employees the freedom to agree on conditions that suit their needs, while ensuring that the award safety net provides fair minimum wages and conditions for workers who may be vulnerable in the labour market.

14. Decisions of the Commission on the adjustment of rates of pay in awards need to be consistent with and reinforce the safety net role of awards. This is important for the integrity of the system introduced in 1996. It will ensure the capacity of the system to provide genuine safety net standards, to encourage agreement making and to meet broader objectives of increased productivity and economic sustainability.

Award safety net

15. The Commission has traditionally played a major role in fixing wages in Australia through the 'flow-on' of its safety net review decisions. Currently around 80 per cent of the Australian workforce do not rely upon awards as their pay-setting method. A breakdown of the workforce by pay-setting method is at [Appendix A](#). Minimum wage levels in Australia and various OECD countries are listed at [Appendix B](#).

16. The role of awards within the industrial framework has been revised. The fundamental concept is that awards should be simpler and deal with a limited range of allowable award matters. Arbitration by the Commission is as a last resort and is only available within specified limits (paragraph 89(a)(ii)).

17. The WR Act currently requires the Commission to have regard to the low paid when adjusting the safety net. The Commission identifies who the low paid are based on the submissions from the various parties. In handing down the 1997 safety net review decision the Commission identified three features that constitute a workable definition of low paid workers: their wages were not prescribed in workplace or enterprise agreements; their award classifications were toward the lower end of the award structure; and they received no, or only small, over award payments.¹ The Commission would continue to adopt a workable definition of the low paid under the amendments proposed in the Bill.

18. The Commonwealth has strongly argued before the Commission that adjusting all award rates regardless of wage level, will undermine the Commission's role in

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

encouraging agreement making. It also has a significant impact on the labour costs of employers as wage increases achieved through safety net adjustments, unlike those achieved through agreement making, do not offer the potential for productivity improvements.

19. The Commonwealth's position has been that, in order to represent a genuine safety net adjustment, the Commission should only make adjustments available for award rates up to and including the equivalent of the tradesperson's rate - that is, Level C10 in the Metal Engineering and Associated Industries Award.

20. Such a capped safety net adjustment is considered consistent with the intent of the WR Act for two main reasons. First, it addresses a statutory requirement that the Commission exercise its powers in ways consistent with the fundamental objectives that wages and conditions are determined as far as possible by agreement at the workplace or enterprise level; that awards act as a genuine safety net; and that adjustments to award rates do not act to discourage agreement-making. Second, it helps to contain the negative impact of wage increases on employment.

21. The Commission's 2003 safety net decision provided a slightly higher wage increase for employees at lower wage levels in order to give some weight to the possible effect of the increase on employment levels. The Bill will provide further direction to the Commission in this regard.

Employment needs

22. The Government recognises that the wages system has an important, but limited, capacity to address and meet social equity goals for low paid workers. Australia has a social security system that genuinely targets adequate assistance to those most in need. Importantly, a wage increase does not benefit a household where no one works. The Commission acknowledges with its 2003 safety net decision "that safety net increases are an imperfect and partial mechanism for addressing the needs of the low paid".²

23. The Bill would provide additional legislative guidance to the Commission when it exercises powers in adjusting the safety net, to address as a primary consideration the needs of the low paid, including their need for employment and to consider the employment prospects of the unemployed and the capacity of employers to pay the increase. The legislation as amended by the Bill would not purport to give an exhaustive statement of the matters to be considered by the Commission.

24. International economic studies on the link between employment growth and increases in the minimum wage provide an important source of information on how safety net increases do impact on the employment needs of the low paid.³ Around 70 per cent of academic studies published in the United States and other OECD countries over the past decade found a significant negative relationship between increases in the minimum wage and employment.

² Australian Industrial Relations Commission, Safety Net Review Wages May 2003, p71

³ Commonwealth submission, Safety Net Review – Wages 2002-03, Section 5.

25. Only a small minority of academic studies have found a negligible relationship between minimum wage increases and employment growth in certain OECD countries. The most well known of these are from US economists Card and Krueger, who conducted a series of ‘natural experiments’ on the effect of minimum wage increases in certain US states.⁴ The Commonwealth has highlighted a number of methodological flaws in the work of Card and Krueger⁵.

26. The majority of Australian economic studies conducted in recent years have also found a negative relationship between aggregate real wage growth and employment. The overall conclusion that can be reached from a diverse range of Australia studies is that the impact of wage increases on employment tends to be greater in Australia than in other developed nations.⁶

27. Australian studies tend to focus on the link between aggregate real wages growth and employment (rather than on just the minimum wage) and therefore do not distinguish between the impacts on workers whose wages are directly affected by safety net increases and on those workers whose pay is above the minimum. Given that a large proportion of award workers possess relatively few marketable skills, it is likely that the negative employment impact found in Australia studies would be even greater for the low paid.⁷

28. The substantial employment effects of wage increases on the low paid should be a primary consideration of the Commission, given the range of social and financial costs imposed by spells of joblessness. Unemployment is a major cause of financial stress and affects the general well-being of individuals, families and communities. Household survey data from the ABS show that the unemployed are nearly six times as likely to be categorised as having a high level of financial stress, than wage and salary earners. Moreover, 72 per cent of workers were reported as having experienced ‘no level of financial stress’ compared to 24 per cent of those whose principal source of income is an unemployment, education or sickness allowance.⁸

29. Unemployed people should be given the best possible chance of obtaining ongoing employment, which in turn gives them better long term financial prospects. While a sizable increase in award wages may provide immediate benefits to those already engaged in paid employment, it has the potential to worsen the financial prospects of the most disadvantaged group in the labour market – the unemployed.

30. A focus on the employment needs of the low paid through the Bill recognises not only the immediate problem of job loss but also the future impacts of higher labour costs on the ability of low skilled job seekers to retain employment.

4 D Card and A Krueger, *Myth and Measurement – The New Economics of the Minimum Wage*, Princeton University Press, Princeton, 1995

5 Commonwealth submission, *Safety Net Review – Wages 2002-03*, Section 5, pages 31-39.

6 For further information on the results of Australian studies, refer to Commonwealth submission, *Safety Net Review – Wages 2002-03*, Section 5, pages 40-42.

7 Reply Commonwealth submission, *Safety Net Review – Wages 2002-03*, Section 5, page 19.

8 ABS Household Expenditure Survey, 1998-1999

31. The skills of unemployed people depreciate as they remain out of work, out of practice and lose professional contacts in the workplace. Unemployment may generate a loss of cognitive abilities as a result of the unemployed person's loss of confidence and sense of control. A lack of success in the labour market is likely to diminish an individual's sense of worth and psychological well-being.⁹ Unemployment also has a significant negative impact on the labour market transition of low paid workers.¹⁰

Capacity to pay

32. An element of the proposed amendments contained in the Bill before the Committee, is that the Commission would give greater emphasis to the capacity of employers to meet the increased wage costs resulting from safety net adjustments. There are several compelling reasons for placing greater emphasis on the capacity of employers to afford safety net adjustments. The most fundamental is the limited capacity of firms to fund increases in wage costs without productivity improvements.

33. Increases in wage costs in excess of productivity will adversely affect the hiring and investment decisions of firms or add to inflationary pressures as cost increases are passed on to consumers. The cost imposition on employers is greater than the amount simply granted by the Commission. Safety net increases raise the costs of a wide range of wage-related expenses including overtime payments, loadings, penalty rates and superannuation.

34. Over the last six safety net adjustments made by the Commission the nominal change in the Federal Minimum Wage has been greater than the productivity growth rate of the economy as a whole. Between 1991-92 and 2001-2002 productivity growth rates in three award-dominated industries such as Accommodation, cafes and restaurants, Retail and Health and community services tended to be lower than the economy wide average. In the submission to the 2002 safety net review the Commonwealth demonstrated that the unit wage costs in the three award-dominated industries had increased substantially over the period of the safety net adjustments since 1997.¹¹

35. Even were it to be assumed that firms could absorb an award increase unmatched by productivity improvements, they are unlikely to have the capacity to absorb successive large increases without significant productivity improvements or increasing their prices to consumers. Without productivity improvements firms are more vulnerable to adverse economic circumstances leading to job shedding or reduced employment opportunities.

9 A Sen 'Inequality, unemployment and contemporary Europe' International Labour Review, 1997, Vol 36, No 2.

10 Y Dunlop 'Labour Market Outcomes of Low Paid Adult Workers: An Application Using the Survey of Employment and Unemployment Patterns' ABS Occasional Paper (Cat No 6293.0.00.005), March 2000

11 Reply Commonwealth submission, Safety Net Review – Wages 2002-03, Section 8, page 45.

CONCLUSION

36. The Bill reflects the Government's continuing efforts to protect the employment prospects of vulnerable low-paid, low-skilled workers and improve the opportunities for the unemployed to enter employment while maintaining a safety net of minimum wages and conditions. The Bill is also consistent with the Government's commitment to have pay and working arrangements determined at the workplace level and accordingly encourage higher-paid, higher-skilled workers to engage in agreement-making.

APPENDIX A: Employee type by pay-setting method, May 2002

| | Awards | Collective and Individual Agreements | Total |
|----------------------|--------------|--------------------------------------|---------------|
| Full-time adult | 7.9% | 57.0% | 64.9% |
| Part-time Adult | 9.7% | 19.2% | 28.9% |
| Adult | 17.6% | 76.2% | 93.8% |
| Full-time Junior | 1.2% | 0.8% | 2.0% |
| Part-time Junior | 2.2% | 1.9% | 4.2% |
| Junior | 3.5% | 2.7% | 6.2% |
| All employees | 20.5% | 79.5% | 100.0% |
| Permanent | 11.1% | 64.0% | 75.1% |
| Casual | 9.5% | 11.4% | 21.0% |
| Temporary | 0.4% | 3.5% | 3.9% |

Note: Figures for All employees were obtained from the Employee Earnings and Hours Survey – Final (6306.0). The figures for the sub-groups were obtained from the preliminary data release.

APPENDIX B: Ratio of minimum to median wages – Australia and various OECD countries

| Country | per cent | Country | per cent |
|----------------|----------|----------------|----------|
| France | 60.8 | Portugal | 38.2 |
| Australia | 57.9 | United States | 36.4 |
| Ireland | 55.5 | Hungary | 35.6 |
| Greece | 51.3 | Poland | 35.5 |
| Belgium | 49.2 | Turkey | 34.7 |
| Luxembourg | 48.9 | Japan | 32.9 |
| Netherlands | 46.7 | Spain | 31.8 |
| New Zealand | 46.3 | Czech Republic | 30.4 |
| Canada | 42.5 | Korea | 23.8 |
| United Kingdom | 41.7 | Mexico | 21.1 |

Source: M Keese and A Puymoyen, 'Changes in Earnings Structure: Some International Comparisons Using the OECD Structure of Earnings Database', OECD Labour Market and Social Policy Occasional Papers, 2001. Data are for 2000 except for Hungary (1999), Poland (1999) and Turkey (1998).

Note: This is the most recent published data from the OECD. The UK Low Pay Commission has developed a more recent table for mid 2002 using data from OECD databases. According to the UK data, Australia remains the second highest among the 12 countries listed, behind France, and the UK ratio of minimum to median wages has risen to 44.0 per cent - refer 'The National Minimum Wage', Fourth Report of the UK Low Pay Commission, page 254.