Chapter One

The Bill

Timing of the bill and the inquiry

1.1 The Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2002 ('the bill') contains provisions first introduced in the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999 (known as MOJO). With the defeat of that bill in the Senate in November 1999, the provisions were reintroduced in the Workplace Relations Amendment (Minimum Entitlements for Victorian Workers) Bill 2001. This bill was laid aside with the dissolution of the House of Representatives in August 2001.

1.2 The current bill was introduced in the House of Representatives on 21 March 2002. The committee has not had the benefit of considering the debate on the bill in the House, which had made little progress through its second reading stage in that place at the time this report was finalised. The Committee conducted a public hearing on the bill in Melbourne on 7 November 2002. In preparing this report the committee has also drawn on 12 submissions it has received.

Reasons for referral

1.3 The Selection of Bills Committee Report of 22 October 2002 contained the principal issues for consideration which it recommended to this committee:

- the adequacy of the employment protection contained in the bill for scheduled workers and outworkers, having regard to the protection enjoyed by other Victorian and Australian workers and outworkers;

- the implications, including constitutional implications, of the bill for alternative legislative approaches at the state level, including the Outworkers (Improved Protection) Bill and the Federal Awards (Uniform System) Bill.

Policy background

1.4 In 1992 the Victorian Government decided to deregulate the Victorian industrial relations system. This was effected through the Employee Relations Act 1992, which abolished state awards from 1 March 1993 and established instead a system of individual and collective agreements underpinned by a set of minimum conditions. In 1996 the Victorian Government referred to the Commonwealth the power to regulate most of its industrial relations powers. This policy was implemented in the *Commonwealth Powers (Industrial Relations) Act 1996*, to take effect from the beginning of 1997. Amendments to the Workplace Relations Act made in 1996

created Part XV of the Act to administer the former Victorian state industrial jurisdiction and to facilitate access to federal awards and agreements. The effect of the transfer of powers was to give the Commonwealth powers to administer industrial legislation passed by the Victorian Parliament in 1992.

1.5 This legislation allowed employment contracts to be entered into based on five minimum terms and conditions. These were: 4 weeks annual leave; one week's paid sick leave; a minimum wage, unpaid maternity, paternity and adoption leave; and notice of termination of employment or pay in lieu. Further amendments to the act were proposed in the 1999 MOJO Bill.

Victorian legislation

1.6 Industrial relations are concurrent powers under the Constitution. The regulation of the employed workforce within state boundaries is a matter for either Commonwealth or state law, but not both. By 1994, the majority of Victorian employees were covered by federal rather than state awards. The referral of power was limited because the potential reach of Commonwealth law is restricted by certain implied constitutional limitations on the capacity of the Commonwealth to pass laws which may effect the functions of a state which are critical to its capacity to function as a government. Thus public sector employment conditions are matters excluded from the referral.

1.7 Commentators, like journalist Mark Davis from *The Australian Financial Review*, have written that for all other workers, the passage of time would see them coming under the employment conditions negotiated through federal enterprise agreements, as Victorian agreements expired. Experience has shown that minimum wage orders continue to operate in the absence of new employment agreements, with Schedule 1A employers and employees remaining in the old state system. This point was made in communications between the Victorian government and the Commonwealth requesting major changes to the Workplace Relations Act. The Victorian Minister for Industrial Relations alleged that the operations of the act had resulted in more than 600,000 Schedule 1A workers being disadvantaged as they were not covered by any award. The Victorian government called for, among other things, a 'genuine' no disadvantage test, a comprehensive award system and an extended role for the AIRC.

1.8 The Commonwealth rejected proposals for changes to the Workplace Relations Act for the reason that the Victorian proposals would effectively re-create a state industrial relations system leading to the loss of Victorian workers jobs.

1.9 In response, the Victorian government established a taskforce to recommend a legislative solution, incorporating aspects of the Workplace Relations Act but establishing a Fair Employment Tribunal to administer a Victorian industrial relations system where matters could not be dealt with under federal law. As noted above, the Fair Employment Bill failed to pass the legislative council. The ad hoc nature of proposed Victorian legislation has, in the Government's view, the potential to complicate industrial relations law in that state, to the detriment of the interests of

both employers and employees and especially to increase unemployment. As commitment to a unified system of industrial relations appears to be a point of agreement on all sides of this debate, the most logical way to strengthen this commitment is to secure the passage of this legislation.

Provisions of the bill

1.10 The Workplace Relations Amendment (Improved Protection for Victorian Workers) Bill 2002 is essentially the same as that introduced in the last parliament. In his opening of the second reading debate on the bill in the House, Minister Abbott made a number of points indicating the Government's commitment to worker protection. This report deals only with the main policy provisions of the bill.

Schedule 1A workers and their conditions of employment

1.11 The first element of protection is in regard to what are known as schedule 1A workers. The bill provides for improved safety net entitlements in schedule 1A that is for employees in Victoria not covered by federal awards and agreements. In summary, the bill will amend the Workplace Relations Act to provide for:

- an entitlement to payment for work performed in excess of 38 hours;
- an entitlement for eight days personal leave, which can be taken as sick leave, with up to five days taken as carers leave;
- an entitlement of two days bereavement leave;
- the Australian Industrial Relations Commission to be given power to support wage arrangements in industry sector orders;
- enhanced powers for investigation and enforcement procedures by departmental inspectors;
- the right of the Victorian Government to intervene in certain proceedings before the AIRC; and.
- the insertion of a mechanism for a stand-down of Schedule 1A employees, where, due to circumstances beyond the employer's control, they cannot be usefully employed.

1.12 Proposed amendments in the bill will widen the statutory role of inspectors to allow them to inform, investigate and enforce rights and obligations in schedule 1A workplaces. The proposed changes will make it easier to determine sick-leave entitlements and to increase them to eight days per year and make sick-leave cumulative. Carers leave and bereavement leave will be additional entitlements.

1.13 The bill will also confer on the Victorian government automatic intervention rights before the Australian Industrial Relations Commission (AIRC) in specific circumstances.

Schedule 2 - Outworkers

1.14 An important element in the bill is the provision to give contract workers in the textile, clothing and footwear industry access to enforceable minimum rates of pay. It will ensure that outworkers are paid at least the amounts they would have earned had they performed the same work as employees. The legislation aims at enforcing compliance by authorising federal workplace inspectors to enter premises where work is performed or where there are relevant documents and by empowering inspectors to enforce the minimum rates of pay in the courts.

1.15 As noted in the explanatory memorandum to the bill, outworkers engaged in the textile, clothing and footwear (TCF) industries are generally known to be in a disadvantaged industrial position. Two reports of the Senate Economics References Committee (1996 and 1998) detail the exploitation of 'sweated' labour in the industry. Reports continue of cases where leading fashion design firms are implicated in sub-contracting arrangements which perpetuate these unfair practices.

1.16 TCF outwork appears to be largely concentrated in the fashion apparel sector. This sector is less likely to establish off-shore production because of short runs and quick demand responses required by customers. There is no reliable data on the number of outworkers in the clothing industry, and estimates are some years old. The Textile, Clothing and Footwear Union of Australia estimated in 1995 there were 144,000 such workers in Victoria. In 1996 the Australian Taxation Office gave a national figure of 50,000 working in the TCF industry, of whom just over 20,000 were individual sub-contractors and homeworkers. The difficulty in legislating improved conditions for TCF outworkers is increased by the problem of not being able to estimate how many outworkers are paid under a contract for services, as distinct from those who are employee outworkers. Nor is it easy to determine to what extent contract outworkers are covered by the Clothing Trade Award; that is, whether or not manufacturers or middlemen for whom contract outworkers perform work are respondents to the Award.

1.17 The committee notes general agreement on the absence of reliable data on either wage-rates for employee outworkers or contract outworkers. There is a significant likelihood of non-compliance with the award, but no reliable data on the extent of award violation. Nor can any reliable estimate be made of the number of hours worked by outworkers.

1.18 The Government has considered a number of options in dealing with the issue of outworkers. Some of these will be discussed in Chapter 2. It suffices to say here that the bill contains provisions that stay clear of constitutional limitations and which do not constrain flexible working arrangements. Above all the intent of the bill is to ensure that the protection of workers is legislated for in a way which is consistent with preserving the unitary workplace relations system in Victoria, and therefore of avoiding unnecessary and cumbersome regulatory burdens.