Australian Government

Department of Employment and Workplace Relations

Senate Standing Committee on Employment, Workplace Relations and Education

Inquiry into the Workplace Relations (A Stronger Safety Net) Bill 2007

Submission of the
Department of Employment and Workplace Relations

4 June 2007

1. Overview of the Submission

1.1 The Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 (the Bill) was introduced into the House of Representatives on 28 May 2007 and passed with amendments on 30 May 2007. The Bill would amend the *Workplace Relations Act 1996* (the Act) to strengthen the safety net and protections for employees. The Bill will do this through the establishment of a fairness test for workplace agreements and two statutory agencies – the Workplace Authority and the Workplace Ombudsman. The proposed amendments would:

(i) require the Workplace Authority Director to be satisfied that specified workplace agreements provide fair compensation in lieu of the modification or exclusion of protected award conditions that apply to an employee or employees (the fairness test);

(ii) establish the Workplace Authority Director and the Workplace Ombudsman as statutory office holders appointed by the Governor-General and create the Office of the Workplace Ombudsman and Workplace Authority as statutory agencies;

(iii) establish a compliance framework to ensure the effective operation of the fairness test;

(iv) provide additional protections for employees, particularly in circumstances where protected award conditions are modified or removed or an agreement fails the fairness test;

(v) clarify and simplify the provisions prohibiting bargaining services fees; and

(vi) remove a requirement that federally registered organisations must have a majority of members in the federal workplace relations system in order to become registered, or remain registered.

1.2 The Bill was referred to the Senate Standing Committee on Employment, Workplace Relations and Education Committee (the Committee) and the Committee has invited submissions from interested parties to comment on the provisions of the legislation.

1.3 To assist with the Committee's inquiry, the submission of the Department of Employment and Workplace Relations will outline the Australian Government's policy objectives and explain the operation of the main provisions of the Bill.

2. Rationale for the amendments

2.1 The Bill will amend the Act to strengthen the existing safety net for the employees whose employment is regulated by the Act. In doing so, however, the Bill maintains the fundamentals of the Australian Government's workplace relations system which has assisted in delivering more jobs and higher wages for Australian families.

2.2 The Bill ensures that the national workplace relations system maintains the emphasis on agreement-making at the workplace or enterprise level, encourages flexible working arrangements and continues to be underpinned by a fair and economically sustainable safety net of minimum entitlements and employment protections.

2.3 Workplace agreements provide greater opportunities for flexible work practices and working arrangements that better suit the needs of employers and employees in the modern economy and modern Australian society. Australian Workplace Agreements provide optimal flexibility for an individual employer and employee to accommodate both business and personal needs.

2.4 The Bill reflects the Australian Government's response to concerns among some in the community that the trading off of penalty rates and other loadings without fair compensation might occur with adverse consequences for final take home pay. In this regard, the Government has emphasised that it was never intended that it should become the norm for protected award conditions to be traded off without proper compensation.

2.5 The fairness test will guarantee employees fair compensation in lieu of conditions, such as penalty rates and overtime and shift loadings, where these are traded off in workplace agreements. In this way, the Bill will provide significant additional protection for employees, reassuring them that when they enter into a workplace agreement, it will be a fair one that has been assessed by an independent statutory office. It seeks to do so in a way that does not constrain flexibility or introduce excessive red tape and regulation.

3. An expanded safety net for agreement-making

Australian Fair Pay and Conditions Standard

3.1 The fairness test will operate in addition to the existing legislated minimum entitlements in the Australian Fair Pay and Conditions Standard. These minimum entitlements are:

(i) the federal minimum wage (including special federal minimum wages for juniors, trainees and employees with disabilities), classification rates of pay in the Australian Pay and Classification Pay Scales, piece rates and casual loadings;

(ii) a maximum of 38 ordinary hours of work per week (plus reasonable additional hours);

(iii) four weeks paid annual leave per annum (with an additional week for shift workers);

(iv) ten days paid personal/carer's leave each year (including sick leave and carer's leave) with provision for an additional two days of unpaid carer's leave per occasion and access to two days of paid compassionate leave per occasion; and

(v) 52 weeks of unpaid parental leave (including maternity, paternity and adoption leave).

3.2 The minimum entitlements in the Australian Fair Pay and Conditions Standard cannot be traded off. A workplace agreement or contract of employment can only provide conditions equal to or better than those set out in the Australian Fair Pay and Conditions Standard.

Protected award conditions

3.3 Certain award conditions are protected by law when workplace agreements are negotiated. The Act provides that these conditions are automatically read into an agreement unless the agreement explicitly modifies or removes these provisions. The protected award conditions are:

(i) rest breaks;

(ii) incentive-based payments and bonuses;

(iii) annual leave loadings;

(iv) public holidays by or under a law of a State or Territory and days to be substituted for public holidays;

(v) monetary allowances for: expenses incurred in the course of employment, or responsibilities or skills that are not taken into account in rates of pay for employees, or disabilities associated with the performance of particular tasks or work in particular conditions or locations;

(vi) loadings for working overtime or for shift work; and

(vii) penalty rates.

3.4 In recognition of the special status of outworkers, the Bill does not affect in any way outworker conditions. These outworker conditions continue to apply despite any of the terms in a workplace agreement that provide a less favourable outcome for the outworker.

3.5 Protected award conditions are drawn from an applicable federal award, a preserved State agreement or a notional agreement preserving State awards. Protected award conditions may be the subject of workplace bargaining by employees and employers and can only be modified or removed by specific terms in the workplace agreement. If these award conditions are not specifically excluded or modified in the workplace agreement, they continue to apply and are enforceable as terms of the agreement.

3.6 The Bill would introduce a fairness test to ensure that where a workplace agreement excludes or modifies protected award conditions, fair compensation is provided to the employee or employees covered by the agreement.

3.7 As is currently the case, workplace agreements will continue to operate from the date of lodgement.

4. Pre-conditions for the fairness test

Date from which the fairness test would apply

4.1 The fairness test would apply to workplace agreements and variations to workplace agreements lodged on or after 7 May 2007 that:

(i) cover employees who work in industries or occupations usually regulated by awards; and

(ii) modify or exclude protected award conditions.

4.2 The fairness test would not apply to agreements lodged before 7 May 2007. The reason for this is that it would not be appropriate to apply the fairness test to agreements that were made in good faith under the legislation in force at that time, nor to interfere with accrued rights under such agreements.

4.3 However, the fairness test will apply to workplace agreements made before 7 May 2007 if they are varied after this date and the variation modifies or excludes one or more of the applicable protected award conditions.

Agreements to which the fairness test would apply

4.4 The fairness test applies to Australian Workplace Agreements that:

(i) provide a full-time (or full-time equivalent) annual base salary of less than $75,000;

(ii) cover employees who work in industries or occupations usually regulated by awards; and

(iii) modify or exclude protected award conditions.

4.5 The test applies to all collective agreements that:

(i) cover employees who work in industries or occupations usually regulated by awards; and

(ii) modify or exclude protected award conditions.

4.6 The fairness test would not apply to Australian Workplace Agreements covering employees with full-time (or full-time equivalent) base salaries of $75,000 or more.

4.7 Salary is defined in the legislation as gross salary and does not include incentive based payments and bonuses, loadings (other than casual loadings) monetary allowances, penalty rates and any other similar payments or employer contributions to superannuation. For casual employees, the $75,000 salary threshold includes casual loadings.

4.8 The Bill provides the method for determining the full-time salary where employees are paid piece rates and the full-time equivalent salary where employees work casually or part time.

4.9 The fairness test would cover most Australian workers as nearly 90 per cent of adult non-managerial employees earn less than the $75,000 salary threshold. The salary threshold is approximately one and a half times average annual ordinary time earnings and aligns with a current income tax threshold for higher income earners. In addition, employees earning $75,000 and above are less likely to be reliant on awards for their pay and conditions of employment.

Protected award conditions and designated awards

4.10 Protected award conditions would be those that apply under a federal award, or a preserved State instrument, which binds the employer.

4.11 If there is no such instrument, and the employee works in an occupation or industry usually covered by a federal award, an appropriate federal award may be designated by the Workplace Authority.

4.12 The Bill would limit the type of award that the Workplace Authority may determine as a designated award, to an award that:

(i) regulates (or would regulate) the terms or conditions of employment of employees engaged in the same kind of work as the work performed by the employee or employees under the workplace agreement; and

(ii) is an appropriate award in the option of the Workplace Authority; and

(iii) is not an enterprise award.

4.13 An employer can apply for an award to be designated by the Workplace Authority before lodging an agreement. Awards can only be designated in relation to employees who work in industries or occupations usually regulated by federal awards.

5. Conducting the fairness test

5.1 The fairness test would require the Workplace Authority Director to be satisfied that:

(i) in the case of an AWA: the agreement provides fair compensation to the employee in lieu of the modification or removal of the employee's protected award conditions; and

(ii) in the case of a collective agreement: on balance, the agreement provides fair compensation, in its overall effect on employees, in lieu of the modification or removal of the employees' protected award conditions – this approach reflects that the test must be applied to the entitlements of a number of employees.

5.2 The Bill confers a broad discretion on the Workplace Authority to inform itself about whether an agreement passes, or does not pass, the fairness test. This would not involve legalistic processes or hearings.

5.3 In many cases, the Workplace Authority would be able to assess an agreement based on the agreement and information lodged with it. However, the Workplace Authority may contact the employer or any employee who is subject to the agreement to seek further information about an agreement or the employment circumstances of the employee or employees covered by the agreement.

5.4 Employees already receive an information statement when they are offered an Australian Workplace Agreement or collective agreement. This requirement is retained and the statement would inform employees of their rights in regard to the fairness test.

5.5 The Workplace Authority will be subject to operational timeframes in conducting the Fairness Test and will make decisions as soon as reasonably practicable, consistent with the obligation to be satisfied that an agreement passes, or does not pass, the fairness test.

5.6 The Workplace Authority will offer a pre-lodgement checking process in advance of conducting the fairness test. This process will give more certainty to the parties to agreements once the agreements have been lodged. This is an operational, rather than legislative process because the legislative fairness test can only be applied to a properly made and lodged agreement with identifiable parties.

5.7 The Bill would require the Workplace Authority to notify the parties at various stages in the process of conducting the fairness test. This includes notice of whether the fairness test applies to an Australian Workplace Agreement or a collective agreement, and whether the agreement passes, or does not pass, the fairness test.

Monetary and non-monetary compensation

5.8 In determining whether fair compensation has been provided, the Workplace Authority Director must first have regard to the monetary and non-monetary compensation provided in return for the exclusion of, or changes to, the protected award conditions. In most cases, this will mean a higher rate of pay in lieu of protected award conditions.

5.9 Non-monetary compensation is defined as compensation that:

(i) has an equivalent money value, or can reasonably be assigned a money value, for example, a car-parking space, childcare or shares in the employer's company; and

(ii) confers a benefit or advantage on the employee which is of significant value to the employee.

5.10 The effect of this will mean that protected award conditions cannot be modified or excluded by a workplace agreement in exchange for something that is of insignificant or no value to the employee. For example, a meal provided by an employer to an employee who is regularly required to work overtime will not be fair compensation for loss of penalty rates.

5.11 In giving consideration to the monetary and non-monetary compensation provided in return for protected award conditions, the Workplace Authority Director would also consider the work obligations of the employee or employees under the workplace agreement. For example, the Workplace Authority Director would consider whether employees were required to work shift work or on weekends and would otherwise have been entitled to penalty rates under the award.

5.12 In administering the no-disadvantage test for workplace agreements prior to the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005*, the Employment Advocate regularly assigned monetary values to certain benefits such as a work-related car which was also available for private use.

5.13 In considering non-monetary values, the Employment Advocate issued procedural guidelines to be followed in these circumstances. In respect of a car, for instance, the NRMA's vehicle operating costs formed the basis for assigning a monetary value. It is anticipated that the Workplace Authority would adopt a similar approach in applying the fairness test.

Personal circumstances

5.14 In determining whether compensation is fair, the Workplace Authority Director may also consider the personal circumstances of employees, including their family responsibilities. For example, if an agreement makes provision for flexible hours of work to enable an employee to care for a family member, this can be taken into account by the Workplace Authority Director in deciding whether an agreement is fair.

5.15 The Workplace Authority can seek further information from an employee or an employer to decide whether compensation is fair.

5.16 'Personal circumstances' does not include an employee's period of unemployment. Examples of the types of factors that the Workplace Authority Director might consider when having regard to the personal circumstances of the employee or employees are provided at pages 16 to 18 of the Explanatory Memorandum for the Bill[1].

Exceptional circumstances

5.17 In exceptional circumstances, and where it is not contrary to the public interest to do so, the Workplace Authority Director would also be able to have regard to the employer's industry, location or economic circumstances and the employment circumstances of the employee or employees.

5.18 For example, when deciding whether an agreement provides fair compensation in lieu of protected award conditions, the Workplace Authority Director can consider any business difficulties of the employer, the regional economic situation, and/or an employee's employment history. However, these factors can only be taken into

[1] The page numbers refer to the Explanatory Memorandum as tabled in the House of Representatives on 28 May 2007.

account in exceptional circumstances and where it is not contrary to the public interest to do so. Examples of where the Workplace Authority Director might consider exceptional circumstances are provided at pages 19 and 20 of the Explanatory Memorandum for the Bill.

5.19 Exemptions would only be considered where the Workplace Authority Director establishes the fact that the employer is facing a genuine business crisis. There will be no broad based exemptions such as for an industry or a geographical area (for example, a rural area or by State) or for employing someone who is either young, old or long-term unemployed.

Comparison with the no-disadvantage test

5.20 The fairness test provides a stronger safety net than the previous no-disadvantage test applicable to workplace agreements lodged prior to 27 March 2006 under the Act.

5.21 Under the no-disadvantage test, an agreement could not operate if it disadvantaged employees in relation to their terms and conditions of employment. An agreement was taken to disadvantage employees if it would result, on balance, in a reduction in their overall terms and conditions of employment under a relevant or designated award.

5.22 The fairness test provides a stronger safety net because it builds on the minimum entitlements established by the Australian Fair Pay and Conditions Standard, that is, minimum and classification wages, hours of work, paid annual and sick leave and parental leave.

5.23 As previously mentioned, workplace agreements must provide minimum standards equal to or better than those in the Australian Fair Pay and Conditions Standard. Under the previous no-disadvantage test minimum standards for conditions such as annual leave and personal/carer's leave could be modified, or removed, in a workplace agreement. Since the introduction of the Australian Fair Pay and Conditions Standard, minimum standards such as these (which form part of the Australian Fair Pay and Conditions Standard) cannot be undercut in a workplace agreement.

6. Where an agreement does not pass the fairness test

6.1 If a workplace agreement does not provide fair compensation in lieu of the modification or removal of any protected award conditions, the Workplace Authority Director would provide advice on how the agreement could be varied to pass the fairness test.

6.2 The employer would have 14 days to vary the agreement (including by way of an undertaking).

6.3 The agreement can be changed or varied by:

(i) varying the agreement, in the case of an Australian Workplace Agreement; or

(ii) the employer providing an undertaking to the Workplace Authority Director which will be enforceable as if it was a variation to an agreement – this applies to both Australian Workplace Agreements and collective agreements.

6.4 The employer undertaking would be dealt with in a similar way as under the previous no-disadvantage test. Under the no-disadvantage test, if the Employment Advocate was not sure that an agreement met the no-disadvantage test; the Employment Advocate could seek an undertaking from the employer. If the terms of the undertaking were acceptable to the Employment Advocate as resolving his concerns regarding the no-disadvantage test, the undertaking would form part of the agreement, and an approval notice could be issued.

6.5 Where an employer does not fix the agreement to make it fair in the 14 day period, the agreement would cease to operate.

6.6 Where the employer varies the agreement in the 14 day period, the Workplace Authority Director would test the varied agreement. If the agreement passes the fairness test after the variation, the employee is likely to be entitled to compensation for the period the agreement was unfair. If the agreement still does not pass the fairness test, the workplace agreement would cease to operate.

Employee entitlement to compensation

6.7 When an unfair agreement ceases to operate, the employer and the employee would revert to the instrument that would have applied to them, but for the unfair agreement. This instrument could be an earlier agreement, the award, or a preserved State instrument. In the case of an employee for whom an award was designated (and where no other instrument applies), the protected award conditions from the designated award would apply. This is an additional protection for these employees.

6.8 The Australian Fair Pay and Conditions Standard would continue to operate, in accordance with the existing provisions of the Act. Any applicable preserved redundancy provisions, or undertakings made by the employer, following unilateral termination of an earlier agreement would also have effect.

6.9 Where an agreement does not pass the fairness test, the Bill would entitle an employee to recover compensation for any shortfall arising if the value of entitlements under the ‘unfair’ agreement is less than the value of entitlements under an otherwise applicable instrument, or the protected award conditions in a designated award, had they applied during the fairness test period.

6.10 Examples of the way in which applicable entitlements for employees would be determined under different industrial instruments for the fairness test period are provided at pages 25 to 27 and 30 to 32 of the Explanatory Memorandum for the Bill.

Protections for employees

6.11 Under the Bill, the Workplace Ombudsman would pursue claims for compensation on behalf of employees when an agreement does not pass the fairness test. In addition the Workplace Ombudsman would pursue claims in relation to the

prohibitions on employers from dismissing an employee because a workplace agreement fails the fairness test and in regard to coercion and duress.

6.12 The Bill would enable the Federal Court and the Federal Magistrate's Court to make orders if an employer dismisses (or threatens to dismiss) an employee for the sole or dominant reason that a workplace agreement does not (or may not) pass the fairness test. The Bill provides that the Court can make an order requiring the employer to pay a specified amount of compensation for damages suffered by the employee. The Court can also make reinstatement or injunction orders.

6.13 The Bill would prohibit an employer from coercing an existing employee to agree, or not to agree, to modify or exclude a protected award condition. This prohibition would not apply to protected industrial action engaged by the employer (within the meaning of section 435 of the Act). This is a civil remedy provision, breaches of which will attract a maximum pecuniary penalty of 60 penalty units (that is, $6,600 for an individual or $33,000 for a body corporate).

6.14 The Bill would also amend the Act to make it clear that the prohibition against duress in the making of an Australian Workplace Agreement would apply to the situation where an employer who has purchased a business requires an existing employee of that business to make an Australian Workplace Agreement as a condition of ongoing employment. The provision clarifies the existing law and does not involve the creation of a new penalty provision. The provision does not preclude the acquiring employer offering existing employees Australian Workplace Agreements.

7. Workplace Authority

7.1 The Bill would provide for the appointment by the Governor-General of the Workplace Authority Director and provide for the appointment by the Minister for Employment and Workplace Relations of Workplace Authority Deputy Directors. The Bill would also provide for the establishment of the Workplace Authority as a statutory agency staffed under the *Public Service Act 1999*.

Functions

7.2 The Workplace Authority Director would perform the current statutory functions of the Employment Advocate (such as the lodgement of agreements and on request from the parties to an agreement checking for prohibited content) as well as be responsible for:

(i) applying the fairness test;

(ii) providing, administratively, a pre-lodgement facility to check agreements against the fairness test;

(iii) providing information and advice to employees and employers about workplace agreement-making and the legislation;

(iv) providing a comprehensive information service about pay and conditions issues; and

(v) providing advice specifically targeted at young people and people from a non-English speaking background.

7.3 The Workplace Authority Director would be specifically required when performing his or her functions in relation to workplace agreements, to have particular regard to:

(i) the needs of workers in disadvantaged bargaining positions, including for example women, people from a non-English speaking background, young people, apprentices, trainees and outworkers;

(ii) encouraging parties to agreement-making to have regard to those needs;

(iii) assisting workers to balance work and family responsibilities; and

(iv) the need to prevent and eliminate discrimination.

Ministerial Directions

7.4 The Minister can give written directions to the Workplace Authority Director about the performance of his or her functions. The Minister would be expressly precluded from giving directions in relation to a specific case or in relation to the Workplace Authority Director's performance of functions, or exercise of powers as an agency head under the *Public Service Act 1999*. A direction by the Minister would be a disallowable instrument. This ensures the independence of the Workplace Authority.

Resources

7.5 The Workplace Authority will receive an extra 502 staff, including approximately 250 transferred from the Department of Employment and Workplace Relations. Additional funding of around $300 million over four years will be provided for the Workplace Authority.

8. Workplace Ombudsman

8.1 The Bill would provide for the appointment by the Governor General of the Workplace Ombudsman and establish the Office of the Workplace Ombudsman as a statutory agency staffed under the *Public Service Act 1999.* The Office of the Workplace Ombudsman replaces the Office of Workplace Services (an executive agency under the *Public Service Act 1999*).

8.2 The Bill sets out the Workplace Ombudsman's broad functions as follows:

(i) assist employees and employers understand their obligations under Commonwealth workplace relations legislation;

(ii) monitor and promote compliance with Commonwealth workplace relations legislation;

(iii) investigate suspected contraventions of Commonwealth workplace relations legislation;

(iv) inquire into any act or practice that may be inconsistent with or contrary to Commonwealth workplace relations legislation;

(v) refer matters to relevant authorities;

(vi) institute proceedings to enforce Commonwealth workplace relations legislation;

(vii) appoint and give directions to workplace inspectors;

(viii) represent an employee in a proceeding where the Workplace Ombudsman considers that providing the representation would promote compliance with this Act; and

(ix) any other function conferred by Commonwealth workplace relations legislation.

Ministerial Directions

8.3 As with the Workplace Authority Director, the Minister may give written directions to the Workplace Ombudsman about the performance of his or her functions. The Minister would be expressly precluded from giving directions in relation to a specific case or in relation to the Workplace Ombudsman's performance of functions, or exercise of powers as an agency head under the *Public Service Act 1999*. A direction by the Minister would be a disallowable instrument. This ensures the independence of the Workplace Ombudsman.

Resources

8.4 The Office of the Workplace Ombudsman will receive an extra 74 staff, in addition to approximately 288 transferred from the current Office of Workplace Services. Additional funding of around $64 million over four years will be provided for the Office of the Workplace Ombudsman.

9. Bargaining services fees

9.1 The existing provisions of the Act and *Workplace Relations Regulations 2006* already operate to ensure that 'bargaining services fees' and other 'objectionable provisions' are 'prohibited content' and cannot be included in workplace agreements. However, these provisions have operated in a convoluted and complex way, requiring reference to both the Act and the Regulations.

9.2 The Bill seeks to clarify and simplify the existing provisions by expressly providing that bargaining services fees are prohibited content. A workplace agreement must not be lodged if it contains prohibited content and a term of the workplace agreement is void to the extent that it contains prohibited content.

9.3 This amendment reflects the Australian Government's commitment to protect the right of freedom of association by allowing Australian employees to choose whether or not they wish to engage a union to negotiate on their behalf. The amendment recognises that in the past employees have been forced to pay for bargaining services that they did not ask for and may not have wanted.

9.4 The effect of the Bill will be that provisions which permit bargaining services fees being collected by related third party entities on behalf of industrial organisations must not be included in an agreement. The amendment will also prohibit fees paid to

someone else instead of an industrial organisation and in circumstances where the fee is to be paid for services provided on behalf of an industrial organisation.

9.5 Nevertheless, nothing in the Act would prevent a person from entering into a separate contract with an industrial organisation under which a fee is paid to negotiate a workplace agreement on behalf of a member or non-member of that industrial organisation. The Bill would prohibit a requirement to pay a bargaining services fee from being included in a workplace agreement made under the Act.

10. Registered organisations – removal of majority membership requirement

10.1 The Bill will amend the Act to remove the requirement that federally registered organisations must have a majority of members in the federal system in order to become registered, or remain registered under Schedule 1 of the Act. The Bill would provide that only some or all members of an organisation need to be federal system employers or employees to be registered under the Act.

10.2 The requirement that a registered organisation must have a majority of members in the federal system recognised the move to a national system covering up to 85 percent of Australian employees, largely based on the corporations power of the Constitution. However, some registered organisations continue to have a majority of members in the state systems or unable to determine at any point in time whether they have a majority of members in the federal system.

10.3 The Bill would provide greater legal certainty ensuring that registered organisations which operate in the federal system can be assured they can retain their registered status.

11. Conclusion

11.1 This Bill will establish a fairness test to strengthen and expand the safety net for agreement making in the national workplace relations system. The fairness test will apply to over 7.5 million Australians making workplace agreements in the federal system.

11.2 The fairness test will enable employees and employers to modify or exclude protected award conditions, but only when the independent Workplace Authority is satisfied that the employees have been fairly compensated.

11.3 The stronger safety net will provide significant additional protection for more vulnerable employees, including young people and workers from a non-English speaking background. This includes legislative protections for employees, including protection against dismissal when an agreement fails to pass the fairness test.

11.4 The introduction of the fairness test is accompanied by two independent statutory offices to ensure the fairness test is applied and enforced effectively.

11.5 Other provisions in the Bill reinforce the importance in the workplace relations system of freedom of association rights and effective and accountable industrial organisations to represent the interests of employees and employers.