Chapter 1

Introduction

1.1 This introductory chapter places the Workplace Relations Amendment (Work Choices) Bill 2005 in an historical context and outlines the need for further reform. It states the objectives of the amendments and the contents of the bill. Certain aspects of the bill are discussed in more detail in following chapters.

Historical context

1.2 The Australian workplace relations framework has undergone significant reform in the past 20 years.[1] During that time, wage fixation has moved incrementally from a centralised model of awarding national wage increases to match increases in the cost of living, to a much more devolved system, where wages are primarily set at the workplace level, with wage increases often based on improvements in productivity.

1.3 These changes were prompted by a bipartisan recognition that a more flexible labour market was needed to maximise economic growth in the increasingly globalised economy. The shift first started to occur in 1987, with the Australian Industrial Relations Commission's (AIRC's) introduction of the Restructuring and Efficiency Principle.[2] This was reinforced (albeit at an industry level) by the Structural Efficiency Principle[3] which followed the development of the Enterprise Bargaining Principle in 1991.[4]

1.4 From this time, the Commission's decisions and legislative action (most significantly through the *Industrial Relations Reform Act 1993* and the *Workplace Relations and Other Legislation Amendment Act 1996*) have facilitated change from national and industry level wage fixation to workplace level wage fixation. Since then, a diminishing proportion of the workforce has directly relied on industry-wide awards for wage increases.

The Workplace Relations Act and subsequent amendments

1.5 The primary focus of the Howard Government's reform agenda since it took office in 1996 has been the establishment of a genuine safety net of minimum wages

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1 This summary of previous reforms is based on Senate Employment, Workplace Relations and Education References Committee, *Workplace Agreements*, October 2005, pp 1-8

2 National Wage Case Decision, Full Bench, Australian Industrial Relations Commission, 10 March 1987, Print G6800

3 National Wage Case Decision, Full Bench, 12 August 1988, Print H4000

4 National Wage Case Decision, Full Bench, 30 October 1991, Print K0300

and conditions, with actual employment conditions negotiated at the workplace through an agreement between employers and employees.

1.6 The *Workplace Relations and Other Legislation Amendment Act 1996* (the WR Act), which renamed and reformed the *Industrial Relations Act 1988*, made the first break with a basic assumption which had underpinned workplace relations management since federation and before: that conflict between employers and employees was inevitable. The amendments instead focused on achieving wage increases linked to productivity at the workplace level. The new name of the WR Act reflected this, as did provisions relating to negotiating and certifying agreements. The WR Act also introduced a new form of agreement, Australian Workplace Agreements (AWAs), which could be made between individual workers and employers.

1.7 Fundamental changes were made to the award structure. The AIRC's ability to make awards in relation to matters outside a core of 20 'allowable award matters' was restricted, and provisions were introduced requiring the AIRC to review and simplify awards to remove all provisions falling outside these 'allowable award matters' after a transitional period of 18 months. These provisions achieved what the AIRC had decided it could not do itself under the former legislation; that is, limit the content of the award safety net to a set of core minimum conditions.[5] The role of the AIRC , and that of its awards, has developed to reflect the increasing emphasis on setting wages and conditions by agreement at the workplace.

1.8 Other important amendments were implemented by the Workplace Relations Amendment (Genuine Bargaining) Act 2002, which specified factors to be taken into account by the AIRC when considering whether a negotiating party was genuinely trying to reach agreement, and which empowered the Commission to make orders in relation to new bargaining periods.

1.9 Associated reforms implemented by the Government since 1996 have included enshrining minimum entitlements of employees in Commonwealth legislation; for instance, arrangements to address unlawful termination of employment, equal remuneration for work of equal value, parental leave and freedom of association.

1.10 Since 1996 Australia has experienced higher wages, higher productivity, more jobs and fewer industrial disputes. Ultimately, the best protection for workers, and the best guarantee of job security and higher wages, is a strong economy. A modern workplace relations system is an essential component. A heavily-regulated workplace relations system in the 1980s failed to protect a million Australians from being thrown onto the unemployment scrapheap.

1.11 Since March 1996 over 1.7 million new jobs have been created, of which:

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5 Safety Net Adjustment and Review Decision, Full Bench, Australian Industrial Relations Commission, 21 September 1994, Print L5300, p.39

- 900,000 have been full-time
- 800,000 have been part-time

1.12 In contrast, between March 1989 and March 1996, 107,000 jobs were created of which:

- 188,000 were full-time
- 519,000 were part-time

1.13 Unemployment is presently 5.1 per cent and is steady at the lowest levels seen in 30 years, which is in stark contrast to the 10.9 per cent recorded at the height of the early 90s recession.

1.14 Real wages have increased by 14.9 per cent since 1996, compared to 1.2 per cent between 1983 and 1996, during which time the ALP and the ACTU embarked on a deliberate strategy of suppressing real wages. According to the Department of Employment and Workplace Relations, the minimum wage declined by around 5 per cent in real terms between 1983 and 1996. It was only this year that the Leader of the Opposition boasted that:

> We achieved 13 years of wage restraint under the Accord. The wage share of GDP came down from 60.1 per cent when we took office to the lowest it had been since 1968. We left office with the wage share of GDP at 55.3 per cent. [6]

1.15 Under the current *Workplace Relations Act*, industrial disputes have consistently remained at the lowest levels of strikes since records were first kept in 1913. In 2004 the level of industrial disputes was 45.5 working days lost per 1,000 employees. The yearly average rate of disputes in the 13 years from 1983 to 1995 inclusive was 192 wdl/1,000

1.16 In 1973, at the height of the system of compulsory arbitration and union power favoured by many current critics of the bill, the rate of industrial disputes was 1,273 wdl/1,000

1.17 The structural reforms implemented by the WR Act and associated legislation have contributed to reduced unemployment, higher real wages, rising productivity and economic growth. However, there are still fundamental problems with the current system that the Work Choices Bill attempts to address.

Why further reform is needed

1.18 While the changes described above have made the system more flexible and less prescriptive, further improvement is required to sustain continued economic growth and allow continued productivity growth. The Workplace Relations

6 Hon. Kim Beazley MP, Speech to Sustaining Prosperity Conference, 1 April 2005

Amendment (Work Choices) Bill 2005 will reduce complexity and contribute to productivity and economic growth, while retaining appropriate key elements of the current system and ensuring that the economic gains of the past decade are maintained and provide a foundation for future economic competitiveness and job creation . The reforms in the bill will also reduce unnecessary regulation and make progress towards implementing a simple and unified workplace relations system.

Problems with the current system

1.19 The costs of the current framework include an unnecessarily high regulatory burden, the wasteful duplication of state and Commonwealth arrangements and most importantly, the longer term costs to productivity and employment growth. For instance, some rigid award and enterprise agreement conditions prevent incentives being offered for productivity rises. Rather than forming a baseline to agreement making, the system provides an incentive for excessive award entitlements, which prevents employers taking on more people and puts up barriers to more unemployed people entering the labour market.

1.20 Problematic features of the current system include:

- the rights the conciliation and arbitration system confers on third parties while marginalising employers and employees;
- the promotion of dispute creation rather than dispute settlement;
- the barriers to direct relationships between employers and employees;
- the ad hoc and patchy coverage of the current Commonwealth award system; and
- the complexity, inefficiency and confusion created by six different and overlapping systems, over 130 different pieces of employment related legislation and over 4 000 different awards.[7]

1.21 The problems outlined above were recently noted by the International Monetary Fund, which made the following comment:

> Further reforms of industrial relations are needed to expand labor [sic] demand and facilitate productivity gains. Labor [sic] market reforms to date have substantially reduced rigidities, but centralised awards still set minimum working conditions in 20 areas through the requirement that conditions in collective and individual contracts not fall below those in awards – the no disadvantage test – and large employers face up to six different industrial relations systems at the Federal and State levels.[8]

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7 Commonwealth of Australia, *Workplace Relations Amendment (Work Choices) Bill 2005 Explanatory Memorandum* (hereafter Explanatory Memorandum), p. 4

8 International Monetary Fund (IMF), *Article IV Consultation with Australia – Staff Report and Public Information Notice on the Executive Board Discussion*, 24 August 2005

1.22 Many of these structural and procedural problems have resulted from the limitations inherent to section 51(xxxv) of the Constitution (the conciliation and arbitration power), upon which the Commonwealth's industrial relations powers are based. The cumbersome and costly procedures that have emerged to circumvent the constraints of the conciliation and arbitration powers, which are discussed in Chapter 2, are 'highly artificial, filled with legal fictions, and difficult to explain to those unfamiliar with the complex workings of the system'.[9]

1.23 As discussed in the following chapter, the problems outlined above cannot be overcome as long as the workplace relations system continues to rely on and be restricted by the conciliation and arbitration powers conferred on the Commonwealth by section 51(xxxv) of the Constitution. The amendments in the Work Choices Bill are based on a completely different heads of power. This will enable the establishment of a unified national system that will cover approximately 85 per cent of the workforce. The rationale for introducing a national system and the constitutional basis for its establishment are also discussed in Chapter 2.

Objectives of the bill

1.24 The expected benefits of specific aspects of the Work Choices Bill are many, but they are all underpinned by a fundamental objective: the attainment of a high, and sustainable, standard of living.[10]

1.25 The health of the economy is unarguably the most important pre-requisite to realising a more affluent society, and workplace relations is a critical determinant of the rate at which an economy will grow and prosper. There have been high increases in the standard of living in the past decade, largely as a result of the increases in productivity which have already been achieved, and the changes in the Work Choices Bill are a critical pre-requisite to its continued improvement.[11] The main impediment to the workplace relations system becoming more efficient, effective and modern is the lack of a cohesive framework through which a uniform national system may run. While this subject is dealt with in Chapter 2, it bears mentioning here as it forms the basis of the system to be introduced by the Work Choices Bill.

1.26 One of the key objectives of the new system is to enhance the strong employment growth of the past decade. While unemployment rates are at a record low, there remain over half a million people who are out of work, and a large additional number who are under-employed. There are approximately 690,000 children now living in jobless households. One of the primary obstacles to further employment is a lack of flexibility in the workplace relations system. The award

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9 J. Webb, *Industrial Relations and the Contract of Employment*, Law Book Company, Sydney, 1974, p. 93

10 Hon. Kevin Andrews MP, Second Reading Speech, House *Hansard*, 2 November 2005, p.12

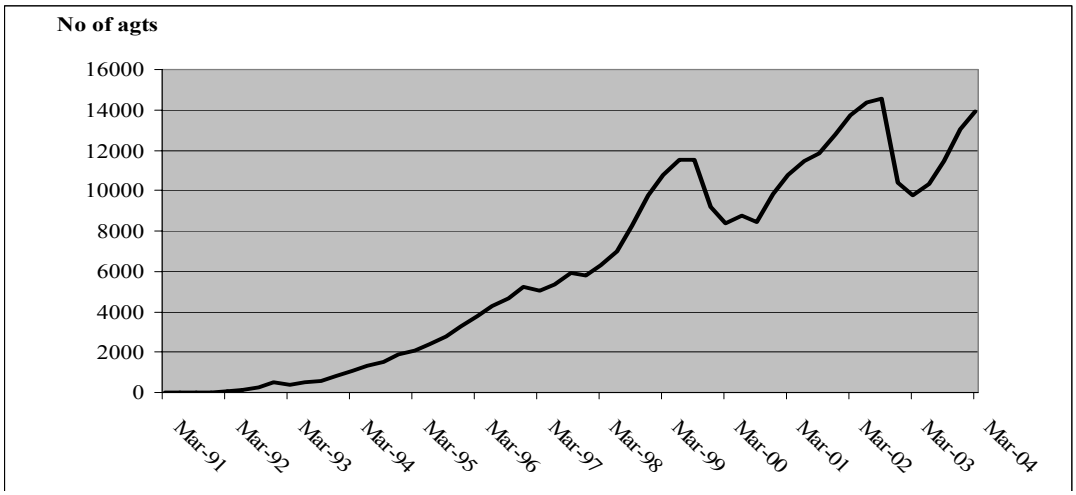
11 Australian Bureau of Statistics, Household Expenditure Survey 2003-2004, publication 6530, pp 1-5

system, through the complex, confusing and subjective 'no disadvantage' test, acts as a barrier to employees and employers deciding what is best at their workplace. The bill will remedy this situation by creating a national Fair Pay and Conditions Standard as the basis for agreement making. In pointing out this problem, the committee majority is also mindful of the need to promote reform in the related area of social welfare benefits, a matter which the Government is now attending to in its welfare to work policy development. Another related area is taxation rates adjustment, and its interaction with the award system, which is also referred to in some submissions to this inquiry, but lies outside the committee's terms of reference.

1.27 A corollary to the need to ensure continuing employment growth is the need to prepare the economy for future challenges, especially the need to make a significant leap in levels of productivity. Many international trading competitors are making great advances in productivity, which is driving strong economic growth and a healthy economy in other countries. While Australia is doing well economically, it is important to maintain the momentum, and extensive changes are needed to bring this about. Introducing a unitary system of industrial relations, combined with the ability for parties to exercise flexibility in the employment relationship, will give employers the confidence they need to grow their businesses and employ more workers. The economic growth which results from this will benefit all people, not just those in the labour market.

1.28 One of the further underlying objectives of the bill is to encourage the spread of agreement making. The passage of the WR Act has made it easier for workplaces to reach agreement with their employees at the enterprise level but the current system is far from perfect. While, collective and individual agreements continue to expand into the service industries and small business sectors where award coverage has been the norm (see graph below), the agreement making system requires significant reform if this trend is to continue.

Number of federal collective wage agreements current at the end of each quarter[12]



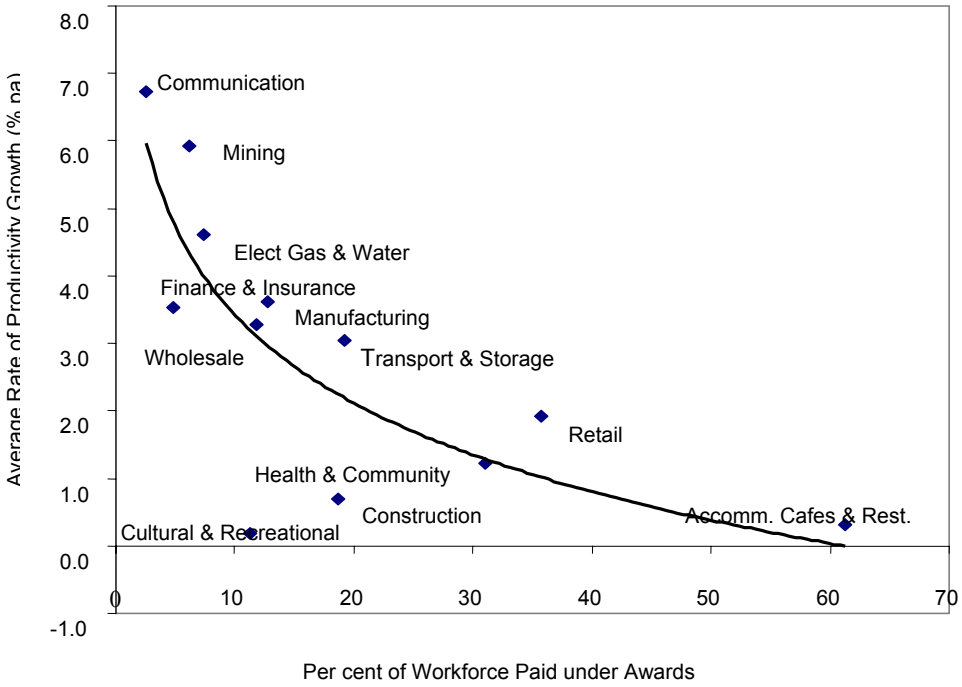
1.29 The reason why it is important to encourage the expansion of agreement making is that there exist a clear correlation between productivity growth and the use of workplace agreements (see graph below). A number of studies by the Productivity Commission and others confirm the positive association between workplace bargaining and productivity growth.[13] In the wholesale and retail trades, for example, industry representatives specifically identified the shift to enterprise bargaining as a significant contributor to labour productivity improvements.[14] The bill will replace the current complex, legalistic and adversarial process of reaching agreement with a lodgement only process which is designed to encourage the growth in agreement making and in turn drive increased productivity.

12 Department of Employment and Workplace Relations, Workplace Agreements Database 2004.

13 For information on these studies see Commonwealth Submission, Safety Net Review – Wages, 18 February 2004, Chapter 4.

14 Productivity Commission; *"Productivity in Australia's Wholesale and Retail Trade", Productivity Commission Staff Research Paper October 2000* - A. Johnston, D. Porter, T. Cobbold and R. Dolomare, pages xii, 63-65, 86

Award coverage as at May 2002 and labour productivity growth by industry June 1990 to June 2002



1.30 The experience of the shift to agreement making also demonstrates that it results in higher wages for employees. According to ABS data, workers on Australian Workplace Agreements clearly earn more on average than workers on both collective agreements and awards:[15]

Average weekly earnings: AWAs versus collective agreements:

All	$890.93 cf. $787.40	13 % higher
Private sector	$800.73 cf. $733.50	9 % higher
Public sector	$1378.47 cf. $878.50	57 % higher

Average weekly earnings: AWAs versus awards:

All	$890.93 cf. $444.55	100 % higher
Private sector	$800.73 cf. $442.72	81 % higher
Public sector	$1378.47 cf. $518.99	166 % higher

1.31 The ability for employees to reach a better balance between work and family life is another aim of the reforms. Current workplace arrangements too often make little or no provision for the individual needs of employees and workplace flexibility is inhibited by a lack of appropriate legal and industrial mechanisms to allow workers

15 ABS *Employee Earnings & Hours survey* (Cat No 6306.0), May 2004

to negotiate hours of work around their family responsibilities and other needs. Instances abound of employers and employees both requiring and seeking arrangements which are mutually beneficial, but not being able to bring them to fruition because of the arbitrary, outmoded provisions in awards and some collective agreements. The issue of family-friendly workplaces centres on the different needs of individual workers, and the standardised working conditions set out in a collective agreement cannot suit the diverse family situations of hundreds or thousands of employees. The reforms in the Work Choices Bill will enable agreements to be tailored to the needs of employers and employees and make it simpler to negotiate family-friendly working arrangements.

1.32 The most recent DEWR report on agreement making under the *Workplace Relations Act 1996* also contains specific figures on the incidence of family friendly measures included in AWAs. It shows:

- AWAs for women are more likely to include flexible working and family friendly provisions than those applying to men;[16]
- Over 70 per cent of all AWAs contained at least one family friendly provisions, relating to leave or flexible work arrangements; and
- Of these agreements, more than half had two or more family friendly provisions.[17]

Summary of major reforms

1.33 The main reforms to be implemented by the bill will:[18]

- simplify the complexity inherent in the existence of six workplace relations jurisdictions in Australia by creating a national workplace relations system based on the corporations power that will apply to a majority of Australia's employers and employees;
- establish an independent body called the Australian Fair Pay Commission (AFPC), to set and adjust minimum and award classification wages, minimum wages for juniors, trainees/apprentices and employees with disabilities, minimum wages for piece workers and casual loadings;
- enhance compliance with the WR Act;
- enshrine in law minimum conditions of employment (annual leave, personal/carer's leave (including sick leave), parental leave (including maternity leave) and maximum ordinary hours of work), which, along with the wages set by the AFPC, will be called the Australian Fair Pay and

16 *Agreement Making in Australia under the Workplace Relations Act 1996: 2002-2003*, p.100

17 *Agreement Making in Australia under the Workplace Relations Act 1996: 2002-2003*, p.94

18 This summary of the major reforms in the bill is reproduced from the Explanatory Memorandum, pp 1-2

Conditions Standard (the Standard) and will apply to all employees in the national system;

- place a greater emphasis on direct bargaining between employers and employees by replacing the certification and approval process for making agreements with a simpler streamlined lodgement only process;
- improve regulation of industrial action while protecting the right to take lawful industrial action by requiring the Australian Industrial Relations Commission (AIRC) to determine an application for an order to stop or prevent unprotected industrial action within 48 hours, requiring secret ballots before protected industrial action, expanding the grounds on which the AIRC can suspend or terminate a bargaining period, and creating a new power for the Minister for Employment and Workplace Relations to suspend or terminate a bargaining period in particular circumstances, such as where industrial action threatens life or personal health and safety and adversely affects the employer and possibly other employees, or where it threatens significant damage to the Australian economy;
- retain a system of awards that will be simplified to ensure that they provide minimum safety net entitlements;
- provide where employees move to a new employer on transmission, for the transfer of industrial instruments to a successor, assignee or transmittee employer, for a maximum period of 12 months (with the exception of Australian Pay and Classification Scales) and to oblige new employers to give notification to transferring employees. Additionally, to provide for the transfer of certain entitlements accrued under the Standard to a successor, assignee or transmittee employer;
- protect certain award conditions (public holidays, rest breaks (including meal breaks), incentive-based payments and bonuses, annual leave loadings, allowances, penalty rates, and shift/overtime loadings) in the agreement making process so that these conditions can only be modified or removed by specific provisions in an agreement;
- preserve specific award conditions (long service leave, superannuation, jury service and notice of termination) for all current and new award reliant employees, and permit other award conditions (annual leave, personal/carer's leave, parental leave) to apply to current and new award reliant employees if they are better than the conditions provided in the Standard;
- encourage employers and employees to resolve their disputes without the interference of third parties by introducing a model dispute settlement procedure that includes a range of dispute settling options for all award and Standard reliant employers and employees, and employers and employees covered by agreements that do not contain dispute settling procedures;
- improve protections for employers and employees by extending the compliance regime in the WR Act to cover the Standard, agreement making,

and State award and agreement reliant employers and employees that are brought into the national system; and

- put in place comprehensive transitional arrangements for employers and employees entering the federal system and employers and employees currently in the federal award system who will not be covered by the new federal system.

Description of the legislation

1.34 At its heart, this bill seeks to create an integrated national workplace relations system. At the present time, employers and employees must contend with confusing, unfair and expensive multi-jurisdictional arrangements, containing perverse incentives for parties to confect disputes that encourage acrimony and continuing disputes between employers and employees, often driven by a third party.

1.35 This legislation seeks to encourage a more direct relationship between employers and employees, based on mutual needs and desires and reflecting the importance of flexibility for both parties in the modern employment relationship. As it currently stands, the system is characterised by conflict, inflexibility, waste, and slowness, all of which have impeded employment and economic growth and development for many years.

Simplified agreement making and wage setting

1.36 This bill allows for the formation of a new and simplified wage setting system, which is discussed in more detail in Chapter 3 of this report. The AFPC which will be established under this legislation, will set and adjust minimum and award classification wages, along with minimum wages for juniors, trainees, apprentices, and employees with a disability. The Commission will also determine wages for piece workers and casual workers.

1.37 The AFPC will adopt a consultative evidence based approach rather than the existing adversarial and legalistic approach. The new system will have as its primary objective the promotion of economic prosperity. This will involve an assessment of what is required to encourage the unemployed and low paid to enter and remain in employment, which is the threshold issue if their circumstances are to improve.

1.38 Minimum and award wages will be protected at the level set after the AIRC's 2005 Safety Net Review. Minimum and award wages will not fall below this level, and the AFPC will decide the timing, implementation, frequency and size of future increases. This approach reflects the fact that the Fair pay Commission is an independent body, and the need for employment arrangements to remain responsive to changing economic conditions.

1.39 The legislation will simplify new awards, and remove from them provisions which are already provided for in other legislative entitlements, such as jury leave, superannuation, notice of termination, and long service leave. However, where these

conditions are in existing awards, they will continue to operate for both existing and new award covered employees. An Award Review Taskforce will be established to simplify award classifications so that they may be more easily understood by the people who need to work with them: employers and employees. Both of these measures aim to improve access to awards and to demystify their contents for those who rely on them.

1.40 One of the primary tenets of the bill is the simplification of agreement making between employers and employees, with a view to encouraging parties to negotiate to achieve the best and most efficient employment relationship possible in their individual circumstances. The agreement making process is discussed in Chapter 3.

1.41 The new system will allow for collective agreements and AWAs to be lodged with the Office of the Employment Advocate (OEA), together with a statutory declaration attesting that the agreement was made in accordance with the law. The agreements or AWAs will be valid immediately on lodgement. The committee majority notes a number of submissions from organisations supporting the bill which are critical of current delays in the implementation of AWAs. The committee notes that the provisions in providing for more streamlined processes will result in a vast improvement over the current time consuming and overly process-driven rules which govern the lodgement and approval of agreements. The new system will reduce delays and uncertainty for both employers and employees, and will ensure that once an agreement is lodged, the parties will have the employment relationship they really want. The OEA will be available to provide advice to parties during the negotiation process.

1.42 The improved compliance regime will ensure that employers meet the procedural requirements under the law, and meet the Australian Fair Pay and Conditions Standard. These rules will govern the negotiation, lodgement and content of agreements.

1.43 Agreements must reflect the minimum conditions of employment as set out in the Australian Fair Pay and Conditions Standard which provides for protection of annual leave, personal or carer's leave (including parental leave), parental leave (including maternity leave), and maximum ordinary hours of work. These, along with the minimum wage and award classifications to be determined by the AFPC will constitute the Australian Fair Pay and Conditions Standard.

1.44 Other employment conditions will be protected through the agreement making process, but can be the subject of bargaining between employers and employees. Unless specifically dealt with in an agreement, public holidays, rest and meal breaks, incentive based payments, annual leave loadings, allowances, penalty rates and shift/overtime loadings will continue to operate consistent with any applicable award.

Evolving role of the AIRC

1.45 Much has been made of the change in focus which this bill brings about for the AIRC. The objective of the changes is simple: to facilitate accessible, expedient

and consensual dispute resolution, and to lay primary responsibility for the satisfactory resolution of workplace problems at the feet of the parties directly concerned: the employer and employee.

1.46 While the AIRC will no longer exercise compulsory powers of conciliation and arbitration or wage setting, it will remain an important player in resolving disputes, should the parties desire it, during the negotiating process and during the term of an agreement. Parties will also have the opportunity to nominate a dispute resolution service other than the AIRC to have their grievance heard. The express consent of parties to the AIRC's involvement in a dispute is a key factor which characterises the AIRC's role into the future, and distinguishes it from the current arrangements.

1.47 In addition, the AIRC will remain empowered to act in respect of bargaining periods, and in stopping unprotected industrial action. The AIRC will be responsible for issuing a Workplace Determination where a bargaining period has been terminated on public interest grounds, such as for the purposes of preserving essential services or to prevent undue economic damage. It will also provide an initial conciliation service where an unlawful termination claim has been made.

1.48 The AIRC will also retain a role in respect of transitional awards. Importantly, it will be the role of the AIRC to implement award rationalisation measures once the findings of the Award Review Taskforce have been considered by government.

1.49 The committee majority identifies the alternative dispute resolution mechanisms as a particular strength of the legislation. Rather than relying heavily on the AIRC, awards and agreements will contain a model Dispute Settling Procedure (DSP) which will set in place a 'staged' process so that, wherever possible, disputes will be settled at the workplace level before they require involvement by formal bodies such as the AIRC. Nonetheless, where required and where nominated by the parties as the body of choice, the legislation provides that AIRC will provide dispute resolution services as it has done previously.

Unions and other registered organisations

1.50 The committee notes a certain amount of comment about the alleged 'anti union' tone to the Work Choices Bill. This is not an 'anti union' bill. This legislation will preserve the proper role of unions and other employee and employer organisations in the workplace. The Government recognises the important role played by unions and employer organisations. These functions will be preserved under the legislation. It will remain possible for unions to be appointed as bargaining agents on behalf of employees negotiating either collective or individual agreements.

1.51 Employees will continue to have the right to join, or not join, a union, and cannot be discriminated against for doing so. This right to freedom of association extends also to other freedoms currently enjoyed by employees, such as refusing to vote for or agree to a certified agreement, participating in proceedings under industrial law, and being a union official.

1.52 The Work Choices Bill will provide new functions for the Australian Industrial Registry[19], including approving right of entry notices, conducting 'fit and proper person' tests in relation to the issuing of a permit, keeping records relating to secret ballots and publishing the results of ballots. State registered organisations will be required to satisfy the Industrial Registrar that they are an existing state-registered organisation prior to being allowed transitional status as a registered body, and will be able to obtain full registration once they have fully complied with provisions of the WR Act within 3 years. Bodies which are substantially or effectively part of a body which is already federally registered will be disallowed from obtaining full registration.

1.53 Importantly, the grounds upon which a registered body may be deregistered have been expanded to include, for instance, breaches of court orders in relation to freedom of association provisions, financial reporting obligations, or conduct which seeks to prevent registration of a new organisation.

Unlawful termination

1.54 The jurisdiction and role of the AIRC with respect to unlawful termination will remain largely unchanged by the legislation.

1.55 Current remedies for unlawful termination will remain and be strengthened under the legislation. It will remain illegal to dismiss an employee based on temporary absence from work due to illness or family responsibilities, trade union membership, objection to signing an AWA, or pursuing a complaint against the employer. In addition, race, colour, sex and sexual preference, age, disability, marital status, religion, political opinion, social origin, pregnancy and family responsibilities will remain unlawful grounds for dismissal.

1.56 An important policy initiative for employees seeking redress for unlawful dismissal is the Government's provision of up to $4 000 for independent legal advice for eligible applicants who have a meritorious case and have exhausted conciliation options. The government is aiming to ensure that unlawful and unfair dismissals are minimised by investing $5 million in education and training for employers on fair and proper termination practices.

Transitional arrangements

1.57 The transitional provisions of the legislation are probably the most complex aspect of the bill. The committee was told that the full transition will take five years, but at the end of that time, a far more streamlined and 'slimmed-down' act would emerge. The legislation provides for two separate transitional systems. The first

19 The Australian Industrial Registry was established under the *Workplace Relations Act 1996* to act as the registry to and provide support to the Australian Industrial Relations Commission, and to provide advice and assistance to organisations in relation to their rights and obligations under the Act

concerns constitutional corporations moving from the state to the new federal jurisdiction. Current wages and conditions under state awards or agreements will continue to apply for up to the three year transitional period. In the case of both state awards and agreements, the terms and conditions contained would remain in effect until they expire or are superseded by a new federal agreement, although in the case of award pay and conditions that are inferior to the provisions of the new Fair Pay and Conditions Standard, the relevant provisions of the Fair Pay and Conditions Standard will prevail. In either case, parties will be free to negotiate a new federal agreement at any stage during the transitional period. In the event that state agreements or awards transit to the Commonwealth system and a new agreement has not been made, applicable Commonwealth award provisions will apply.

1.58 In the case of employers and employees currently in the Commonwealth system where the employer is not a constitutional corporation, a five year transitional period will apply to current federal collective agreements, during which period employers may incorporate, in which case a new federal agreement will be made at the end of the transition period. In the case that employers do not wish to incorporate, and the transition period expires, they will transit to the state system. In the case of awards, a similar transitional period will apply, and at the conclusion of that period any employer remaining unincorporated will transit to a state system.

1.59 The AIRC will retain a limited power to vary wage rates and other entitlements in awards being operated by unincorporated corporations during the transition period, but will be unable to bind new parties to the award.

Conclusion

1.60 The objectives of the Work Choices Bill, foremost of which is ensuring Australia's future prosperity, are consistent with the trend and intent of previous Government policies. The following chapters examine the benefits of the move to a unitary industrial relations system, and address matters of concern expressed to the committee during the inquiry.