

2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Workplace Relations Amendment (Work Choices) Bill 2005

(Amendments to be moved by Senator Siewert on behalf of the Australian Greens in committee of the whole)

- (1) Page 1 (line 1) to page 687 (line 28), omit “Australian Fair Pay Commission” (wherever occurring), substitute “Australian Pay Commission”.

[Australian Pay Commission]
- (2) Page 1(line 1) to page 687 (line 28), omit “AFPC” (wherever occurring), substitute “APC”.

[APC]
- (3) Page 1 (line 1) to page 687 (line 28), omit “Australian Fair Pay and Conditions Standard” (wherever occurring), substitute “Australian Pay and Conditions Standard”.

[Australian pay and conditions standard]
- (4) Schedule 1, item 10, page 28 (after line 16), at the end of section 7H, add:
 - (e) to prevent and settle industrial disputes:
 - (i) in so far as possible, by conciliation; and
 - (ii) as a last resort and within limits specified in this Act, by arbitration.

[prevent and settle industrial disputes]
- (5) Schedule 1, item 10, page 28 (after line 16), after section 7H, insert:

7HA Performance of AFPC functions

- (1) In performing its functions under this Part, the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:
 - (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
 - (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;

(c) when adjusting the safety net, the needs of the low paid.

- (2) In performing its functions under this Part, the Commission must have regard to the following:
- (a) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed;
 - (b) the need to support training arrangements through appropriate trainee wage provisions;
 - (ba) the need, using a case-by-case approach, to protect the competitive position of young people in the labour market, to promote youth employment, youth skills and community standards and to assist in reducing youth unemployment, through appropriate wage provisions, including, where appropriate, junior wage provisions;
 - (c) the need to provide a supported wage system for people with disabilities;
 - (d) the need to apply the principle of equal pay for work of equal value without discrimination based on sex;
 - (e) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (3) For the purposes of paragraph (2)(e), junior wage provisions are not to be treated as constituting discrimination by reason of age.
- (4) For the purposes of paragraph (2)(e), trainee wage arrangements are not to be treated as constituting discrimination by reason of age if:
- (a) they apply (whether directly or otherwise) the wage criteria set out in the award providing for the national training wage or wage criteria of that kind; or
 - (b) they contain different rates of pay for adult and non-adult employees participating in an apprenticeship, cadetship or other similar work-based training arrangement.

[Commission's functions]

- (6) Schedule 1, item 43, page 58 (line 8), after “agreements”, insert “and ensure their compliance with this Act”.

[employment advocate to check AWA's]

- (7) Schedule 1, item 71, page 121 (line 2) to page 160 (line 3), Part VA, Division 6, omit “paternity” (wherever occurring), substitute “partner”.

[paternity to be replaced with partner]

- (8) Schedule 1, item 71, page 123 (after line 24), after the definition of *primary care giver*, insert:

same-sex partner, of an employee, means a person with whom the employee is living as a couple on a genuine domestic basis.

[definition]

- (9) Schedule 1, item 71, page 123 (line 31) to page 124 (line 2), omit the definition of *spouse*, substitute:

spouse includes the following:

- (a) a former spouse;
- (b) a de facto spouse;
- (c) a former de facto spouse;
- (d) a same-sex partner;

(e) a former same-sex partner.

[definition]

(10) Schedule 1, item 71, page 138 (lines 19 to 27), omit “a male employee” (twice occurring), substitute “an employee”.

[replace male employee with an employee]

(11) Schedule 1, item 71, page 203 (lines 25 to 28), omit subsection 104(6).

[coercion and duress]

R(12) Schedule 1, items 113 and 114, page 356 (line 4) to page 357 (line 10), **TO BE OPPOSED.**

[employers with 100 employees]

(12) Schedule 1, item 113, page 356 (lines 8 and 9), after “employer”, insert “, together with any related entity, related body corporate and associated entity of the employer”.

[restructuring will not avoid unfair dismissal claims]

(13) Schedule 1, item 113, page 356 (after line 21), at the end of section 5F, add:

- (c) for the purposes of subsection (5E), **related entity** has the meaning given by section 9 of the *Corporations Act 2001*, excluding item (k) of that definition;
- (d) for the purposes of subsection (5E), **related body corporate** has the meaning given by section 50 of the *Corporations Act 2001*;
- (e) for the purposes of subsection (5E), **associated entity** has the meaning given by section 50AAA of the *Corporations Act 2001*.

[definitions]

(14) Schedule 1, page 356 (after line 3), after item 112, insert:

112A At the end of subsection 170CE(1)

Add:

- ; or (d) on the ground that the employer had re-arranged the affairs of the business in which the employee was employed with a purpose or effect of evading the operation of subsection 170CE(6).

[standing to apply for relief where business restructured etc]

(15) Schedule 1, page 356 (after line 3), after item 112, insert:

112B After subsection 1709CE(1)

Insert:

- (1A) Where an employee applies to the Commission for relief in respect of termination of employment in accordance with paragraph 1(d), the Commission must investigate and consider the rearrangement of business affairs that led to the termination of employment including:
 - (a) whether the restructuring occurred after the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005*; or
 - (b) their bona fides; or
 - (c) whether a purpose or effect of the rearrangement was to evade the operation of subsection 170CE(6).

[commission required to investigate restructuring to evade unfair dismissal]

(16) Schedule 1, page 362 (after line 22), after item 130, insert:

130A At the end of subsection 170CK(2)

Add:

- (3) because the employer has rearranged the affairs of the business so that the employer now employs less than 100 employees, where a reason for that rearrangement was to evade the operation of subsection 170CE(6).

[no termination through restructuring]

(17) Schedule 2, item 2, page 661 (after line 7), after Clause 1, insert:

1A Automatic transitional registration

A State-registered association, registered in accordance with the requirements of the State in which the association was registered at the time of the commencement of this Schedule which complies with Clause 2 of this Schedule, is deemed to be transitionally registered.

[automatic transitional registration]

(18) Schedule 2, item 2, page 661 (line 9), omit “A”, substitute “In the event that registration does not occur in accordance with Clause 1A, a”.

[automatic transitional registration]