Coalition Senators' Report

Introduction

2.1 Coalition senators initiated this inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 on 14 February 2008. Coalition senators are concerned that the new government is intent on fundamentally altering arrangements which have promoted an unprecedented period of economic growth which the country still enjoys, nearly twelve years on.

2.2 Coalition senators will not be opposing the passage of this bill. As will become clear, however, they find much to criticise in the detail of the bill. On closer inspection, the bill is fundamentally flawed, from a drafting as well as policy perspective. The bill is complicated and, in many areas difficult to understand. While the bill seeks to replace existing individual statutory agreements with another form of individual statutory agreement (ITEAs), it fails to accommodate a host of employment arrangements allowed for under existing legislation.

2.3 In delivering this report, Coalition senators reject various assessments and assertions made in the government senator's report as to the policy intent and effect of both the current workplace relations laws and their architects. Coalition senators also reject assertions made in the government senator's report attributing policy intent to members of today's Coalition.

The terms of reference – lack of economic modelling

2.4 Witnesses generally gave evidence of their concerns about economic and social impacts of the bill, particularly in sectors with a high utilisation of individual agreements. They were variously concerned about the bill's impact on:

- economic and social impacts from the abolition of individual statutory agreements;
- impact on employment;
- potential for a wages breakout and increased inflationary pressures;
- potential for increased industrial disputation;
- impact on sectors heavily reliant on individual statutory agreements; and
- impact on productivity.

2.5 However, none of the witnesses had conducted economic modelling of the effects of the bill. More particularly, DEEWR has not conducted economic modelling of the likely effects of the bill. Its submission focussed more on the government's assessment of 'the past', rather than an empirical assessment of the effects of the bill.

This submission suggests that the effects of the bill will be minor, and will not risk damaging the economic progress achieved to date.

2.6 While the government has made claims that collective agreements lead to non-inflationary wage growth and improvements in productivity growth, the department could not point to any government studies to support such claims.

2.7 Many witnesses generally had concerns about the abolition of individual statutory agreements and the impact on employment, and no witnesses were aware of any economic modelling which demonstrated the government's claims regarding a 'fairer' system. It appears that no new data has emerged either from the government or from academia in relation to the effect of the termination of individual agreements.

2.8 Empirical modelling showing positive economic effects of the bill is conspicuous in its absence. However, this has not prevented from the Minister in her second reading speech commenting that:

> A workplace relations system that works for all Australians should be fair and flexible, simple and productive. It will not jeopardise employment, will not allow for industry wide strikes or pattern bargaining and it must not place inflationary pressures on the economy. It specifically aims to drive productivity and cooperative workplace arrangements.[1]

Drafting issues

2.9 One witness, Professor Andrew Stewart, said in his submission 'The Transition bill was plainly drafted in a hurry….many of the new provisions remain widely complicated and difficult to understand, even for experts.'[2]

2.10 Asked when before the committee, whether he saw '…a way for the bill in its current form to deliver a system that is understandable for users – that is, anything other than complicated and difficult to understand', Professor Stewart's evidence was 'The short answer to that is no….' [3]

Timeline for inquiry

2.11 This undue haste has spilled over to this inquiry itself, with similarly undesirable consequences. The Senate committee acted contrary to the will and intent of the Senate, in insisting on an early reporting date for this inquiry. Allowing the Committee to inquire and report (say) a month later, would have had negligible effect.

2.12 The timeline for this inquiry does not reflect the importance of the breadth of issues raised by the bill. The March 17 reporting deadline forced on the committee by

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1 Speech on the Second Reading by Hon Julia Gillard, MP, *Hansard (Reps*), p. 10.

2 Professor Andrew Stewart, *Submission 16*, p. 2.

3 *Committee Hansard*, 7 March 2008, p. 12.

the government members has resulted in a rushed inquiry that has left the committee little time for reflecting on either broad policy issues or the minutia of provisions in the bill. Comments in submissions and at public hearings indicate that there was insufficient time for public consultation, beyond the magic circle of the government's own confidants. Some witnesses had to correct errors made in hastily prepared submissions.

Conduct of the inquiry

2.13 The inadequate timeline for the inquiry inevitably and detrimentally affected the conduct of the inquiry.

2.14 Coalition senators believe that this denied the committee its right to fully and properly consider and scrutinise the bill, and denied the opportunity for reasonable questioning of a number of key witnesses. The committee chair attempted to manage this inadequate timeframe. However, it was often very difficult for Coalition members to fully explore the concerns most parties raised in their submissions.

2.15 Despite these significant inadequacies, Coalition senators have done their best in this report to highlight many of these deficiencies in the bill, about which the Senate should be informed.

End to reform

2.16 Since the advent of the Workplace Relations Act (WRA), a key issue has been the relative merits of collective and individual agreements. It remains a key issue in this inquiry. The Labor Party has been unequivocally opposed to individual agreements. The Coalition supports the continuous availability of individual statutory workplace agreements (subject to a safety net), for those who choose them. The Coalition's reforms provide employers and employees with an option to pursue the most suitable form of agreement based on their needs and circumstances**.**

2.17 Whilst individual statutory agreements might be utilised by a small percentage of users of the current IR system, the flexibility they offer is crucial to some sectors of Australian industry in securing workers and in remaining competitive. They should remain a choice in the workplace bargaining system.

2.18 The wholesale return to collective agreements risks the return of processes which sustained the influence and power of trade unions for most of the twentieth century. While history will not necessarily repeat itself with strikes and disruptions, in the absence of powerful individualistic trends in employment relations a great deal of enterprise incentive is lost. This development may send us back, as a productive society, to the point where we may have to re-learn the lesson that workplace relations must adapt to changing economic and social circumstances. Coalition senators believe that compulsory collective agreements will be unpopular with many employees, including those who reject collectivism or have irregular patterns of employment and hours of work. The assumption made by unions and other government supporters that such people are an exploited minority is misleading generalisation. It is a reflection of

changing social patterns. The bill contains provisions that will project us into the past, to relearn lessons since forgotten.

Major policy flaws and drafting difficulties in the bill

2.19 Many of the following relate to the committee's terms of reference. Others are too important to overlook.

- The proposed demise of individual agreements
- Confusion arising from use of the Individual Transitional Employment Agreement (ITEAs)
- Undertakings to employees pending approval of an agreement
- The new No-Disadvantage Test
- Restoration of awards as the basis for wage agreements
- Award modernisation
- The possibility of future industrial unrest
- Difficulties faced by small contractors and micro businesses
- Local government concerns
- Other issues including: disincentive for businesses to employ staff; inadequate transitionary arrangements; significant disruption to employment arrangements.

The demise of individual agreements

2.20 A two year transitional instrument, the ITEA, is at the core of the bill. Australian Workplace Agreements will be abolished. Employers have been presented with a *fait accompli*. However, the peak organisations: ACCI, the Australian Industry Group, the Master Builders Association and the National Farmers Federation, amongst others, were emphatic in their opinion that individual statutory agreements were important, and even essential, in the range of employment agreement instruments that should be available to their members and to employees.

2.21 There is strong evidence that some form of individual statutory agreement subject to a safety net is an essential instrument in any industrial system. Concern was expressed at the loss of choice and flexibility in the workplace for employers and employees.

2.22 Western Australia has the longest experience with individual agreements. State legislation was introduced successfully in 1993, mainly in response to considerable industrial unrest at the time. When the committee visited Perth it was informed that many employers, especially in the resources sector, were totally reliant

on AWAs because these were very adaptable and suited project work which had finite contract periods.[4] The submission and other evidence tendered by the Western Australian Chamber of Commerce and Industry deal mainly with the problem of replacing AWAs, and will be covered under the ITEA heading.

2.23 Ai Group argued that 'employees and employers should have the right to pursue the form of agreement which best suits their needs, whether a collective agreement, individual agreement, an agreement with a union or one directly with employees'. [5] At the Sydney hearing Mr Stephen Smith emphasised that Ai Group 'would prefer that the former statutory individual agreement remain in the workplace relations system, underpinned by the new global no disadvantage test.'[6]

2.24 Generally, witnesses noted that some capacity for individual agreement making within a wider system of collective agreement making can continue to have a positive effect on economic and social life.

2.25 ACCI argued that providing flexibility only within collective agreements might reduce options available to some individuals, including flexibility to balance their work and family life. [7]

2.26 The Chamber of Commerce in WA stated that:

> If there was some means of individual agreement making, we would be satisfied. It appears that the government is relying on award flexibility clauses that will be introduced as part of the government's new system. These flexibility clauses are supposedly designed to enable an employer and an employee to negotiate a set of arrangements that might suit them, but we don't know what they look like yet.[8]

2.27 The Rio Tinto submission indicates that they have been using individual statutory agreements since the early 1990s and their use of AWAs has met the needs of both the organisation and the employees. Currently, 22 per cent of their workforce use AWAs.[9]

2.28 The National Farmers Federation also supported the maintenance of AWAs as a legitimate alternative to awards, common law agreements or collective

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4 Chamber of Commerce and Industry Western Australia, *Committee Hansard*, 4 March 2008, p. 1.

5 Ai Group, *Submission 38*, p. 3.

6 Ai Group, *Committee Hansard*, 6 March 2008, p. 1.

7 ACCI, *Submission 14*, p. 7.

8 Chamber of Commerce and Industry Western Australia, *Committee Hansard*, 4 March 2008, p. 8.

9 Rio Tinto *Submission 4*, p. 3.

agreements'.[10] In fact, most workers in the pastoral and agricultural industries are on award rates, but many workers in the large agribusiness firms are on AWAs.[11]

2.29 ABI advised that it continues to support individual statutory agreement making as 'an essential feature of a modern workplace relations system that facilitates workplaces that are productive, co-operative, flexible and responsive.'[12]

2.30 Master Builders Australia highlighted that:

> ITEAs will not be a component of the new industrial relations system that will come into effect in January 2010. Master Builders advocates that the underlying safety net is the important consideration when assessing whether or not an individual instrument is fair. There is nothing per se unfair in the use of individual statutory agreements and, for this reason, the Master Builders' policy position is that employees and employers from January 2010 should continue to be permitted the flexibility to decide what type of agreement best suits their needs and circumstances as long as the relevant statutory safety net requirements have been met. [13]

2.31 In their submission the Electrical and Communications Association (ECA) expressed their preference for the flexibility of the current system and being able to move away from the 'one size fits all' award or collective agreement and move towards an outcome that provides benefits to both employer and employee.[14] The submission notes:

> The advent of AWAs into the mainstream of the industrial relations sector in 2006, coupled with the ever increasing shortage of qualified tradespeople and a greater demand to work outside the standard working hours that has emerged over the past five years, has provided a perfect opportunity for many of ECA's smaller members to be able to not only adequately compensate their employees for the work undertaken, but to structure the working conditions around the business and the sector of the industry they worked in. This allowed businesses to keep their overheads to a minimum while not placing their employees at a disadvantage in terms of reduced wages or conditions.[15]
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> The ECA submission highlighted their concern that 'the abolition of AWAs will have a detrimental effect on the economic and growth potential of many of its smaller members as it was they who were able to gain the most benefit from implementing them into their business.'[16]

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10 National Farmers' Federation, *Submission 21*, p. 3.

11 National Farmers' Federation, *Committee Hansard*, 6 March 2008, p. 24.

12 ABI, *Submission 31*, p. 3.

13 Master Builders Australia, *Submission 3*, p. 8.

14 Ibid., p. 2.

15 Ibid., p. 3.

16 Ibid., p. 4.

> Benefits include: flexibility to amend start and finish time to suit worksites such as shutdowns in mining and engineering; providing an all up rate for employees which meant the employee was receiving the same amount of wages for the same time worked but was receiving more superannuation due to a higher ordinary times earning rate, while the employer received reductions in overheads such as payroll in trying to determine correct pay rates; tailoring an agreement to suit an employee's specific work/life situation to include additional leave in lieu of a reduced hourly pay rate if more leave was a driving factor for the employee.[17]

2.32 ECA noted that the benefits described above provided many small businesses with the opportunity to employ additional staff and retain staff by tailoring the industrial instrument to best suit the employer/employee relationship. ECA caution that the 'one size fits all' style of industrial relations that this bill reverts back to will not allow contractors to negotiate directly with individual employees on a case by case basis and will not allow contractors to adequately or appropriately reward employees for individual productivity gains.[18]

2.33 The Master Plumbers Association of Queensland (MPAQ) told the committee that individual statutory agreements had brought many small businesses into the industrial relations system for the first time. Mr Adrian Hart from the MPAQ told the committee:

> One of the biggest concerns I had had as an individual trying to assist small plumbing contractors was that quite often they would have an arrangement with their employees or their workers which suited both parties but they did not formalise it by way of some form of registered agreement and, in not doing so, they had a technical breach of the award. We saw the ability for them to register those agreements as being a way of providing some guarantee to the employee as to what the arrangements were, and some protection to the employer should there be a technical breach of the award identified.[19]

2.34 Ms Marcia Kuhne from the Chamber of Commerce and Industry WA also made the point that the result of the bill will be that employers and employees will be affected 'because many employees also elect to be employed under individual arrangements under their own agreements. It suits many employees'.[20]

2.35 This view was also put to the committee by Mr Smith from Ai Group who stated at the Sydney hearing:

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17 Ibid., p. 4.

18 Electrical and Communications Association, *Submission 5*, p. 5.

19 Master Plumbers Association of Queensland, *Committee Hansard,* 10 March 2008, p.13.

20 Chamber of Commerce and Industry Western Australia, *Committee Hansard,* 4 March 2008, p. 9.

> In our experience with our member companies there are plenty of circumstances where AWAs do suit the needs of both parties, and those circumstances are very diverse. For example, senior salaried staff may want to approach their employer about, say, the cashing out of leave.[21]

2.36 Coalition members of the committee were sceptical of the extent to which flexibility clauses could usefully be included in the modern awards promised under the legislation. It remains doubtful as to whether these would deliver employers and employees the same flexibility they currently have with individual statutory agreements. This scepticism appeared to be shared by others.

2.37 The Chamber of Commerce in WA stated that:

> If there was some means of individual agreement making, we would be satisfied. It appears that the government is relying on award flexibility clauses that will be introduced as part of the government's new system. These flexibility clauses are supposedly designed to enable an employer and an employee to negotiate a set of arrangements that might suit them, but we don't know what they look like yet.[22]

2.38 Finally, Master Builders Australia presented a realistic view which Coalition members consider has widespread support. Employers will live with what the government has proposed but would miss the option of choosing to make new individual statutory agreements on a continuing basis.

> ITEAs will not be a component of the new industrial relations system that will come into effect in January 2010. Master Builders advocates that the underlying safety net is the important consideration when assessing whether or not an individual instrument is fair. There is nothing per se unfair in the use of individual statutory agreements and, for this reason, the Master Builders' policy position is that employees and employers from January 2010 should continue to be permitted the flexibility to decide what type of agreement best suits their needs and circumstances as long as the relevant statutory safety net requirements have been met. [23]

2.39 Coalition members of the committee believe that the policy to abolish individual agreements in 2010 is wrong in principle, and is likely to result in a change to workplace culture which will affect the entrepreneurial spirit of employers and the morale of many employees. The Master Plumbers Association of Queensland commented:

> … the position has been taken at times with collective agreements that accommodated the basic level of performance and expectation, rather than set the agreement bar higher in terms of expected performance and

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21 Ai Group, *Committee Hansard*, 6 March 2008, p. 2.

22 Chamber of Commerce and Industry Western Australia, *Committee Hansard*, 4 March 2008, p. 8.

23 Master Builders Australia, *Submission 3*, p. 8.

> productivity outcomes. The collective agreement has deferred in favour of least performance and productivity.
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> This can create a workforce culture of just doing the job, rather than aspiring to a level of outstanding performance that exceeds client expectations, especially where the employer is striving for a real customer service culture within the business. Then it became doubly hard for the employer when the agreement, driven by the union, quite obviously was based on 'one size fits all', where the level of expected performance and productivity was built around the lowest membership acceptable level. Often just enough was good enough.
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> AWAs had a greater capacity to release the tiger within, so to speak, with respect to an employer's capacity to develop an aspirational level of performance and productivity amongst the workforce by enabling each individual to partner with the employer in performance and productivity. Individual agreements also provided a way of legalising what so often happened in the workplace—that is, one-on-one arrangements were previously agreed to between the boss and the worker as the award system did not suit many employees, and yet the employers could not contract out of them. Individual agreements provided a way for employers to have legitimate arrangements with their employees. This is also a useful retention strategy.

2.40 Coalition senators consider this to be a good summation of what will be lost with the demise of individual agreements.[24]

Confusion arising from the use of ITEAs

2.41 Under the transitional arrangements employers using AWAs will be able to enter into ITEAs until 31 December 2009.

2.42 It is clear from the considerable amount of evidence given to the committee that the use of ITEAs in the terms proposed by the bill has resulted in great confusion. Some industry representatives appear to believe that by various ways they can be continued indefinitely. Others are concerned about the two-year life of the instrument and consider this period to be inadequate. In any event, this extra agreement will add another instrument to the workplace which will increase confusion for employees and increase the bureaucracy burden for business.

Limited use of ITEAs

2.43 The Electrical and Communications Association (ECA) expressed concern regarding what they see as the extremely limited parameters under which ITEAs can be made. They highlight the situation for contractors in Queensland, who are not

24 Master Plumbers Association of Queensland, *Committee Hansard, 10 March 2008*, p.12.

respondent to the relevant federal award, which leaves the contractor with little choice but collective negotiations.[25]

2.44 While acknowledging the proposed abolition of AWAs, many employer organisations expressed the view that it would be their preference for ITEAs to be available as an option on an ongoing basis, subject to a safety net. Their argument was that this will address the need for a form of individual statutory agreement which they would like to see continue in principle and practice.

2.45 There was no unanimous view from business regarding the length of an extended timeframe for ITEAs. However, ACCI submitted that 'ITEAs (of a non-transitional and non-time limited nature) be available to all employers, for all employees, on an ongoing basis, regardless of an employers history of AWA use.'[26]

2.46 The option to make them available as continuing instruments subject to a safety net was raised by a number of business organisations.

2.47 Evidence from DEEWR showed that existing AWAs and new ITEAs can continue to apply beyond their nominal term. Coalition senators note that this is consistent with the Government's pre-election promise that existing laws will apply to the termination of AWAs which run beyond their nominal term. We note that it is somewhat at odds with the Government's indications that there will be no place in the new workplace relations system for AWAs or any other form of individual statutory agreement.

2.48 DEEWR also gave evidence that AWAs and ITEAs in this situation could continue to apply in workplaces, subject to the parties exercising their legal rights to terminate them. They can continue to apply beyond 2012. The bill does not provide an 'end date' for this continued application of AWAs and ITEAs beyond their nominal term.

> Deputy Prime Minister Gillard was interviewed yesterday and she indicated the government's policy quite clearly, which was that AWAs and ITEAs, as it is expressed in the explanatory memorandum, ' would continue to operate until terminated or replaced'.[27]

2.49 Coalition senators note that the fact that the parties cannot amend or vary an AWA or ITEA operating beyond its nominal term does not prevent the parties from choosing to continue to apply such AWAs and ITEAs on a continuing and indefinite basis.

2.50 In the context of a bill which otherwise progressively limits and then ends the rights of parties to make new individual statutory agreements, Coalition senators

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25 Electrical and Communications Association, *Submission 5*, p. 5.

26 ACCI, *Submission 14*, p. 12.

27 DEEWR, *Committee Hansard*, 11 March 2008, p.7.

consider this availability to parties who so wish of a mechanism to continue to apply a stream of individual statutory agreements (subject to a safety net), to be critically important.

Re-engagement of previous employees

2.51 Subsections 326(1) and (2) enable ITEAs to be made by an employer that employed at least one employee on an individual statutory agreement as at 1 December 2007 subject to the following criteria:

- an existing employee employed under an ITEA, an AWA, a 'pre reform AWA' , an individual preserved State agreement or an employment agreement within the meaning of section 887, or

- a new employee who has not previously been employed by that employee.[28]

2.52 Witnesses drew the committee's attention to this section which makes ITEAs inaccessible to employees who were previous employees of an organisation. Their concerns were that for particular industries with work of an itinerant nature, particularly the construction sector, but also retail, hospitality and the home and community care sectors, employers will not be able to re-engage staff on ITEAs that may have worked for them previously. The Chamber of Commerce and Industry in WA argues that 'if the provision is not altered to encompass previous employment …the construction industry will largely be unable to access the transitional arrangements'.[29]

2.53 WA Chamber of Commerce and Industry further notes:

> We do not understand the rationale for excluding previous employees from the ITEAs system. Is the reason for exclusion of such importance that it overrides the significant impact on an industry such as construction which traditionally hires and fires employees as demanded by the project? The Transitional Bill is effectively nullified as a transitional arrangement if it becomes law without amendment to enable offering of ITEAs to previous employees in the circumstances described above.[30]

2.54 When appearing before the committee Ms Kuhne from the Chamber of Commerce WA explained that in WA, AWAs have been in place for some 15 years and some employers have become totally reliant on them. She emphasised that 'There are many cases where members in fact are no longer aware of the detail of awards that might or might not in fact cover employees who are currently covered by AWAs…so

28 Explanatory Memorandum, p. 10.

29 Chamber of Commerce and Industry Western Australia, *Submission 24*, p. 8.

30 Ibid.

they have been relying on the fact that they would be able to transition out of those arrangements.' [31]

2.55 Mr Lee from the Chamber of Commerce, WA, reiterated the nature of the employment in the construction industry and the particular impact of the bill on this sector. He emphasised the discontinuous nature in the industry where an ongoing employment relationship is not possible due to the project nature of the sector. He told the committee that this occurs 'particularly in the north of the state where a lot of work is seasonal in nature – during the summer wet season very little work goes on. He stressed that 'on other sectors it might be a minor inconvenience; on this sector it is a major problem.'[32]

2.56 The issue of not being able to offer previous employees ITEAs was supported by a number of witnesses in the construction industry including BGC Contracting Pty Ltd which noted that over the last 12 months, 10 per cent of the recruited employees have worked for the company previously. In their submission they note: 'BGC sees the prevention of offering ITEAs to previous employees as creating an unjust discrimination against previous employees which must be removed.'[33]

2.57 Mr Ward from Ertech Pty Ltd pointed out to the committee that they are moving towards developing collective agreements and have set an ambitious date of August 2008 to have the work completed. He emphasised that the process to conclude a collective agreement will take time and in the meantime they are disadvantaged by being precluded from rehiring their itinerant workforce as a result of that particular clause.[34]

2.58 Mr Blyth from Compass Group told the committee:

> So it is not a question of the philosophical debate about the advantages of AWAs versus collective agreements; it is a recognition that, in a transitional period, there will be one group of employees important to our business from a productivity point of view who will be in a position such that, if they are employed by us, they cannot be employed on the same thing, being an ITEA, but have to be employed under an award. We then find that at a site where our clients obviously would want us to have in place registered industrial agreements for that workforce- and there are a while range of obvious advantages to that – the ex-employee cannot be put into that category during this transition period. We think that is a flaw in the bill, with respect.[35]

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31 Chamber of Commerce and Industry Western Australia, *Committee Hansard*, 4 March 2008, p. 1.

32 Chamber of Commerce and Industry WA, *Committee Hansard*, 4 March 2008, p. 2.

33 BGC Contracting Pty Ltd, *Submission 19*, p. 1.

34 Ertech Pty Ltd, *Committee Hansard*, 4 March 2008, p. 7.

35 Compass Group, *Committee Hansard*, 4 March 2008, p. 6.

2.59 Rio Tinto notes that employees leave employers for a wide number of reasons and the timeframe of their break in employment is variable. Rio Tinto argues that they cannot identify anything particular about former employees that would support the need for this exclusion and ask for its removal from the bill.[36]

2.60 BGC Contracting also raised concern with this exclusion noting that over the last 12 months, 10 per cent of their recruited employees have worked for them previously. They have also suggested that this exclusion be removed.[37]

2.61 The Coalition cannot identify the need for this provision, believes it would be a disincentive to employ people in the sectors such as those mentioned above and supports this exclusion being removed.

Different commencement dates

2.62 The bill would introduce a number of changes regarding the circumstances in which workplace agreements commence operation. Currently workplace agreements take effect from the date that they are lodged with the Workplace Authority. This will continue to be the case for greenfields agreements and ITEAs covering new employees.[38]

2.63 The proposed amendments establish new operational arrangements for collective agreements and ITEAs covering existing employees. The changes mean that these agreements will take effect after they are approved by the Workplace Authority as passing the no-disadvantage test.[39] Specifically, the Explanatory Memorandum notes that such agreements commence operation 'the seventh day after date of issue by Workplace Authority Director under subsections 346M(2) or 346Q(2) (where the agreement as varied passes the no-disadvantage test).[40]

2.64 The NFF does not support the change in commencement dates for collective agreements and asks for an amendment so that all agreements commence on lodgement date. They cite the length of time between lodgement date and approval date as a frustration for employers given the delays experienced with the administrative process.[41]

36 Rio Tinto, *Submission 4*, p .6.

37 BGC Contracting Pty Ltd, *Submission 19*, p. 1.

38 Explanatory Memorandum, p. 6.

39 Explanatory Memorandum, p. 7.

40 Explanatory Memorandum, p. 26.

41 NFF, *Submission 21*, p. 3.

2.65 ABI also considers that the appropriate date of commencement of operation for all agreements is the lodgement date due to the lengthy delays being experienced with the Workplace Authority. [42]

2.66 In their submission, Rio Tinto states that it does not support the introduction of an operative date that extends beyond the date of lodgement. They illustrate their argument with the following example:

> It introduces the very off position where two employees can be offered similar ITEAs, one applicable from lodgement (a new employee), whilst the agreement for an existing employee must wait approval from the Authority.[43]

2.67 Rio Tinto believe there is no sound reason for this distinction as current provisions of the Act cater effectively for operation of agreements on lodgement with subsequent rectification if the agreement fails to meet statutory requirements.[44]

2.68 ACCI supports all agreements commencing from the time of lodgement but understands the government's intention is for the majority of agreements to operate from seven days of being approved and suggests an alternative agreements approval model:

> ACCI's model is to ensure that long standing well credentialed users of the system (who can provide a level of trust) assist in the Workplace Authority approving agreements and speeding up the process of approving agreements for employers, unions and employees. [45]

2.69 The Coalition notes the current delays with the Workplace Authority and supports ACCI's proposal for a fast track agreement making mechanism.

Undertakings to employees pending approval of an agreement

2.70 A number of witnesses raised the issue that the bill does not permit an employer to give an undertaking in respect of the agreements which operate from approval. Ai Group argue that the provision of undertaking has proved to be an effective way of addressing situations where an agreement does not pass the no-disadvantage test and requiring them to lodge formal variations is bureaucratic. At the Sydney hearing Mr Smith further explained:

> It might be that there is just a very minor difficulty – the employer might have to increase the wage rate by 1c per hour to meet the no disadvantage test – and to require the employer to go back through the formal process of varying the agreement is very bureaucratic, time consuming and costly,

42 ABI, *Submission 31*, p. 11.

43 Rio Tinto, *Submission 4*, p. 8.

44 Ibid., p. 8.

45 ACCI, *Submission 14*, p. 33.

> when the company might operate right across the country or might have its employees out in remote locations and so on. We think the undertaking process does work very well and should be retained. [46]

2.71 Coalition senators support retention of the capacity to give an undertaking rather than requiring a fresh vote to approve an agreement where, for example, wages have been increased to get it through.

The new no-disadvantage test

2.72 ACCI notes in their submission 'that there will be a considerable difference between the proposed NDT and the former pre-Work Choices NDT in relation to the benchmark used to assess the proposed agreements'. ACCI considers 'that the 'reference instruments' are not appropriate for ITEAs and that for both ITEAs and collective agreements the benchmark should be standard and consistent'.[47]

2.73 The Coalition notes ACCI's concerns that:

> The effect of using the words 'or would not result', appears to require the agreement to satisfy the NDT over the agreement's life and not at the point of conducting the NDT.[48]

2.74 ACCI also raised that:

> CAs contain wages which are far in excess of the minimum award derived pay rates which would not represent an appropriate transitional instrument for former AWA users.[49]

2.75 In their submission, Master Builders Australia note that 'whilst the Explanatory Memorandum states at page 6 that the no disadvantage test to be introduced will relate to 'future agreements' the broad words used in section 346(1) in particular could be taken to mean that existing agreements must meet the new test. This interpretation is derived from the use of the words 'in operation' in proposed section 346C(1). Master Builders suggests that, for the sake of clarity, the subsection specifically exclude workplace agreement made before the commencement of the legislation.[50]

2.76 The Electrical and Communications Association (ECA) support a no disadvantage test, but urge the government to rethink the benchmarking requirements, concerned that there will be a different benchmark for different companies. They note that within the construction industry collective agreements generally contain

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46 Ai Group, *Committee Hansard*, 6 March 2008, p. 6.

47 ACCI, *Submission 14*, p. 20.

48 Ibid., p. 29.

49 Ibid., p. 23.

50 Master Builders Australia, *Submission 3*, pp. 8-9.

provisions far in excess of relevant awards. The Association argues that the baseline for the test should be the relevant award for the industry of the company seeking the test 'as to include relevant instruments such as collective agreements…will provide an artificial inflationary figure and push wages beyond the ability of some companies'. [51]

2.77 The ECA also notes that the bill's requirements mean that a company can negotiate wages and conditions down which they argue is sometimes necessary in times of economic downturn.[52]

2.78 The ECA also notes that the bill's requirements mean that a company can never negotiate wages and conditions down which they argue is sometimes necessary in times of economic downturn.[53]

> The example I use here is a redundancy trust we have, into which $65 is paid for our members, for each employee. Our reading of the bill suggests that, if we wish to renegotiate that EBA two or three years down the track, and take our payments down to, say, $50 a week—because everyone now has a lot of money in their redundancy trust and no-one is being made redundant in our industry and probably won't for the next five years—it would fail the no-disadvantage test because of that, unless we provided a benefit somewhere else. And that is not always going to be practicable in economic downturn times.[54]

2.79 A number of witnesses raised the issue of the existing backlog of agreements at the Workplace Authority and expressed concern that the new arrangements will add to the backlog.

2.80 While not opposing the new no-disadvantage test, Rio Tinto is concerned that the introduction of the new test and the necessary introduction of new systems into the Workplace Authority will further add to the processing time of the existing backlog of agreements and new agreements. They note that while current delays are of concern the agreements at least are in operation throughout the delay which will not be the case for some agreements under the bill. To address the backlog they suggest the following: template approval and a simplified no disadvantage calculator that is publicly available. [55]

2.81 Coalition senators would like to see the issues outlined above clarified in the bill.

- That there is a need only to meet the NDT at the time of approval and not throughout the life of the agreement; and

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51 Electrical and Communications Association, *Submission 5*, p. 6.

52 Ibid.

53 Ibid., p. 6.

54 Electrical and Communications Association, *Committee Hansard*, 10 March 2008, p.30

55 Rio Tinto, *Submission 4*, p. 7.

- That the existing legislative standard is taken into account.

Award modernisation

2.82 Since 1996 a series of legislative changes reduced the scope and impact of awards. The WRA anticipated the decline of the awards system as a benchmark for wages and conditions. This bill reverses that policy and process. One of the objections to awards was their inherent inflexibility. Coalition senators note the claims that under the new award modernisation, awards will become more flexible. Coalition senators remain sceptical about whether the bill will achieve this, and how the bill will make award flexibility work in practice.

The cost of restoring awards

2.83 While supporting the award modernisation process a large number of witnesses highlighted a number of areas of concern.

2.84 First is increased costs for employers. While noting the award modernisation request that there should be no increased costs for employers, Mr John Rothwell from Austal Ships told the committee 'I have never yet known a workforce to vote up something for free. So there is a cost to be paid'. [56] Mr Rothwell further stated 'If we are going to change from AWAs to something else, there will be more costs involved'. He asked the committee to ensure that he changes are made as simply as possible and with as little disruption as possible.[57] 'All of the changes cost money, time explanation and communication and it is quite extensive'. [58]

2.85 This was reinforced at the Sydney hearing by Mr Stephen Smith from Ai Group who argued:

> It would be a disaster if the award modernisation process suddenly resulted in a levelling-up exercise. The last time we did a count, there were 340 federal awards in the manufacturing industry. When you add up all the NAPSAs as well, it is probably something like 400 or perhaps more. Even in the metal industry, there are more than 100 awards. If that resulted in a levelling-up exercise, it would be very negative. However, the point is there very strongly and it needs to stay there – although I know that some other witnesses have argued that it should not be there – that we believe this must not be an exercise of increasing costs.[59]

2.86 Professor Andrew Stewart from Adelaide University submitted that the award modernisation request currently expresses the intention not to either 'disadvantage employees' or 'increase the costs of employers'.

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56 Macmahon, *Committee Hansard*, 4 March 2008, p. 7.

57 Austal Ships, *Committee Hansard*, 4 March 2008, p. 14.

58 Ibid., *Committee Hansard*, 4 March 2008, p. 16.

59 Ai Group, *Committee Hansard*, 6 March 2008, p. 3.

> I expressed concern that any attempt to meet both those objectives would create major difficulties for the proposed process of modernisation. [60]

Complexity of process

2.87 Mr Paul Howes from the Australian Workers Union told the committee that in his view award modernisation will be an incredibly difficult process:

> For federal awards alone we have upwards of about 380 and then there are state awards that have now been brought into the federal system. It raises many complexities for us. We still have industries which primarily operate under an award system – the pastoral industry in particular is a key example. In looking at the pastoral industry award for example my great concern…would be the loss of the formula that exists to determine shearing rates…I understand that the formula came out of the 1956-57 shearers' dispute, which lasted for two years. It is very unique and very cumbersome but it is also a very productive way of determining the rate for shearing.[61]

2.88 Mr Smith from Ai Group told the committee that it will be a complicated process 'not only because of the issue of the number of awards and the very diverse conditions within them, but also because it is the government's aim to have common rule awards'.[62] He illustrated his point with the following example:

> If you look at the food industry, for example, and the processing of frozen vegetables, we have the AWU horticultural award, the Manufacturing Grocers award with the NUW and the Food Preservers award with the AMWU. You have three major industry awards with different conditions that at the moment apply to different companies. It has been an NUW site, an AMWU site or an AWU site. There are all sorts of issues that arise when you suddenly say that the processing of frozen vegetables has to be covered under one award. Where do you get the terms and conditions from? Not only are there issues about terms and conditions, there are issues about union coverage. That is just in the federal area. Once all the NAPSAs are rolled in together – and we believe it does need to be done and we are very committed to it – we are not underestimating the difficulty that we are going to face.[63]

2.89 The ECA supports the intention of the bill to provide modern, easy to understand and apply awards relevant to the industry they are intended to serve. However, they have reservations regarding the process of this modernisation. Specifically, section 576T which' suggests that modern awards must not include terms and conditions that are determined by reference to State and Territory boundaries or

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60 Professor Andrew Stewart, *Supplementary Submission 16A*, p. 1.

61 Australian Workers Union, *Committee Hansard*, 6 March 2008, p. 14.

62 Ai Group, *Committee Hansard*, 6 March 2008, p. 5.

63 Ibid., p. 5.

do not have effect in each State and Territory.'[64] ECA suggests the implication of this section are: that Queensland, which is not currently a respondent to the National Electrical, Electronic and Communications Contracting Industry Award 1998, would become a respondent to the award; and the wages as they are presently set out in the award would be a breach of section 576T and that there would be one wage list for all of Australia.[65]

State differentials

2.90 State differentials must be taken into account in running viable businesses in a country as diverse as Australia and any proposed transition to award modernisation and a unitary system of industrial relations will make this more difficult.

2.91 The matter of state differences was raised by a number of witnesses. Mr Smith also highlighted the removal of state differences, stating:

> We are very concerned about the provision in the bill that requires all state differences to be removed within five years. Five years sounds like a long time but it will drive the outcomes of the award modernisation process, and we believe that needs to be removed. [66]

2.92 Mr Howes told the committee that the state differentials in his industries are very large:

> Mining in Western Australia is vastly different from mining in Tasmania, and mining in Victoria is vastly different from mining in Queensland. My understanding is that there are constitutional issues in having state differentials put into the modern awards. I am yet to understand how the coverage will apply.[67]

2.93 He supported the extension of the nominal expiry date of preserved state agreements using the steel sector as an example:

> The steel sector is unique in most large manufacturing concerns. If you take BlueScope Steel for example, I have 4 ½ thousand members directly employed in their Port Kembla steelworks in Wollongong, and other unions have an extra 1, 000 members there. That enterprise has always operated under the state jurisdiction and continues to operate under the state jurisdiction through a different application through the federal commission. I think it is important for the surety of those enterprises going ahead and the complex and competitive issues that the steel sector faces at the moment.[68]

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64 Electrical and Communications Association, *Submission 5*, p. 7.

65 Electrical and Communications Association, *Submission 5*, p. 7.

66 Ai Group, *Committee Hansard*, 6 March 2008, p. 3.

67 Australian Workers Union, *Committee Hansard*, 6 March 2008, p. 14.

68 Ibid., p. 15.

2.94 Rio Tinto supports that enterprise awards are excluded from the award modernisation process. They note that this relates to Federal enterprise awards and as Rio Tinto has a number of enterprise awards initially made in state jurisdictions they would not support the removal of these enterprise awards (operating as NAPSAs) without further consideration of the parties.[69]

2.95 There were further concerns regarding the consultation process. ECA are concerned about the consultation process noted on p.78 of the Explanatory Memorandum highlighting that 'with many federal awards not having full coverage across Australia,….that the AIRC will only consult with organisations that are presently respondents to the award, and may not consult with organisations who will become respondents once the award is modernised.[70]

2.96 The Local Government Association of Queensland expressed some scepticism about the timeframe for award modernisation.

> It is not for us to say that we are opposed to modernising the award but, having been involved myself in the award rationalisation and knowing how long that took, the time frame—I agree with the previous presenters to you—taken just for that exercise was extensive. To modernise awards will take some considerable period of time, and we would probably reserve our judgment about whether the time frame provided is actually adequate.[71]

2.97 Coalition committee members note the high hopes and aspirations of the witnesses in relation to the award modernisation timeline and process and assurances from DEEWR but remain sceptical that the timeframe can be realised.

Long Service Leave

2.98 Coalition committee members note ACCI's concerns regarding long service leave. ACCI submitted that in relation to long service leave the Australian Government:

> …will, in co-operation with state governments, develop a national long service entitlement under the NES. In doing so, the Australian Government will also consult with major employers and employee representative bodies. Until then, long service leave entitlements derived from various sources will be protected. So as to not pre-empt the development of a nationally consistent approach, the Commission must not include a provision of any kind in a modern award that deals with long service leave.[72]

2.99 ACCI further noted:

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69 Rio Tinto, *Submission 4*, p. 8.

70 Electrical and Communications Association, *Submission 5*, p. 7.

71 Local Government Association of Queensland, *Committee Hansard*, 10 March 2008, p.39.

72 ACCI, *Submission 14*, p. 74.

> Unfortunately, the proposed approach to LSL would provide precisely the pre-emption of the review which the Government seeks to avoid.
>
> There are a number of LSL awards and award provisions which differ from state legislation. If modern awards are made without LSL provisions, costs will increase for employers and LSL benefits will change prior to the proposed LSL review being completed.
>
> The approach outlined is not a preservation of the status quo for those subject to award LSL. A superior approach would be to require a preservation of existing award LSL pending the outcome of the review and any specific changes/the creation of a new LSL standard. This would allow the review to consider the transitional and cost considerations for employers potentially coming off awards LSL/making some changes in this area.[73]

2.100 Coalition senators support the proposal to retain scope for awards to include long service leave at least until the government completes its proposed long service leave inquiry.

The possibility of future industrial unrest

2.101 An undoubted achievement of the past eleven years has been the general and dramatic decline in the level of industrial disputes. Despite talk of social and generational change, and different attitudes to work, the single most important cause of the long period of industrial harmony is the Workplace Relations Act. It has banned industrial action except in particular circumstances, particularly in circumstances where unions once postured in the weeks and months preceding negotiations for a new collective agreement. While the issue of industrial unrest is partly speculative, the committee heard witnesses acknowledge the potential for the bill to provoke industrial disputes. Ms Marcia Kuhne from the Chamber of Commerce and Industry WA, told the committee:

> In the transition away from AWAs into collective agreement making you immediately have the potential for industrial disputation because you are changing instruments – you are entering into a negotiation process where the ground rules will change. There is a period of negotiation and we simply say that there is potentially industrial disputation that may result out of that.[74]

2.102 Mr John Rothwell from Austal Ships also highlighted the potential for union involvement. He told the committee that after a very bad experience in their early period '(early 1990s) with a thuggish type behaviour by the union', their company is now a non-union yard where they have good relations with the workforce and have been experiencing industrial peace. The company has its own workplace representative committee which worked well. Mr Rothwell told the committee that

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73 Ibid., p. 74.

74 Chamber of Commerce and Industry Western Australia, *Committee Hansard*, 4 March 2008, p. 10.

their preference is not to be forced to negotiate with unions but to continue to negotiate with their workforce through the workplace committee.[75]

Difficulties faced by small contractors and micro-businesses

2.103 Evidence to the committee indicates that small businesses and micro businesses will be especially affected by the demise of individual agreements. The committee heard from the Master Plumbers Association of Queensland that while it has become easier to have collective agreements registered, their take-up by small business has been relatively low. This is because employers have had the flexibility to agree to employee requests for higher hourly rates in lieu of more flexible work arrangements.[76]

2.104 The size of the micro-business sector is very large. The committee was told that in only one Queensland service industry alone – electrical contracting - approximately 85-90 per cent of the 4 000 contractors employed fewer than 10 people.[77] The latest ABS figures nationally show that 1.9 million businesses (96 per cent of all business) employed fewer that 20 people, and most of these had an annual turnover of less that $2 million. Furthermore, the bulk of businesses are non-employing businesses or micro-businesses. [78]

2.105 The Electrical and Communications Association of Queensland told the committee that collective agreements did not suit the circumstances of small business. The committee was told that the small 'mum and dad' businesses have been the main beneficiaries of individual statutory agreements, and that the Association had been active in assisting its members to draw up individual agreements which meet the no-disadvantage test.

2.106 The Electrical Contractors Association also had concerns about the wider ramifications of legislative change affecting small and micro businesses. In relation to collective agreements being included as a benchmark for the proposed new no-disadvantage test, it told the committee:

> ECA believes that to include relevant instruments such as collective agreements, which traditionally provide for much higher wages and conditions than those set by the award, will provide an artificial inflationary figure and push wages beyond the ability of some contractors, and place those companies at a disadvantage to contractors who do not have collective agreements. Based on the above, and with the interests of fairness to all stakeholders, ECA respectfully requests that the government reconsiders the no disadvantage test benchmark and requirements.

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75 Austal Ships, *Committee Hansard*, 4 March 2008, p. 14.

76 Master Plumbers Association of Queensland, *Committee Hansard* , 10 March 2008, p.12.

77 Electrical and Communications Association, *Committee Hansard*, 18 March 2008, p.29.

78 http:www.abs.gov.au/AUSSTATS/abs@nsf/Previousproducts/8165.0Media%20Rel

2.107 Coalition senators believe that a wages blow-out may be one of the consequences of this legislation, and deal a blow to the small and micro business sector, particularly in the service industry sector which is most sensitive to movement in employment. This could occur (for instance) if union pressure in negotiation of collective agreements became a more common occurrence under the new regime. The results could include dislocation in the labour market and labour scarcity in key areas of employment.

2.108 When asked about the effect on employment following the abolition of AWAs, the Electrical Contractors Association confirmed that many of its members would revert to sub-contracting rather than employ people on the basis of a genuine employer-employee relationship. They would then encounter legal problems. Perhaps more significantly, it would discourage people from increasing the size of their businesses.[79] Coalition senators note this indication of disincentive for growth and productivity in the small business sector. As Mr Daly of the ECA pointed out:

> It is the small mum and dad companies—which have been the engine room of the economic drive in the last 10 years—that are employing these people, that are now starting to reconsider: 'Do I really want to go through the hurdles of possibly having to deal with the union to negotiate an agreement?' Not all of them will want to, not all of them will need to. But that is now the possibility that they are looking at, and they are the ones who will start saying, ' I do need another person, but I don't need them that desperately,' or, 'I might take them on as a subcontractor and just pay them 50 bucks an hour and that's that.' No other conditions, no protection, and that is the end of it. I do not believe that that is where we want our industry to go either.[80]

2.109 Coalition senators note with regret this realistic prognosis of trials to come.

Local government concerns

2.110 Evidence from the Local Government Association of Queensland (LGAQ) gave the committee a picture of very complex award systems in place, drawn from both state and Commonwealth jurisdictions. In providing a range of community services, local government authorities are highly dependent on the flexibility provided by AWAs in remunerating personnel on call. Evidence from the LGAQ ranged over issues that will need to be addressed and resolved in relation to this bill and subsequent bills. The first issue concerns individual agreements.

2.111 Clearly, there is a concern that the abolition of individual agreements will inhibit the ability of local government to staff essential services. Instances of likely problems were given by the LGAQ:

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79 Electrical and Communications Association, *Committee Hansard*, 18 March 2008, p.29.

80 Ibid., p. 31.

> If I might just give one example: in one of our regional centres, the only swimming pool in the town was leased out to a person prior to the HIH collapse. That person ran the swimming pool, they ran the shop and they ran swimming classes, and their income came from that. They leased it out for a minimal cost to the council and council was happy because there was a service being provided. The bottom line is that the cost of public liability became too expensive for that particular lessor to continue with the arrangement, so they are going to close the pool. The cost of council taking it on and having to pay that person for the normal hours that they would work to run the swimming program, which were generally outside of what we would call normal working hours—because the nature of a swimming pool is that it is mainly for children and it is used after school and before school and on Saturdays and Sundays—was triple costs for overtime, working on weekends. There is the cost of that under the ordinary award, plus then you bring in the plethora of allowances for running shops and for expert swimming tutors et cetera cetera, and it would just become too expensive for the council to continue to run it. We arranged an AWA in that case, and that allowed the person to continue to work as an employee. The council took on the cost of the public liability. The person's wages were supplemented. They had part of their income under the AWA from the gate takings and from running lessons, so it continued the old lease arrangement but allowed the council to take on the public liability. In that particular instance, that pool probably would have closed or, at best, it would have cost the council an enormous amount of extra dollars which would have had to be taken off some other services that council would have provided.[81]

2.112 The LGAQ gave further examples of a person working as a security officer/caretaker at a community centre who also cooked meals for children on care orders, local laws officers and dog and stock catchers. [82]

2.113 This brings us to problems with awards. Local government across the whole country is beset by problems relating to awards, complicated by the question of whether they are 'constitutional corporations'. The issue of award complexity was described to the committee:

> LGAQ has direct involvement in the negotiation of agreements and awards covering about 400 different occupational categories, involving at least 23 awards, at least 168 collective agreements, between 40 and 60 AWAs and then a plethora of what are called local area workplace agreements, which are known perhaps by the committee as site agreements, along with other individual instruments such as what are called common-law contracts. So we have in Queensland local government a mix of industrial instruments. LGAQ's concern is that, whatever legislation is enacted by the federal parliament, it does not constrain the necessary flexibility for local government to function, to provide services to communities, to attract and retain its workforce and to ensure that it is able to compete against its

81 ibid., p. 41.

82 LGAQ, *Committee Hansard*, 10 March 2008, p. 42.

> competitors, which is not other tiers of government but the mining sector in Queensland, for example, or in the south-east corner, and the building and construction sector.[83]

2.114 Coalition senators note here that 'competition' refers to competition for labour in a tight employment market. Further to this evidence, the LGAQ added:

> … local government is not characterised by the principles that apply to the awards. Local government is not characterised by ordinary hours that extend from seven till five. Local government provides services often 24/7, so the prescriptions that apply in the awards are not always particularly helpful in regulating the industrial relations entitlements and wages for employees of council. A classic example is the local laws officer and the dog catcher or, as it will be in the country, catching stray cattle. They may well get a phone call at 11 o'clock at night and then the police ring them back and say, 'Oh, we've sorted it.' If you were to apply strictly the award, that employee on the basis of the award would not be able to re-enter the work site and commence duties for 10 more hours after that phone call, which is a nonsense.[84]

2.115 The LGAQ stated that flexibility clauses within awards as proposed by the award modernisation system already existed and were insufficient to their needs:

> All of our awards do have an enterprise flexibility provision within them. What I am saying to you is that was insufficient, hence the plethora of local government being redolent with side agreements, otherwise known as LAWAs, because they were premised on calling up an antiquated award that did not reflect the business needs or the realities for employees in local government.[85]

2.116 The LGAQ has called for new national local government awards. Coalition senators note that this is a matter for the AIRC. But it also notes that one of the most serious pressure points that will be experienced under the new legislation will be awards modernisation. A glimpse at only one sector, local government, gives an insight into the challenge ahead. It is one that Coalition senators on this committee will be closely monitoring.

Other issues

2.117 A number of issues were reported to the committee which highlight potential uncertainties that may be created by the transitional bill and these are highlighted below.

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83 Local Government Association of Queensland, *Committee Hansard*, 10 March 2008, p. 38.

84 ibid., p. 42.

85 Local Government Association of Queensland, *Committee Hansard*, 10 March 2008, p. 39.

Other 'uncertainties' and drafting issues

2.118 Several submissions have referred to problems of drafting. These may be more properly defined as 'uncertainties' about policy implementation. The submission from ACCI contains a comprehensive list of what may be described as 'uncertainties', which include apparently unnecessary provisions.

2.119 ACCI has queried why, for the purposes of performing the NDT, the relevant benchmark is not explicitly against the Australian Fair Pay and Conditions Standard, as mentioned in the Minister's second reading speech.[86]ACCI also has concerns about wage rates and the NDT. It also believes that there may be an anomaly for a global NTD to not be conducted against minimum wage rates, and how the Workplace Authority can consider pay scales in particular circumstances.[87] There are also queries in the submission concerning award designation, pre and post-lodgement designation. These are matters which the committee was not able to follow up with DEEWR in the time available.

Repeal of s.355

2.120 ACCI notes that 'section 355 of the WRA provides that agreements can only refer to a limited number of other industrial documents (ie. Federal awards and workplace agreements). It limits the extent to which parties to agreements can re-introduce instruments which have otherwise ceased to apply'.[88] They highlight that the repeal of s.355 was not announced in any policy document and caution that the deletion of s.355 will lead to a blow-out in agreement approvals, if the Workplace Authority must scrutinise any documents that are called up by the agreement.[89]

Earnings above $100,000

2.121 The Government's Forward with Fairness Policy Implementation Plan says:

> In Labor's new industrial system, employees earning above $100,000 will be free to agree their own pay and conditions without reference to awards.[90]

2.122 Professor Andrew Stewart confirmed his view that nothing in the bill achieves this objective.[91]

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86 ACCI, *Submission 14*, p.25.

87 ibid., pp. 27-28.

88 ACCI, *Submission 14*, p. 61.

89 Ibid., pp. 62-63.

90 *Forward with Fairness - Policy Implementation Plan,* Kevin Rudd MP, Labor Leader and Julia Gillard MP, Shadow Minister for Employment and Industrial Relations, August 2007, p.9.

91 *Committee Hansard, 7 March 2008, p. 8.*

2.123 The Government's Forward with Fairness Policy Implementation Plan goes on to say 'Labor in Government will legislate to confine the application of Labor's new award system to employees who earn less than $100,000 per year when the new award system commences on 1 January 2010.' Professor Stewart further confirmed the bill does not achieve this. He indicated that he had expected to find these provisions in this bill. [92]

2.124 Coalition senators are concerned by the absence of these critical provisions, particularly given the Government promised their implementation by 1 January 2010.

2.125 It was further pointed out to the committee that the new Part 10A does not refer to the $100,000 threshold provided for in the government's policy *Forward with Fairness Implementation Plan.* The Chamber of Commerce WA suggested that the government supply its rationale for selecting the $100 000 limit in the Explanatory Memorandum.[93]

2.126 Coalition senators support their call that the commitment must be reflected in the transitional bill setting out a clear exemption from awards for employees receiving earning in excess of the threshold.

Unitary System

2.127 Ms Denita Wawn from the National Farmers Federation (NFF) told the committee that employers who are not incorporated and who are under a five-year transition process will not have the benefit of award modernization unless all the state governments refer their powers to the Commonwealth to ensure that everybody is in the same system.[94]

2.128 The NFF raised the issue that the reforms sought through the bill will not cover those employers and employees whose employment is covered by the federal transitional award system.

> That is, employers who are not corporations but were covered by federal awards prior to the introduction of Work Choices have been provided a transitional federal award system for a period of five years that is set to expire in March 2011. Those employers seek to be covered by the federal workplace relations system. [95]

2.129 Coalition senators note that moves toward a unitary or national system of industrial relations is inevitable over time. It is a process that will test the resolve of the current government to put its case to the states in pursuit of this policy.

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92 Ibid.

93 Chamber of Commerce WA, *Supplementary Submission 24A*, p. 1.

94 NFF, *Committee Hansard*, 6 March 2008, p. 24.

95 NFF, *Submission 21*, p. 8.

Telstra redundancy

The committee heard details of particular cases bearing on the changes to be implemented by this legislation. The case of Telstra redundancies was drawn to the attention of the committee by the Communications Electrical Plumbing Union (CEPU). There was a concern about the possibility of provisions of this bill extinguishing the old IR redundancy provisions. The consequence of this would be a diminished payout on redundancy.

Low paid workers

2.130 Coalition senators received assurances that the matter of low-paid workers will be dealt with in future legislation. There is a need to place a safety net under vulnerable low-paid workers, who often operate in an award-free environment. This should be considered by the AIRC as part of its award restructuring task. The committee has heard much over the past two years about the plight of exploited workers in the textile and clothing industries, and their plight needs to be taken seriously.

Conclusion

Coalition senators generally approve of measures in this bill which strengthen no-disadvantage provisions to ensure fair bargaining between employers and employees. The Coalition also accepts that for many workers and employers the award is a necessary benchmark to ensure fairness in any negotiation for either an individual agreement or a collective agreement. To this end it supports award modernisation and the future role of an independent body, such as the AIRC. However, the bill reflects the regressive policy of the government in attempting to abolishing individual statutory agreements. This is a step too far, and risks an agreement making regime which is adversarial and acrimonious. These elements of workplace culture which were present for most of the country's industrial history have mercifully disappeared over the past twelve years. They have not been missed, and should not be resurrected.

Senator John Watson **Senator Sue Boyce** **Senator Mary Jo Fisher**
Deputy Chair