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No. 116 2002–03

Workplace Relations Amendment (Protecting the Low Paid) Bill 2003

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Workplace Relations Amendment (Protecting the Low
Paid) Bill 2003

Steve O'Neill
Economics, Commerce and Industrial Relations Group
28 February 2003

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Workplace Relations Amendment (Protecting the Low Paid) Bill 2003

Date Introduced: 13 February 2003

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: On the day after the Act receives Royal Assent

Purpose

The Bill proposes that the objects of the *Workplace Relations Act* (WR Act) be amended to specify the needs of the low paid as a primary focus in adjusting the award safety net without 'discouraging agreement-making for award workers above the safety net', as the Hon. Tony Abbott expressed in the [Second Reading Speech](#) to this Bill.¹ It is also proposed the WR Act be amended to require the Australian Industrial Relations Commission (AIRC) to also consider the following matters when adjusting the safety net:

- the primary consideration of the needs of the low paid, including their need for employment
- the employment prospects of the unemployed, and
- the capacity of employers to meet increased labour costs.

Background

The *Workplace Relations Act 1996* (WR Act) prescribes the employment conditions (e.g. annual leave, personal and carer's leave and other entitlements) and rates of pay attached to classifications, which may be included in federal awards. The aggregate of these awards, their prescriptions on employment conditions or entitlements and wage and salary rates, constitute the federal award safety net.

In September 2002, there were 2 156 current federal awards.² From research into these awards, it would appear that possibly a quarter or so are documents which specify the full range of employment conditions which would be expected to be included in an award.

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However many, possibly the majority of federal awards address a single issue such as superannuation, or, have been devised to serve some other need.³

The award safety net is prescribed under Part VI Division 1 of the WR Act. At the time that the Workplace Relations and Other Legislation Amendment Bill was debated in Parliament (1996), there was agreement between the Government and the Australian Democrats in supporting the role of the award system, and so providing employees with fair and enforceable minimum wages and conditions. The text of the Agreement between the Government and the Australian Democrats confirmed that:

The objects relating to awards are to be amended to further reflect their maintenance by the Commission; their role in acting as a safety net providing fair minimum wages and conditions; and the need for their simplification ... There will also be some restructuring of s.88B (Performance of Commission's functions)...⁴

Hence, section 88B prescribes an award safety net to be maintained by the AIRC in the following terms:

Performance of Commission's functions under this Part :

- (1) [**Further objects of the Act**] The Commission must perform its functions under this Part in a way that furthers the objects of the Act and, in particular, the objects of this Part.
- (2) [**Safety net established**] 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.
- (3) [**Considerations**] 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.

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- (4) For the purposes of paragraph (3)(e), junior wage provisions are not to be treated as constituting discrimination by reason of age.
- (5) For the purposes of paragraph (3)(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.

Data on the spread of award coverage across the workforce.

The Australian Bureau of Statistics in its 'method of payment' surveys reveals a downward trend of the proportion of employees employed under awards such that in May 2002 only 21 per cent of employees were covered by awards without reference to another agreement.⁵ The same survey for May 2000 had shown 24 per cent of employees under awards. On the other hand, the proportion of employees covered by individual agreements had grown to 42 per cent in May 2002, and the proportion under collective agreements had increased only marginally (to 37 per cent).⁶ Awards thus have a declining influence as the prime determinant of wage and employment conditions and individual employment agreements, whether formal or informal are now the largest single category of employment arrangement.⁷

Nature of Commission's jurisdiction

Both the safety net of awards prescribed above and the jurisdiction of the AIRC in wages matters is ultimately derived from the power of the federal Parliament to make laws with respect to conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State (Australian Constitution, section 51(xxxv)). As the *Australian Labour Law Reporter* notes:

High Court cases have established that this provision, while wide in its operation, places distinct limitations on the power of both the Parliament and the Commission to regulate industrial relations.⁸

However in recent times the Government has suggested underpinning the award safety net on alternative constitutional basis, particularly by using section 51(xx), the corporations power, of the Australian Constitution. A number of Government publications under the title of *Breaking the Gridlock* investigate the option further, and background on the proposed broader use of the corporations power in workplace relations can be found in *Bills Digest 91 2002-03*, and from Professor Andrew Stewart.⁹ However the following discussion on the award safety net is predicated on it deriving from section 51 (xxxv) of the Australian Constitution.

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Updating the award safety net

The parties to an award may make an application to vary its provisions under [Section 113](#) of the WR Act. Under [section 106](#) a Full Bench of the AIRC may establish principles about the making or varying of awards in relation to each of the allowable award matters. The AIRC (often a single member) may then make awards consistent with those principles, giving effect to Full Bench principles.

Under [section 90](#) of the WR Act, the AIRC is required to take account of the public interest when dealing with matters before it. The AIRC shall have regard to the objects of the Act, the state of the national economy and the effects on it that any award made may have (particularly any effects on inflation and the level of employment). These provisions allow the AIRC a wide discretion in determining awards, although its discretion is circumscribed by other factors such as the ambit of the dispute (ie the quantum of the union claim and the employers' counter claim) as well as the 'allowable matters' prescribed in [section 89A](#) and [section 143](#) of the WR Act which stipulate other requirements of awards. The *Australian Labour Law Reporter* describes the AIRC's approach to the setting of wages in the following summary:

In formulating a set of wage fixing principles the Commission tries to approach the question of wage fixing not as the resolution of each dispute as an isolated and independent case but as the determination of inter-related matters within a "system" in which short term advantages or disadvantages may have to be balanced against long term costs or gains. The Commission does not see its role as one of offering advice on the proper economic policy for the Government to pursue. However the Commission believes it should draw attention, whenever necessary, to the industrial implications of economic policies in so far as they bear on wage demands and on the decisions of the Commission.¹⁰

The minimum wage debate

The implication of this Bill is that high minimum wages are likely to price low paid employed persons out of work, and make it difficult for the unemployed to secure work. A plan by the 'Five economists' at the time of the 1998 federal election sought to cap wage increases of those under award wages and so make their on-going employment more attractive to employers, as well as providing incentives to employ the long term unemployed, and so made a contribution to the minimum wage debate.¹¹ The AIRC has also reviewed the overseas literature on the minimum wage debate, evident in the following extract from its 1999 Safety Net Wage (SNW) decision:

Turning to the micro-economic effects, the parties have augmented the voluminous material, largely of an international character, which has been relied on and considered in the 1997 and 1998 Living Wage cases. [The major studies which were brought to our attention include: *"The National Minimum Wage"*, First Report of the (UK) Low Pay Commission; *"Making the Most of the Minimum Statutory Minimum Wages, Employment and Poverty"*, OECD Employment Outlook, December 1998; *"The Youth Labour Market; Anecdotes, Fables and Evidence"*, Junaker, Waite and Belchamber; *"Another Modest Wage Increase"*,

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J. Bernstein; "Making Work Pay: The Impact of the 1996-97 Minimum Wage Increase", J. Bernstein and J. Schmitt; "Minimum Wages Debate and Policy Developments in Australia, the UK and the US", P. Dawkins; Discussion on "Minimum Wages Debate and Policy Developments in Australia, the UK and the US", P. Lewis; "Unemployment Policy: Government Options for the Labour Market", D.J. Snower and G. de la Dehesa; TRYM Related Paper No. 20, K. Bernie and P. Downes; "Youth Wages and Employment", Productivity Commission; "Minimum Wages, Training Wages and Youth Employment", J. Mangan and J. Johnston; "The 'New Economics' of the Minimum Wage? Evidence from New Zealand", T. Maloney; and "Do Minimum Wages have an Adverse Effect on Employment? Evidence from New Zealand", S. Chapple.]

We note that much of the material put before us relates to international research, although two recent pieces of research relate directly to Australia, albeit in the context of youth wages. We accept that there are difficulties in directly applying the international material to the task before us for several reasons:

- it deals generally with a single minimum wage, rather than the structure of classification rates to which the ACTU wages claim is directed;
- minimum wages considered in international studies are at a different level, relative to actual wages, and increases are of different magnitudes; and
- differing economic conditions and statutory contexts attach to minimum wages across countries.¹²

Similar considerations are reflected in the [AIRC's 2002 Safety Net Wage decision](#), in approximately 100 pages of analysis of economic issues including employment, inflation and external circumstances as well as a further 27 pages of analysis of the needs of the 'low-paid' and living standards generally, as well as consideration of the impact on labour costs resulting from any award increases.¹³ In previous decisions the AIRC has rejected the notion that the 'low-paid' and the unemployed are one and the same group.¹⁴

Over the 1990s, applications to the AIRC by unions to update the wage and salary component of the award safety net have been made on an annual basis, with submissions put and hearings conducted in the early part of the calendar year, and a decision usually handed down in May.¹⁵ Unions seek to update the award safety net for a number of reasons. Firstly, about 20 per cent of employees (1.7 million¹⁶) are dependent solely on federal and State awards for their incomes and living standards. Secondly, an increase in their wages will allow the previous year's growth in national output to be partly reflected in award wages and so redistribute income (although to a lesser extent than formerly). Thirdly, award pay rates must be taken into account when the AIRC considers whether a certified agreement or Australian Workplace Agreement (by the Employment Advocate) passes the 'No Disadvantage Test' ([section 170XA](#)) in comparison to an otherwise applicable award. Thus unions perceive it as important to update award wage rates for this purpose. The increases in the minimum award wage made through Safety Net Reviews since 1997 can be seen in the table below.

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Table: Safety Net Adult Award Wage increases 1997 - 2002

Year	Amount granted	Federal Minimum Wage
1997	\$10.00	\$359.40
1998	\$14 up to \$550 pw \$12 \$550 < \$700 pw \$10 > \$700 pw	\$373.40
1999	\$12 to \$510 pw \$10 > \$510 pw	\$385.40
2000	\$15 for all adult award rates	\$400.40
2001	\$13 up to \$490 pw \$15 \$490 - \$590 pw \$17 > \$590 pw	\$413.40
2002	\$18 for all adult award rates	\$431.40

Source: [The Role of Safety Net Awards](#) (Table)

Safety Net Applications 2003

The Australian Council of Trade Unions (ACTU) lodged applications with the AIRC to update the award safety net by \$24.60 in all award rates on 16 December 2002 on behalf of its affiliates. On 26 February 2003, the Commonwealth Government released its [submission](#) to the Safety Net Wage review arguing that it would not oppose an increase in award rates of \$12.00 for those on award rates of pay up to and including the C10 level of the metal tradesperson's rate (\$525.20). The Australian Chamber of Commerce and Industry (ACCI) has opposed any wage increase while the Australian Industry Group (AiG) proposes an increase of \$11.00.¹⁷

Basis of policy commitment

The Bill's [Explanatory Memorandum](#) (EM) reviews the policy basis for the proposed amendments to the WR Act. It notes that the Government's longstanding policy position on the role of the safety net of awards was reiterated in the policy statement *Choice and Reward in a Changing Workplace* released in October 2001:

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The Liberal/National Coalition strongly believes in providing an effective safety net of minimum wages and conditions of employment that can be relied upon by low paid employees, whilst contributing to workplace bargaining above that safety net.

The EM goes on to note that the priorities of providing a safety net for the low paid, while still encouraging agreement making for those able to bargain, are not being effectively balanced during the process of adjusting the safety net:

When adjusting the award safety net, there is a need for the Australian Industrial Relations Commission (the Commission) to give greater regard to the effect of its decisions on the encouragement of agreement making and the employment prospects of the low paid and unemployed ... A particular problem is the extension of safety net adjustments to middle and high wage earners. Giving annual increases to higher paid employees fails to provide an appropriate incentive for these employees to enter into workplace agreements. Recent decisions suggest that the Commission continues to see a role for the award system in determining the wages and salaries of middle and high wage earners even though these employees are increasingly entering into wage agreements with their employers and are less reliant on award based wage increases.¹⁸

In other words, the Government is concerned that low paid workers are not priced out of jobs, and high wage earners should be encouraged to bargain, although the EM seems to suggest that high wage earners are already doing this.

It should be noted however that the Government previously acknowledged the important role of safety net decisions improving the living standards of low paid workers, reflected in the following comments of the former Minister for Employment, Workplace Relations and Small Business, the Hon. Peter Reith in the following comment on the 1999 Safety Net Increase:

Today's decision means that under the Howard government low paid workers, even those who do not make workplace agreements, continue to receive both actual and real increases in wages. This decision alone represents a further real wage increase of around 2% in wages for the low paid.

Since March 1996, under the Howard government, the lowest paid now have received wage increases of at least \$36.00. Taking into account inflation over this period, the total real wage increase since March 1996 has been 7.8%.¹⁹

And, in the following year Mr Reith claimed economic benefits from reforms were engendered through the WR Act, and have helped to raise the wages of the low-paid through safety net increases:

The reforms implemented by the Government through the WR Act have helped Australia become stronger, with fewer strikes, low inflation, higher productivity and more competitive enterprises. They have helped Australian families improve their living standards and enjoy greater flexibility in their working lives. They have also protected the

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low paid with substantial real wage increases delivered through a series of safety net wage increases.²⁰

Position of significant interest groups/press commentary

The press commentary on this Bill coincided with news on the day before its introduction to Parliament that the Commonwealth Bank paid a \$33m separation payment to a former executive, Mr Chris Cuffe. The Federal Opposition thus made the observation that a minimum wage earner would need to work 1500 years to earn this remuneration.²¹

Otherwise, media commentary has reported the position of the major players in the upcoming SNW hearings (determined to commence on 31 March 2003²²).

Importantly, Labor States have agreed to support an SNW increase of \$18 per week. According to *WorkplaceInfo*, the response appears to have been coordinated by Victorian Minister for Industrial Relations, the Hon. Rob Hulls:

State Labor Governments will support an increase of \$18 a week in the wages of Australia's lowest-paid workers in the union movement's upcoming test case, and are calling on the Federal Government to do the same ... Victorian IR Minister Rob Hulls said in a statement today the Bracks Government believed an \$18 a week rise - the record amount the bench awarded last year was 'sustainable and economically responsible' and said while no-one would get rich on such an amount, it would make a difference ...

NSW IR Minister John Della Bosca also supported the rise, which would take the minimum wage to \$449.40 a week. A spokesperson for Della Bosca said the Government supported the \$18 rise on the basis of economic modelling, and in the belief that it was a 'fair, balanced amount'.²³

On the other hand employer groups, especially ACCI have opposed the ACTU's claims and while supporting the Bill, they doubt that it will have much, if any, influence on this year's SNW review as a decision is more likely to be handed down before the Bill passes the Parliament. However the ACCI is opposed to the position of the State Governments:

Earlier this week, ACCI head Peter Hendy warned that employers would hold various Australian Governments to account for any extra wages bills, after State Governments said they supported an \$18 a week rise.

ACCI's Workplace Policy Director, Peter Anderson said today that the \$82 increase in the minimum wage in the past six years had been 'very substantial' in both actual and historical terms. He said Australia was facing a 'very different economic outlook' this year, with the drought severely affecting employers outside the capital cities, where workers were more likely to be covered by awards and therefore subject to minimum wage increases.²⁴

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Pros and cons

Pro

The Hon Tony Abbott has made the main case in favour of the Bill. An interview given to *WorkplaceInfo* by Mr Abbott reiterates the Government's reasons for the Bill:

‘This in turn ensures a stronger and more resilient economy with healthier employment prospects. In this way, agreement making at the workplace level offers rewards for employees, employers and for Australia as a nation.’

He emphasised that a key part of the principal object of the Act was that actual wages should, as far as possible, be determined by bargaining at the workplace or enterprise level, to encourage agreement making and to meet overall economic objectives.

Abbott added that AIRC decisions on the adjustment of rates of pay in awards needed to be consistent with and reinforce the safety net role of awards to ensure genuine safety net standards. The federal workplace relations system was now firmly focused upon the setting of wages and conditions of employment at the enterprise level and this gave employers and employees the opportunity to increase the productivity and competitiveness of Australian enterprises, Abbott said.

But he said that while unemployment had fallen from the highs of the early 1990s and Australia was weathering the economic effects of international uncertainty, many people still found it difficult to gain employment, and the Bill would help address that issue.²⁵

Cons

Those arguing against the Bill, particularly trade unions, are likely to rely on the already existing requirements of the WR Act requiring the AIRC to maintain an award safety net and to protect the position of the low-paid. The provisions of the WR Act requiring the AIRC to consider aspects of public interest matters, in part, frame how it approaches its task and it may be questionable as to whether the Bill's provisions will make any significant change to its perception of how it should conduct its duties. In respect of the Bill's concern that high-wage earners should bargain, the WR Act imposes no duty or obligation for parties to bargain, and in this respect Australia's reliance on the award safety net distinguishes it from the bargaining arrangements institutionalised in other comparable countries. As the OECD has noted in relation Australia's award and bargaining system,

... many important features associated with the compulsory arbitration model remain, keeping Australia's "antipodean exceptionalism" alive. The current workplace relations model remains predominantly based on the conciliation and arbitration power and still involves considerable complexity; if anything the reforms have added to this complexity by putting another layer of formalised bargaining agreements on top of the existing award system ... Industrial awards continue to play a significant role in wage setting, in particular at the bottom end of the pay scale...²⁶

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ALP/Australian Democrat/Greens policy position/commitments**ALP**

The ALP opposes the Bill. Robert McClelland MP, Shadow Attorney-General and Shadow Minister for Workplace Relations claimed:

The legislation is an unprecedented attempt to change the rules of the current Living Wage Case, which will decide on a pay rise for more than a million low-paid workers...

The Howard Government's crack down on the lowest paid also comes as it renews its push for tax breaks for foreign executives, and does nothing about outrageous \$33 million executive payouts.²⁷

The Australian Democrats

A report on the Bill claimed that spokesperson Senator Andrew Murray did not want to comment in depth before the Bill was introduced to Parliament.²⁸

The Greens

Senator Kerry Nettle on behalf of the Australian Greens opposes the Bill. She has said:

The Bill removes the ability of the AIRC to protect low paid workers by directing it to give primacy to the needs of business over the needs of employees when determining applications for a rise in minimum award wages ... experience shows that business commonly argues that minimum pay rises are unaffordable and will cost jobs. If the AIRC is forced to give preference to these arguments, more than one million people will suffer a cut in real wages.²⁹

Main Provisions

Schedule 1—Amendment of the *Workplace Relations Act 1996*

Part 1—Amendments

Item 1 adds "primarily to address the needs of the low paid" at the end of subparagraph 3(d)(ii).

Item 2 adds new subparagraph 88A(d)(iii) which recognises that the primary role of awards is to address the needs of the low paid.

Item 3 repeals and replaces paragraph 88B(2)(c) which requires the AIRC when adjusting the safety net, to consider as a primary consideration, the needs of the low paid, *including* their need for employment; the employment prospects of the unemployed and the capacity of employers to meet increased labour costs.

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Part 2—Application

Item 4 requires that the amendments apply to pending proceedings and proceedings notified after the commencement of the Bill, which is the day the Bill is assented to.

Concluding Comments

The Bill raises issues of both maintaining the protection of employment of low paid workers and maintaining the standards of living for the low paid. It is not clear that the Bill will assist in acting as an incentive for those not in a bargaining arrangement, to pursue one. The WR Act does not direct or require employment parties to bargain. It recognises bargaining arrangements not formalised under it, and as the OECD has noted adds another layer of complexity to the formal bargaining system on top of the existing award system.

Endnotes

- 1 The Hon Tony Abbott, *Debates*, House of Representatives, 13 February 2003, p. 796.
- 2 Workplace Relations Amendment (Award Simplification) Bill 2002 [Explanatory Memorandum](#), p.5. This Bill also currently before the Parliament, seeks to reduce the content of the award safety net so that in future, awards would not be able to prescribe provisions which allow for: the serving on juries (where a court requests an employee to perform this duty), long service leave, skill-related career paths, notice of termination and 'bonuses'.
- 3 David Plowman, 'Awards, certified agreements and AWAs: some reflections', *ACIRRT Working Paper No.75*, April 2002, p. 11.
- 4 The Hon. Peter Reith and Senator Cheryl Kernot, *Agreement between the Commonwealth Government and the Australian Democrats on the Workplace Relations Bill* (October 1996) p. 6.
- 5 ABS *Employee Earnings and Hours*, Cat. No.6305, May 2002 (December 2002).
- 6 ABS *Employee Earnings and Hours* Cat. No. 6305, May 2000 (December 2000).
- 7 ABS *Employee Earnings and Hours*, Cat. No.6305 May 2002 (December 2002).
- 8 CCH *Australian Labour Law Reporter* at: ¶27–035.
- 9 Andrew Stewart, 'Federal Labour Law and New Uses for the Corporations Power', *ACIRRT Working Paper Series*, Proceedings from the 8th Annual Labour Law Conference, 16 June 2000.
- 10 CCH *Australian Labour Law Reporter* at: ¶27–080.

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- 11 The Five economists' plan is reviewed by Ian Watson, 'Proposals for a Wage Freeze and Tax Credits: Will Subsidising Low Wage Jobs Solve Unemployment?' [Parliamentary Library Research Paper 29 1998-99](#).
- 12 AIRC Safety Net Wage Decision, [Print R1999](#), April 1999 par.51.
- 13 AIRC PR002002, 9 May 2002.
- 14 AIRC, Safety Net Wage Decision, [Print R1999](#), April 1999, para.81.
- 15 Steve O'Neill and Bronwen Shepherd, [The Role of Safety Net Awards](#), (Parliamentary Library E Brief), May 2002.
- 16 See ACTU *Minimum Wages Submission 2003* [written submission](#) to the AIRC's Safety Net Review (2003), at: p. 9.
- 17 'Canberra won't oppose up to \$12 rise for low paid', *The Australian Financial Review*, 27 February 2003, p. 10.
- 18 Workplace Relations Amendment (Protecting the Low Paid) Bill 2003, [Explanatory Memorandum](#), p.2.
- 19 The Hon Peter Reith, 'Safety Net Wage decision ', *Media Release*, 29 April 1999.
- 20 The Hon. Peter Reith, 'Challenges for management in the modern workplace', *Address to Year 2000 Annual Joint Management Lecture*, 18 May 2000.
- 21 Robert McClelland MP 'Abbott takes stick to the lowest paid' *Media Release*, 13 February 2003.
- 22 See the AIRC's [Statement and Directions](#), 19 December 2002.
- 23 'State governments back \$18 rise', *WorkplaceInfo* <http://www.workplaceinfo.com.au>, 31 January 2003.
- 24 Wage case tops ACCI meeting agenda *WorkplaceInfo*: <http://www.workplaceinfo.com.au>, 14 February 2003.
- 25 'Agreement-making still a priority in safety net bill', *WorkplaceInfo*: <http://www.workplaceinfo.com.au>, 13 February 2003.
- 26 Organisation for Economic Cooperation and Development (OECD) *Innovations in Labour Market Policies: the Australian Way*, 2001, p. 262.
- 27 Robert McClelland MP, 'Abbott takes a stick to the lowest paid', *Media Release*, 13 February 2003.
- 28 'Abbott's 11th hour bid to change minimum wage case' *WorkplaceInfo*: <http://www.workplaceinfo.com.au>, 12 February 2003.
- 29 Senator Kerry Nettle, 'Government determined to punish low paid workers', *Media Release*, 13 February 2003.

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