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No. 161 2003–04

Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

Bills Digest
No. 161 2003–04

Workplace Relations Amendment (Protecting Small
Business Employment) Bill 2004

Steve O'Neill
Economics, Commerce and Industrial Relations Section
15 June 2004

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Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004

Date Introduced: 26 May 2004

House: House of Representatives

Portfolio: Employment and Workplace Relations

Commencement: In the main, on the day which the Bill receives Royal Assent, although it is intended to commence at the same time as the Workplace Relations Amendment (Award Simplification) Act 2004.

Purpose

The Bill seeks to negate the decision (26 March 2004) of the Australian Industrial Relations Commission (AIRC) which extended redundancy pay to federal award employees retrenched by small businesses. Small businesses (those with fewer than 15 employees) have been excluded from the award obligation to pay redundancy since 1984.

Background

Redundancy protection has long been an important issue in Australia's industrial landscape. Writing in the 1980s, academics Deery and Plowman observed:

With the collapse of full employment, in the face of a prolonged international recession, employees have become increasingly concerned about establishing claims to a greater security of employment within their places of work ... since the mid 1970s dramatic improvements in the reliability, versatility and speed of computer technology, accompanied by falling costs, have led to a marked expansion in the application of labour saving machinery in industry and commerce.¹

In many respects this technological change continues apace, although a new ingredient in the redundancy debate appears to be the real potential for retrenchments even when companies are 'doing well' and the prospect of a long period out of work for older employees. In any case, the recession of the early 1980s was the spur which led industrial tribunals to include redundancy provisions more widely in awards.

In New South Wales, the Wran Government also legislated to regulate the redundancy process pertaining to state award workers in its *Employment Protection Act 1982* (EPA).

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This Act has much bearing on the current Bill as it requires companies to notify the NSW Industrial Registrar of an intention to retrench employees. Unions are notified as well, and the NSW Industrial Relations Commission can make an order for the payment of severance (redundancy pay).

The NSW EPA also has a bearing on the Commonwealth Government's attempts to exclude small business from unfair dismissal claims by former employees. As the former Minister for Employment and Workplace Relations, the Hon Peter Reith noted in debates on the Workplace Relations Amendment Bill 1997 [No.2], the size of the business proposed to be excluded from unfair dismissal claims was also 15 employees or fewer :

This size of small business was chosen because of the precedent provided by the *Employment Protection Act 1982* (NSW), introduced by the Wran government, and followed by the then Australian Conciliation and Arbitration Commission in the 1984 termination, change and redundancy test case.²

More recent attempts to exclude small businesses from unfair dismissal claims have expanded the small business definition to 'fewer than 20 employees'.³

The NSW EPA also exempts businesses with fewer than 15 employees from having to notify the NSW Industrial Registrar of redundancies, and this exemption has been taken to mean a 'general' exemption for small business from making redundancy payments (discussed below).

Termination, Change and Redundancy cases

Redundancy pay provisions were inserted into federal awards following two test case decisions by the (then) Australian Conciliation and Arbitration Commission in what became referred to as the *Termination, Change and Redundancy cases* (TCR cases, 1984).⁴ From this date federal awards contained provisions dealing with termination, change (which usually required consultations with unions over proposed changes to workforce needs arising from technological change) and redundancy, although in certain circumstances an award might have tailored TCR provisions for the particular industry or business, eg a redundancy standard more generous than the 1984 standard.

The current federal law governing termination of employment is governed by Part VIA, Division 3 of the *Workplace Relations Act 1996* (WR Act) and by federal award provisions.

Redundancy provisions of awards addressing pay are allowable matters under section 89A of the WR Act. However transitional provisions of the *Workplace Relations and Other Legislation Act 1996* removed termination of employment provisions dealing with what now would be called 'unfair dismissals' from awards. The 'change' component of the TCR cases has also been removed from awards and similar, but by no means the same, provisions are found under Subdivision E of Part VIA Division 3 of the WR Act.

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The 1984 TCR cases determined that longer serving employees would be entitled to longer periods of notice of termination, from what was one week's notice to up to 5 weeks depending on the employee's service and age. These provisions are reflected in the current notice periods stipulated in the [WR Act at section 170CM](#).

Table 1: 1984 Notice of Termination

Period of continuous service	Period of notice
1 year of less	1 week
1 year and up to the completion of 3 years	2 weeks
3 years and up to the completion of 5 years	3 weeks
5 years and over	4 weeks

The TCR decision also set a basic scale of severance pay to be provided in federal awards. The scale reflected the scale developed in the NSW IRC in 1983. The scale was set at 2 weeks pay per year of service to a maximum of 8 weeks:

Table 2: 1984 TCR redundancy pay

Period of continuous service	Severance pay
Less than 1 year	nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	6 weeks pay
3 years and less than 4 years	7 weeks pay
4 years and less than 5 years	8 weeks pay

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As federal awards are allowed to prescribe redundancy pay, this standard is not reflected in the WR Act. However, a supplementary TCR decision in 1984 exempted businesses employing less than 15 employees from making redundancy payments. This general redundancy scale (Table 2) is currently reflected in payments which the Government will make to employees whose employer becomes insolvent resulting in the loss of accrued entitlements under the Commonwealth's General Employee Entitlements and Redundancy Scheme (GEERS). These payments include:

- all unpaid wages including unpaid amounts in respect of paid leave already taken and allowances such as shift allowance and overtime
- all unpaid annual leave including annual leave loading
- all unpaid pay in lieu of notice
- up to 8 weeks redundancy pay (emphasis added), and
- all long service leave.⁵

In light of the AIRC's redundancy decision, it is likely that the GEERS redundancy cap may need to be increased to reflect what is a new 'community standard' (see below at Table 3), even though legal entitlements of an individual may still exceed this new community standard in particular circumstances.

As the constitutional basis of the current Bill is limited, it is likely that GEERS may continue to meet redundancy entitlements of state award small business employees whose employer becomes insolvent, thus denying the employee/s an accrued redundancy entitlement (ie from the assets of the business). Presumably GEERS (EESS before it) has been meeting some state award small business employee redundancy entitlements since its inception in 2000, for example in respect of South Australian insolvencies, or more widely under the redundancy provisions of enterprise agreements. GEERS' operational guidelines do not spell out a small business exemption, eg under the definition of an eligible claimant.

Revised TCR standard

The claims

In a case before the AIRC commencing in 2002, the Australian Council of Trade Unions (ACTU) sought to have the 1984 8 week limit redundancy standard reviewed (with a number of other matters) and to bring federal award redundancy standards into line with higher redundancy standards applying in New South Wales and Queensland.

At the time of the hearings in this case in 2003, there was much community concern at massive payouts for redundant senior corporate figures. For example, former BHP Billiton

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head Brian Gilbertson received a payout worth up to \$50m, after less than a year as its chief executive officer.⁶ The ACTU redundancy claim sought to:

- increase maximum severance payments from eight weeks after four years service to sixteen weeks after six years service
- add up to an extra four weeks severance pay for workers aged 45 or over
- delete the exemption from paying redundancy entitlements for employers with 15 or fewer employees, and to
- extend redundancy entitlements to regular casuals (strictly meaning, employees whose daily employment is renewed daily into months or years)

Employers

The claim was strenuously opposed by employer groups, particularly the Australian Chamber of Commerce and Industry (ACCI). The ACCI in its *Impact of the ACTU claim*⁷ argued that if the small business exemption was removed, a small retail employer employing a worker on \$500.70 a week would face a cost increase of more than 400 per cent for making him or her redundant after three years service (up from \$1502.10 to \$6509.10). A medium business (defined as having up to 50 employees) would face an increase of around 30 per cent if it made redundant a clerk earning \$627.50 a week (up from \$6275 to \$8157). ACCI was adamant that the small businesses exemption is necessary to preserve jobs and prevent insolvencies and that small businesses do not have the same capacity as large businesses to access capital.⁸

The ACTU rejected these contentions, arguing that 100 000 small business employees a year are terminated through business restructures and that only 53 per cent of employees made redundant would be entitled to a maximum of seven weeks pay under the union proposal while some 30 per cent of employees made redundant would be entitled to no redundancy pay because they would fail to reach the threshold of 12 months service. The ACTU submitted in the case that 70 per cent of small businesses are profitable at the times they lay off staff.⁹

The Australian Industry Group (AiG) also rejected the ACTU claim but also sought to have federal redundancy provisions override inconsistent (higher) state award provisions. It sought for the AIRC to insert a new clause stating that federal test case provisions dealing with termination and redundancy pay are intended to 'occupy the field', or override state laws when they both deal with the same subject matter. The AiG argued this would be consistent with section 152 of the WR Act, and with High Court jurisprudence. The AiG submission claimed that recent decisions by various state industrial tribunals have cast 'considerable doubt' on the paramountcy of federal award provisions dealing with

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termination of employment, including redundancy pay, despite the commonly-held assumption over many years that federal awards were intended to cover the field.¹⁰

It might be noted that the scheme of termination of employment originally envisaged under the WR Act made some allowance for the constitutional limitations on which the scheme was based. Ergo, federal award employees not constitutionally covered by the federal termination scheme and dismissed (they believed) unfairly, were not precluded from accessing state termination jurisdictions for a termination remedy by the federal termination of employment provisions. Such employees excluded federally but allowed access to state tribunals would include those federal award employees working for partnerships, for example. Most states have amended their laws to specifically accommodate the federal scheme.

More recently however, the Commonwealth has shown some determination to replace what it perceives as 'inconsistent' state termination provisions by expanding Commonwealth coverage. The Workplace Relations (Termination of Employment) Bill 2002 is a good example, and the current Bill shows a similar intent with the current Bill.

The 2004 Redundancy decision

In its 2004 Redundancy decision,¹¹ the AIRC granted some of the ACTU's claims with modification, while rejecting others. It extended award based redundancy provisions for the first time since 1984 in the following scale:

Table 3: 2004 Redundancy pay scale for businesses > 15 employees

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	6 weeks pay
3 years and less than 4 years	7 weeks pay
4 years and less than 5 years	8 weeks pay

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Period of continuous service	Severance pay
5 years and less than 6 years	10 weeks pay
6 years and less than 7 years	11 weeks pay
7 years and less than 8 years	13 weeks pay
8 years and less than 9 years	14 weeks pay
9 years and less than 10 years	16 weeks pay
10 years and over	12 weeks pay

After 10 years or more the severance pay is reduced to 12 weeks pay, offsetting long service leave entitlements potentially payable after 10 years of service. The AIRC extended the above scale to small business, but capped maximum payments at 8 weeks pay for small business. It refused to extend payments to regular casual employees. It also rejected the claim for a higher rate of redundancy pay for workers aged over 45 years. However, the decision also allowed for individual businesses struggling to make payments to apply for an exemption from the redundancy standard.

The Bill

According to Minister Andrews' [Second Reading Speech](#) on this Bill, the effect of the AIRC's redundancy decision is that:

A typical retail business with seven employees, each with six years continuous service, would now face a contingent liability for redundancy pay of almost \$30,000.¹²

The Bill exempts businesses employing 15 or less employees from paying redundancy. In particular

small businesses which are constitutional corporations but covered by state awards are also exempted by the Bill from paying redundancy under the provisions of state awards, ie the current Bill proposes to 'cover the field' to the limit of constitutional authority

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- the AIRC will refrain from making orders to insert small business redundancy pay clauses into federal awards (consequent upon its redundancy decision of 26 March 2004)
- for the purposes of determining the numbers of workers employed and potentially retrenched, the timing of redundancy is clarified
- only casuals employed on a long-term systematic basis for 12 months or more are to be counted in a business's staff, and
- redundancy provisions in awards prior to the AIRC's 2004 decision are unaffected. But award variations made from the time of the decision until the legislation commences will be cancelled – except in situations where entitlement to a payment has arisen.¹³

The Bill does not affect small businesses that remain unincorporated and are covered by state awards. This means that they will continue to be obliged to meet redundancy pay provisions should a relevant state award or commission order provide for these.

How the small business redundancy exemption currently applies

It was noted in the introduction to this digest that the NSW employment protection legislation provided an exemption from the requirement to notify the NSW Industrial Registrar of pending redundancies where the business employed fewer than 15 employees. This exemption was more or less continued in the federal award system where small businesses were exempted from the obligation to meet redundancy pay. It might be noted also that the 1984 TCR decision has been considered in other state industrial jurisdictions and often followed usually with some reservations. The AIRC in its 2004 redundancy decision considered at length the precise nature of any small business exemption operating in the states and federally, extracts summarised below:

Federal

- In the TCR No. 1 decision the Commission excluded employers who employ fewer than 15 employees from the notification and consultation provisions only, not from the requirement to make redundancy payments. Further proceedings took place after the Commission '*received a multitude of complaints from employers about the decision.*' The TCR No. 2 decision was subsequently issued. In that decision the Commission determined that:

'... in the interests of uniformity with New South Wales and in the light of the material presented about the effect of taking into account previous service, we are prepared to grant an exemption for employers of less than 15 employees. This exemption will also be subject to further order of the Commission.'

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- The exemption in the TCR standard clause is expressed to be ‘*subject to an order of the Commission in a particular redundancy case*’. In each of the following cases the Commission, after considering the circumstances of the industry, decided that the small business exemption should be removed from the award in question:
 - Re Municipal Employees (WA) Award 1982 and other awards
 - Building and Construction Industry TCR Case
 - Re Clothing Trades Award 1982
 - Re Furnishing Trades Award, 1981
 - Australian Municipal, Administrative, Clerical and Services Union and Armidale Family Day Care Ltd and others
 - Re Timber Industry Award 1990 and
 - Re National Joinery and Building Trades Products Award 1993.

New South Wales

- When first introduced, the *Employment Protection Act 1982* (NSW) (EPA 1982) provided that employers employing fewer than 15 employees were exempt from the ‘*compulsory notification*’. Sections 7 and 8 provided for compulsory notification to the Registrar where an employer proposed to terminate the employment of one or more employees. Upon such notification the relevant unions were notified (section 10) and a report provided to the President of the IRC NSW (section 11). The IRC NSW had the power to make orders, including orders for the payment of severance pay (paragraph 14(1)(a)).
- The small business exemption only related to the compulsory notification requirements and did not affect the power of the IRC NSW to order severance pay for small businesses. Subsection 14(9) of EPA 1982 states:

‘An order under this Act has effect notwithstanding that the number of employees employed by the employer concerned falls below 15.’
- The IRC NSW's approach to redundancy was subsequently reviewed in 1994 in *Re Application for Redundancy Awards Case*. The IRC NSW rejected a union application to remove the exemption, in the following terms:

‘Lastly, we have closely considered Mr Sams' submissions that the scale should apply to enterprises employing under 15 employees and the trenchant opposition of the employers. We note that this level of exception is contained in the Employment Protection Act and has been extensively followed elsewhere. In the circumstances ...we determine to maintain the barrier in the same terms.’

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South Australia

- When the Industrial Relations Commission of South Australia (IRCSA) considered the matter in 1987 it decided not to exempt small business. In *Re Clerks (SA) Award & Another Award* the exemption was rejected on the grounds that it would be "unjust". The IRCSA said:

‘[W]e are persuaded that it would be unjust to grant an employer an automatic exemption from the redundancy provisions simply because he employs less than fifteen employees.’

It seems to us that the rationale behind such an exemption must assume, we think incorrectly, that an employer who employs less than 15 employees cannot afford to pay the redundancy benefits to his retrenched employees. It may well be that he has not the capacity to do so. But many employers who employ only a small number of employees have very lucrative businesses, whilst employers of a larger number of employees might make a relatively small profit . . . A provision of that kind is arbitrary and in our view is devoid of merit. All employees who are made redundant for whatever reason, are likely to suffer the same adverse effects no matter whether they were employed at a small enterprise or by a multi-national company. In our view all employees who are made redundant should prima facie be entitled to the same benefits. If any employer considers that he does not possess the capacity to pay the benefits bestowed by the redundancy provisions then he will have the right to come to the Commission to be exempt therefrom. Each case can then be dealt with on its individual merits.’

Western Australia

- The Western Australian Industrial Relations Commission (WAIRC) considered this issue in 1985 in *Amalgamated Metal Workers and Shipwrights Union of Western Australia v Anchorage Butchers Pty Ltd and others*. In that case the WAIRC decided that:

The claim to exclude from the redundancy provisions employers who employ less than 15 employees appears hard to rationalise and no real attempt was made by the applicants to do so. It is surely not the case that an enterprise that employs fewer than 15 people will generally not have the resources to meet redundancy payments and the like. Some enterprises forced to retrench 100 employees may find their resources taxed to a greater degree than an enterprise employing 14 people, and dismissing just one employee through redundancy. In the absence of argument to justify if this arbitrary exclusion appears to us to be unnecessarily and illogically discriminatory.

- In a subsequent 1986 decision of the WAIRC the small business exemption was incorporated (for the sake of consistency) but the WAIRC said:

Having studied all of the material before us on this subject and having considered the submissions of the parties, we are convinced that the figure 15 is quite arbitrary and

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has its origin in the New South Wales Employment Protection Act 1982. It is our belief that it has its genesis in Section 9 of that Act and probably its inclusion in the Act had more to do with problems of administration than with intrinsic merit. Be that as it may consistency demands that the union's claim be rejected and the exclusion ... for employers who employ less than 15 employees should appear also in the state Award ...

- Thus there is no single TCR standard in Western Australian state awards, (within the meaning of Principle 10, of that State's statement of principles for making awards in WA). The WAIRC has adopted the general small business exemption that operates federally, albeit with some reservations.

Queensland

- The most recent consideration of the small business exemption occurred in the *QCU v QCCI* decision of 18 August 2003. In that decision the Queensland Industrial Relations Commission (QIRC) decided to retain the small business exemption. The QIRC concluded that:

In our view, the small business exemption should be retained. Many small businesses operate in marginal circumstances.

An obligation to make severance payments has the very real potential to result in the insolvency of a number of small businesses.

The lack of financial resilience in small business previously referred to has not changed since 1994. We accept the Queensland Government's submission that small business would generally have smaller cash reserves to meet severance pay requirements, and redundancies occurring would represent a greater proportion of the overall labour costs of the business.

Tasmania

- The position in Tasmania is a little different from that in other states. In 1985 the Tasmanian Industrial Commission rejected the notion of making general provision for redundancy or retrenchment procedures in favour of the continuation of a case by case approach. As a consequence there is no general exemption for small business from the requirement to pay redundancy in that state.

Summary

The inference to be made from this survey on the small business exemption is that it does not appear to be uniform or absolute across the states or federally and that usually some discretion is reserved for the relevant tribunal whether to make an order for a small

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business redundancy depending on the merits of the case, as the AIRC's 2004 redundancy decision noted:

The existence of a small business exemption in most state jurisdictions is clearly a factor which supports the retention of the exemption in federal awards. But it is not a determinative consideration. It must be balanced against other factors such as the inequities that may arise in circumstances where a business reduces employment over time, and the inconsistency of treatment of redundant employees based on the number of persons their employer employs.¹⁴

ALP and Australian Democrat responses

The ALP opposes the Bill but appears sympathetic to the notion of allowing small businesses an opt-out from the redundancy pay obligation on account of possible financial effects on the businesses viability, in other words a business concerned would have to make a case and argue that it could not meet the costs of redundancy/ies.¹⁵

Representing the Australian Democrats, Senator Murray has expressed an initial concern at the prospect of the Bill overturning a decision of the independent tribunal charged with considering the matter of redundancy in depth.¹⁶

The 2004 Supplementary Redundancy decision

As with the original 1984 redundancy decision, the AIRC made a [supplementary decision](#) to its March 2004 decision on 8 June 2004.¹⁷ The supplementary decision declined employers' proposals to restructure the schedule of redundancy payments applying to businesses with more than 15 employees (to account for the differing long service qualifying periods of the States and Territories), and the AIRC has retained the schedule shown in Table 3.

On the matter of exempting small business from the (capped) redundancy schedule determined in the March 2004 decision the AIRC decided that the argument put by the employers, particularly ACCI, had merit. This was that the small business obligation to meet redundancy pay would commence for their employees at this point forward (effectively from the June decision), ie previous service of individual employees would not be considered in determining an employee's service:

... we think there is some merit in the proposal advanced by ACCI. In particular, we accept that small business employers may not have the financial reserves necessary to meet a redundancy situation immediately, even though currently trading profitably. For these reasons, notwithstanding its lateness, we have some sympathy for the submission. The reasons which have already lead us to adopt a less onerous severance pay scale for small business also support the submission. We have decided that the severance pay scale to apply to small business should not take into account service rendered prior to the operative date of any order giving effect to the March decision.¹⁸

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The supplementary decision in effect defers the maximum small business redundancy payment/s arising from this test case until mid 2009 or later.

Main Provisions

Clause 3

Schedule 1

Item 1 – Paragraph 89A(2)(m) replaces existing paragraph 89A(2)(m) making redundancy pay by an employer of 15 or more employees an allowable award matter. Redundancy pay by an employer of fewer than 15 employees therefore would *not* be an allowable award matter.

Item 3 inserts **subsection 89A(7A)** which would prevent an exceptional matters order being made about redundancy pay by an employer of fewer than 15 employees.

Item 4 inserts **paragraph 89A(8A)(a)** which sets out the ‘relevant time’ at which the number of employees is to be calculated for the purposes of paragraph 89A(2)(m) and subsection 89A(7A). **Paragraph 89A(8A)(b)** provides that a reference to employees in either paragraph 89A(2)(m) or subsection 89A(7A) includes a reference to the employee who becomes redundant and any other employee who becomes redundant at the relevant time. A reference to employees also includes any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months, but does not include any other casual employee.

Item 5 inserts **section 153A** which provides that a constitutional corporation which employs fewer than 15 employees is not required to make redundancy payments to its employees where a state law or state award requires it to do so.

Item 6 inserts **subsections 170FA(3) and (4)**. **Subsection 170FA(3)** provides that the Commission must not make an order to give effect to Article 12 of the ILO’s Termination of Employment Convention in relation to the matter of redundancy pay by an employer of fewer than 15 employees. The intention behind sections 170FA, FB, FC and FD was to provide employees with access to severance payments where these were not available as an award entitlement.¹⁹ The WR Act’s termination of employment provisions give effect to Articles 12 and 13 (only) of the Convention, and there exists in these provisions currently a small business exemption. **Subsection 170FA(4)** sets out the relevant time and the definition of employees including long term casual employees for the purpose of calculating a small business (see **item 4**).

Item 7 provides that the amendments contained in **items 1 to 4** of this Schedule apply where the Commission is dealing with industrial disputes by arbitration after the Schedule

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commences whether the industrial dispute arose before or arises after the Schedule has commenced. This item also provides that the amendment made by **item 5** applies to a state law or state award made, amended or varied, that imposes redundancy pay obligations on constitutional corporations that employ fewer than 15 employees.

Item 8 provides that if, during the period from 26 March 2004 until Schedule 1 commences, the Commission made an award or order that had the effect of requiring an employer of fewer than 15 employees to make a redundancy payment, or if the Commission varied an award or order that was made before or during that period to that effect, then from the commencement of this Schedule such an award or order ceases to have that effect.

Item 9 prevents a state law or award that is made, amended or varied during the period from 26 March 2004 until the Schedule commences and which has the effect of requiring a constitutional corporation employing 15 or fewer employees to pay redundancy pay, from having effect.

Schedule 2

Schedule 2 makes the same amendments as provided for in Schedule 1, in the scenario that the Workplace Relations (Award Simplification) Bill 2002 becomes law and commences before this Bill receives Royal Assent. This is necessary because that Bill and the current Bill make changes to similar provisions of the WR Act.

Schedule 3

Schedule 3 does the same where the Bill receives Royal Assent before the commencement of the Workplace Relations Amendment (Award Simplification) Bill 2002.

Schedule 4

Schedule 4 provides any entitlement to a redundancy payment that arose before the commencement of a Schedule to this Bill is not affected by the Bill.

Concluding Comments

The Bill highlights the difficulty of altering what appear to be established standards – in this case the removal of the small business exemption in federal award redundancy provisions. With the limited time available to prepare this digest, it was not feasible to look at the reasoning behind the 1982 small business exemption as provided for then in New South Wales. However, it is likely that some concession was made for the general economic recession at that time, and it is reasonable to ask whether those circumstances

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continue to apply. Although the main purpose of the Bill is to counter the AIRC recent redundancy decision, the Bill also indicates the Government's more pronounced intention to exclude inconsistent state award provisions, even though the AIRC's decision does not alter or extend their redundancy provisions. The Bill also represents the Government's first attempt to implant a small business exemption in the WR Act's allowable award matters.

Endnotes

- 1 S. Deery and D. Plowman, *Australian Industrial Relations* (2nd edition), (McGraw-Hill, 1982, p. 386.
- 2 The Hon Peter Reith, House of Representatives, *Hansard*, 26 November 1997, p. 11259.
- 3 Note the Workplace Relations Amendment (Fair Dismissal) Bill 2002 at subsection 170CE(5C).
- 4 Australian Industrial Relations Commission, Print [F6230](#) Print [F7262](#).
- 5 Department of Employment and Workplace Relations, GEERS [Operational Arrangements](#) at: www.workplace.gov.au, under employee entitlements.
- 6 I. Howarth, 'For the record, Gilbertson leaves BHP with \$50m', *The Australian Financial Review*, 25 May 2003, p. 1.
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- 9 Ibid.
- 10 'AiG wants federal redundancy to 'cover the field' *WorkplaceInfo*, 28 January 2003.
- 11 AIRC, Redundancy case 2004, [PR032004](#), 26 March 2004.
- 12 The Hon Kevin Andrews, Second Reading of the Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004, House of Representatives, *Hansard*, 26 May 2004, p. 28986.
- 13 This might be the case where an employee has been made redundant after the AIRC's decision and before the Bill beings passed as an Act and coming into effect.
- 14 AIRC, Redundancy case 2004, [PR032004](#), 26 March 2004.
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- 16 Senator Andrew Murray, interview on ABC Radio, *PM*, 26 May 2004.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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16 *Workplace Relations Amendment (Protecting Small Business Employment) Bill 2004*

17 AIRC Redundancy case, Supplementary Decision, [PR062004](#), 8 June 2004.

18 Ibid at par 21.

19 See for example AIRC decision, *S9143*, 4 October 2000.

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