

CHAPTER 13

SCHEDULE 15 – MATTERS REFERRED BY VICTORIA

Outline of proposed amendments

13.1 Victoria referred most of its powers relating to industrial relations to the Commonwealth under the *Commonwealth Powers (Industrial Relations) Act 1996*. As a result, the WR Act contains provisions dealing with the employment conditions of Victorian employees. Part XV of the WR Act and Schedule 1A to the Act deal with, amongst other things, minimum terms and conditions of employment in Victoria.

13.2 Schedule 15 of the Bill contains amendments to Part XV and Schedule 1A to improve the operation of Victorian minimum terms and conditions of employment. While many of the amendments are of a technical nature¹, the Bill would make amendments in the following substantive areas:

- allowing inspectors authorised under the WR Act to enter and inspect premises where it is believed that employees are employed on conditions set under Schedule 1A, and to enforce any breaches of these minimum terms and conditions;
- clarifying the operation of entitlements to annual leave and sick leave under Schedule 1A;
- ensuring that employees who work more than 38 hours a week are entitled to be paid for these additional hours of work; and
- ensuring that employers can stand down employees employed under contracts underpinned by Schedule 1A minimum terms and conditions.

Evidence

13.3 It was generally agreed that the amendments in this Schedule would fix practical problems that had arisen since the referral of Victorian powers to the Commonwealth, and benefit Victorian employees working under Schedule 1A minimum terms and conditions:

We commend that drafting of the Bill in that it will have the Act deal much more elaborately than is presently the case with Annual Leave in Schedule 1A. This is very desirable from the point of view of employers and employees needing to operate in accordance with the schedule.²

1 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2413

2 Submission No. 468, Law Council of Australia, vol. 22, p. 5731

Enforcing terms and conditions of Victorian employees

13.4 The technical problems which have prevented inspectors representing the Department of Employment, Workplace Relations and Small Business from enforcing the Schedule 1A minimum conditions were highlighted as an area of particular concern during the inquiry:

The department effectively does not prosecute employers who breach (Schedule 1A terms and conditions). Our organisation decided to outline these problems because we trust that the Committee will recommend that the problems be addressed...There have been no prosecutions at all in Victoria with regard to schedule 1A workers...The Department of Employment, Workplace Relations and Small Business does not believe it has the power to prosecute—it is a matter relating to the difficulty with referral of powers.³

When the WR Act was amended by the *Workplace Relations and Other Legislation Amendment Act (No.2) 1996*, no provision was made to allow this Department's authorised officers to enter into workplaces where the terms of employment of employees were governed by contracts of employment underpinned by the minimum conditions of employment contained in Schedule 1A. Nor was provision made for the Department's authorised officers to bring actions under sections 178 and 179 of the WR Act in respect of breaches of the Schedule 1A minimum conditions...⁴

13.5 Items 1-6 and 8 of Schedule 15 to the Bill will rectify these problems.

Clarifying leave entitlements

13.6 Regarding the proposed changes to clarify annual leave and sick leave entitlements under Schedule 1A, the Department submitted that the amendments had been developed in response to 'numerous requests from Victorian employers and employees seeking assistance in the interpretation of Schedule 1A...whether Schedule 1A gives casual employees (who already receive a loading in lieu of these entitlements) an entitlement to paid annual leave and sick leave...and how entitlements to annual leave and sick leave should be calculated when there is a variation in the weekly hours of work of an employee.'⁵

13.7 Some witnesses opposed these particular amendments as they considered that they would further reduce what were already very basic conditions of employment:

Some other proposed changes in this schedule will actually compound existing inequities Victorian employees covered by Schedule 1A currently experience. Two of the changes that will have a detrimental effect on these

3 Evidence, Ms Wendy Tobin, Melbourne, 8 October 1999, pp. 177, 182

4 Submission No. 329, Department of Employment, Workplace Relations and Small Business, vol. 11, p. 2414

5 *ibid.*, p. 2415

employees are those proposed in the new subsections (3) and (5) of Clause 1 of Schedule 1A, which relate to the calculation of annual leave and sick leave. These clauses rely on a mathematical model which excludes the time an employee is on leave from the calculation equation. The impact this will have, especially in relation to the accrual of annual leave, gives Victorian employees less annual leave over time than those covered by other state laws or federal awards, which include time taken as leave in the calculation of leave entitlements.⁶

The proposed changes to Clause 1 of Schedule 1A will see that casual and seasonal workers who currently are entitled to minimum conditions of employment in respect of annual leave and sick leave, will lose those entitlements. The very specific changes introduced by Item 14 of Part 1 of Schedule 15 of the Bill is aimed to take away from existing Victorian employees even the poor minimum conditions they are currently entitled to. There is no justification given by either Government for further reducing the minimum entitlements of Victorian employees.⁷

Conclusion

13.8 A majority of the Committee acknowledges that there is general support for the proposed amendments to correct technical deficiencies in the operation of Part XV and Schedule 1A to the WR Act.

13.9 While there are some concerns about possible disadvantage to some workers through the changes to annual leave and sick leave entitlements, the Committee majority notes that it is not normal in any Australian jurisdiction for casual employees to be entitled to paid annual or sick leave. This is why casual employees receive higher pay rates than their full time and casual counterparts – their pay rates incorporate loading in lieu of standard leave provisions.

Recommendation

13.10 That the proposed amendments to Part XV and Schedule 1A be enacted.

6 Submission No. 398, Jobwatch Inc., vol. 14, p. 3258

7 Submission No. 414, Shop Distributive and Allied Employees' Association, vol. 17, p. 3780

