

2002 - 2003

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**WORKPLACE RELATIONS AMENDMENT (PROTECTING THE LOW PAID)
BILL 2003**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment and
Workplace Relations, the Honourable Tony Abbott MP)

WORKPLACE RELATIONS AMENDMENT (PROTECTING THE LOW PAID) BILL 2003

OUTLINE

This Bill proposes to amend the *Workplace Relations Act 1996* (the WR Act) to ensure that adjustments to the award safety net are made giving appropriate recognition to the needs of the low paid.

When adjusting the award safety net, there is a need for the Australian Industrial Relations Commission (Commission) to give greater emphasis to the needs of the low paid, the employment prospects of the low paid and the unemployed, and the capacity of employers to meet increased labour costs. Under recent decisions of the Commission quite highly paid workers have been able to receive safety net adjustments. This acts as a disincentive to bargaining at the enterprise level.

The Bill would amend the objects of the Act to ensure that the primary focus of the award safety net is to address the needs of the low paid. The Bill would also require the Commission to recognise that the primary role of awards is to address the needs of the low paid when the Commission performs functions and exercises powers in relation to awards.

In performing functions under Part VI of the WR Act the Commission would be required to have regard to:

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

FINANCIAL IMPACT STATEMENT

The measures in this Bill will have no impact on Commonwealth expenditure.

REGULATION IMPACT STATEMENT

REGULATION IMPACT STATEMENT – WORKPLACE RELATIONS AMENDMENT (PROTECTING THE LOW PAID) BILL 2003

Problem:

1. 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.

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. (p 27)

2. 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.

3. 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.

4. 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.

Objective:

5. The Government's objective is to emphasise, when the Commission is varying and adjusting awards, the need for it to focus upon the intended safety net role of the award system for the low paid.

6. The Government's policy position is that the award safety net should focus primarily on the low paid and that adjustments to that safety net should have primary regard for the needs of the low paid, including their need for employment.

Options:

Status quo

7. The status quo could be maintained. If this option were chosen the Commission is likely to continue to award safety net adjustments to all workers whose pay is set by awards – including middle and high wage earners. The continued application of safety net adjustments to high and middle wage earners is likely to continue to remain as a disincentive to agreement making.

Increasing the emphasis of safety net adjustments on the needs of the low paid

8. The preferred option is to amend the *Workplace Relations Act 1996* (WR Act) to emphasise that the needs of the low paid, including their employment prospects, should be the primary consideration for the Commission in maintaining the award safety net. In order to reinforce the importance of the need for employment, the proposed amendments also include that, in addition to current provisions, the Commission should have regard, when adjusting the award safety net, to the employment prospects of the unemployed and the capacity of employers to meet resulting increased labour costs.

9. This option involves amendments to the WR Act which would:

- emphasise in Part 1, Section 3 (Principal Object) the needs of the low paid as a primary consideration when adjusting the safety net;
- emphasise in Part VI, Division 1A (Objects of Part), a primary consideration for the needs of the low paid when adjusting the safety net; and
- add to Part VI, Division 1 (Functions of Commission generally) that when the Commission is adjusting the safety net, primary consideration should be given to the needs of the low paid including their need for employment, and that consideration should be given to the employment prospects of the unemployed and the capacity of employers to meet increased labour costs.

Impact Analysis:

10. Adjustments to the safety net that are not focussed upon the low paid and have disregard for the capacity of employers to meet resulting increased labour costs, can create a disincentive to bargain at the workplace level. This limits the benefits of increased productivity and efficiency to be gained by employers, employees and the community more generally. Refocussing the federal award system so that it acts as a genuine safety net for the low paid will help protect the pay and conditions of employees who are unable to bargain, while at the same time encouraging agreement making for those who are able to do so. Encouraging agreement making that is tailored to the needs of the particular workplace will give the opportunity for increased flexibility and efficiency.

11. In May 2000 it was estimated that approximately 1.8 million non-farm employees continued to depend on either federal or State awards as their pay setting mechanism. Safety net adjustments directly affect up to this number of employees as State jurisdictions flow-on federal safety net adjustments.

12. The desired impact of the proposed Bill would be to emphasise the importance of award dependent low paid workers and their ongoing employment prospects, when the Commission is adjusting the award safety net. The proposed Bill would increase the level of consideration given in Safety Net Reviews to the capacity of employers to meet increased labour costs.

Views of affected parties:

13. Consultations with employer representatives during Safety Net Reviews have identified concerns regarding the extension of safety net increases to middle and high wage earners, the capacity of employers to pay increased labour costs following safety net adjustments and the impact of safety net increases on employment prospects for relevant employees.

14. In 'Modern Workplace : *Modern Future – A Blueprint for the Australian Workplace Relations System 2002-2010*', the Australian Chamber of Commerce and Industry (ACCI) supports a refocussed system where wages are primarily varied through workplace bargaining and award rates of pay provide a genuine safety net for the lowest paid.

Conclusion and recommended option:

15. The recommended option is to amend the WR Act to emphasise that the low paid and their employment prospects should be the primary consideration for the Commission in setting the award safety net, and that the Commission should also have regard to the capacity of employers to meet resulting increased labour costs.

Implementation and Review:

16. The recommended option would be implemented by amending the WR Act to
- Emphasise in Part 1, section 3 (Principal Object) that addressing the needs of the low paid is a primary consideration when adjusting the safety net;
 - Emphasise in Part VI, Division 1A (Objects of Part) that a primary consideration when adjusting the safety net is addressing the needs of the low paid; and
 - Add to Part VI, Division 1 (Functions of Commission generally) that, when the Commission is adjusting the safety net, primary consideration should be given to the needs of the low paid including their need for employment, and that consideration should be given to the employment prospects of the unemployed and the capacity of employers to meet increased labour costs.
17. The Department of Employment and Workplace Relations will monitor the impact of the legislation. The legislation will also be reviewed through formal mechanisms for consultation already in place. Consultation with interested parties and groups will also continue.

NOTES ON CLAUSES

Clause 1 – Short title

1. This is a formal provision specifying the short title of the Act.

Clause 2 – Commencement

2. This clause specifies that the Act will commence on the day after it receives Royal Assent.

Clause 3 – Schedule(s)

3. Clause 3 provides that an Act specified in a Schedule to this Act is amended or repealed as set out in the Schedule, and that any other item in a Schedule operates according to its terms.

SCHEDULE 1 – AMENDMENT OF THE WORKPLACE RELATIONS ACT 1996

Part 1 – Amendments

Item 1 – Subparagraph 3(d)(ii)

1. Section 3 of the WR Act sets out the principal object of the Act. That object is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia. Paragraph 3(d)(ii) is to the effect that providing the means to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment is one of the ways that the object of the WR Act is to be achieved.
2. This item would insert a reference to the primacy of the needs of the low paid in the maintenance of the award safety net. The amendment will emphasise that the safety net role of the award system is targeted to addressing the needs of the low paid.

Item 2 – Paragraph 88A(d)

3. Part VI of the WR Act concerns the role of the award system in dispute prevention and settlement. The objects of Part VI are set out in section 88A.
4. Paragraph 88A(d) currently provides that it is an object of the Part to ensure that the Australian Industrial Relations Commission (the Commission) exercises its powers and functions in relation to making and varying awards in a way that encourages agreement making at the enterprise level and protects and promotes youth employment.
5. Consistent with focussing the award safety net on the needs of the low paid the Bill would also require the Commission to recognise that the primary role of awards is to address the needs of the low paid when the Commission performs functions and exercises powers in relation to awards.

Item 3 – Paragraph 88B(2)(c)

6. Section 88B provides the Commission with guidance on the performance of its functions under Part IV of the WR Act. Subsection 88B(2) provides that in performing its functions the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained having regard to a number of factors. The needs of the low paid are already referred to as one of the factors to be considered where the Commission is adjusting the safety net (paragraph 88B(2)(c)).
7. The proposed amendment would provide additional guidance to the Commission on factors that are to be considered when it is adjusting the safety net. The Commission will be required to have regard to the needs of the low paid, including their need for employment, as a primary consideration. In addition the Commission is required to consider the employment prospects of the unemployed and the capacity of employers to meet increased labour costs.

Part 2 – Application

Item 4 – Application of Part 1 Amendments

8. This item proposes that the amendments made by Part 1 will apply to any proceedings that that the Commission has not finished dealing with on or before the day when the Act commences. This means that the Commission will be required to apply the amended provisions in relation to any part heard matters on and after the commencing day.