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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**WORKPLACE RELATIONS AMENDMENT
(AWARD SIMPLIFICATION) BILL 2002**

EXPLANATORY MEMORANDUM

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

WORKPLACE RELATIONS AMENDMENT (AWARD SIMPLIFICATION) BILL 2002

OUTLINE

This Bill proposes amendments to the *Workplace Relations Act 1996* (the WR Act) by limiting and clarifying the allowable award matters and making related changes to the award making powers of the Australian Industrial Relations Commission (Commission).

The Bill proposes to simplify the allowable award matters by:

- removing various items from the list of allowable award matters;
- tightening the scope of some existing allowable matters; and
- making explicit various matters which are not within the scope of allowable award matters.

The Bill proposes to clarify the following aspects of award making:

- provisions incidental to an award may only be included in an award where they are essential for the operation of that award;
- provisions which facilitate agreement making in the workplace are allowable award matters; and
- machinery provisions, for example the commencement date of awards, are allowable matters.

The Bill proposes that exceptional matters orders only be made by a Full Bench of the Commission.

The Bill also proposes transitional arrangements which require the Commission to review all awards within a period of 12 months to ascertain whether they contain provisions that may no longer be included as allowable award matters due to the amendments contained in the Bill. At the end of the 12 month review period, any provision in an award which is no longer an allowable matter due to the amendments proposed in the Bill will cease to have effect.

FINANCIAL IMPACT STATEMENT

The proposals contained in the Bill are budget neutral.

REGULATION IMPACT STATEMENT

Analysis of Key Elements of the Bill

Background

One of the primary objectives of the WROLA Act was to reinforce the primacy of workplace agreement-making in the federal workplace relations system. To achieve this objective, it was necessary to amend provisions of the WR Act dealing with awards as well as those dealing with agreement-making. The purpose of the amendments to the awards provisions was to fundamentally refocus the role of award system as a safety net of minimum wages and conditions of employment that would not operate as a disincentive to agreement-making. The relevant amendments made by the WROLA Act:

- inserted new objects into Part VI of the WR Act to reflect the safety net role envisaged for awards and the role of the Commission in maintaining the safety net (section 88A of the WR Act);
- specified the matters to which the Commission must have regard in ensuring that a safety net of fair minimum wages and conditions of employment is established and maintained (section 88B);
- limited the matters in relation to which the Commission could exercise arbitration powers to 20 'allowable award matters'¹ (set out in section 89A of the Act)² and provided for existing awards to be simplified so as to provide only for allowable award matters (Part 2 of Schedule 5 to the WROLA Act);

¹ The 'allowable award matters' are:

- classifications of employees and skill-based career paths;
- ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
- rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system;
- piece rates, tallies and bonuses (amended in 2001 to delete 'tallies');
- annual leave and leave loadings;
- long service leave;
- personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave;
- parental leave, including maternity and adoption leave;
- public holidays;
- allowances;
- loadings for working overtime or for casual or shift work;
- penalty rates;
- redundancy pay;
- notice of termination;
- stand-down provisions;
- dispute settling procedures;
- jury service;
- type of employment, such as full-time employment, casual employment, regular part-time employment and shift work;
- superannuation;
- pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.

In addition, s.89A(6) permits the Commission to include in an award provisions that are incidental to the matters in s.89A(2) and necessary for the effective operation of the award.

² There are some limited exceptions to section 89A, namely 'exceptional matters orders' - see ss.89A(7) and 120A - and awards made under s.170MX of the WR Act - see s.170MY(2).

- precluded the Commission from dealing with industrial disputes in relation to employees whose wages and conditions of employment are governed by a State award or employment agreement except where ceasing to deal with such a dispute would not be in the public interest (section 111AAA of the WR Act); and
- provided for State awards and certain forms of State agreements to displace federal awards (section 152).

Award simplification

The approach taken by the Commission to the application of section 89A of the WR Act and Part 2 of Schedule 5 to the WROLA Act for the purposes of simplifying awards has, in many instances, resulted in awards continuing to contain provisions that are outside the intended scope of the allowable award matters. As a consequence, many awards continue to contain unnecessary detail and administrative regulation (for example, provisions regulating the transfer of employees between work locations), provisions that hinder productivity and the efficient performance of work (for example provisions prescribing the proportion or number of employees that may be engaged in particular job classifications) and regulate matters that are more appropriately dealt with at the workplace level (for example, education and training).

There are also concerns that the allowable award matters include matters in relation to which award regulation is unnecessary because they are provided for in federal or State legislation. These include, for example, notice of termination of employment and long service leave.

Where matters are the subject of both statutory and award regulation, employers can be confronted with complex and confusing compliance requirements. It is not always clear to employers which set of requirements apply, and in some cases, obligations will differ across a workplace. For example, the employment of some employees in a workplace may be regulated by an award which includes long service leave provisions, while the employment of other employees in the same workplace may be award-free or be covered by an award that includes different entitlements or does not include long service leave provisions.

Only 182 Awards were simplified or set aside through award simplification in the 18 month interim period under the WROLA Act. Since then 2,422 awards have been simplified or set aside with 376 currently being simplified.

Options

Option 1: Status Quo

Option 2: Amend the WR Act

Amend the WR Act to ensure that awards operate as intended as a genuine safety net of basic minimum wages and conditions by:

- reducing the scope of the allowable award matters by amending subsection 89A(2) of the WR Act to exclude:
 - skill based career paths;

- bonuses
 - long service leave;
 - notice of termination;
 - jury service.
- clarifying the scope of the remaining allowable matters to ensure that they operate as intended, for example:
 - 'cultural leave' covers only ceremonial leave for Aboriginal and Torres Strait Islanders and other similar types of cultural or religious obligations;
 - 'allowances' covers only the reimbursement of expenses incurred in the course of employment, and allowances for skills not taken into account in the employee's rate of pay or for disabilities associated with the performance of particular tasks, or work in particular conditions or locations;
 - "redundancy pay" only covers genuine redundancy and not to custom and practice that arises in certain industries.
 - 'public holidays' covers only gazetted public holidays observed generally throughout the community and not days such as union picnic days; and
 - provisions dealing with training and education, accident make up pay, union picnic days, quotas on particular types of employment, dispute settling procedures that do not allow for freedom of choice in representation or maximum or minimum hours of work for regular part-time employees are not included in awards.
 - limiting the application of subsection 89A(6) to ensure that only those provisions that are incidental to an allowable award matter provided for in the award and 'essential for the purpose of making a particular provision operate in a practical way' may be included in awards;
 - accelerating the progress of award simplification, by providing for a 12-month interim period before non-allowable matters cease to have effect (compared with the provision of an 18 month period under the 1996 legislation); and
 - ensuring that all exceptional matters orders must be made by Full bench of the Australian Industrial Relations Commission.

Parties' views

The Australian Chamber of Commerce and Industry consider that despite the 1996 workplace relations reform package, there are still further challenges including that the system continues to be unduly complicated and prescriptive and that the award system continues to have too great a role vis-à-vis agreements.

Impact Analysis

Option 1: Status Quo

Costs

Awards containing unnecessary detail and administrative regulation (for example, provisions regulating the transfer of employees between work locations), provisions that hinder productivity and the efficient performance of work (for example provisions prescribing the proportion or number of employees that may engaged in particular job classifications) and provisions that regulate matters that are more appropriately dealt with at the workplace level (for example, education and training) impose costs on businesses in terms of productivity and unnecessary regulation.

Federal awards that require employers to compensate their employees for pay lost whilst undertaking jury service can impose significant burdens on employers. The precise cost impact will vary according to the jurisdiction in which jury service is performed, the employee's rate of pay and the duration of jury service.

Payment arrangements for jury service vary substantially between jurisdictions. Some jurisdictions provide for payment of compensation in respect of lost wages in addition to daily rates, but these amounts are capped. Other jurisdictions make no provision for compensation for lost wages, but generally provide for higher daily payments than those jurisdictions that provide for compensation for lost wages. For example, if a tradesperson whose employment is regulated by the *Metal, Engineering and Associated Industries Award 1998* and is paid \$477.20 per week performs jury service for 10 days, there are two jurisdictions in which payments made by the State would fully meet the employee's ordinary award wages. In all other jurisdictions, the employee's employer would be required to make some payment, varying across jurisdictions, to top up the employee's jury payments so that the employee continues to receive an amount equivalent to his or her ordinary award wages.

Employers would be liable to meet higher costs where an employee performs jury service in a long trial and where it is necessary for the employer to engage a replacement employee during the absence of the employee performing jury service. These costs can impose a disproportionate burden on small businesses as it is more difficult for them to absorb unanticipated costs and to cover the absence of an employee without engaging a replacement. Small businesses will often need to meet the cost of engaging a replacement employee as well as make up pay for the employee performing jury service, while larger businesses may have greater flexibility to cover an absence.

The regulation of employment conditions through both award provisions and legislation is complex and confusing and creates an unnecessary administrative burden for employers.

The slow progress of the award simplification process has meant that some awards still have not been varied to remove 'non-allowable' matters, unnecessary detail and provisions that hinder productivity and the efficient performance of work.

Whilst non-allowable matters are of no effect³, their retention can be confusing for award parties

³ That is, they cease to have effect at the end of the interim period.

who may be uncertain about their rights and obligations. The continued operation of provisions that come within the scope of the allowable matters but contain unnecessary detail or hinder productivity and the efficient performance of work impose additional compliance costs and unnecessary costs incurred because potential productivity gains have been prevented by restrictive award provisions.

Benefits

The primary benefits of the existing arrangements are that, compared with the previous legislation, (including previous measures to modernise awards), the reforms introduced by the WROLA Act have resulted in the simplification of number of key awards and have contributed towards refocussing the award system as a safety net that does not act as a disincentive to bargaining.

Option 2: Amend the WR Act

Costs

The amendments relating to the allowable award matters will require the review of almost all federal awards⁴. The parties (ie unions, employers and employer organisations) to awards that are to be simplified will be required to devote resources to that task and, where necessary, to participation in review proceedings in the Commission. The Commission will be required to vary awards to bring them into line with the allowable award matters. In addition to those awards not yet simplified, the Commission's award simplification function currently being undertaken under Schedule 5 to the WROLA Act would continue pursuant to the WR Act as amended.

It is relevant to note that there will be substantially fewer awards in place when the new simplification process commences than was the case at the commencement of the WROLA Act process, so the overall size of the task will be smaller. As at 30 September 2002, there were 2,156 current awards. At the commencement of the WROLA Act process there were 3 253 awards in place.

Some employers may incur additional costs as a result of obligations that arise under State/Territory long service leave legislation. The impact of the removal of long service leave from federal awards will depend on the terms of the relevant award provisions, the legislation that would apply in place of award obligations and the extent to which long service leave entitlements are provided for by way of agreements.

The removal of jury service from the allowable award matters may require State and Territory Governments to meet additional costs in connection with jury service. As noted above, payment arrangements for jury service vary substantially between jurisdictions. Any decisions about whether existing State/Territory arrangements should be changed to take into account the fact federal awards would no longer require employers to provide 'make-up' pay for employees engaged in jury service are matters for States and Territory Governments.

⁴ Awards made under section 170MX of the WR Act, orders made under section 501 of the Act and certain enterprise agreements formalised as consent awards do not require simplification.

Benefits

The benefits of option 2 are that:

- the award safety net would not impede workplace efficiency or organisational effectiveness by imposing industry-wide obligations that do not meet the different needs of individual workplaces;
- award provisions would not duplicate matters that are dealt with in legislation, thus eliminating confusion that duplicate statutory and award provisions can create for employers and employees at the workplace level;
- employers will benefit from being relieved of award obligations to meet costs associated with jury service which are more appropriately the responsibility of the relevant judicial systems;
- by providing for a 12 month transitional period to bring existing awards into line with the revised allowable matters and award simplification criteria, the productivity benefits and cost savings are made available to workplaces more quickly than was the case under the 18 month transitional period that applied under the WROLA Act; and
- employers and employees will have greater freedom of choice as to the form of regulation that is most appropriate to their needs.

Conclusion and Recommended Option

Option 2 further focuses awards on their role as a safety net to protect the low paid. In this way, awards will provide a safety net that does not create a disincentive to agreement making, and in doing so, will ensure that agreement-making remains the primary focus of the federal workplace relations system.

Whilst the further award simplification measures in option 2 will require award parties and the Commission to devote resources to reviewing and varying almost all federal awards, the further simplification of awards provides for more flexibility in workplace regulation and less prescription in awards than the existing arrangements, thus providing a basis for increased productivity and reduced costs for businesses.

Although the removal of additional matters from the scope of the allowable award matters will reduce award regulation, it is open to employers and employees to make other arrangements in respect of those matters where it is appropriate to the needs of their particular workplaces to do so. In some instances, parties might choose to provide for particular matters by way of agreement and some others matters might be dealt with by way of policies and procedures at the workplace.

Under option 2, parties will continue to be able to seek award regulation in respect of non-allowable matters where the matters involved are exceptional and a harsh or unjust outcome would result from the exclusion of award regulation. In this way, option 2 strikes an appropriate balance between reducing award regulation generally and providing additional regulation where necessary in the public interest.

Option 2 provides for a 12 month transitional period to bring existing awards into line with the revised allowable matters and award simplification criteria compared with an 18 month transitional period that applied under the WROLA Act. This will allow sufficient time for an orderly transition to the new arrangements without unduly delaying access to the productivity benefits and cost savings that may be achieved through simplified awards.

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 when the various provisions of the Act are proposed to commence. Sections 1 to 3 and anything in the Act not elsewhere covered by the table will commence on the day on which the Act receives the Royal Assent. The amendments set out in Schedule 1 will commence on a single day to be fixed by proclamation, subject to subsection (3).

3. Clause 2 has the effect that if an item in the table is not proclaimed to commence within six months of the Act receiving Royal Assent, it will commence on the day following that period of six months.

Clause 3 – Schedule(s)

4. This clause provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule operates according to its terms.

SCHEDULE 1 - AWARD SIMPLIFICATION

1.1 This Schedule proposes amendments to Part VI of the *Workplace Relations Act 1996* (the WR Act), which are directed towards ensuring that awards act as a safety net of basic minimum wages and conditions of employment in respect of appropriate allowable award matters.

1.2 The proposed amendments provide for further simplification of awards.

Part 1 - Amendments

Workplace Relations Act 1996

Item 1 - Paragraph 89A(2)(a)

1.3 This item proposes would remove ‘skill based career paths’ from the allowable award matters. These matters are more appropriately dealt with at the enterprise or workplace level and, if regulation by an industrial instrument is necessary, by a certified agreement or an Australian Workplace Agreement.

Item 2 - Paragraph 89A(2)(d)

1.4 This item would remove ‘bonuses’ from the allowable award matters. These matters are more appropriately dealt with at the enterprise or workplace level and, if regulation by an industrial instrument is necessary, by a certified agreement or an Australian Workplace Agreement. ‘Piece rates’ would be retained in the list of allowable matters to allow the Commission to include clauses relating to piece rates in awards.

Item 3 - Paragraph 89A(2)(f)

1.5 This item would remove ‘long service leave’ from the allowable award matters. Minimum standards of long service leave would be regulated by State or Territory legislation.

Item 4 - Paragraph 89A(2)(g)

1.6 This item would omit ‘cultural leave’ from paragraph 89A(2)(g) and ‘other like forms of leave’ from the allowable award matters. The capacity to include in an award provision for certain forms of cultural leave is provided for in proposed paragraph 89A(2)(ga) [Item 5 of this Schedule].

Item 5 - After paragraph 89A(2)(g)

Proposed new paragraph 89A(2)(ga) would include in the allowable award matters leave for Aboriginal and Torres Strait Islander people to meet ceremonial obligations and leave for other cultural or religious obligations of a similar nature.

Item 6 - Paragraph 89A(2)(i)

1.7 This item would repeal paragraph 89A(2)(i) and replace it with a new provision that further limits the scope of the Commission’s powers under subsection 89A(1) in respect of public holidays. Proposed paragraph 89A(2)(i) would limit the Commission’s powers to include in an award provisions dealing with:

- the observance of days declared by State or Territory Governments to be observed as public holidays generally within the State or Territory or region of the State or Territory concerned by employees who work in the relevant State, Territory or region; and
- the entitlements of employees paid in respect of those days.

1.8 Proposed paragraph 89A(2)(i) would preclude the Commission from including in awards provisions that treat particular days as public holidays in addition to those declared by State and Territory Governments to be observed generally in the relevant community as public holidays. This means that an award could not include as public holidays additional days which may be or may have been treated as ‘extra’ public holidays in a particular industry.

1.9 Proposed paragraph 89A(2)(i) is not intended to preclude an award from providing for the substitution of different days to be observed as public holidays or from providing for arrangements to be made at the workplace or enterprise level for the substitution of different days to be observed as public holidays.

Item 7 - Paragraph 89A(2)(j)

1.10 This item would replace existing paragraph 89A(2)(j) (which includes ‘allowances’ as an allowable matter) with a new provision limiting the type of allowances that may be included in an award to monetary allowances payable to employees for expenses incurred in the course of their employment, particular responsibilities or skills that are not taken into account in the employee’s rate of pay or for disabilities associated with the performance of particular tasks (for example, handling hazardous materials, or work in particular conditions or locations, for example remote locations).

Item 8 - Paragraph 89A(2)(m)

1.11 Existing paragraph 89A(2)(m) allows awards to provide for redundancy pay. Item 8 would amend the paragraph to limit the circumstances in which an award may provide for redundancy pay to circumstances in which an employee’s employment has been terminated at the initiative of the employer on the grounds of operational requirements. As is the case with existing paragraph 89A(2)(m), neither new paragraph 89A(2)(m) nor subsection 89A(6) would operate to allow the inclusion in awards of provisions which affect the capacity of an employer to determine the number or identity of persons whose employment is to be terminated for operational requirements.

Item 9 - Paragraph 89A(2)(n)

1.12 This item would remove ‘notice of termination’ from the allowable award matters. Minimum requirements as to notice of termination at the initiative of the employer are set out in Part VIA of the Act.

Item 10 - Paragraph 89A(2)(q)

1.13 This item would remove ‘jury service’ from the allowable award matters.

Item 11 – After paragraph 89A(2)(s)

1.14 This item proposes to amend subsection 89A(2) to insert new paragraph 89A(2)(sa). New paragraph 89A(2)(sa) will provide for a new allowable award matter – ‘bonuses for outworkers’. The amendment is required because ‘bonuses’ generally are to be deleted as an allowable award matter (item 2), but are to be retained as an allowable award matter for outworkers.

Item 12 – Paragraph 89A(2)(t)

1.15 This item proposes consequential amendments to paragraph 89A(2)(t) to expressly provide that allowable award matter concerns pay and conditions for outworkers, other than bonuses, which are fair and reasonable in comparison with the pay and conditions specified in a relevant award or awards for employees who perform the same kind of work at an employer’s commercial or business premises.

1.16 The amendments proposed by items 11 and 12 are designed to ensure that outworkers in the clothing industry who are paid in accordance with payment by results systems do not lose access to that mode of remuneration.

Item 13 - At the end of subsection 89A(3)

1.17 This item would amend subsection 89A(3) by providing that the Commission’s power to make or vary an award dealing with the matters in subsection 89A(2) is limited to making minimum rates awards that provide for basic minimum entitlements. This amendment reinforces the objects of ensuring that awards act as a safety net of basic minimum wages and conditions of employment to help address the needs of the low paid, that awards do not provide for wages and conditions of employment above the safety net and do not operate as a disincentive to agreement making.

Item 14 - After subsection 89A(3)

1.18 Proposed new subsection 89A(3A) would clarify the scope of the allowable award matters set out in subsection 89A(2) by expressly providing that certain matters are not within the scope of the allowable matters. However, the range of ‘non-allowable’ matters is not confined to the matters listed in subsection 89A(3A). The list of matters set out in proposed new subsection 89A(3A) is simply intended to provide greater certainty as to the status of the matters listed in that provision.

1.19 Proposed new paragraph 89A(3A)(a) would provide that transfers between work locations do not come within the scope of the allowable award matters. This provision is intended to remove from the scope of awards provisions such as those setting out conditions applicable to transfers or selection for transfer from one work location to another. It is not intended to prevent the inclusion of provisions that permit the transfer of employees to a work location other than their usual location where the employer is not able to usefully employ them because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible.

1.20 Proposed new paragraph 89A(3A)(b) would provide that matters pertaining to training and education, such as participation in training activities, leave for training or study purposes and fees (except in relation to leave and allowances for trainees and apprentices) do not come within the scope of the allowable award matters.

1.21 Proposed new paragraph 89A(3A)(c) would provide that requirements for the recording of employees' work times do not come within the scope of the allowable award matters. Section 353A of the Act provides for the making of regulations in relation to employment records which may include records of the hours worked by employees.

1.22 Proposed new paragraph 89A(3A)(d) would exclude accident make up pay from the scope of the allowable award matters. Minimum standards applicable to work-related injuries would continue to be regulated by State or Territory legislation or, in some cases, by federal legislation.

1.23 Proposed new paragraph 89A(3A)(e) would exclude from the scope of the allowable award matters dispute settling procedures that provide for an organisation of employers or employees to participate in, or represent an employer or employee in the whole or part of the dispute settling process but do not allow the employer or the employee the right to represent their own interests or to choose a representative other than a particular organisation or organisations. This limitation is not intended to exclude organisations from involvement in dispute settling procedures, but rather to ensure that award-based procedures provide employers and employees with choice as to representation.

1.24 Proposed new paragraph 89A(3A)(f) would provide that transfers from one type of employment to another type of employment do not come within the scope of the allowable award matters. 'Type of employment' refers to categories such as full-time employment, casual employment, regular part-time employment and shift work [see paragraph 89A(2)(r)]. It is not intended to refer to types of work or duties (as distinct from types of employment) and would not preclude the inclusion of award provisions that permit the transfer of employees to different duties where the employer is not able to usefully employ them to perform their usual duties because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible.

1.25 Proposed new paragraph 89A(3A)(g) would exclude from the scope of the allowable award matters the number or proportion of employees that an employer may employ in a particular type of employment or classification. This means, for example, that an award is not permitted to include provisions that impose, or would have the effect of imposing, a limit on the number of persons that may be employed in a particular type of employment or classification, whether by imposing a quota on that employment type or classification or requiring the number of persons (or minimum or maximum number of persons) in a particular type of employment or classification to be determined by reference to the number of persons employed in another type of employment or classification.

1.26 Proposed new paragraph 89A(3A)(h) would exclude from the scope of the allowable award matters prohibitions (whether direct or indirect) on an employer employing persons in a particular type of employment or classification. This limitation is not intended to preclude an award from including provisions that stipulate that particular competencies, qualifications or licences must be held in order to perform certain duties.

1.27 Proposed new paragraph 89A(3A)(i) would exclude from the scope of the allowable award matters provisions setting maximum or minimum hours of work for regular part-time employees. This paragraph would have the same effect as existing paragraph 89A(4)(b).

Item 15 - Subsection 89A(4)

1.28 This item would repeal subsection 89A(4), which provides that the Commission’s powers to make an award in relation to the matters covered by paragraph (2)(r) does not include the power to limit the number or proportion of employees that an employer may employ in a particular type of employment or to set minimum or maximum hours of work for regular part-time employees. These qualifications on the allowable award matters are to remain in place but would be covered by new paragraphs 89A(3A)(g), 89A(3A)(h) and 89A(3A)(i).

Item 16 - Subsection 89A(5)

1.29 This amendment is consequential upon the repeal of subsection 89A(4) [item 15 of this Schedule]. It replaces a reference to paragraph 89A(4)(b) with a reference to the corresponding new paragraph 89A(3A)(i).

1.30 This item also includes a note to insert a subsection heading “Other provisions that the Commission may include in an award” above subsection 89A(5). This will be the heading for subsections 89A(5), 89A(6) and proposed subsection 89A(6A).

Item 17 - Subsection 89A(6)

1.31 This item would amend subsection 89A(6) to limit the scope of ‘incidental’ provisions that may be included in an award to those provisions that are essential for the purpose of making particular clauses relating to allowable matters operate in a practical way. That is, to be included in an award under this subsection, a provision must be both incidental to an allowable matter and essential to the operation of a particular award clause. This provision would allow the Commission to include in awards provisions that are required to ensure the practical operation of clauses dealing with allowable matters, but would also ensure the practical operation of matters is not expanded, thereby recognising that awards should act as a safety net of basic minimum wages and conditions of employment.

Item 18 - After subsection 89A(6)

1.32 This item would insert new subsection 89A(6A) to clarify that subsection 89A(2) does not preclude awards from including machinery provisions such as definitions, arrangements, commencement date, term and parties bound.

Item 19 - After subsection 89A(8)

1.33 This item would insert new subsection 89A(8A) to make it clear that subsection 89A(2) does not preclude awards from including provisions that are allowed by subsection 113A and subsection 143(1C) of the Act, such as enterprise flexibility and facilitative provisions.

Item 20 - Subsection 113A(2)

1.34 This item repeals subsection 113A(2) which will no longer be necessary because of the amendment proposed in Item 19 which would have the effect of ensuring that the capacity of the Commission to include enterprise flexibility provisions in an award is not limited by subsection 89A(2).

Item 21 - Subsection 120A(4)

1.35 This item would amend subsection 120A(4) so that exceptional matters orders may only be made by a Full Bench of the Commission. At present, a single Commissioner may make an exceptional matters order that relates to a single business.

Part 2 – Application, transitional and savings provisions

Item 22 - Application of Part 1

1.36 This item proposes that the amendments made by items 1 to 21 of this Schedule will apply in relation to an industrial dispute that the Commission began to deal with before the commencement of those items, or begins to deal with after commencement of these items.

Item 23 – Transitional provision – review of awards

1.37 This item requires the Commission to review all awards within a period of 12 months to ascertain whether they contain provisions that may no longer be included as allowable award matters due to the amendments to section 89A made by Part 1 of this Schedule. After considering appropriate alternatives, the Commission may vary an award to remove those provisions no longer allowable under section 89A.

1.38 This item provides that the Commission may review awards for the purposes of this Bill at the same time as it reviews awards for other purposes.

1.39 This item also provides that at the end of 12 months after the commencement of this Schedule, any provision in an award which is no longer an allowable award matter due to the amendments in this Schedule, will cease to have effect.

1.40 Further, the item provides that the Commission may vary any award to remove any provision which has ceased to have effect because the end of the transitional period has been reached.