

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and new clause to be moved on behalf of the Government

(Circulated on the authority of the Minister for Industrial Relations,
Senator the Honourable Peter Cook)



9 780644 408974

(

(

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 1992

Amendments and new clause to be moved on behalf of the Government

OUTLINE

These amendments of the bill will:

- omit the provisions of the bill that provide for the Australian Industrial Relations Commission (AIRC) to have jurisdiction in disputes about the use of independent contractors, rather than employees, for the performance of work (*Amendments 1, 3 and 18*);
- omit the related provision of the bill preventing the AIRC awarding preference to, or against, independent contractors (*Amendment 2*);
- omit one of the powers proposed to be given to the AIRC, to exercise when it decides that a contract is unfair, harsh or against the public interest (*Amendment 4*);
- modify the requirement that a certified agreement that applies only to a single business or single workplace must include as parties all unions with award coverage in the business or workplace:
 - the modification will provide that unions which have no members employed in the business or workplace need not be included as parties (*Amendments 5 and 6*);
- leave the requirements for the publication by the Australian Industrial Registry of a certified agreement which applies only to a single business or workplace to the Rules of the AIRC (*Amendment 7*, inserting a new clause);
- allow employers to be given a wider choice of representative in a case before a magistrate's court under the new "small claims" procedure (*Amendments 8 and 9*);
- omit a provision which would have codified the right of a union to represent in contract negotiations a member who is an independent contractor (*Amendment 10*);
- give the Australian Road Transport Industry Organization (ARTIO) a seat on the National Labour Consultative Council (NLCC) (*Amendments 11, 12, 13, 14, 15, 16 and 17*).

FINANCIAL IMPACT STATEMENT

The amendments will have no significant impact on Commonwealth expenditure.

NOTES ON THE AMENDMENTS

Amendment 1

This amendment will delete from the bill the proposed addition to the definition of "industrial dispute" in subsection 4(1) of the *Industrial Relations Act 1988*. This definition specifies the disputes in respect of which the AIRC has jurisdiction.

The effect of this amendment, therefore, is that the bill will no longer include the provision giving the AIRC jurisdiction to prevent and settle interstate disputes about the use of independent contractors, rather than employees, for the performance of work.

Amendment 2

Amendment 2 will delete from the bill clause 7 that would alter the provision of the *Industrial Relations Act* (section 122) governing the AIRC's power to award preference to members of organisations registered under that Act. The clause being deleted from the bill would prevent the AIRC awarding preference to employees over independent contractors, to independent contractors over employees, or to some independent contractors over others.

This clause had been included in the original bill as an adjunct to the conferral of jurisdiction that is now being omitted by Amendment 1.

Amendment 3

Amendment 3 deletes from the bill a provision (section 127A) that would have governed the AIRC's exercise of the new "independent contractors" jurisdiction that would have been given by the bill as originally introduced. Now that the provision conferring that jurisdiction is being deleted by Amendment 1, it is appropriate to also delete section 127A.

Amendment 4

This amendment omits one of the specified powers that would have been available to the AIRC when it decides that a contract is unfair, harsh or against the public interest.

The power omitted is the power (under proposed paragraph 127C(1)(c)) to make "any other orders in respect of the contractual relationship between the parties to the contract".

This amendment will not affect the AIRC's power (under proposed paragraphs 127C(1)(a) and (b)) to make orders setting aside all or part of the contract or varying the contract.

Amendment 5

This amends the provision of the bill (*clause 9, proposed subparagraph 134E(1)(e)(i)*) that specifies who must be party to a certified agreement that applies only to a single business, part of a single business, or a single place of work. The provision requires that all unions which have award coverage in the single business, part of a single business, or a single place of work must be party to the agreement. This requirement is subject to an exception, namely, that a union need not be included as a party to the agreement, provided it has been given the opportunity to be a party. This amendment reflects the proposed inclusion of a further exception (see Amendment 6).

Amendment 6

This amendment adds an exception to the requirement proposed in the bill (*clause 9, proposed subparagraph 134E(1)(e)(i)*) that where a certified agreement applies only to a single business, part of a single business, or a single place of work, all the unions with award coverage in that single business, part of a single business, or single place of work must be party to the agreement. The amendment will provide that, if a union has award coverage but no members employed in the single business, part of a single business, or single place of work, it need not be included as a party to the agreement.

Amendment 7 : New clause

The proposed new clause 9A of the bill will add section 143A to the Industrial Relations Act. Section 143A will restrict the existing provision of that Act (*subsection 143(4)*) which requires the Industrial Registrar to effect the publication of all awards of the AIRC. Certified agreements will have the status of awards (see the definition of "award" in subsection 4(1) of the Act). The amendment exempts those certified agreements which apply only to a single business, part of a single business, or a single place of work from the existing publication requirement. As the substance of such certified agreements essentially involves matters confined to the parties to the agreement, publication will not always be necessary. There will remain a requirement that copies of all such agreements be available for inspection at each Registry (*subsection 143(3)*). In addition, the AIRC has the power to make rules governing its practice and procedure (*paragraph 48(1)(a) of the Act*). This power will permit the AIRC to make any necessary rules for the publication of such agreements.

Amendment 8

This amends a provision of the bill (*clause 13 of the bill, proposed subsection 179D(3)*) which will allow regulations to be made concerning cases heard in a court of a Territory under the proposed "small claims" procedure. The bill allows these regulations to provide for representation of a party by an officer or employee of an "organisation" (ie, a trade union or employer body that is a registered organisation under the Act). This amendment will allow the regulations to also

provide for representation by an officer or employee of an association of employers.

Amendment 9

This amendment makes the same change as Amendment 8, but in relation to State courts (*clause 13 of the bill, proposed subsection 179D(4)*).

Amendment 10

This amendment removes from the bill clause 17 which would add section 286A to the Industrial Relations Act. The proposed section 286A would provide that an organisation of employees may represent a member who is an independent contractor, if the member so consents, in negotiations with another person over the terms and conditions of the member's engagement by the person under a contract for services.

The proposed section 286A is now considered unnecessary.

Amendment 11

This amendment, together with the following 6 amendments, alters clauses of the bill which amend the *National Labour Consultative Council Act 1977* (NLCC Act).

All 7 amendments implement the Government's decision to give the Australian Road Transport Industry Organisation (ARTIO) a seat on the NLCC.

Amendment 11 alters the definition of "appointed member" in the NLCC Act (*clause 23 of the bill, amending section 3 of the NLCC Act*). The definition will now include the new member to be nominated by ARTIO.

Amendment 12

This reflects the increase in the number of members of the NLCC to 20, from the number of 18 initially proposed by the bill (*paragraph 25(a) of the bill, amending subsection 6(1) of the NLCC Act*). The additional members are the nominee of ARTIO and an additional nominee of the ACTU.

Amendment 13

This increases the number of ACTU nominees on the NLCC to 8, from the 7 proposed by the bill (*paragraph 25(b) of the bill, amending paragraph 6(1)(e) of the NLCC Act*).

This amendment gives continuing effect to the policy, already reflected in the NLCC Act, that the membership will include equal numbers of representatives of employer bodies and representatives of the ACTU.

Amendment 14

This amendment alters a provision which lists the membership of the NLCC. The bill already provides for that membership to include a person nominated by the Metal Trades Industry Association of Australia (*paragraph 25(c) of the bill, amending subsection 6(1) of the NLCC Act*). This amendment adds a member nominated by ARTIO.

Amendment 15

This has the effect that ARTIO's nominee will be appointed to the NLCC by the Minister (*paragraph 25(d) of the bill, amending subsection 6(2) of the NLCC Act*).

Amendment 16

This amendment will allow ARTIO to nominate a person to attend any NLCC meeting which the appointed member is unable to attend (*clause 26 of the bill, amending paragraph 10(2)(b) of the NLCC Act*).

Amendment 17

This amends a clause of the bill which will allow the Minister to invite a person, body or organisation to nominate a representative to participate in NLCC meetings without becoming a member of the NLCC (*clause 27 of the bill, inserting section 10A in the NLCC Act*).

This amendment will require the Minister to consult ARTIO before issuing an invitation; clause 27 of the bill already requires consultation with each of the other organisations which nominate members of the NLCC.

Amendment 18

This amendment removes from the bill provisions (*Schedule : amendments of the Northern Territory (Self-Government) Act 1978 and of the Seat of Government (Administration) Act 1910*) that were to give the AIRC jurisdiction in disputes about the use of independent contractors, rather than employees, in the Northern Territory and the Australian Capital Territory.

