

1994

**THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA**

HOUSE OF REPRESENTATIVES

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL (No.2) 1994

EXPLANATORY MEMORANDUM

**(Circulated by authority of the
Minister for Industrial Relations,
the Honourable Laurie Brereton MP)**

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL (No.2) 1994

OUTLINE

This bill amends legislation on 3 separate topics:

- industrial relations in the coal industry;
- the salaries of Members of Parliament; and
- quorum and voting arrangements for the National Occupational Health and Safety Commission.

Coal Industry

Schedule 1 to the bill will amend:

- (a) the *Coal Industry Act 1946*; and
- (b) the *Industrial Relations Act 1988*; and
- (c) the *Industrial Relations (Consequential Provisions) Act 1988*; and
- (d) the *Sex Discrimination Act 1984*.

The purpose of these provisions is to reform the arrangements for the prevention and settlement of industrial disputes in the coal mining industry. Reform will take place in two stages. The provisions implementing the first stage will operate until the provisions implementing the second stage commence operation (at least 2 years later). Commencement of both stages will depend upon proclamation by the Governor-General and the prior consent to their commencement by the Governor of New South Wales. The latter requirement is consistent with the co-operative legislative arrangements involving the Commonwealth and New South Wales which currently regulate industrial matters in the coal mining industry.

The first stage in the reform process will:

- (a) require the Coal Industry Tribunal, established under the *Coal Industry Act 1946*, and Local Coal Authorities which the Tribunal has established under that Act, to exercise their jurisdiction in a manner which is more consistent than at present with the manner in which the Australian Industrial Relations Commission exercises its jurisdiction;
- (b) make awards, etc., of the Coal Industry Tribunal subject to appeals and references to, and reviews by, a Full Bench of the Commission; and

- (c) preclude the establishment of further Local Coal Authorities and the making of further appointments to existing Local Coal Authorities.

The second stage involves the abolition of the Coal Industry Tribunal, with the Australian Industrial Relations Commission performing functions and exercising powers in respect of industrial matters in the coal mining industry instead of the Tribunal and the Local Coal Authorities.

MPs' salaries

Schedule 2 to the bill will amend the *Remuneration and Allowances Act 1990*.

In accordance with a recommendation of the Remuneration Tribunal, the Parliamentary Allowance of \$4,767 per annum, that was introduced from 1 July 1994, is to be incorporated into the base salary of MPs. To give effect to this, the bill abolishes the Allowance and increases the base salary from the maximum of the Australian Public Service Senior Executive Service Band 1 classification to the minimum of the Senior Executive Service Band 2 classification.

National Occupational Health and Safety Commission

Schedule 3 to the bill will amend the *National Occupational Health and Safety Commission Act 1985*.

The quorum and voting arrangements applicable for Commission decisions about grants to a body represented on the Commission will be altered.

FINANCIAL IMPACT STATEMENT

The bill will involve a very minor increase in Commonwealth expenditure.

On full integration of the Coal Industry Tribunal into the Australian Industrial Relations Commission, ie, on commencement of the long term arrangements, it will be necessary to re-negotiate the financial arrangement between the Commonwealth and New South Wales which provides for an equal sharing of the cost of the administration of the Coal Industry Tribunal. Current annual total administration cost of the Coal Industry Tribunal is \$1.216 million.

NOTES ON CLAUSES

Clause 1

This is a formal provision specifying the short title.

Clause 2

This provides for the commencement of the provisions of the bill.

The coal industry amendments include their own provision for commencement (this is explained in the notes on item 1 of Schedule 1).

The remainder of the bill will commence on Royal Assent.

Clause 3

The amendments made by this bill, and associated provisions, are set out in the 3 Schedules to the bill.

Clause 3 is a formal provision which lets the Schedules take effect as provisions of the bill.

SCHEDULE 1

AMENDMENTS RELATING TO THE COAL INDUSTRY

PART 1 - COMMENCEMENT PROVISIONS AND OBJECT OF SCHEDULE

Item 1

This item provides that:

- a Proclamation cannot be made for the commencement of any of the provisions in either Part 2 or Part 3 of the Schedule without the prior consent of the Governor of New South Wales;
- Part 2 of the Schedule (other than items 16, 17 and 18) commences on a day to be fixed by Proclamation;
- Part 3 of the Schedule commences on a day (not earlier than 2 years after the day fixed for the commencement of Part 2, other than items 16, 17 and

18) to be fixed by Proclamation;

items 16, 17 and 18 commence on a day or days to be fixed by Proclamation.

Nothing in the commencement provisions precludes the Governor of New South Wales giving one consent to the commencement of Parts 2 and 3. They do not require separate consents to be given.

Item 2

This item sets out the object of the Schedule, namely to reform the arrangements for the prevention and settlement of industrial disputes in the coal mining industry.

PART 2 - SHORT TERM ARRANGEMENTS

Division 1 - Amendments of the Coal Industry Act 1946

Items 3 and 4

These items amend section 4 of the *Coal Industry Act 1946* (the Coal Industry Act) to up-date the definition of the expression "the Commission" and to define a number of expressions which will be used in the amended Coal Industry Act.

Item 5

This item amends section 34 to take account of the repeal of the *Conciliation and Arbitration Act 1904*.

Item 6

This item amends section 34 of the Coal Industry Act to ensure that, in making awards or orders, the Coal Industry Tribunal (the CIT) applies, as far as is practicable, relevant decisions of, or relevant principles established by, a Full Bench of the Australian Industrial Relations Commission (the AIRC). By virtue of section 39 of the Coal Industry Act, this requirement will also apply to the Local Coal Authorities (the LCAs).

(Item 14 makes similar provision in relation to boards of reference established under the Coal Industry Act.)

Item 7

This item repeals section 35 of the Coal Industry Act which enables the CIT to appoint assessors.

Item 8

The repeal of section 35 (by item 7) will not affect matters in respect of which the CIT began to perform functions or exercise powers before the commencement of item 7 (see item 8).

Item 9

Item 9 amends section 36 to take account of the repeal of the *Conciliation and Arbitration Act 1904*.

Item 10

This item inserts a new subsection (3) into section 36 of the Coal Industry Act which deals with the force and effect of awards or orders made by a Full Bench of the AIRC, and judgments given or orders made by the Industrial Relations Court of Australia (the Court) under the Act. (The bill gives Full Benches and the Court certain powers and functions: see item 13.)

Item 11

This item inserts a new subsection (7) into section 37 which will make clear that the CIT has power to give the LCAs binding directions with respect to the performance of their functions and exercise of their powers.

Item 12

This item amends section 37 of the Coal Industry Act to ensure that the CIT cannot establish any LCAs, or appoint Chairpersons or other members to LCAs, after the commencement of the amendment.

Item 13

This item inserts sections 41AA - 41AI into the Coal Industry Act. Sections 41AA to 41AD, which give certain functions to the Court and Full Benches of the AIRC, are subject to sections 41AF and 41 AG. (The Court and Full Benches will also have, in relation to proceedings under these sections, the powers conferred by new section 41AH.)

Section 41AA enables appeals, with leave, to a Full Bench of the AIRC from certain decisions, etc., made by the CIT after the commencement of the section.

Subsection 41AA(1) sets out the decisions, etc., of the CIT from which an appeal lies, subject to leave being granted under subsection 41AA(2). Subsection 41AA(1) is based on subsection 45(1) of the *Industrial Relations Act 1988* (the IR Act).

Subsection 41AA(2) requires leave to be granted in matters which are of such importance that it should be granted in the public interest.

Subsection 41AA(3) sets out who may institute appeals from the CIT (cf. subsection 45(3) of the IR Act).

Subsection 41AA(4) enables the staying of the operation of the whole or a part of a decision, award or order which is the subject of an appeal under section 41AA (cf. subsection 45(4) of the IR Act).

Subsection 41AA(5) enables 2 or more appeals to be heard together (cf. subsection 45(5) of the IR Act).

Subsections 41AA(6) and (7) set out the powers of a Full Bench for the purposes of an appeal under section 41AA (cf. subsections 45(6) and (7) of the IR Act).

Section 41AB enables the CIT to refer questions of law arising in matters before it for the opinion of the Court. It is based on section 46 of the IR Act.

Section 41AC enables proceedings relating to an alleged industrial dispute, or the whole or part of an industrial dispute, to be referred from the CIT to a Full Bench of the AIRC. It is based on section 107 of the IR Act.

Subsection 41AC(1) explains what a "part of an industrial dispute" is for the purposes of section 41AC (cf. subsection 107(1) of the IR Act).

Subsection 41AC(2) (cf. subsection 107(2) of the IR Act) provides that an application for a matter to be dealt with by a Full Bench under section 41AC may only be made:

- by a party to the relevant proceedings before the CIT or by the Minister; and
- where the subject-matter of the proceedings, or the whole or part of the industrial dispute, concerned is of such importance that, in the public interest, it should be dealt with by a Full Bench.

Subsections 41AC(4) to (6) together require applications under subsection 41AC(2) to be referred to the President of the AIRC and set out the basis upon which the President may grant such applications (cf. subsections 107(4) - (6) of the IR Act).

Subsections 41AC(7) to (9) together set out what the Full Bench is required to or may do if an application is granted under subsection 41AC(2) (cf. subsections 107(7) - (9) of the IR Act).

Subsections 41AC(10) to (12) together give the President of the AIRC and the Full Bench certain powers in relation to the CIT for the purposes of the exercise of

powers under section 41AC (cf. subsections 107(10) - (12) of the IR Act).

Section 41AD enables the Minister to apply to the President of the AIRC for a Full Bench review of an award or order made, after the commencement of the section, by the CIT which appears to the Minister to be contrary to the public interest. It is based on section 109 of the IR Act.

Section 41AD requires the President to establish a Full Bench to hear and determine applications under it and requires the Full Bench to conduct a review if it considers that the matter concerned is of such importance that, in the public interest, there should be a review.

Subsection 41AD(6) makes clear that any right of appeal or power of a Full Bench under section 41AA is preserved.

Section 41AE requires the CIT to convene hearings to review awards referred to it under a new section to be inserted into the *Sex Discrimination Act 1984* (the SD Act) by the bill. It is based on section 111A of the IR Act.

Section 41AF limits the powers of a Full Bench of the AIRC under sections 41AA, 41AC and 41AD.

By virtue of section 41AF, an appeal will only lie under section 41AA, and an application may only be made under section 41AC or 41AD:

- to the extent that the decision, etc, being appealed against was made in the exercise of what are referred to in this Explanatory Memorandum as "Commonwealth powers or functions", or to the extent that the application involved the exercise of those powers or functions [subsection 41AF(2)]; or

- if a New South Wales law authorises the Full Bench to exercise powers or functions on the appeal or application to the extent that the Full Bench could not validly exercise them apart from that law [subsection 41AF(3)]; or

- as long as there is no such New South Wales law, and the subject of the appeal or application relates to matters which are referred to in this Explanatory Memorandum as "corporation/trade and commerce matters" [subsections 41AF(4) and (5)].

("Commonwealth powers or functions" are those vested in the CIT and LCAs under subsection 32(2) of the Coal Industry Act. The CIT and LCAs also have powers and functions vested in them by the complementary Coal Industry Act 1946 (NSW). "Corporation/trade and commerce matters" are those for which the corporations or trade and commerce powers of the Constitution are applicable; these are matters pertaining to the relationship between employers in the coal mining industry and their employees, when (a) the employer is a trading corporation or a foreign

corporation, or (b) the employment is for, or incidental to, coal mining for overseas or interstate trade.)

Subsection 41AF(6), for the purpose of avoiding the possibility of an inconsistency between Commonwealth law and any complementary New South Wales law:

- enables the New South Wales law contemplated by section 41AF to require the President of the AIRC to ensure, where practicable, that at least one member of the Full Bench which is to exercise powers or functions under that law also holds office as a member of the Industrial Relations Commission of New South Wales; and
- requires the President to comply with such a requirement.

Section 41AG limits the powers of the Court under section 41AB. By virtue of section 41AG, a question of law arising in a matter may only be referred to the Court under section 41AB:

- to the extent that the matter is before the CIT in the exercise of Commonwealth powers or functions [subsection 41AG(2)]; or
- if a New South Wales law authorises such a question to be referred to the extent that the matter is before the CIT in the exercise of other (non-Commonwealth) powers or functions [subsection 41AG(3)]; or
- as long as there is no such New South Wales law, and the matter pertains to corporation/trade and commerce matters [subsections 41AG(4) and (5)].

Section 41AH applies, in relation to proceedings before a Full Bench of the AIRC or the Court under sections 41AA to 41AD, provisions of the IR Act which confer power on the AIRC (or a Full Bench of the AIRC) or the Court in relation to proceedings under the IR Act or which relate to such proceedings.

By virtue of section 41AH:

- in proceedings under sections 41AA to 41AD the Court, and Full Benches of the AIRC, will be able to exercise the powers that would have been available to them if the proceedings had been under the IR Act (eg. the powers under paragraphs 111(1)(j) to (t) of the IR Act); and
- the provisions of the IR Act and IR Regulations which relate to proceedings in the Commission or the Court (for example, which regulate the practice and procedure in proceedings, and the rights of persons to intervene in proceedings) will apply in relation to proceedings before Full Benches or the Court under the Coal Industry Act.

Subsection 41A(1) applies sections 90, and 91 to 98, of the IR Act to the AIRC (including a Full Bench), the CIT and the LCAs in the performance of functions under the Coal Industry Act. These sections of the IR Act relate to the manner in which the AIRC is to exercise its functions under that Act (eg. requiring it to take certain matters into account). Subsection 41A(2) requires that a Full Bench of the AIRC apply, in the jurisdiction under the Coal Industry Act, relevant Full Bench principles or decisions, as far as practicable.

Item 14

This item inserts a new section 44A into the Coal Industry Act. This section requires boards of reference established by the CIT to apply, as far as practicable, relevant decisions of, or relevant principles established by, a Full Bench of the AIRC. (Cf. item 6 in relation to the CIT and LCAs.)

Item 15

This item excludes awards or orders made by Full Benches of the AIRC, and judgments or orders of the Court, from the effect of section 45 of the Coal Industry Act. Section 45 renders ineffective relevant awards or orders of tribunals having jurisdiction in industrial matters in the coal mining industry which are inconsistent with current awards or orders of the CIT or LCAs.

Item 16

This item repeals section 46 of the Coal Industry Act which provides for the payment of allowances to witnesses. (Item 16 can commence on a different date from the other provisions in Part 2 of Schedule 1.)

Item 17

This item amends section 47 of the Coal Industry Act so that it provides for representation at LCA hearings only rather than, as at present, to representation at CIT hearings as well. (Item 17 can commence on a different date from the other provisions in Part 2 of Schedule 1.)

Item 18

This item inserts a new section 47A into the Coal Industry Act which provides for representation at hearings before the CIT. It is based on section 42 of the IR Act. (Item 18 can commence on a different date from the other provisions in Part 2 of Schedule 1.)

Division 2 - Amendments of the Sex Discrimination Act 1984

Item 19

This item inserts sections 50E and 50F into the SD Act. These sections are based on sections 50A and 50B of the SD Act which deal with awards of the AIRC.

Section 50E enables a person to complain to the Human Rights and Equal Opportunity Commission (HREOC), alleging that a person has done a discriminatory act under an award, order or determination of the CIT, an LCA or a board of reference made after the commencement of section 50E, or under a variation after that commencement, of any award, order or determination of the CIT, an LCA or a board of reference. A discriminatory act is one that would be unlawful under Part II of the SD Act if it had not been done in direct compliance with the award, order or determination.

The section only applies in relation to awards, etc., made in the exercise of powers conferred on the CIT, LCA or board of reference by or under the Coal Industry Act to the extent to which the conferral is within Commonwealth legislative power (subsection 50E(9)).

Subsection 50E(1) sets out who can make a complaint. Subsections 50E(2) and (3) provide for the complaint to be referred to the Sex Discrimination Commissioner and then, if the Commissioner considers that the act complained about is discriminatory, to the CIT. The outcome of a referral to the CIT must be notified to the complainant (subsection 50E(7)).

If the Commissioner decides not to refer the complaint to the CIT, the Commissioner will, in certain circumstances, be obliged to refer the decision to the President of HREOC. Section 50F requires the President to review the decision and sets out the President's powers and functions in relation to that review.

PART 3 - LONG TERM ARRANGEMENTS

Division 1 - Amendments of the Coal Industry Act 1946

Item 20

This item removes a number of definitions from the Coal Industry Act which will be unnecessary as a consequence of the bill's repeal of Part 5 of that Act.

Item 21

This item repeals Part 5 of the Coal Industry Act. (Part 5 deals with industrial matters in the coal mining industry.)

Item 22

This item omits clause 3 of the Schedule to the Coal Industry Act. (Clause 3 deals with transitional arrangements relating to earlier amendments to that Act.)

Division 2 - Amendments of the Industrial Relations Act 1988**Item 23**

This item inserts into section 4 of the IR Act a definition of the term "coal mining industry" which is used in provisions which the bill inserts into that Act.

Item 24

Section 5 of the IR Act gives that Act a particular operation with respect to certain industrial issues.

Subsection 5(3) lists those industrial issues. Item 24 of the bill adds to that list matters relating to the relationship between employers and employees in the coal mining industry. However, it does so only to the extent that those matters relate to the terms and conditions of employment of employees engaged in, or in activities incidental to, the mining of coal for the purposes of trade or commerce:

- . between Australia and a place outside Australia; or
- . between the States; or
- . within a Territory, between a State and a Territory or between two Territories.

Item 25

This item adds a new subsection (6) to section 5 of the IR Act. For the purpose of avoiding the possibility of an inconsistency between Commonwealth law and any complementary New South Wales law, subsection (6):

- . permits the AIRC to exercise powers or functions which a New South Wales law confers on it with respect to matters pertaining to the relationship between employers in the coal mining industry in New South Wales and their employees;
- . enables the New South Wales law to require the President of the AIRC to ensure, where practicable, that at least one member of the Full Bench which is to exercise powers or functions under that law also holds office as a member of the Industrial Relations Commission of New South Wales; and
- . requires the President to comply with such a requirement.

Item 26

This item repeals Division 2A of Part IV of the IR Act. (Division 2A of Part IV requires the Industrial Registry to provide administrative support to the CIT and to the LCAs.)

Item 27

This item amends subparagraph (b)(i) of the definition of "boycott dispute" in section 156 of the IR Act as a consequence of the bill's repeal of Part 5 of the Coal Industry Act.

Item 28

This item omits subsection 163B(2) of the IR Act as a consequence of the bill's repeal of Part 5 of the Coal Industry Act. (Subsection 163B(2) deals with the powers of the AIRC in relation to boycott disputes in relation to which the CIT or an LCA may exercise or is exercising powers.)

Item 29

This item amends section 412 of the IR Act as a consequence of this bill's repeal of Part V of the Coal Industry Act. (Section 412 deals with the jurisdiction of the Court.)

Division 3 - Amendment of the Industrial Relations (Consequential Provisions) Act 1988

Item 30

This item repeals section 88 of the *Industrial Relations (Consequential Provisions) Act 1988*. (Section 88 provides for the application of the Coal Industry Act as a consequence of the enactment of the IR Act.)

Division 4 - Amendments of the Sex Discrimination Act 1984

Items 31 and 32

These items repeal new sections 50E and 50F of the SD Act (see item 19) as a consequence of the bill's repeal of Part 5 of the Coal Industry Act.

Division 5 - Saving and transitional

Item 33

This item defines a number of terms used in this Division.

Item 34

Provided the following awards, etc., had effect under subsection 36(1) or (2) of the Coal Industry Act immediately before the commencement of item 34, item 34 provides for their continued effect on and after that commencement:

- . awards or orders made by the CIT;
- . decisions given by an LCA;
- . agreements made at a hearing before the CIT or an LCA;
- . agreements made under a provision of an award made by the CIT.

Item 34 also provides for the continued effect of determinations made or things done by the CIT or an LCA under these awards, etc. (referred to in the item as "instruments").

Sub-item 34(2) provides for one of these awards, etc, to the extent to which it was made under Commonwealth powers or functions, to continue to have effect on and after the commencement of item 34 as, and to be taken to be, an award made by the AIRC under the IR Act.

Sub-item 34(3) provides for one of these awards, etc, to the extent to which it can have effect under the corporations power of the Constitution, to continue to have effect on and after the commencement of item 34 as, and to be taken to be, an award made by the AIRC under the IR Act. However, sub-item 34(3) precludes the AIRC from varying any such award.

Sub-item 34(4) provides for this use of the corporations power of the Constitution to not apply if complementing New South Wales legislation provides for these awards, etc, to have effect as awards of the AIRC.

Sub-item 34(5) provides for sub-item 34(3) also to operate as if it referred to employees employed for the purposes of the trading activities of their employers rather than to the employees, in general, of the employers concerned. This is to ensure the provision will continue to have effect if the corporations power of the Constitution is interpreted narrowly.

It would be possible for certain instruments to continue to have effect as, and be taken to be, awards of the AIRC by virtue of either sub-item 34(2), (3) or (5) (eg. instruments made under Commonwealth powers or functions which relate to matters pertaining to the relationship between employers in the coal mining industry that are trading corporations, or foreign corporations, and those of their employees who are employed for the purposes of the trading activities of their employers).

Sub-item 34(6) provides for the construction of references to the CIT or LCAs in these awards, etc.

Sub-item 34(7) provides for the continued effect on and after the commencement of item 34, of any determination made or thing done by the CIT or an LCA under these awards, etc.

Subject to certain conditions being satisfied, the saving and transitional provisions are not intended to affect the operation of any New South Wales law which provides for:

- an award, etc, to the extent to which it was made under powers and functions conferred on the CIT or an LCA by New South Wales law in relation to matters pertaining to the relationship between employers in the coal mining industry and their employers, to have effect as, and be taken to be, an award made by the AIRC under the IR Act; or
- a reference to the CIT or an LCA in such an instrument to be taken (in relation to matters occurring before the commencement of item 34) to be a reference to the AIRC; or
- determinations made or things done under such an instrument, before that commencement, by the CIT or an LCA to have effect on and after that commencement as if made or done by the AIRC (sub-item 34(8)).

Item 35

This item provides for the continued effect of determinations made, decisions given or other instruments issued by a board of reference established under the Coal Industry Act that had effect immediately before the commencement of the item.

The item operates in relation to these determinations, etc, in the same way as item 34 operates in relation to instruments of the CIT or LCAs.

Item 36

This item relates to matters which were pending before the CIT or an LCA immediately before the commencement of the item. (Sub-item 33(3) states when a matter is to be taken to have been pending before an authority for the purposes of

the saving and transitional provisions.)

Item 36 provides for the following matters which were pending before the CIT or an LCA to be taken to be matters before the AIRC and for the AIRC to be able to deal with them as if they had been before the AIRC since they arose:

- matters to the extent to which they were notified to the CIT or LCA for it to exercise, or the CIT or LCA was exercising, Commonwealth powers or functions [sub-item 36(2)];
- matters to the extent to which the jurisdiction attracts the corporations power of the Constitution, but only as long as there is no complementary NSW legislation [sub-item 36(3), (4) and (5)];

Sub-item 36(7) enables the AIRC, in dealing with these matters, to have regard to evidence given, or arguments put, in the CIT or LCA proceedings to which they relate and to any CIT or LCA decision, etc., in relation to them.

Subject to certain conditions being satisfied, the saving and transitional provisions are not intended to affect the operation of any New South Wales law which provides for:

- a matter pertaining to the relationship between employers in the coal mining industry and their employees that was pending, before the commencement of item 36, before the CIT or an LCA to be taken to be a matter before the AIRC under provisions of the IR Act applying as New South Wales law;
- the AIRC to be able to deal with that matter as if it had been before the AIRC since it arose; or
- the AIRC, in dealing with such a matter, to be able to have regard to evidence given, or arguments put, in the CIT or LCA proceedings to which it relates and to any CIT or LCA decision, etc., in relation to it (sub-item 36(8)).

Item 37

This item provides for appeals under new section 41AA of the Coal Industry Act (see item 13 of the bill) which were pending before a Full Bench of the AIRC immediately before the commencement of the item to be taken to be appeals under section 45 of the IR Act.

Item 38

This item provides for questions of law which had been referred to the Court under new section 41AB of the Coal Industry Act (see item 13 of the bill) but not

determined before the commencement of the item to be taken to have been referred to the Court under section 46 of the IR Act.

Item 39

This item provides for applications or matters under new section 41AC of the Coal Industry Act (see item 13 of the bill) which were pending immediately before the commencement of the item to be taken to be applications or matters pending under section 107 of the IR Act.

Item 40

This item provides for applications and reviews under new section 41AD of the Coal Industry Act (see item 13 of the bill) which were pending immediately before the commencement of the item to be taken to be applications and reviews pending under section 109 of the IR Act.

Item 41

This item provides:

- . for matters pending before HREOC, the Sex Discrimination Commissioner or the President of HREOC under new section 50E of the SD Act (see item 19 of the bill) immediately before the commencement of the item to be taken to be matters pending under section 50A of the SD Act; and
- . in relation to an award referred to the CIT under new section 50E of the SD Act before the commencement of item 41, for it to be taken to have been referred to the AIRC under section 50A of the SD Act, or for a hearing to have been taken to have been convened under section 111A of the IR Act, depending upon what stage the reference of the award has reached.

Item 42

This item enables a board of reference established under the Coal Industry Act to continue to deal with matters which were pending before it immediately before the commencement of the item as if the board had been established, and assigned its functions, by the AIRC under section 131 of the IR Act.

Item 43

This item enables regulations to be made for the purposes of Division 5 of Part 3 of Schedule 1.

SCHEDULE 2

AMENDMENTS OF THE REMUNERATION AND ALLOWANCES ACT 1990

Item 1

This inserts a provision which will deny continuing effect to the allowance for which a salary increase is now being substituted. This is in accordance with the decision of the Remuneration Tribunal that the allowance be converted into a salary increase.

Item 2

This ties the annual salary of Members of Parliament to the minimum for SES Band 2 (the clauses to be omitted tied the salary to the maximum of SES Band 1).

Item 3

This item concerns the additional salaries payable to Parliamentary officeholders. It will be increased, pro rata, when the SES Band 2 minimum is increased (at present, the additional salaries are increased pro rata when the SES Band 1 maximum increases).

SCHEDULE 3

AMENDMENTS OF THE NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION ACT 1985

Item 1

Item 1 is a formal amendment.

Item 2

Item 2 updates the references to Commonwealth Ministers in the Act.

Item 3

Subsection 10(1) of the *National Occupational Health and Safety Commission Act 1985* (NOHSC Act) provides for the nomination of members to the National Occupational Health and Safety Commission (the Commission) by certain bodies and persons.

Section 19 of the NOHSC Act sets out the requirements relating to meetings of the Commission. There must be a quorum of 12 members, including a member nominated by the Australian Council of Trade Unions, one by the Australian Chamber of Commerce and Industry (formerly the Confederation of Australian Industry) and one by the Federal Ministers (subsection 19(4)). Decisions are made by 12 affirmative votes (subsection 19(5)).

Item 3 of Schedule 3 to this bill inserts a new section 19A. Proposed subsections 19A(1) and 19A(3) provide that where the body or person who has nominated a member to the Commission has a direct or indirect pecuniary interest in a matter under consideration by the Commission, that member may not participate in the deliberations or vote about that matter.

Proposed subsection 19A(2) makes it clear that a Minister is not to be taken to have a direct or indirect pecuniary interest in a matter merely because the Commonwealth may have such an interest..

Proposed subsection 19A(4) provides that where a member is disqualified from participating under subsection 19A(3), the quorum requirements of subsections 19(4) and 19(5) do not apply and that an affirmative vote is to be at least three-quarters of those members who are not so disqualified.

- - - - -

Printed by Authority by the Commonwealth Government Printer



9 780644 300193