

1994

THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

THE SENATE

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*.

The purpose of these provisions is to reform the arrangements for the prevention and settlement of industrial disputes in the coal mining industry. Commencement of the amendments 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 amendment will abolish 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.

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 Part 2 of the Schedule without the prior consent of the Governor of New South Wales; and
- . Part 2 of the Schedule commences on a day to be fixed by Proclamation.

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 - ARRANGEMENTS FOR THE PREVENTION AND SETTLEMENT OF
DISPUTES IN THE COAL MINING INDUSTRY**

Division 1 - Amendments of the Coal Industry Act 1946

Item 3

This item removes a number of definitions from the *Coal Industry Act 1946* (the Coal Industry Act) which will be unnecessary as a consequence of the bill's repeal of Part 5 of that Act.

Item 4

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

Item 5

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 6

This item inserts into section 4 of the *Industrial Relations Act 1988* (the IR Act) a definition of the term "coal mining industry" which is used in provisions which the bill inserts into that Act.

Item 7

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 7 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 8

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 or Queensland law (the "relevant State law"), subsection (6):

- . permits the Australian Industrial Relations Commission (the AIRC) to exercise powers or functions which the relevant State law confers on it with respect to matters pertaining to the relationship between employers in the coal mining industry in that State and their employees;
- . enables the relevant State 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 that State; and
- . requires the President to comply with such a requirement.

Item 9

This item inserts a new section 92A into the IR Act to provide for the AIRC, when performing functions in relation to the coal mining industry, to have regard to any relevant decisions of the Coal Industry Tribunal (the CIT).

This new section 92A is expressed as being "subject to this Act" (ie, the *Industrial Relations Act*). This will make clear that the additional express obligation, placed on the AIRC for coal mining industry matters, does not detract from the general provisions of the Act about the AIRC's performance of its functions.

Item 10

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 Local Coal Authorities (the LCAs)).

Item 11

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 12

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.)

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

Item 13

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 - Saving and transitional

Item 14

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

Item 15

Provided the following awards, etc., had effect under subsection 36(1) or (2) of the Coal Industry Act immediately before the commencement of item 15, item 15 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 15 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 15(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 15 as, and to be taken to be, an award made by the AIRC under the IR Act.

Sub-item 15(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 15 as, and to be taken to be, an award made by the AIRC under the IR Act. However, sub-item 15(3) precludes the AIRC from varying any such award.

Sub-item 15(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 15(5) provides for sub-item 15(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 15(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 15(6) provides for the construction of references to the CIT or LCAs in these awards, etc.

Sub-item 15(7) provides for the continued effect on and after the commencement of item 15, 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 15) 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 15(8)).

Item 16

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 15 operates in relation to instruments of the CIT or LCAs.

Item 17

This item relates to matters which were pending before the CIT or an LCA immediately before the commencement of the item. (Sub-item 14(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 17 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 17(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 17(3), (4) and (5)];

Sub-item 17(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 employers that was pending, before the commencement of item 17, 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 17(8)).

Item 18

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 19

This item enables regulations to be made for the purposes of Division 4 of Part 2 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.

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