

1996


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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**WORKPLACE RELATIONS AND OTHER LEGISLATION
AMENDMENT BILL 1996**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Industrial Relations,
the Honourable Peter Reith MP)

78118 Cat. No. 96 4727 9 ISBN 0644 439793



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WORKPLACE RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 1996

(Amendments to be moved on behalf of the Government)

OUTLINE

These amendments alter clause 2 and Schedules 1, 3, 4, 5, 7, 9-13, 17 and 20 of the Bill. The principal amendments are as follows.

Schedule 3 - The Employment Advocate

Amendments are proposed to restrict the power of authorised officers to enter and inspect premises for the purpose of enforcing Australian Workplace Agreements.

Schedule 5 - Awards

An amendment is proposed to more clearly express the intended operation of the proposed amendment to section 152, the purpose of which is to allow a State employment agreement to be in force in certain circumstances, despite the existence of a Federal award which would otherwise render it unenforceable.

Schedule 7 - Termination of employment

Amendments are proposed:

- to clarify the relationship between provisions on the serious misconduct exception to the requirement to provide certain notice of termination or pay in lieu; and
- to enable the use of a small claims procedure in proceedings alleging failure to provide such notice or pay in lieu.

Schedule 9 - Certified agreements

Amendments are proposed:

- to provide a more comprehensive description of the circumstances in which an agreement may be made under proposed Division 3 of proposed Part VIB, based on the conciliation and arbitration power;
- to establish that certified agreements will operate subject to the provisions of a State law, but will override State awards or State employment agreements, consistent with what the Bill as introduced provides in relation to Australian workplace agreements (AWAs);

- to make it clear that the Australian Industrial Relations Commission's arbitration powers following termination of a bargaining period, under section 170MX, are not limited to the allowable award matters provided in proposed section 89A; and
- to remove the requirement for an enterprise bargaining report for the year ending 31 December 1996.

Schedule 11 - Australian workplace agreements (AWAs)

An amendment is proposed to prevent an employee or employer who is a party to an AWA from engaging in industrial action during the period of operation of the AWA before its nominal expiry date; limited immunity from suit will continue to be available where industrial action is taken after the nominal expiry date of an AWA.

Schedule 13 - Amendments relating to minimum conditions of employment under agreements

Amendments are proposed:

- to deem an award to make provision for wages for regular part-time employees, where an agreement applies to a regular part-time employee and the relevant or designated award does not already make such provision;
- to enable regulations providing for the minimum wages of employees participating in a prescribed Labour Market Program to incorporate matters from certain instruments and to establish criteria in accordance with which prescribed persons could be required to determine matters relevant to the determination of minimum wages (eg in accordance with existing guidelines of the supported wages system); and
- to provide a pro rata entitlement for part-time workers to personal/carer's leave.

Schedule 14 - Industrial action

An amendment is proposed to clarify who may apply for an order that industrial action stop or not occur.

Schedule 15 - Registered organisations

Amendments are proposed to remove obligations on employer organisations arising from changes to membership and business organisation which might affect responsivity to awards.

Schedule 16 - Freedom of association

Amendments are proposed:

- to amend the definition of 'industrial action' so as to make clear that it is limited to circumstances within the constitutional power of the Commonwealth; and

- to prevent dual applications in respect of breaches of Federal and State freedom of association provisions.

Schedule 17 - Transfer of jurisdiction from the Industrial Relations Court of Australia to the Federal Court of Australia

Amendments are proposed to alter the operation of items in this Schedule, if the *Federal Court of Australia Act 1976* is amended by another Act so as to provide for the appointment of Judicial Registrars of the Federal Court, before the commencement of this Act.

FINANCIAL IMPACT STATEMENT

The amendments proposed to the Bill will not have any significant impact on Commonwealth expenditure.

NOTES ON AMENDMENTS

Clause 2 - Commencement

Amendment No. 1 - page 2 (line 2)

This is a technical amendment so that new item 90 of Schedule 17, proposed to be inserted by Amendment No. 60 (explained below), would not be taken to commence on Proclamation. Instead, it would commence on Royal Assent, in accordance with subclause 2(1) of the Bill.

Amendment No. 2 - page 2 (line 11)

This is a technical drafting amendment, concerned with ensuring the correct numerical sequence of the proposed new subsections of section 152 of the Act.

Item 35 of Schedule 5 proposes the addition, at the end of section 152, of new subsections (2) and (3). Item 3 of Schedule 7 proposes the addition, at the end of section 152, of new subsection (4).

This amendment proposes that if both items take effect on the same day, item 35 of Schedule 5 commences first, ensuring the correct numerical sequence of the proposed subsection.

SCHEDULE 1 - THE PRINCIPAL OBJECT OF THE WORKPLACE RELATIONS ACT 1996

Item 1 - Section 3

Amendment No. 3 - page 3 (line 29)

The subparagraph proposed to be amended indicates that the *Workplace Relations Act 1996* (as it will be when amended) is intended to provide the means for ensuring the existence of an effective award safety net. This amendment proposes to clarify that it is intended that there be a safety net of minimum wages and conditions which are fair minimum wages and conditions.

SCHEDULE 3 - THE EMPLOYMENT ADVOCATE

Item 2 - After Part IV

Proposed Part IVA - The Employment Advocate

Proposed section 83BH - Powers of authorised officers

Amendment No. 4 - page 10 (lines 25 and 26)

Amendment No. 5 - page 10 (line 27)

Amendment No. 6 - page 11 (line 1)

Amendment No. 7 - page 11 (line 32 to 36)

These amendments give effect to a single substantive change to the Bill (3 of the amendments are formal consequential drafting changes). That change is a restriction of the power to enter and inspect premises for the purpose of enforcing Australian Workplace Agreements (AWAs).

Subsection 83BH(3) - in the form proposed by the Bill - would have allowed an 'authorised officer' (ie a person authorised for this purpose by the Employment Advocate) to enter 'the following premises or place:

- (a) premises on which the authorised officer has reasonable cause to believe that work to which an AWA applies is being performed or has been performed; or
- (b) a place of business in which the authorised officer has reasonable cause to believe that there are documents relevant to compliance purposes'.

The effect of these 4 amendments would be that paragraph (a) would apply only to 'a place of business', rather than to any premises. Amendment No. 5 makes this change to paragraph (a). Amendments No. 4, 6 and Z are formal consequential amendments; they are necessary because section 83BH will no longer refer to 'premises' but will refer instead only to a 'place' of business. Amendments No. 4 and 6 delete references to 'premises'. Amendment No. 7 substitutes a new subsection (8); this new subsection corresponds to subsection (8) in the Bill as introduced, with the necessary changes arising from references to 'a place' rather than 'premises'.

SCHEDULE 4 - REPRESENTATION RIGHTS OF ORGANISATIONS OF EMPLOYEES

Item 8 - After subsection 118A(3)

Amendment No. 8 - page 19 (lines 29 to 33)

This amendment proposes omission of an item which would have inserted a subsection on the periods of operation of orders about the representation rights of organisations of employees. This item is unnecessary - orders will have effect according to their terms and in accordance with general principles.

SCHEDULE 5 - AWARDS

Item 5 - Subsection 4(1)

Amendment No. 9 - page 23 (line 24)

This is a minor technical amendment to the definition of 'State employment agreement' in item 5 of Schedule 35.

Paragraph (c) of that definition provides that a State employment agreement means an agreement that is *in force* under a law of a State that provides for such agreements.

The definition complements the proposed amendments to section 152 (item 35 of Schedule 5), the purpose of which is to allow a State employment agreement to be *in force* in certain circumstances, despite the existence of a Federal award which would otherwise render it unenforceable. The proposed provisions of section 152 will not have their intended operation if, because of paragraph (c) of the definition, they only apply to a State employment agreement that is already *in force*.

Accordingly, this amendment replaces the words 'in force' in paragraph (c) of the definition with the word 'made'.

Amendment No. 10 - page 33 (lines 3-12)

This amendment omits item 35 and replaces it with a new item 35.

New item 35 - After section 152

Item 35 proposes to add new subsections (2) and (3) to section 152 of the Act. This amendment replaces the new subsections proposed in the Bill with provisions redrafted to more clearly express their intended operation, namely:

where wages and conditions of employment of an employee are regulated by a State employment agreement that is validly in force, the provisions of a subsequent federal award will not bind anybody in respect of that employee (proposed subsection (2)); and

where a Federal award binds an employer in respect of an employee, it does not prevent the employer and the employee from entering into an enforceable State employment agreement. In these circumstances, the Federal award will no longer be binding on the employer in respect of the employee.

The amendment makes it clear that these provisions do not operate to revive the operation of State employment agreements that were displaced by Federal awards before the provisions take effect.

SCHEDULE 7 - TERMINATION OF EMPLOYMENT

Item 3 - At the end of section 152

Amendment No. 11 - page 43 (line 16)

Amendment No. 12 - page 43 (lines 17 and 18)

These amendments proposes minor changes to the wording of proposed subsection 152(4), which is to ensure that the presence of provisions on the subject of termination of employment in a Federal award do not prevent an employee covered by that award from using a remedy under or derived from a State law or award. Amendment No. 11 replaces a reference to a 'remedy' in respect of termination with a broader reference to 'provision' in respect of termination. This is because State awards may impose obligations in respect of termination, but the availability of a remedy only arises if the obligation is breached. Amendment No. 12 makes a corresponding amendment to the reference to a Federal award.

Item 5 - Subdivisions A, B, C and CA of Division 3 of Part VIA

Proposed Subdivision C - Unlawful termination of employment by employer

Proposed section 170CM - Employer to give notice of termination

Amendment No. 13 - page 55 (lines 9 and 10)

Amendment No. 14 - page 56 (lines 14 to 18)

These amendments concern the exception from the requirement for minimum notice of termination of employment or pay in lieu, in cases of serious misconduct. They clarify the relationship between the general meaning of serious misconduct (misconduct of such a nature that it would be unreasonable to require the employer to continue the employment during the required period of notice) and the proposed capacity for the regulations to identify particular conduct, or conduct in particular circumstances, that meets this test.

Proposed section 170CP - Application to courts in relation to alleged contravention of section 170CK, 170CL, 170CM or 170CN

Amendment No. 15 - page 57 (lines 29 and 30)

This amendment proposes to omit and substitute the subsection which enables acceptance of applications lodged out of time, replacing references to 'the Court' with more general references to a (or the) court. The effect of the proposed amendment is that both the Federal Court and a court of competent jurisdiction will be able to accept applications which are lodged out of time if it would be unfair not to so.

Amendment No. 16 - page 60 (after line 6)

This amendment proposes to insert an additional section into item 5 as follows.

New section 170CT - Small claims procedure

This section would allow an application in respect of a failure to provide minimum notice of termination or pay in lieu, in a magistrate's court, to be conducted in accordance with the small claims procedure set out in section 179C (which otherwise applies to actions for recovery of amounts required to be paid by an award or order).

Item 10 - Subdivision F of Division 3 of Part VIA

Amendment No. 17 - page 61 (line 3)

The proposed amendment corrects a typographical error.

Amendment No. 18 - page 63 (after line 15)

This amendment proposes to insert a new item 14A into Schedule 7 of the *Workplace Relations and Other Legislation Amendment Bill 1996* (WR Bill).

New item 14A - Paragraph 170KA(1)(b)

The new item would remove a reference to Schedule 13 of the Act, which contained a copy of the text of the ILO's Workers with Family Responsibilities Recommendation, 1981. This amendment is consequential to the repeal of Schedule 13 which is proposed in item 16 of Schedule 7 to the Bill.

SCHEDULE 9 - CERTIFIED AGREEMENTS

Item 19 - Part VIB

Proposed Division 3 - Making agreements about industrial disputes and industrial situations

Proposed section 170LN - What this Division covers

Amendment No. 19 - page 78 (line 1)

This technical amendment proposes replacement of paragraph (a) of the current description of Division 3, which refers to agreements made to prevent or settle an industrial dispute, with a more comprehensive description of the scope of the Division.

This is intended to clarify that agreements are able to be made under this Division to further settle, or maintain a settlement of an industrial dispute.

Proposed Amendments No. 20-22 are also directed to clarifying the scope of Part VIB.

Proposed section 170LO - Agreement about industrial dispute

Amendment No. 20 - page 78 (lines 4-12)

This amendment proposes replacement of proposed section 170LO. This provision currently provides that an agreement may be made to settle some or all matters in dispute, or to prevent further industrial disputes between an employer carrying on a single business and one or more organisations, to the extent that the matters in dispute relate to the single business or relevant part of the single business.

As with proposed Amendment No. 19, this proposed amendment provides a more comprehensive description of the circumstances in which an agreement may be made under Division 3.

Proposed Division 4 - Certifying Agreements

Proposed section 170LU - When Commission to refuse to certify an agreement

Amendment No. 21 - page 81 (before line 2)

This amendment proposes insertion of a new subsection 170LU(1A).

The purpose of this amendment is to avoid any doubt that agreements made under Division 3 must relate to industrial disputes or industrial situations.

The provisions relating to agreements made under Division 3 (and presented for certification under Division 4) are based on the conciliation and arbitration power of the Constitution, which allows laws to be made for the prevention and settlement of interstate industrial disputes.

The effect of this is that there is a requirement for an industrial dispute or a situation which may give rise to an industrial dispute before the Commission can certify an agreement to settle or maintain settlement of the dispute or part, to prevent an interstate dispute arising, or to assist in such settlement, maintenance or prevention.

Proposed new subsection 170LU(1A) would put it beyond doubt that a valid application for certification cannot be made if the Commission is not satisfied that there is such a matter within its jurisdiction or that the agreement prevents or settles, whether wholly or partly, the relevant dispute, maintains the settlement of an industrial dispute, or prevents an industrial situation from giving rise to a dispute.

Proposed section 170LV - Other options open to Commission instead of refusing to certify an agreement

Amendment No. 22 - page 82 (after line 26)

This amendment proposes addition of a new subsection (3) to section 170LV (which relates to the options open to the Commission where it has grounds to refuse certify an agreement, other than refusing certification).

The amendment is related to Amendment No. 21 (outlined above).

The effect of the amendment would be that if the Commission has taken the steps provided for by subsection (1) but is still required to refuse to certify an agreement, the Commission must conciliate to assist the parties to make the agreement certifiable. (Subsection 170LV(1) allows the Commission to accept undertakings, and requires it to allow the parties to vary the agreement to satisfy its concerns, before refusing certification.)

Proposed Division 5 - Effect of certified agreements

Proposed section 170LZ - Effect of a certified agreement on Commonwealth laws or State laws, awards or agreements

Amendment Nos. 23-27 are related. The effect of these amendments would be that, in relation to specified matters, certified agreements will operate subject to the provisions of a State law, but will override State awards or State employment agreements. This is consistent with what the Bill as introduced provides in relation to Australian workplace agreements (AWAs).

This change would be effected by Amendment No. 24. Amendment No. 27 would amend the relevant definition. The other amendments are incidental to these amendments.

Amendment No. 23 - page 84 (lines 9 and 10)

This amendment is a technical amendment related to Amendments No. 24 and 27.

Amendment No. 24 - page 84 (lines 12 and 13)

The amendment proposes deletion of the words 'award or agreement' from subsection 170LZ(2).

The effect of this amendment would be that, in relation to specified matters, certified agreements will operate subject to the provisions of a State law, but will override State awards or State employment agreements. The specified matters are:

- occupational health and safety;
- workers' compensation;
- apprenticeship;
- any other matter prescribed by the regulations.

This amendment would put certified agreements in the same position as in relation to Australian workplace agreements (see proposed sections 170VQ and 170VR).

Amendments No. 23 and 25-27 are related to this amendment.

Amendment No. 25 - page 84 (line 18)

Amendment No. 26 - page 84 (lines 20 and 21)

These are technical amendments related to Amendment Nos. 24 and 27.

Amendment No. 27 - page 84 (line 32) to page 85 (line 4)

This amendment proposes replacement of the definition of 'State law, award or agreement' with a definition of State law. This amendment is required because of Amendment No. 24.

Proposed Division 8 - Negotiations for certified agreements etc

Proposed section 170MI - Initiation of bargaining period

Amendment No. 28 - page 91 (line 28)

This amendment is a technical item to correct an incorrect cross reference in the note to subsection 170MI(1). The incorrect reference to subsection 170MZ(6) in the note would be changed to subsection 170MZ(7).

Proposed section 170ML - Protected action

Amendment No. 29 - page 93 (line 30)

This amendment is a technical item. The amendment proposes deletion of the words 'or for both of those purposes' from subsection 170ML(3).

The purpose of this amendment is to ensure that this subsection is worded consistently with subsection 170ML(2), and to ensure consistency of interpretation.

Proposed section 170MM - Industrial action must not involve secondary boycott

Amendment No. 30 - page 95 (line 4)

This amendment proposes correction of a typographical error.

Proposed section 170MN - Industrial action etc. must not be taken before nominal expiry date of agreements

Amendment No. 31 - page 95 (lines 30-32)

This amendment proposes replacement of proposed subsection 170MN(5).

The amendment is consequential upon the proposed amendment to section 170VU (Amendment No. 35).

Amendment No. 31 would reword proposed subsection 170MN(5) to reflect the proposed amendment to section 170VU. (The proposed amendment to section 170VU will clarify that industrial action by employees and lock outs by employers are to be excluded during the

period of operation of an AWA prior to its nominal expiry date. Section 170VU as it is in the Bill as introduced extends only to industrial action.)

Proposed section 170MY - Commission's powers where section 170MX applies

Amendment No. 32 - page 105 (after 14)

It is proposed to amend section 170MY to make it clear that the limits on the Commission's arbitration powers in relation to awards matters are not applicable following termination of a bargaining period where industrial action being taken to support or advance claims in respect of an agreement is threatening to endanger the life, personal safety or health, or welfare of the population or of a part of it, or, to cause significant damage to the Australian economy or a part of it.

In this situation, the Commission is to have all of the conciliation and arbitration powers that it would have in respect of Part VI (awards) in relation to the matters if that Part applied to conciliation and arbitration in relation to the matters instead of in relation to industrial disputes. In this context, section 170MX is not intended to be limited to the allowable award matters provided in new section 89A. The purpose of this proposed amendment is to make this clear.

Item 23 - Application and transitional

Amendment No. 33 - page 113 (lines 1 to 13)

This is a technical amendment affecting transitional arrangements related to Amendment No. 37.

The effect of the current transitional provisions, in combination with new section 358A (inserted by schedule 12, item 86 of the Bill) was to continue to require a report in relation to the year ended 31 December 1996. It is considered inappropriate to require a report to be prepared in relation to this period as the proposed new provisions will not have been properly tested.

SCHEDULE 10 - ENTERPRISE FLEXIBILITY AGREEMENTS (EFAs)

Item 2- Continued operation of EFAs

Amendment No. 34 - page 116 (lines 8 to 11)

This amendment relates to one of the current subitems consequential upon the changed definition of 'award'. It proposes to omit the current subitem concerning the *Sex Discrimination Act 1984*, and insert a similar subitem, together with a subitem concerning the *Disability Discrimination Act 1992*. In each case, the effect of the subitem is to maintain the currently applicable arrangement under which certain otherwise discriminatory acts done in direct compliance with an award (including an EFA) are exempt from certain provisions of the relevant Act, notwithstanding the fact that an EFA will (except as provided by Part 2 of Schedule 10) no longer be an 'award'.

SCHEDULE 11 - AUSTRALIAN WORKPLACE AGREEMENTS

Item 3 - Before Part VII

Proposed Division 6 - Effect of AWA

Proposed section 170VU - Industrial action by party to AWA

Amendment No. 35 - page 129 (lines 11-14)

This amendment proposes the omission of the proposed section and the substitution of two new subsections.

New subsection 170VU(1) would prevent an employee, whose employment is covered by an AWA, engaging in industrial action during the period of operation of the AWA before its nominal expiry date.

New subsection 170VU(2) would prevent an employer locking out an employee, who is covered by an AWA, during the period of operation of the AWA but before the nominal expiry date of the AWA, for the purpose of supporting or advancing claims in respect of the employee's employment.

A monetary penalty would be able to be imposed for contravention of either subsection.

The amendment would have the consequential effect of ensuring that the limited immunity from suit (provided for in proposed Division 8 of Part VID) is available where industrial action or lock-out action is taken after the nominal expiry date of an AWA.

SCHEDULE 12 - CONSEQUENTIAL AMENDMENTS RELATING TO CERTIFIED AGREEMENTS, AWAs AND ENTERPRISE FLEXIBILITY AGREEMENTS

Part 1 - Amendments relating to agreements and awards

Amendment No. 36 - page 145 (after line 15)

This amendment proposes to insert a new item which would amend the *Disability Discrimination Act 1992*, consequent upon the amendment of the definition of 'award' by item 1 of Schedule 12.

New item 60A - Paragraph 47(1)(c)

Section 47 of the Disability Discrimination Act currently excepts from Part 2 of that Act any actions done in direct compliance with an order or award of a court or tribunal having power to fix minimum wages, to the extent that such an order or award provides for a supported wage system (see paragraph 5.28 of the Explanatory Memorandum to the Bill as introduced).

The effect of this item is to preserve the current exception under the Disability Discrimination Act for actions done in direct compliance with supported wage system provisions in a certified

agreement, notwithstanding that certified agreements will no longer fall within the definition of 'award' in the *Workplace Relations Act 1996*.

Part 3 - Other amendments relating to agreements etc.

Item 86 - After section 358

Proposed section 358A - Reports about developments in making agreements

Amendment No. 37 - page 150 (lines 8 to 12)

This amendment relates to the annual report on Enterprise Bargaining.

This report is currently required to be produced annually (current section 170RC). New section 358A will require a report to be produced every three years commencing with the three year period ending on 31 December 1999.

The effect of the transitional provisions (proposed to be repealed by Amendment No. 33) was to continue to require a report in relation to the year ending 31 December 1996.

As noted above, in relation to proposed Amendment No. 33, this was considered inappropriate. This amendment will amend proposed section 358A to require the first report in relation to the new provisions to relate to the period commencing when the new provisions take effect, and ending on 31 December 1997. Subsequent reports will relate to three year periods (the first ending on 31 December 2000).

SCHEDULE 13 - AMENDMENTS RELATING TO MINIMUM CONDITIONS OF EMPLOYMENT UNDER AGREEMENTS

Item 1 - After Part VID

Proposed Division 1 -Preliminary

Proposed section 170XD - Determination of designated award for the purposes of a certified agreement

Amendment No. 38 - page 156 (line 31)

Amendment No. 39 - page 157 (line 3)

Amendment No. 40 - page 157 (line 6)

Proposed subsection 170XD(1) requires an employer to apply to the AIRC, in the absence of a relevant award, for the nomination of a designated award for the purposes of making a certified agreement.

The subsection, amended as proposed by these amendments, would allow an employer or an organisation of employees who propose to make a certified agreement to apply to have the Commission nominate a designated award.

Amendment No. 41 - page 157 (line 10)

New section 170XDA - Relevant or designated award not providing wages for regular part-time employees

This amendment would insert a new section 170XDA, which would be a deeming provision. It would provide that where an agreement applies to a regular part-time employee and the relevant or designated award does not make provision for the payment of wages to regular part-time employees, the award is, for the purposes of the minimum conditions only, to be deemed to apply as if it did make such provision.

The new section would ensure that, where a relevant or designated award does not provide for the payment of wages to regular part-time employees, there would be no requirement to pay full-time wages to a part-time employee to whom an agreement applies.

On the occasions when the new section operates, an award would be deemed to be varied in such a way that it would apply appropriately in relation to the payment of wages to part-time employees. In particular, any rate or amount payable to a full-time employee and any factor affecting such payment (such as the hours of work after which overtime will be payable) are to be adjusted, if necessary, taking into account the ratio of the part-time employee's working hours to the working hours of a full-time employee.

Proposed Division 2 - Employees (other than casuals)

Proposed section 170XH - Wages—Employees participating in prescribed Labour Market Programs

Amendment No. 42 - page 159 (after line 31)

Proposed section 170XH allows regulations to be made to provide for the minimum wages for employees participating in a prescribed Labour Market Program. This amendment proposes to insert new subsections (2) and (3). New subsection (3) would provide that section 49A of the *Acts Interpretation Act 1901* does not apply for the purposes of regulations under subsection (1). In its place, new paragraph (2)(a) would provide that the regulations may incorporate, adopt or apply:

- legislative provisions (including provisions of delegated legislation) as they exist from time to time (subparagraph (2)(a)(i));
 - matters from awards which apply at a particular time (subparagraph (2)(a)(ii)); and
- any matter contained in any instrument or writing as in force at the time the regulation is made (subparagraph (2)(a)(iii)).
- Subparagraphs (2)(a)(i) and (iii) are consistent with what would be permitted under section 49A of the *Acts Interpretation Act 1901*. Subparagraph (2)(a)(ii) allows the regulations to provide for awards, which would otherwise come under

subparagraph (2)(a)(iii), to be incorporated as they exist at a particular day. This is necessary for the appropriate use of award pay rates as a benchmark for the purposes of the minimum conditions.

New paragraph (2)(b) would ensure that the regulations may establish (directly, or indirectly) criteria in accordance with which prescribed persons or bodies will be required to determine matters relevant to the determination of the minimum wages payable to an employee participating in a prescribed Labour Market program.

For instance, it is intended that in relation to an employee with a disability participating in the Supported Wage System the regulations may provide for a minimum that is a proportion of the full award rate that would otherwise apply to the employee, where the proportion is determined by a prescribed person, in accordance with existing guidelines for the Supported Wage System.

Proposed section 170XJ - Personal/carer's leave

Amendment No. 43 - page 161 (line 14)

Proposed subsection 170XJ(7) provides a pro-rata entitlement for part-time workers to personal/carer's leave. This amendment proposes to insert the word 'regular' before the words 'part-time'.

The effect of the amendment would be allow a pro-rata application of the personal/carer's leave minimum condition only if the employee to whom an agreement applies is a regular part-time employee. The amendment is consistent with the Government's intention to encourage regular part-time work with pro-rata entitlements.

Proposed Division 3 - Casual employees

Proposed section 170XR - Wages—employees participating in prescribed Labour Market Programs

Amendment No. 44 - page 166 (after line 20)

Proposed section 170XR, which is a parallel provision to proposed section 170XH that applies to casual employees participating in a prescribed Labour Market Program, would be amended in the same way that Amendment No. 42 proposes to amend proposed section 170XH.

SCHEDULE 14 - INDUSTRIAL ACTION

Item 5 - Section 127

Proposed section 127 - Orders to stop or prevent industrial action

Amendment No. 45 - page 173 (after line 13)

This amendment proposes insertion of a subsection to clarify who may apply for an order that industrial action stop or not occur and to provide that the Commission may make such an order of its own motion.

SCHEDULE 15 - REGISTERED ORGANISATIONS

Amendment No. 46 - page 180 (after line 13)

New item 11A - Subsection 195(2)

This amendment proposes an additional item, to repeal subsection 195(2), which requires the rules of an organisation of employers to provide that, where there is an assignment or transfer of, or succession to, the whole or part of the business of a member of the organisation, the member is required to notify the organisation of that fact.

Item 15 - After Division 6 of Part IX

Proposed Division 6A - Enterprise branches

Proposed section 232C - Applications to the Commission

Amendment No. 47 - page 182 (after line 34)

This amendment proposes insertion of an additional subsection to clarify that an application for a vote to establish an enterprise branch can only be made after the rules of the organisation provide for the establishment of such enterprise branches (as required by proposed section 201A, to be inserted by item 12 of Schedule 15).

Item 17 - After Division 7 of Part IX

Proposed Division 7A - Withdrawal from amalgamations

Proposed section 253ZL - Orders for ballots

Amendment No. 48 - page 189 (lines 8 and 9)

Amendment No. 49 - page 189 (lines 10 to 11)

These amendments concern the preconditions for an order by the Court for a secret ballot in respect of a proposal for withdrawal from an organisation. The Bill as introduced requires the Court to consider whether a proposal is workable, and enables regulations on matters to be

taken into account for this purpose. Amendment No. 48 proposes that the regulations should specify the requirements with which a proposal is to comply; Amendment No. 49 would omit the redundant subsection which currently provides for regulation.

Amendment No. 50 - page 194 (after line 2)

New item 18A - Subsection 264(7)

This amendment proposes an additional item, to repeal subsection 264(7), which currently requires an organisation of employers which receives notice of resignation from an employer member to give notice of the resignation to the Industrial Registrar and each organisation of employees bound by an award that had previously bound the resigning employer because of membership of the organisation.

Amendment No. 51 - page 199 (after line 30)

This amendment proposes an additional item to repeal section 309, which requires that where, under a rule made under subsection 195(2), an organisation is notified that of an assignment, transfer or succession of a business or part of a business of a member of the organisation, the organisation shall notify a Registrar and any organisation of employees bound by an award or order of the Commission that also bound the member of the organisation. The repeal of section 309 would be consequential upon the repeal of subsection 195(2) proposed by Amendment No. 46.

SCHEDULE 16 - FREEDOM OF ASSOCIATION

Amendment No. 52 - page 201 (after line 5)

New item 1A - Subsection 4(1) (at the end of paragraph (d) of the definition of *industrial action*)

This item would insert provisions to clarify the scope of paragraph (d) of the definition of 'industrial action' in subsection 4(1). Paragraph (d) provides that 'industrial action' includes a failure or refusal by persons to attend for work or, if they do attend, to perform any work. The proposed amendment would make clear that the application of paragraph (d) is limited to circumstances within the constitutional power of the Commonwealth, namely where the industrial action concerns, or is related to, members of organisations, industrial disputes (which would include industrial issues, because of the current section 5 of the Act), Commonwealth employment or employment by a constitutional corporation (which would include employment by a Commonwealth authority, because of the definition of constitutional corporation currently in section 4 of the Act), or where the persons concerned are employed in a Territory.

Item 5 - After Part X

Proposed Part XA - Freedom of association

Proposed section 298B - Definitions

Amendment No. 53 - page 205 (after line 7)

This amendment would add a new subsection to proposed section 298B. The proposed new subsection will make clear that a failure or refusal by a person to perform only part of that person's duties is capable constituting 'industrial action' for the purposes of proposed Part XA, and that 'industrial action' may also include a course of conduct.

Proposed section 298P - Industrial associations acting against employers

Amendment No. 54 - page 210 (lines 23 and 24)

This is a minor technical amendment.

Proposed section 298W - Effect on other laws

Amendment No. 55 - page 215 (lines 21 to 25)

This amendment would substitute a new subsection which provides that where an application has been made for a remedy for a breach of the proposed freedom of association provisions, an application in respect of the same conduct cannot be made under any other law, including an industrial law of a State or Territory.

Amendment No. 56 - page 215 (line 27)

This is a minor technical amendment.

Amendment No. 57 - page 215 (line 29)

This amendment proposes replacement of proposed subsections (4) and (5) with provisions which reflect the change to subsection (2) proposed by Amendment No. 65. Proposed subsection (4) would provide that where an application has been made under the industrial law of a State or Territory, an application in respect of the same conduct cannot be made under Division 6. Under proposed subsection (5), however, an application may be made under Division 6 if the application under a State or territory industrial law was made in connection with a prosecution for an offence.

**SCHEDULE 17 - TRANSFER OF JURISDICTION FROM THE
INDUSTRIAL RELATIONS COURT OF AUSTRALIA TO THE
FEDERAL COURT OF AUSTRALIA**

Federal Court of Australia Act 1976

Item 19 - After section 18

New section 18AB - Powers of Judicial Registrars

Amendment No. 58 - page 220 (line 14)

This amendment corrects a typographical error.

Amendment No. 59 - page 220 (line 19)

This amendment abbreviates a reference to the name of the Act in which new section 18AB is proposed to appear, in accordance with normal drafting practice.

Amendment No. 60 - page 241 (after line 23)

This amendment proposes to insert a new Part 4 into Schedule 17, containing a new item, which would in certain circumstances omit certain items from the Schedule and substitute other items.

**Part 4 - Contingent amendments of the Federal Court of
Australia Act 1976 concerning Judicial Registrars**

New item 90 - Consequences of certain prior amendments of *Federal Court of Australia Act 1976*

This new item would provide that if the Federal Court Act has been amended by the insertion of new sections 18AA and 18AB in relation to Judicial Registrars, then the current items 19 and 27 of Schedule 17 (which would otherwise insert sections addressing the corresponding matters) would be omitted, and three new items would be inserted in place of the current item 19. The items to be omitted would be redundant if the Act is already amended to provide for the appointment of Judicial Registrars and the exercise of powers by Judicial Registrars; minor amendments only would be required, to enable the delegation of powers in relation to the *Workplace Relations Act 1996*.

Possible substitute item 19 - After subsection 18AB(1)

Possible substitute item 19A - Subsections 18AB(2), (5) and (6)

Possible substitute item 19B - Subsection 18AI(2)

These are the items which would be inserted by new item 90, in the circumstance described above. Substitute item 19 would enable the Rules of the Court to delegate to the Judicial Registrars, in addition to the powers delegable because of the earlier legislation on which new

item 90 is premised, powers in relation to the *Workplace Relations Act 1996* (corresponding to the powers delegable under proposed section 18AB, to be inserted by item 19 of Schedule 17 if there is not any prior legislation). Substitute items 19A and 19B make minor consequential amendments.

SCHEDULE 20 - THE SHORT TITLE OF THE INDUSTRIAL RELATIONS ACT 1988

Part 2 - Amendment of other Acts

Australian Federal Police Act 1979

Amendment No. 61 - page 286 (after line 22)

This amendment proposes to insert a new item into Schedule 20, to address an additional reference in the *Australian Federal Police Act 1979* to the *Industrial Relations Act 1988*, which is to appear in a new section proposed to be inserted by the Australian Federal Police Amendment Bill 1996 (which was passed by the Senate on 30 May 1996 and is presently before the House of Representatives).

New item 5A - Subsection 26F(4)

In the same way as the proposed items already in Part 2 of Schedule 20, new item 5A would omit a reference to the '*Industrial Relations Act 1988*' in this subsection of the *Australian Federal Police Act 1979* and substitute '*Workplace Relations Act 1996*'.
