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THE SENATE

INDUSTRIAL RELATIONS REFORM BILL 1993

FURTHER ADDITIONAL SUPPLEMENTARY EXPLANATORY MEMORANDUM

**Further additional amendments to be moved on behalf of the Government**

(Circulated on the authority of the Minister for Industrial Relations,  
the Hon Laurie Brereton MP)





## **INDUSTRIAL RELATIONS REFORM BILL 1993**

### **FURTHER ADDITIONAL GOVERNMENT AMENDMENTS**

#### **OUTLINE**

By these proposed amendments, a new Part VIC is to be included in the *Industrial Relations Act 1988* (the IR Act). This will give the responsibility for paid rates awards to the members of the Commission who are responsible for exercising the powers and performing the functions of the proposed Bargaining Division of the Commission. This will be additional to and separate from those responsibilities.

Provision is to be made for higher penalties for breaches of paid rates awards and agreements under Part VIB will, where appropriate, be encouraged before such awards are made.

The new provisions will replace certain provisions in the bill which relates to paid rates awards.

#### **FINANCIAL IMPACT STATEMENT**

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

## NOTES ON AMENDMENTS

### Amendment No 1

This amendment forms part of a set of related amendments consequential on the establishment of proposed Part VIC - *Paid Rates Awards* - see Amendment No 10.

This amendment revises one of the proposed new objects for Part VI of the IR Act. These new objects are inserted by proposed section 88A (clause 7 of the bill). Paragraph (a) of that section is changed to omit the reference to paid rates awards. This is to be accommodated by the objects for proposed Part VIC.

### Amendment No 2

This is consequential on the proposed insertion of new Part VIC - *Paid Rates Awards*.

It amends the heading to proposed section 90AA (clause 10 of the bill) to reflect its application to the proposed new Part as well as to Part VI (which, among other things, concerns the Commission's general awards making powers).

### Amendment Nos 3 and 4

These will amend proposed subsection 90AA(1) (clause 10 of the bill) to reflect its application to the proposed new Part VIC - *Paid Rates Awards* - as well as to Part VI of the IR Act.

### Amendment No 5

The proposed amendment omits clause 15.

Clause 15 would have inserted section 123A - paid rates awards. This is to be dealt with in proposed Part VIC.

### Amendment No 6

This is consequential on the proposed insertion of Part VIC - *Paid Rates Awards*.

The amendment proposes the insertion in section 4 of the IR Act (a section containing definitions) of definitions of the expressions "*paid rates awards*" and

"paid rates functions and powers". This is consequential on the proposed insertion of Part VIC - *Paid Rates Awards*.

#### **Amendment No 7**

This amends clause 27 of the bill.

Clause 27 proposes amendments to section 95 of the IR Act. Section 95 is presently framed to restrict the flowing on of provisions of certified agreements to awards.

This amendment will replace clause 27 to reflect the proposed insertion of Part VIC - *Paid Rates Awards*.

Under the amendment, section 95 will be replaced by a provision which restricts the circumstances in which the Commission may include in an award (whether it is an award providing for wages and conditions that are minimums or a paid rates award) terms based on the terms of:

- . a certified agreement; or
- . an enterprise flexibility agreement; or
- . a paid rates award.

#### **Amendment No 8**

The amendment is consequential on the proposed insertion of Part VIC - *Paid Rates Awards*.

It reflects the fact that members of the Commission who are members of the proposed new Bargaining Division of the Commission are to be responsible for exercising the powers and performing the functions under proposed new Part VIC.

The amendment will include in proposed section 170QG (assignment of other work to Bargaining Division) a reference to the responsibilities under the new Part.

#### **Amendment No 9 - Insertion of a new Part**

The amendment proposes the insertion of new Part VIC - *Paid Rates Awards*, containing new sections 170SA to 170UE.

The proposed new Part will give members of the Commission who are members of the proposed new Bargaining Division (see clause 31, proposed section 170QA-QG) responsibility for exercising powers and performing functions under the new Part.

Part VIC will contain proposed section 170UB. This section (which replaces proposed section 123A which would have been inserted by clause 15 of the bill) concerns circumstances in which the Commission is to make a paid rates award<sup>1</sup>.

### **Part VIC - Paid Rates Awards**

#### **Division 1 - Objects**

##### **Section 170SA - Objects**

This section sets out 2 specific objects of the Part. The Commission is required, by section 90 of the IR Act, to have regard to the objects of the IR Act when performing its functions.

The objects for Part VIC proposed by section 170SA specifically refer to the role of paid rates awards<sup>2</sup>, where appropriate, in relation to the protection of the wages and conditions of employment of employees. A second object emphasises the importance of such awards being suited to the efficient performance of work in particular industries and enterprises, while proper account is to be taken of employees' interests.

#### **Division 2 - Role of the Bargaining Division**

Members of the Commission who undertake the work of the proposed new Bargaining Division<sup>3</sup> are to be responsible for paid rates awards. This division addresses how such members have that responsibility.

##### **Section 170TA - Paid rates functions and powers**

Under the section, the Bargaining Division (established by proposed section 170QA, clause 31 of the bill) is to perform the functions and exercise the Commission's powers in relation to:

- . making, varying, suspending or cancelling<sup>4</sup> a paid rates award;
- . industrial disputes that may involve making or varying a paid rates award;

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<sup>1</sup> Proposed section 170PP - clause 31, p.56 of the bill, also provides for the making of a paid rates award. This arises where certain serious detrimental effects of industrial action (eg, a threat to essential services) result in the Commission terminating a *bargaining period* (see proposed Part VIB, Division 4).

<sup>2</sup> A paid rates award is to be defined (see clause 6) as an award specifying actual entitlements, rather than minimum entitlements, in respect of wages and conditions of employment.

<sup>3</sup> See clause 31 of the bill, proposed Part VIB, Division 5, Subdivision A, proposed sections 170QA-170QG.

<sup>4</sup> See subsection 111(1), section 113 and section 187 of the IR Act which provides such powers.

. any other matters in relation to a paid rates award.

Proposed section 170TA(2) makes it clear that the functions and powers conferred by Part VIC are additional to the Bargaining Division's other responsibilities and separate from them. This is intended to emphasise the difference between facilitating agreements under proposed Part VIB and exercising powers of conciliation and arbitration in relation to paid rates awards under proposed Part VIC.

Certain provisions which apply to the Bargaining Division in respect of its responsibilities under proposed Part VIB are to apply under proposed Part VIC<sup>5</sup>. This is provided for in proposed subsection 170TA(3). The relevant provisions are proposed subsection 108(2A), which is to be inserted by Schedule 2 to the bill (see clause 34), proposed subsections 170QB(2) and (3), and sections 170QD, 170QE and 170QF, all of which are to be inserted by clause 31 of the bill (proposed Part VIB, Division 5).

These provisions relate to by whom the Bargaining Division's powers and functions may be exercised and the responsibility of the Vice President who is assigned to the Division to control its work.

Proposed subsection 170QB(3) is included in the provisions which are to apply to proposed Part VIC to ensure that there will be no invalidity if powers and functions under the new Part are exercised or performed in error by a member of the Commission who does not have the requisite authority to do so.

#### **Section 170TB - Certain disputes to be referred to Bargaining Division**

This proposed section concerns how a matter involving a paid rates award, or a proposed paid rates award, is referred to the member of the Commission responsible for such matters under proposed Part VIC.

Under the IR Act, a Presidential Member of the Commission who is a member of a panel of members to which responsibility for a particular industry has been assigned, or the President, is responsible for dealing with dispute and related matters in that industry<sup>6</sup>.

Proposed section 170TB provides for the referral to the Vice President assigned to the Bargaining Division (in the capacity of controlling work under proposed Part VIC) of alleged industrial disputes that may involve the exercise of powers or the performance of functions under Part VIC.

<sup>5</sup> This is in addition to the general powers under Part VI and other relevant provisions of the Act in relation to awards.

<sup>6</sup> See definition of *relevant Presidential Member* in subsection 4(1); section 37 in relation to panels; section 99 in relation to notification of disputes.

It is made clear by proposed subsection 170TB(3) that if the Commission deals with a matter in error without satisfying this requirement, it will not invalidate the relevant act or decision of the Commission.

**Section 170C - Certain disputes to be referred back to relevant Presidential Member**

This section complements proposed section 170B. It provides for the referral by the Vice President responsible for controlling the work of the Commission under proposed Part VIC to refer back to the relevant Presidential Member any dispute which, in the opinion of the Vice President, is not a matter concerning a paid rates award.

Proposed subsection 170C(3) validates acts or decisions of the Commission which have been done or made without this requirement's having been complied with.

**Division 3 - Making, varying and cancelling paid rates awards**

**Section 170UA - Commission to consider whether paid rates dispute should be settled by an agreement under Part VIB**

This proposed provision is intended to be consistent with the scheme of the IR Act which encourages the making of agreements, in appropriate cases.

Before the Commission makes a paid rates award, it is to be satisfied that it is more appropriate to make the award than to have an agreement under Part VIB or that there is not reasonable prospect of such an agreement.

This is not intended to limit or prevent the making of interim awards, where that is appropriate<sup>7</sup>.

The proposed section is complemented by proposed subsection 113(4A) - clause 13 of the bill - which encompasses agreements where application to vary awards are made.

**Section 170UB - Making or varying paid rates awards**

This section and proposed sections 170UC and 170UD respectively contain the provisions of proposed subsection 123A(1) - (3); 123A(4) and (5); and subsection 123A(6).

Proposed subsection 123A was to be inserted by clause 15, which is now to be omitted (see above).

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<sup>7</sup> See paragraph (b) of clause 12 of the bill, proposed subsection 111(1D).



Proposed section 170UB is intended to ensure that employees whose wages and conditions of employment have automatically been determined by a paid rates award or awards, whether Federal or State, will, subject to certain qualifications, continue to have such awards.

Such awards are common in certain areas of industry, such as public sector employment. It is considered contrary to the maintenance of good industrial relations and a climate in which there can be a constructive approach to reaching agreements not to provide for such award within the system of the IR Act.

The new section is meant to apply to areas of employment with a history of coverage by paid rates awards - see subsection (1).

Even so, the Commission will, on public interests grounds, be able to refuse to make an award or to maintain an award as a paid rates award - subsection 170UB(3). It will also be for the Commission to decide in any matter before it whether or not to make an award or to vary an award, and what to include in the award or variation.

The Commission need not make a paid rates award if the parties concerned do not want it to do so - subsection 170UB(3).

#### **Section 170UC - Commission to maintain existing paid rates awards**

The Commission will be obliged by proposed section 90AA (clause 10 of the bill) to maintain all awards in a way that ensures that wages and conditions of employment under them form an appropriate part of the overall system of awards. Although consistent wages and conditions are required for minimum rates awards under s.90AA(2)(a), paid rates awards do not have to be consistent with minimum rates awards - subsection 170UC(2).

#### **Section 170UD - Party acting inconsistently with award's status as a paid rates award**

This proposed section will allow the Commission to cancel a paid rates award and replace it with a minimum rates award or vary a paid rates award to make it a minimum rates award if satisfied that a party to such an award has acted in a way that is so inconsistent with the award as to make it inappropriate for the award to continue as a paid rates award. This will be entirely a matter for the Commission, after giving the parties an opportunity to be heard.

#### **Section 170UE - Paid rates awards to be identified as such**

In order to avoid uncertainty about whether an award is a paid rates award, the Commission is to be required to include a statement in a paid rates award

identifying it as such<sup>8</sup>.

This is considered necessary, in light of the particular responsibility which is given under the legislation to certain Commission members for paid rates awards and matters pertaining to them. It will also be significant because higher monetary penalties are to apply to breaches of paid rates awards (see later).

#### **Amendment Nos 10 and 11**

Under the bill, higher penalties are to apply for breach of agreements (see clause 32).

The maximum penalties are \$5,000 and \$2,500 for each successive day on which a breach continues. Such penalties were also to apply to a paid rates award made where a bargaining period was terminated under proposed section 170PP (clause 31 of the bill).

Under these amendments all paid rates awards are to be subject to this requirement (except for those made before the commencement of proposed Part VIC<sup>9</sup>).

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<sup>8</sup> This will also apply to paid rates award under proposed section 170PP.

<sup>9</sup> This is achieved by providing that the high penalties will apply to an award that states it is a paid rates award, as required by proposed section 170UE. Existing paid rates award do not contain such a statement (but if varied and if still operating as paid rates awards after variation, they must contain such a statement and will attract the new penalties.











