Workplace Relations Amendment (A Stronger Safety Net) Bill 2007

(Government)

(1) Clause 2, page 2 (at the end of the table), add:

5. Schedule 4  The day on which this Act receives the Royal Assent.

[prohibited content]

(2) Clause 2, page 2 (at the end of the table, after proposed table item 5), add:

6. Schedule 5  A single day to be fixed by Proclamation.

However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

[membership requirements for registered organisations]

(3) Page 76 (after line 32), at the end of the Bill, add:

Schedule 4—Prohibited content

Workplace Relations Act 1996

1  Subsection 4(2)

Omit “section 356”, substitute “paragraph 356(1)(f)”.

2  Section 356

Repeal the section, substitute:
356 Prohibited content

(1) For the purposes of this Act, each of the following is prohibited content:
   (a) a provision that requires or permits any conduct that would contravene Part 16, or that would contravene that Part if Division 2 of that Part were disregarded;
   (b) a provision that directly or indirectly requires a person:
       (i) to encourage another person to become, or remain, a member of an industrial association; or
       (ii) to discourage another person from becoming, or remaining, a member of an industrial association;
   (c) a provision that indicates support for persons being members of an industrial association;
   (d) a provision that indicates opposition to persons being members of an industrial association;
   (e) a provision that requires or permits payment of a bargaining services fee;
   (f) a matter specified in the regulations.

(2) An expression used in paragraph (1)(a), (b), (c), (d) or (e) that is also used in section 810 has the same meaning in that paragraph as it has in that section.

3 Transitional—regulations made for the purposes of section 356 of the Workplace Relations Act 1996

(1) This item applies to regulations that:
   (a) were made for the purposes of section 356 of the Workplace Relations Act 1996;
   and
   (b) were in force immediately before the commencement of this item;
   but does not apply to subregulation 8.5(7) of the Workplace Relations Regulations 2006.

(2) The regulations have effect, after the commencement of this item, as if they had been made for the purposes of paragraph 356(1)(f) of the Workplace Relations Act 1996 as amended by this Act.

(4) Page 76 (after line 32), at the end of the Bill, after proposed Schedule 4, add:

Schedule 5—Membership requirements for registered organisations

Workplace Relations Act 1996

1 Section 6 of Schedule 1
   Insert:
   constitutional trade or commerce has the same meaning as in the Workplace Relations Act.

2 Section 6 of Schedule 1
   Insert:
designated Commonwealth authority means:
(a) a body corporate established for a public purpose by or under a law of the Commonwealth; or
(b) a body corporate:
   (i) incorporated under a law of the Commonwealth or a State or Territory; and
   (ii) in which the Commonwealth has a controlling interest.

3 Section 6 of Schedule 1 (definition of federal system employee)
Repeal the definition, substitute:

federal system employee means:
(a) an individual so far as he or she is employed, or usually employed, as described in paragraph (a), (b), (c), (d), (e) or (f) of the definition of federal system employer, by a federal system employer, except on a vocational placement; or
(b) an individual who is employed in Victoria, so long as the provisions of this Schedule that would apply to:
   (i) the individual as a federal system employee; or
   (ii) an association of which the individual is a member;
fall within the legislative power referred to the Commonwealth under the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria; or
(c) an independent contractor who, if he or she were an employee performing work of the kind which he or she usually performs as an independent contractor, would be an employee who could be characterised in either or both of the ways mentioned in paragraphs (a) and (b).

4 Section 6 of Schedule 1 (definition of federal system employer)
Repeal the definition, substitute:

federal system employer means:
(a) a constitutional corporation, so far as it employs, or usually employs, an individual; or
(b) the Commonwealth, so far as it employs, or usually employs, an individual; or
(c) a designated Commonwealth authority, so far as it employs, or usually employs, an individual; or
(d) a person or entity (which may be an unincorporated club) so far as the person or entity, in connection with constitutional trade or commerce, employs, or usually employs, an individual as:
   (i) a flight crew officer; or
   (ii) a maritime employee; or
   (iii) a waterside worker; or
(e) a body corporate incorporated in a Territory, so far as the body employs, or usually employs, an individual; or
(f) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as the person or entity employs, or usually employs, an individual in connection with the activity carried on in the Territory; or
(g) an employer in Victoria, so long as the provisions of this Schedule that would apply to:
   (i) the employer as a federal system employer; or
   (ii) an association of which the employer is a member;
fall within the legislative power referred to the Commonwealth under the

Note: In the context of paragraph (f), Australia includes the Territory of Christmas Island and the
Territory of Cocos (Keeling) Islands. See paragraph 17(a) of the Acts Interpretation Act 1901.

5 Section 6 of Schedule 1
Insert:

flight crew officer has the same meaning as in the Workplace Relations Act.

6 Section 6 of Schedule 1
Insert:

maritime employee has the same meaning as in the Workplace Relations Act.

7 Section 6 of Schedule 1
Insert:

vocational placement has the same meaning as in the Workplace Relations Act.

8 Section 6 of Schedule 1
Insert:

waterside worker has the same meaning as in the Workplace Relations Act.

9 Paragraph 18A(1)(b) of Schedule 1
Omit “the majority”, substitute “some or all”.

10 Subsection 18A(2) of Schedule 1
Repeal the subsection.

11 Paragraph 18A(4)(b) of Schedule 1
Repeal the paragraph, substitute:

(b) it is not the case that some or all of the association’s members are federal system
employers.

12 Paragraph 18B(1)(b) of Schedule 1
Omit “the majority”, substitute “some or all”.

13 Subsection 18B(2) of Schedule 1
Repeal the subsection.

14 Paragraph 18B(5)(b) of Schedule 1
Repeal the paragraph, substitute:

(b) it is not the case that some or all of the association’s members are federal system
employees.

15 Paragraph 18C(2)(b) of Schedule 1
Omit “the majority”, substitute “some or all”.

16 Subparagraph 18C(3)(c)(i) of Schedule 1
Repeal the subparagraph, substitute:

(i) an employee who could be characterised in either or both of the ways mentioned in paragraphs (a) and (b) of the definition of federal system employee in section 6; and

17 Subsection 18D(1) of Schedule 1

Repeal the subsection, substitute:

Associations of employers

(1) If the Parliament would not have sufficient legislative power to provide for the registration of a particular association of employers if:

(a) a particular class of employers mentioned in paragraphs (a) to (g) of the definition of federal system employer in section 6 were included when working out whether some or all of the association’s members are federal system employers;

that definition applies as if it did not include a reference to that class of employers.

18 Subsection 18D(3) of Schedule 1

Repeal the subsection, substitute:

Associations of employees

(3) If the Parliament would not have sufficient legislative power to provide for the registration of an association of employees if:

(a) a particular class of individuals so far as they are employed, or usually employed, as described in paragraph (a), (b), (c), (d), (e) or (f) of the definition of federal system employer in section 6, by a federal system employer were included when working out whether some or all of the association’s members are federal system employees;

the definition of federal system employee in section 6 applies as if it did not include a reference to that class of employees.

(3A) If the Parliament would not have sufficient legislative power to provide for the registration of an association of employees if:

(a) a particular class of individuals mentioned in paragraph (b) or (c) of the definition of federal system employee in section 6 were included in working out whether some or all of the association’s members are federal system employees;

that definition applies as if it did not include a reference to that class of employees.

[membership requirements for registered organisations]