2008

The Parliament of the
Commonwealth of Australia

THE SENATE

Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008

(Amendments to be moved by Senator Siewert on behalf of the Australian Greens in committee of the whole)

[Amendments in relation to workplace agreements]

(1) Schedule 1, item 2, page 5 (lines 29 to 33), omit subsection 346D(1), substitute:

(1) An ITEA passes the no-disadvantage test if the Workplace Authority Director is satisfied that:

(a) the ITEA does not result, or would not result, on balance, in a reduction in the employee’s overall terms and conditions of employment under any reference instrument relating to the employee; and

(b) the ITEA would not result, on balance, in a reduction in the employee’s overall terms and conditions of employment under any law of a State or Territory that was in existence immediately before the reform commencement that the Workplace Authority Director considers relevant; and

(c) the ITEA complies with the Australian Fair Pay and Conditions Standard.

[compliance with Australian Fair Pay and Conditions Standard and pre-reform State and Territory laws]

(2) Schedule 1, item 2, page 6 (lines 1 to 6), omit subsection 346D(2), substitute:

(2) A collective agreement passes the no-disadvantage test if the Workplace Authority Director is satisfied that:

(a) the agreement does not result, or would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees under any reference instrument relating to one or more of the employees; and

(b) the agreement would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees under any law of a State or Territory that was in existence immediately before the reform commencement that the Workplace Authority Director considers relevant; and

(c) the agreement complies with the Australian Fair Pay and Conditions Standard.

[compliance with Australian Fair Pay and Conditions Standard and pre-reform State and Territory laws]
(3) Schedule 1, item 2, page 9 (after line 25), after subsection 346G(1), insert:

(1A) An employer who makes an application under subsection (1) must provide a copy of the application to the relevant employee or employees, as the case may be, within seven days of making the application.

[employees to be informed of designated award application]

(4) Schedule 1, item 2, page 13 (line 31), omit “that”, substitute “to”.

[all agreements to operate from approval]

(5) Schedule 1, item 2, page 13 (line 34) to page 14 (line 5), omit subsection 346K(1), substitute:

(1) This Subdivision applies to all workplace agreements.

[all agreements to operate from approval]

(6) Schedule 1, item 2, page 14 (line 9), omit “to which this Subdivision applies”.

[all agreements to operate from approval]

(7) Schedule 1, item 2, page 14 (after line 28), at the end of paragraph 346M(1)(a), add:

(iv) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;

[all agreements to operate from approval]

(8) Schedule 1, item 2, page 15 (after line 9), at the end of paragraph 346M(2)(a), add:

(iv) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;

[all agreements to operate from approval]

(9) Schedule 1, item 2, page 15 (after line 25), after section 346M, insert:

346MA  Workplace Authority Director must provide written reasons

(1) If the Workplace Authority Director makes a decision under section 346D that an agreement:

(a) passes the no-disadvantage test; or
(b) does not pass the no-disadvantage test;
then, in response to a request by any of the following parties:

(c) the employer in relation to the agreement;
(d) an employee whose employment is subject to the agreement;
(e) if the agreement is a union collective agreement or a multiple-business agreement that would be a union collective agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;
(f) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement;

the Workplace Authority Director must provide written reasons for the decision.

[Director to provide written reasons for decision]

(10) Schedule 1, item 2, page 15 (after line 25), after section 346M, insert:
Review of decisions of Workplace Authority Director

If the Workplace Authority Director makes a decision under section 346D in relation to an agreement, any of the parties to the agreement in paragraphs 346MA(c) to (f) may appeal to the Federal Magistrates Court for a review of the decision in accordance with the Administrative Decisions (Judicial Review) Act 1977.

[review of decisions of Director]

(11) Schedule 1, item 2, page 17 (line 4), at the end of subsection 346Q(2), add:

; (d) if the agreement is a union greenfields agreement or a multiple-business agreement that would be a union greenfields agreement but for subsection 331(1)—the organisation or organisations bound by the agreement.

[all agreements to operate from approval]

(12) Schedule 1, item 2, page 17 (line 30) to page 30 (line 20), Subdivisions D and E TO BE OPPOSED.

[all agreements to operate from approval]

(13) Schedule 1, item 2, page 31 (line 1), after paragraph 346ZJ(1)(b), add:

or (c) fail to employ an employee; or

d) treat an employee any less favourably;

[dismissal/unfavourable treatment]

(14) Schedule 1, item 2, page 31 (lines 2 and 3), omit “the sole or dominant reason for the employer dismissing, or threatening to dismiss,”, substitute “one of the reasons for the employer dismissing, threatening to dismiss, failing to employ or treating less favourably,”.

[dismissal/unfavourable treatment]

(15) Schedule 1, page 34 (after line 9), after item 7, insert:

7A At the end of section 352

Add:

AWAs and ITEAs to expire on nominal expiry date

(3) Notwithstanding any other provision of this Act, a pre-reform AWA, an AWA or an ITEA expires on its nominal expiry date and ceases to have effect on that date.

[expiration on nominal expiry date]

(16) Schedule 1, item 15, page 39 (after line 28), after clause 2, insert:

2A Application of no-disadvantage test to AWAs

(1) An employee employed under an AWA or the bargaining agent of an employee employed under an AWA may apply to the Workplace Authority Director for a review of the employee’s AWA to determine whether it passes the no-disadvantage test in Division 5A.

(2) If the Workplace Authority Director determines that the AWA fails the no-disadvantage test, the employee may terminate the AWA by lodging with the Workplace Authority Director a declaration of termination which meets the requirements set out in subsection 395(3).

(3) The employee must take reasonable steps to ensure that written notice of the termination is given to the employer in relation to the AWA.
(4) An employer must not:
    (a) dismiss an employee; or
    (b) threaten to dismiss an employee; or
    (c) treat an employee any less favourably;
    if one of the reasons for the employer dismissing, threatening to dismiss or treating less favourably, the employee is that the employee sought a review of his or her AWA or that the employee terminated his or her AWA.

(5) Subsection (4) is a civil remedy provision.

Note 1: A contravention of subsection (4) is enforceable by a workplace inspector—see Division 11 for provisions on enforcement.

Note 2: Division 3 of Part 14 contains other provisions relevant to civil remedies.

[application of no-disadvantage test to AWAs]

(17) Schedule 1, item 15, page 40 (line 34) to page 41 (line 6), omit subclause 5(3).

[no variation of AWAs]

(18) Page 119 (after line 19), after Schedule 5, insert:

Schedule 5A—Transitional arrangements for preserved State agreements

Workplace Relations Act 1996

1 Division 3 of Part 2 of Schedule 8 (heading)
   Omit “Varying”, substitute “Extending or varying”.

2 Before clause 16 of Schedule 8
   Insert:

Subdivision A—Extending or varying a preserved State agreement after the commencement of the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008

15H Commission may extend or vary a preserved State agreement

   (1) After the commencement of the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008, the Commission may, on application by any person bound by a preserved State agreement, by order:
      (a) extend the nominal expiry date of the agreement; or
      (b) vary the terms of the agreement.

   (2) However, before making the order, the Commission must be satisfied that:
      (a) all parties bound by the agreement genuinely agree to the extension or variation; and
      (b) none of the parties have, after the introduction day:
         (i) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
         (ii) applied for a protected action ballot under section 451 in relation to proposed industrial action; and
(c) in the case of a variation—the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement under:

(i) any transitional award or notional agreement preserving State award that would regulate any term or condition of employment of the employees if the employer had been an excluded employer immediately before the reform commencement; and

(ii) any law of the Commonwealth, or of a State or Territory, that the Commission considers relevant.

(3) If the Commission extends the nominal expiry date of the agreement, the extended date cannot be more than 3 years after the date on which the order is made.

(4) The employees bound by the agreement are taken, for the purposes of paragraph (2)(a), to agree to the extension or variation if a valid majority of the employees bound by the agreement at the time of making the extension or variation agree to it.

(5) Section 170LE of the pre-reform Act applies to deciding whether a valid majority of the employees agree to the extension or variation as if references in that section to making an agreement were references to making the extension or variation.

(6) To avoid doubt, the terms and conditions of employment under a transitional award may, for the purposes of paragraph (2)(c), include terms and conditions that did not apply on the reform commencement, or that have been varied since the reform commencement.

(7) In this clause:

introduction day means the day on which the Bill that became the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008 was introduced into the House of Representatives.

Subdivision B—Varying a preserved State agreement

3 After subclause 22(1) of Schedule 8

Insert:

(1A) A person must not:

(a) take or threaten to take any industrial action or other action; or

(b) refrain or threaten to refrain from taking any action;

with intent to coerce another person to agree, or not to agree, to the extension of the nominal expiry date of, or the variation of, a pre-reform certified agreement under clause 15H.

4 Subclause 22(2) of Schedule 8

Omit “Subclause (1)”, substitute “This clause”.

5 Subclause 22(3) of Schedule 8

Omit “subclause (1)”, substitute “this clause”.

[no variation of AWAs]