2008-2009

The Parliament of the
Commonwealth of Australia

THE SENATE

Fair Work Bill 2008

(Government)

(1) Clause 12, page 19 (line 8), omit “means redundancy”, substitute “means redundancy or termination payment”.

[industry-specific redundancy schemes]

(2) Page 137 (after line 3), after clause 140, insert:

140A Terms for long distance transport employees

A modern award may include terms relating to the conditions under which an employer may employ employees to undertake long distance transport work.

[long distance transport employees]

(3) Page 142 (after line 8), after clause 145, insert:

145A Terms about consultation and representation

Without limiting paragraph 139(1)(j), a modern award must include a term that:

(a) requires an employer to whom the award applies to consult the employer’s employees to whom the award applies about major workplace changes that are likely to have a significant effect on the employees; and

(b) allows for the representation of those employees for the purposes of that consultation.

[consultation and representation]

(4) Clause 154, page 144 (line 27), omit paragraph (1)(b), substitute:

(b) are expressed to operate in one or more, but not every, State and Territory.

[State-based differences]

(5) Clause 287, page 257 (line 21) to page 258 (line 4), omit the clause, substitute:
287 When national minimum wage orders come into operation etc.

Orders come into operation on 1 July

(1) A national minimum wage order that is made in an annual wage review comes into operation on 1 July in the next financial year (the year of operation).

Setting of different wages or loadings only permitted in exceptional circumstances

(2) The national minimum wage or the casual loading for award/agreement free employees set by the order must be the same for all employees, unless:
   (a) FWA is satisfied that there are exceptional circumstances justifying setting different wages or loadings; and
   (b) the setting of different wages or loadings is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

(3) A special national minimum wage set by the order for a specified class of employees must be the same for all employees in that class, unless:
   (a) FWA is satisfied that there are exceptional circumstances justifying setting different wages; and
   (b) the setting of different wages is limited just to the extent necessary because of the particular situation to which the exceptional circumstances relate.

Adjustments taking effect during year of operation only permitted in exceptional circumstances

(4) The order may provide that an adjustment of the national minimum wage, the casual loading for award/agreement free employees, or a special national minimum wage, set by the order takes effect (whether for some or all employees to whom that wage or loading applies) on a specified day in the year of operation that is later than 1 July, but only if:
   (a) FWA is satisfied that there are exceptional circumstances justifying the adjustment taking effect on that day; and
   (b) the adjustment is limited just to the particular situation to which the exceptional circumstances relate.

When orders take effect

(5) The order takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after 1 July in the year of operation. However, an adjustment referred to in subsection (4) takes effect in relation to a particular employee from the start of the employee’s first full pay period that starts on or after the day specified as referred to in that subsection.

Clause 289, page 258 (line 27) to page 259 (line 2), omit subclauses (2) and (3), substitute:

(2) FWA must publish all submissions made to FWA for consideration in the review.

(3) However, if a submission made by a person or body includes information that is claimed by the person or body to be confidential or commercially sensitive, and FWA is satisfied that the information is confidential or commercially sensitive, FWA:
   (a) may decide not to publish the information; and
   (b) may instead publish:
(i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or

(ii) if FWA considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.

(4) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).

(5) FWA must ensure that all persons and bodies have a reasonable opportunity to make comments to FWA, for consideration in the review, on the material published under subsections (2) and (3).

(6) The publishing of material under subsections (2) and (3) may be on FWA’s website or by any other means that FWA considers appropriate.

[publication of submissions]

(7) Clause 306, page 266 (lines 29 and 30), omit all the words from and including “to the extent” to and including “equal remuneration order”, substitute “in relation to an employee to the extent that it is less beneficial to the employee than a term of an equal remuneration order that applies to the employee”.

[equal remuneration]

(8) Clause 324, page 282 (line 2), before “An”, insert “(1)”.

[payment of wages]

(9) Clause 324, page 282 (after line 22), at the end of the clause, add:

(2) An authorisation for the purposes of paragraph (1)(a):
   (a) must specify the amount of the deduction; and
   (b) may be withdrawn in writing by the employee at any time.

(3) Any variation in the amount of the deduction must be authorised in writing by the employee.

[payment of wages]

(10) Clause 326, page 283 (line 6), omit “the”, substitute “an”.

[payment of wages]

(11) Clause 326, page 283 (lines 10 to 12), omit all the words from and including “the deduction” to the end of subclause (1), substitute:

   either of the following apply:
   (c) the deduction or payment is:
      (i) directly or indirectly for the benefit of the employer, or a party related to the employer; and
      (ii) unreasonable in the circumstances;
   (d) if the employee is under 18—the deduction or payment is not agreed to in writing by a parent or guardian of the employee.

[payment of wages]

(12) Clause 333, page 289 (line 9), omit “The”, substitute “(1) Subject to this section, the”.

[high income threshold]
(13) Clause 333, page 289 (after line 10), at the end of the clause, add:

   (2) A regulation made for the purposes of subsection (1) has no effect to the extent that it would have the effect of reducing the amount of the high income threshold.

   (3) If:
      
      (a) in prescribing a manner in which the high income threshold is worked out, regulations made for the purposes of subsection (1) specify a particular matter or state of affairs; and
      
      (b) as a result of a change in the matter or state of affairs, the amount of the high income threshold worked out in that manner would, but for this subsection, be less than it was on the last occasion on which this subsection did not apply;

      the high income threshold is the amount that it would be if the change had not occurred.

(14) Page 289 (after line 10), at the end of Division 3, add:

   333A Prospective employees

   If:

      (a) an employer, or a person who may become an employer, gives to another person an undertaking that would have been a guarantee of annual earnings if the other person had been the employer’s or person’s employee; and

      (b) the other person subsequently becomes the employer’s or person’s employee; and

      (c) the undertaking relates to the work that the other person performs for the employer or person;

   this Division applies in relation to the undertaking, after the other person becomes the employer’s or person’s employee, as if the other person had been the employer’s or person’s employee at the time the undertaking was given.