The Parliament of the Commonwealth of Australia

THE SENATE

Fair Work Bill 2008

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

(1) Clause 3, page 3 (lines 11 and 12), omit “take into account”, substitute “give effect to”.

[objects: giving effect to international labour obligations]

(2) Page 3 (after line 36), after Division 2, insert:

Division 2A—Interpretation of this Act

3A Interpretation of this Act

This Act is to be interpreted in a way that is consistent with, and gives effect to, Australia’s international labour obligations.

[interpretation: compliance with international labour obligations]

(3) Page 3 (after line 36), after Division 2, insert:

Division 2B—Review by the ILO

3B Review of this Act by the ILO

(1) The Minister must, as soon as practicable after the commencement of this Act, submit the Act to the ILO Committee of Experts on the Application of Conventions and Recommendations with a request for urgent advice as to the compliance of the Act with international labour standards.

(2) The Minister must also provide to the ILO Committee any additional information it requests to assist in its provision of advice on the compliance of the Act, and must cause a copy of that information to be laid before each House of the Parliament within 6 sitting days of that House after the information is provided to the committee.

(3) The Minister must cause any response from the ILO Committee to be laid before each House of the Parliament within 6 sitting days of that House after the Minister receives the response.
(4) To avoid doubt, the submission of the Act to the ILO Committee in accordance with subsection (1) is additional to the obligations Australia has to report regularly on measures that have been taken to implement ILO conventions.

[review: compliance with international labour obligations]

(4) Clause 12, page 25 (line 13), omit “172(1)”, substitute “172(1A)”.

[permitted matters]

(5) Page 60 (after line 16), at the end of Subdivision B, add:

44A FWA may deal with a dispute about the application of National Employment Standards

(1) FWA may deal with a dispute about the application of National Employment Standards.

(2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:
   (a) an employee;
   (b) an employer;
   (c) an employee organisation;
   (d) an employer organisation.

(3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.

(4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

[broad powers of FWA to deal with disputes]

(6) Page 60 (after line 23), after clause 45, insert:

45A FWA may deal with a dispute about the application of modern award terms

(1) FWA may deal with a dispute about the application of a term of a modern award.

(2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:
   (a) an employee;
   (b) an employer;
   (c) an employee organisation;
   (d) an employer organisation.

(3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.

(4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

[broad powers of FWA to deal with disputes]

(7) Clause 47, page 61 (lines 23 to 27), omit subclause (2).

[modern awards: exemption of high income employees]

(8) Page 64 (after line 9), after clause 50, insert:
50A FWA may deal with a dispute about the application of enterprise agreement terms

(1) FWA may deal with a dispute about the application of a term of an enterprise agreement.

(2) FWA may deal with the dispute on application by any of the following to whom the dispute relates:
   (a) an employee;
   (b) an employer;
   (c) an employee organisation;
   (d) an employer organisation.

(3) FWA may deal with the dispute by mediation, conciliation or arbitration, including by making any order it considers appropriate.

(4) In dealing with the dispute, FWA must take into account fairness between the parties concerned.

[broad powers of FWA to deal with disputes]

9) Page 118 (after line 28), at the end of Division 10, add:

116A Compensation for public holiday

(1) Where an employee works on a public holiday, the employee is entitled to the additional compensation provided for in the modern award that covers the employee.

(2) To avoid doubt, an enterprise agreement or individual flexibility arrangement cannot alter the entitlement to compensation in subsection (1).

[public holiday compensation]

10) Clause 139, page 136 (line 16), at the end of subclause (1), add:
   ; (k) exceptional matters where the circumstances of the industry or sector warrant such matters being included in the award.

[modern awards may provide for exceptional circumstances]

11) Clause 143, page 140 (after line 4), after subclause (7), insert:

   (8) To avoid doubt, nothing in this section is intended to exclude from award coverage employees in new or emerging occupations that have not previously been covered by awards but whose work is of a character that would warrant modern award coverage.

[award coverage]

12) Clause 152, page 143 (lines 17 to 21), TO BE OPPOSED.

[prohibition on ‘right of entry’ terms opposed]

13) Clause 172, page 161 (lines 5 to 23), omit subclause (1), substitute:

Enterprise agreements may be made about permitted matters

(1) An agreement (an enterprise agreement) that is about one or more permitted matters may be made in accordance with this Part.

Note: An employee organisation that was a bargaining representative for a proposed enterprise agreement will be covered by the agreement if the organisation notifies FWA under section 183 that it wants to be covered.
(1A) All matters, other than matters which comprise unlawful terms, are permitted matters.

(14) Clause 180, page 170 (line 28), omit “7-day”, substitute “14-day”.

(15) Clause 194, page 182 (lines 21 to 27), omit paragraph (c).

(16) Clause 194, page 183 (lines 1 to 13), omit paragraphs (e) to (g).

(17) Clause 229, page 208 (lines 1 to 4), omit subclause (2).

(18) Clause 260, page 234 (after line 14), at the end of the clause, add:

(6) For the purposes of paragraph (5)(c), an employer may be identified by a trading name, being a name that the employer trades under, or is known as by its employees, suppliers or customers.

(19) Clause 262, page 235 (line 25), at the end of subclause (4), add:

; and (c) an improvement in the employment conditions of the employees.

(20) Clause 263, page 236 (line 1 to 21), TO BE OPPOSED.

(21) Division 3, clauses 328 to 333, page 285 (line 2) to page 289 (line 10), TO BE OPPOSED.

(22) Clause 332, page 288 (line 8), omit paragraph (1)(c).

(23) Clause 332, page 288 (lines 20 to 26), omit subclause (3).

(24) Clause 333, page 289 (lines 8 to 10), omit the clause, substitute:

333 High income threshold

(1) The high income threshold is $150,000, indexed in accordance with subsection (2).

(2) The regulations must prescribe a method for the annual indexation of the high income threshold by reference to the increase in the full-time adult average weekly ordinary time earnings for all persons in Australia, as published by the Australian Statistician.

The following 2 amendments are alternatives to the above amendment

C:\WINDOWS\TEMP\aphdata_temp\c39fa682-d76b-4adf-a16b-92565a5f0b5\5729 Fair Work AG.doc 16/3/2009 11:09 AM
(25) Clause 409, page 336 (lines 17 and 18), omit “that are about, or are reasonably believed to be about, permitted matters”.

[remove reference to permitted matters]

(26) Clause 409, page 337 (lines 7 to 10), subclause (4) TO BE OPPOSED.

[remove concept of pattern bargaining]

(27) Clause 412, page 339 (line 9) to page 340 (line 6), TO BE OPPOSED.

[remove concept of pattern bargaining]

(28) Clause 413, page 340 (lines 17 and 18), omit “or multi-enterprise agreement”.

[industrial action may relate to multi-enterprise agreements]

(29) Clause 418, page 347 (after line 3), at the end of the clause, add:

(5) As soon as practicable after making an order under subsection (1), FWA must attempt to conciliate the dispute giving rise to the industrial action.

[conciliation during stop period]

(30) Clause 419, page 347 (lines 4 to 29), TO BE OPPOSED.

[stop orders on non-national employees or employers]

(31) Division 5, clause 422, page 350 (lines 1 to 16), TO BE OPPOSED.

[remove concept of pattern bargaining]

(32) Clause 425, page 354 (lines 1 to 15), TO BE OPPOSED.

[cooling off]

[The following 2 amendments are an alternative to the above amendment]

(33) Clause 425, page 354 (line 2), omit “must”, substitute “may”.

[cooling off order not mandatory]

(34) Clause 425, page 354 (line 2), after “suspending”, insert “for a period not exceeding 48 hours”.

[cooling off suspension period]

(35) Clause 426, page 354 (line 16) to page 355 (line 25), TO BE OPPOSED.

[third party harm]

(36) Division 7, clauses 431 to 434, page 359 (line 1) to page 360 (line 12), TO BE OPPOSED.

[ministerial declarations terminating industrial action]

(37) Clause 443, page 364 (lines 20 to 22), omit paragraph (1)(b).

[protected action ballot orders]

(38) Clause 459, page 375 (lines 9 and 10), omit paragraph (1)(b).

[vote in protected ballot action]
(39) Heading to Subdivision A, page 383 (line 4), omit “Protected industrial action”, substitute “Industrial action”.

[remove distinction between protected and unprotected in payment provisions]

(40) Clause 470, page 383 (line 7), omit “protected”.

[remove distinction between protected and unprotected in payment provisions]

(41) Clause 471, page 384 (line 4), omit “protected”.

[remove distinction between protected and unprotected in payment provisions]

(42) Clause 471, page 384 (line 25), omit “protected”.

[remove distinction between protected and unprotected in payment provisions]

(43) Clause 471, page 385 (line 26), omit “protected”.

[remove distinction between protected and unprotected in payment provisions]

(44) Subdivision B, clauses 474 and 475, page 387 (line 1) to page 388 (line 23) TO BE OPPOSED.

[remove distinction between protected and unprotected in payment provisions]

(45) Clause 492, page 398 (after line 20), after subclause (2), insert:

(2A) Without limiting when a request under subsection (1) might otherwise be unreasonable, similar considerations to those set out in paragraph (2)(b) apply in determining whether a request under paragraph (1)(b) is unreasonable.

[right of entry – requests as to route taken]

(46) Division 3, clauses 494 to 499, page 399 (line 1) to page 401 (line 26), TO BE OPPOSED.

[state and territory OHS rights]

(47) Subdivision C, clauses 508 and 509, page 405 (line 22) to page 406 (line 29), TO BE OPPOSED.

[restrictions on rights of organisations and officials]

(48) Clause 595, page 469 (lines 4 to 13), omit subclauses (2) and (3), substitute:

(2) FWA may deal with a dispute as it considers appropriate, including in the following ways:

(a) by mediation or conciliation;
(b) by making a recommendation or expressing an opinion;
(c) by arbitration (including by making any orders it considers appropriate).

[FWA to have broad powers to resolve disputes]

(49) Clause 596, page 470 (line 16), at the end of subclause (4), add:

; or (d) is a lawyer from a community legal centre.

[community legal centre lawyers exempt from leave requirement]