2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

WORKPLACE RELATIONS AMENDMENT (TRANSITION TO FORWARD WITH FAIRNESS) BILL 2008

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Employment and Workplace Relations, the Honourable Julia Gillard MP)
OUTLINE

The proposed Government amendments would amend the provisions of the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 (the Bill).

The amendments would:

- enable the Workplace Authority Director to have regard in certain circumstances to State and Territory laws about long service leave as part of the no-disadvantage test;
- enable an eligible employer to make an individual transitional employment agreement (ITEA) with a previous employee, provided that employee’s employment was not terminated in order to re-engage the former employee on an ITEA;
- ensure that outworker conditions in awards continue to have effect despite any less favourable terms of a workplace agreement;
- enable preserved State agreements to be extended and varied in limited circumstances; and
- clarify the operation of certain provisions and correct a number of minor technical oversights.

FINANCIAL IMPACT STATEMENT

These amendments are budget neutral.
NOTES ON AMENDMENTS

Amendment (1) – Schedule 1, item 1, page 3 (after line 19)

1. Proposed section 326 currently limits the eligibility of employees to enter into individual transitional employment agreements (ITEAs) to existing employees on individual statutory agreements and new employees who have not previously been employed by the employer (the employer must have employed at least one employee on an individual statutory agreement as at 1 December 2007).

2. During the Senate inquiry into the Bill, concerns were expressed about the implications of the ‘new employee’ restriction for the use of ITEAs.

3. This amendment would enable an eligible employer to make an ITEA with a previous employee, provided the former employee’s employment was not brought to an end in order to re-engage the former employee on an ITEA.

Amendment (2) – Schedule 1, item 2, page 5 (after line 24)

4. Proposed subsection 346C(3) currently provides that, for the purpose of proposed new Division 5A of Part 8 to the Act (the no-disadvantage test), a reference to an employee whose employment is subject to a workplace agreement is taken to include a reference to a person whose employment may at a future time be subject to the agreement.

5. This amendment would insert the words ‘so far as the context permits’, to make clear that the subsection applies only to the extent possible in the particular circumstances.

Amendment (3) – Schedule 1, item 2, page 5 (lines 31 and 32)

6. Subsection 346D(1) sets out the no-disadvantage test for an individual transitional employment agreement (ITEA).

7. This amendment would clarify that the reference to the employee in this provision is a reference to the employee whose employment is subject to the agreement. This is a minor amendment to ensure technical consistency with other provisions.

Amendment (4) – Schedule 1, item 2, page 6 (after line 4)

8. Subsection 346D(2) sets out the no-disadvantage test in relation to a collective agreement.

9. This amendment would make clear that the reference to employees in this provision is a reference to the employees whose employment is subject to the agreement. As is the case for amendment (3), this is a minor amendment to ensure technical consistency with other provisions.
10. As the Bill is presently drafted, long service leave entitlements under state and territory laws are not required to be considered by the Workplace Authority Director when deciding whether a workplace agreement passes the no disadvantage test. However, employees who have a long service leave entitlement under a relevant collective instrument (e.g. a collective agreement) or by a relevant general instrument (e.g. an award) would have that entitlement taken into account.

11. This amendment would make state and territory long service leave laws part of the no disadvantage test, consistent with the approach to long service leave entitlements from relevant collective and relevant general instruments.

12. For the purpose of the no disadvantage test, under proposed new paragraph 346D(2A)(a), to the extent that it provides for long service leave, a law of a state or territory would be taken to be a reference instrument for the purpose of the no disadvantage test if it applied to the employee immediately before the workplace agreement was lodged, or would have applied if the employee was employed by the employer at that time (for example, in the case of a person yet to be employed under an ITEA or greenfields agreement).

13. Such laws would not form part of the no disadvantage test for employees to whom they did not actually apply before a workplace agreement was lodged. Where, for example, an applicable award or collective agreement is the basis for the no disadvantage test and excludes a state or territory long service leave law, the Workplace Authority Director would be required to have regard to the agreement or award only. This would be consistent with the approach that employees should not be disadvantaged by making a new workplace agreement relative to their otherwise applicable terms and conditions of employment.

14. However, where a designated award is inconsistent with a state or territory long service leave law, the Workplace Authority Director would only have regard to the state or territory law, and not the designated award in relation to the matter of long service leave. This is consistent with the approach that an award can only be designated where there is no otherwise applicable instrument.

Amendment (6) – Schedule 1, item 2, page 6 (after line 27)

15. This amendment would insert new subsection 346D(8) in proposed section 346D of the Bill to clarify the effect of the no-disadvantage test where there is a reference instrument in relation to some but not all employees.

16. Under proposed subsection 346D(2) a collective agreement must be tested if there is a reference instrument in relation to one or more employees. Under subsection 346D(7), if there is no reference instrument in relation to any of the employees whose employment is subject to the agreement, a collective agreement is taken to pass the no-disadvantage test.
17. Proposed new subsection 346D(8) would clarify that:

- a collective agreement that passes the no-disadvantage test under subsection 346D(2) will pass in relation to all employees including those for whom there is no reference instrument (proposed paragraph 346D(8)(a)); and

- a collective agreement that does not pass the no-disadvantage test subsection 346D(2) will not pass in relation to any employee including those for whom there is no reference instrument (proposed paragraph 346D(8)(b)).

Amendment (7) – Schedule 1, item 2, page 10 (lines 6 to 25)
Amendment (9) – Schedule 1, item 2, page 12 (lines 14 to 18)
Amendment (11) – Schedule 1, item 2, page 12 (after line 37)

18. Under proposed subsection 346G(2)(a) of the Bill, an award can be designated by the Workplace Authority Director before a workplace agreement is lodged for the purpose of the no-disadvantage test if the employee(s) in question are employed in an industry or occupation in which the terms and conditions of the kind of work to be performed are usually regulated by an award (or would be so regulated but for a workplace agreement or industrial instrument having come into operation).

19. There is currently no equivalent requirement under proposed section 346H, which deals with award designation after a workplace agreement has been lodged. Amendment (9) would correct a technical oversight and ensure that this requirement applies both before and after a workplace agreement has been lodged with the Workplace Authority Director.

20. Under proposed subsection 346G(3) of the Bill, a reference to an award-regulated industry or occupation is taken to include an industry or occupation in which terms and conditions of employment were usually regulated, immediately before the commencement of the Workplace Relations Amendment (Work Choices) Act 2005, by:

- a State award;
- a transitional Victorian reference award within the meaning of Schedule 6 to the Act;
- a common rule in operation under Schedule 6 to the Act; or
- a transitional award within the meaning of Schedule 6, other than a Victorian reference award, to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.

21. However, of these instruments, only State awards existed immediately before the commencement of that Act. The other instruments were created as federal instruments on 27 March 2006.

22. Amendment (11) would insert new subsection 346HA to ensure that the references to each instrument reflect their correct time of operation, in the case of award designation both before and after a workplace agreement is lodged. The new provision would have the effect
that an award-regulated industry or occupation is taken to include an industry or occupation in which terms and conditions of employment:

- *were* usually regulated by a State award immediately before the reform commencement (or would have been put for an industrial instrument or a State employment agreement having come into operation), or

- *are* usually regulated (or would be so regulated but for an industrial instrument or a State employment agreement) by a transitional Victorian reference award, a common rule in operation under Schedule 6, or a transitional award other than a Victorian reference award, to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.

23. Amendment (7) would omit subsection 346G(3) from the Bill, which is no longer required as a result of amendments (9) and (11). The matters dealt with in this provision would be contained in new section 346HA.

**Amendment (8) – Schedule 1, item 2, page 11 (lines 1 to 3)**

**Amendment (10) – Schedule 1, item 2, page 12 (lines 31 to 33)**

24. Amendments (8) and (10) are consequential on amendment (33), which would substitute a new definition for the current definition of ‘enterprise award’ in proposed section 576U of the Bill.

25. The new definition would provide that an award is an enterprise award if it regulates the terms and conditions of employment of an employee or employees in a single business only (being the single business specified in the award). This is intended to clarify that the definition of enterprise award in section 576U does not include awards that bind more than a single business.

26. Amendments (8) and (10) would ensure that the award designation provisions under the no disadvantage test are consistent with the proposed new definition. Under these amendments the Workplace Authority Director could not designate an award that regulates the terms and conditions of employment of an employee or employees in a single business only (being the single business specified in the award). Such awards are typically tailored to the circumstances of an individual employer and are not appropriate for the purpose of assessing workplace agreements made by other employers.

**Amendment (12) – Schedule 1, item 2, page 15 (lines 31 to 34)**

**Amendment (13) – Schedule 1, item 2, page 20 (lines 27 to 30)**

27. These amendments would omit proposed subsections 346N(2) and 346W(5) and substitute new provisions to ensure that all necessary provisions apply in relation to variations of workplace agreements that initially fail the no disadvantage test.
28. Proposed sections 346N and 346W currently allow for workplace agreements that fail the no-disadvantage test to be varied in a way that does not involve all of the usual procedural requirements, such as provision of ready access and an information statement. For the purpose of these variations, subsections 346N(2) and 346W(5) currently provide that the requirements of Division 8 of the Act concerning the process for varying workplace agreements do not apply, except for:

- subsection 373(1), which would set out the approval requirements for ITEAs; and
- section 374, which provides that an employer must not lodge an unapproved variation.

29. However, a number of other provisions are also required, including those that the Bill introduces to ensure that agreement variations are properly approved. The replacement provisions would:

- apply sections 367 and 368 of the existing Act, which set out who may make a variation and when a variation is made;
- apply proposed new section 368A to ensure that only genuinely approved variations are capable of operating;
- apply section 372 of the Act, which requires an employer to seek approval to a variation of a union collective or greenfields agreement within a reasonable period;
- substitute the reference to subsection 373(1) with a reference to section 373 so that approval requirements for both variations of ITEAs and collective agreements apply;
- continue to apply section 374, which specifies that an employer must not lodge an unapproved variation;
- apply proposed new paragraph 377(1)(b) so that copies of signed variations would have to be lodged; and
- apply proposed new section 380A to ensure that, where an unapproved variation is lodged, civil remedy provisions operate.

Amendment (14) – Schedule 1, item 2, page 30 (line 23)

30. This amendment would make a minor technical amendment to proposed subsection 346ZH(1) to insert a reference to proposed section 346Q.

31. Under section 346Q the Workplace Authority Director is required to notify an employer about the outcome of the no disadvantage test in relation to variations of collective agreements that commence operation on approval.

32. This amendment would ensure that such an employer is required to give their current employees a copy of the Workplace Authority Director’s notice.
Amendment (15) – Schedule 1, page 33 (after line 8)

33. The Bill proposes the repeal of section 354 of the Act, which deals with protected award conditions. Subsection 354(3) currently provides that outworker terms in an award have effect where the terms of an agreement provide a less favourable outcome in a particular respect.

34. This amendment would insert proposed new subsections 349(2) and (3) to ensure the continuing operation of award terms about outworker conditions despite any less favourable terms of a workplace agreement.

Amendment (16) – Schedule 1, item 15, page 39 (line 10)

35. This amendment would omit subparagraph 2(2)(b) from proposed Schedule 7A. Subclause 2(2)(b) of proposed Schedule 7A currently has the effect that paragraph 347(4)(b) of the pre-transition Act would not apply to an AWA.

- Paragraph 347(4)(b) of the Act provides that an AWA ceases to be in operation if it is replaced by another AWA.

36. Under proposed Schedule 7A an AWA made before the Bill commences would be able to be lodged with the Workplace Authority Director up to 14 days after that commencement. Subclause 2(2)(b) of proposed Schedule 7A would mean that an AWA lodged after the commencement date within the allowed 14 day timeframe could not replace an earlier AWA. Removing subclause 2(2)(b) of proposed Schedule 7A would enable this to occur.

37. However, following the expiry of 14 days after the Bill’s commencement, paragraph 347(4)(b) of the pre-transition Act would be redundant because AWAs could not be made after the Bill commences nor lodged more than 14 days after that commencement.

Amendment (17) – Schedule 1, item 15, page 40 (after line 3)

38. This amendment would insert new subclause 3(1A) in proposed new Schedule 7A to ensure that a bargaining agent appointed in relation to an AWA would continue to have standing to apply for civil remedies in relation to AWAs under paragraph 405(1)(e), despite the appointment ceasing to have effect under proposed subclause 3(1).

Amendment (18) – Schedule 1, item 2, page 41 (line 24)

Amendment (19) – Schedule 1, item 2, page 41 (lines 33 and 34)

39. These amendments would correct a technical oversight and ensure that paragraphs 7(1)(b) and 7(2)(b) of proposed new Schedule 7A require the Workplace Authority Director to notify the parties of ineffective lodgment of an AWA or AWA variation, in circumstances where an AWA or AWA variation has been lodged 14 days after the Bill’s
commencement. This would be consistent with subclauses 1(2) and 5(2) of proposed Schedule 7A.

40. As currently drafted, paragraphs 7(1)(b) and 7(2)(b) of proposed new Schedule 7A require the Workplace Authority Director to notify the parties of ineffective lodgment if an AWA or AWA variation has been lodged 14 days after employee approval, even if the AWA or variation is lodged within the 14 day commencement period.

41. The amendment would replace the reference to the 14 day approval period with a reference to the 14 day commencement period.

42. In the situation where an AWA or AWA variation has been lodged 14 days after employee approval the AWA or variation may come into operation (provided other requirements have been met) but penalties for breach of existing sections 342 or 375 of the Act, continued in operation under subclause 2(1) of Schedule 7A, would apply.

Amendment (20) – Schedule 1, item 15, page 42 (after line 13)

43. This amendment would insert paragraph 8(1)(aa) in proposed new Schedule 7A to include a reference to paragraph 336(b) of the Act.

44. This amendment would ensure that employees on AWAs that have passed their nominal expiry date will be ‘eligible employees’ for the purpose of pre-lodgment procedures for the making of a collective agreement. This would mean that these employees are entitled to be given ready access to the agreement and an information statement in the same way as employees on ITEAs that have passed their nominal expiry date.

Amendment (21) – Schedule 1, item 15, page 43 (after line 21)

45. This amendment would insert references to subsections 347(1) and (2) in subclause 2(1) of proposed Schedule 7B to the Bill. This would make clear that a pre-transition collective agreement made before the commencement of the Bill and lodged within 14 days of that commencement operates from the time of lodgment with the Workplace Authority Director, consistent with existing lodgment and operation rules.

Amendment (22) – Schedule 1, Part 2, page 44 (after line 15)

46. This amendment would insert item 15A at the end of Part 2 of the Bill to clarify the transitional effect of the repeal of section 399.

47. The Bill as proposed would repeal section 399 of the Act to ensure that, where an industrial instrument (an earlier workplace agreement or award) ceases to operate in relation to an employee because it is replaced by a workplace agreement, it could operate again if the replacement workplace agreement is terminated after the commencement of the Bill.

48. New item 15A would make clear that such instruments revive only if a workplace agreement is terminated on or after commencement. New item 15A would also clarify that
any protected award conditions applying to an employee immediately before the commencement of the Bill because of the operation of section 399 would continue to apply after that commencement, and such employees would continue to be covered by the Australian Fair Pay and Conditions Standard. Protected award conditions are terms of an award and under section 349 of the Act they would cease to apply when a new workplace agreement commenced operation in relation to the employer and employee(s).

49. For the purpose of item 15A, an industrial instrument would have the meaning given by section 399 of the pre-transition Act, and would also include other transitional instruments that were taken to be awards for the purpose of section 399 of the pre-transition Act (except to the extent that they contain protected award conditions).

Amendment (23) – Schedule 1, item 48, page 50 (line 22)

50. This amendment would correct a typographical error and ensure that paragraph 367(2)(aa) of the Act refers to variations of workplace agreements after an agreement fails the no disadvantage test under both proposed sections 346N (relating to agreements that commence operation on approval) and 346W (relating to agreements that commence operation on lodgment).

51. Currently, the Bill only includes a reference to section 346W in paragraph 367(2)(aa).

Amendment (24) – Schedule 1, item 67, page 53 (line 33) to page 54 (line 1)

52. This amendment would correct a typographical error.

53. Currently, item 67 of the Bill purports to amend, among other things, paragraphs 393(2)(ba) and (c) of the Act in order to replace references to ‘AWA’ with ‘ITEA’. These provisions will be deleted by the repeal of section 393 in item 11 of Schedule 1 to the Bill. Accordingly, references to these provisions are unnecessary.

Amendment (25) – Schedule 1, item 159, page 71 (lines 1 to 3)
Amendment (26) – Schedule 1, item 165, page 71 (lines 19 to 21)
Amendment (27) – Schedule 1, item 171, page 72 (lines 9 to 11)

54. These amendments would omit items 159, 165 and 171 of the Bill, which amend subclauses 89(1), 95(1) and 102(1) of Schedule 6 and substitute new items.

55. Currently, the Bill would provide that a common rule, transitional Victorian reference award or a transitional award other than a transitional Victorian reference award are taken to be an award for the purpose of sections 354 and 399 of the pre-transition Act as they relate to pre-transition AWAs and pre-transition collective agreements.

56. The amendments would replace the current references to sections 354 and 399 of the pre-transition Act with references to section 349 and 354 of the pre-transition Act. This is necessary to ensure that there is a provision governing the interaction between pre-transition
workplace agreements and transitional awards applying in Victoria. Transitional arrangements relating to section 399 are dealt with in amendment (22).

Amendment (28) – Schedule 1, page 74 (after line 15)

57. This amendment would insert item 191A to include new paragraphs (aa) – (ah) in clause 20 of Schedule 7 to the Act. These provisions deal with the continuing operation of pre-reform AWAs.

58. This amendment would enable employees on pre-reform AWAs that have passed their nominal expiry date to fully participate in the bargaining process for, and approve, new collective agreements and variations to collective agreements in the same way as employees on AWAs and ITEAs that have passed their nominal expiry dates.

Amendment (29) – Schedule 1, page 76 (after line 21)

59. This amendment would insert new item 210A into the Bill, which would insert subclauses 15G(1A), (1B) and (1C) in Schedule 8 to the Act to provide for fallback arrangements when a preserved State agreement (PSA) is terminated.

60. Currently, when a PSA is terminated employees fall back to ‘protected preserved conditions’ under Regulation 2.2 of Chapter 5 of the Workplace Relations Regulations 2006. It is proposed that this regulation will be repealed consistent with:

- the repeal of section 354 of the Act which relates to protected award conditions; and
- section 399 which prevents an award or earlier workplace agreement from reviving when a workplace agreement is terminated.

61. Proposed new subclause 15G(1A) would have the effect that if a preserved individual State agreement is terminated under clause 21 of Schedule 8 to the Act, the employee would be covered by:

- a preserved collective State agreement binding the employer; or

- if there is no such agreement, any notional agreement preserving State awards (NAPSA) that would have come into operation in relation to the employer and employee on 27 March 2006.

62. Proposed new subclause 15G(1B) would have the effect that if a preserved collective State agreement is terminated under clause 21 of Schedule 8 to the Act, the employee would be covered by a NAPSA that would have come into operation in relation to the employer and employees on 27 March 2006.

63. Under proposed new subclause 15G(1C) the preserved collective State agreement or NAPSA (as the case may be) would apply until an award or workplace agreement comes into operation in relation to the employer and employee.
Amendment (30) – Schedule 1, page 78 (after line 23)
Amendment (31) – Schedule 1, page 79 (after line 28)

64. These amendments would respectively insert items 228A-E to amend clause 26 of Schedule 8 to the Act and items 237A-E to amend clause 52A of Schedule 8 to the Act. These amendments are related to the transitional operation of section 355 of the Act as it relates to the incorporation of terms from PSAs and NAPSAs in pre-transition AWAs and pre-transition collective agreements.

65. Section 355 of the Act currently regulates the extent to which workplace agreements can incorporate by reference terms and conditions of other workplace agreements, awards or other instruments. The Bill would repeal this provision but preserve its operation for pre-transition AWAs and pre-transition collective agreements.

66. The amendments are necessary to ensure that pre-transition workplace agreements can continue to incorporate by reference terms of PSAs and NAPSAs as if the PSA or NAPSA was a workplace agreement under section 355 of the pre-transition Act.

67. These amendments are similar to those introduced by items 186-188 and 192-194 of the Bill in relation to the incorporation of terms by reference from pre-reform certified agreements and pre-reform AWAs.

Amendment (32) – Schedule 2, item 9, page 96 (lines 23 to 30)

68. This amendment would omit section 576K of the Bill and substitute a new section.

69. Outworker arrangements are typically complex and outworkers are not always engaged as a direct employee of the business contracting the work. Often outworkers are engaged under contracting arrangements.

70. The amendment will ensure that modern awards can include provisions relating to both employee outworkers and to contract outworkers and to contract outworkers in the textile, clothing or footwear industry.

71. The provision for contract outworkers in the textile, clothing or footwear industry reflects the fact that, for a long time, awards for this industry have contained protections for contract outworkers as well as employee outworkers.

72. While modern awards will not be able to bind contract outworkers themselves (modern awards will only be able to bind those parties set out in section 576V), they may bind an ‘eligible entity’ that arranges for work to be carried out by outworkers.

73. This amendment is necessary to ensure appropriate safeguards for these vulnerable workers.
74. Subsection 576K(1) would define the term ‘outworker’ as:

- an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer; or
- an individual who is a party to a contract for services and who, for the purposes of the contract, performs work:
  - in the textile, clothing or footwear industry; and
  - at private residential premises or at other premises that are not business or commercial premises of the other party to the contract or (if there are 2 or more other parties to the contract) of any of the other parties to the contract (subsection 576K(1)).

75. This definition is relevant to subsection 576K(2), which would set out what terms may be included in modern awards relating to outworkers.

76. Proposed section 576K should be read in conjunction with proposed section 576V, which sets out who may be bound by a modern award.

77. ‘Eligible entity’ is defined in proposed section 576U to mean any of the following entities, other than in the entity’s capacity as an employer:

- a constitutional corporation;
- the Commonwealth;
- a Commonwealth authority;
- a body corporate incorporated in a Territory;
- 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, in connection with the activity carried on in the Territory.

78. Under proposed subsection 576V(5), the Australian Industrial Relations Commission would be able to bind eligible entities to the outworker terms of a modern award. If so bound, an eligible entity would be obliged to comply with outworker terms in a modern award.

79. Proposed section 576K would enable protective clauses like those found in the Clothing Trades Award to be included in modern awards.

80. Proposed paragraph 576K(2)(a) would enable modern awards to include terms relating to the conditions under which an employer may employ employees who are outworkers (including terms relating to the pay or conditions of the outworkers). For the purposes of this paragraph, the terms employer and employee have the meanings given in subsection 5(1) and 6(1) of the Act.
81. Proposed paragraph 576K(2)(b) would enable modern awards to include terms relating to the conditions under which an eligible entity may arrange for work to be carried out for the entity (either directly or indirectly) by outworkers (including terms relating to the pay or conditions of the outworkers). For the purposes of the definition of outworker in subsection 576K(1) the terms employer and employee will have their ordinary meaning (see amendment (35)). Proposed subsection 576K(2)(b) would enable the Australian Industrial Relations Commission to take account of the need to protect outworkers as part of the award modernisation process regardless of their employment status.

82. A legislative note would make clear that terms that may be included in modern awards under paragraph 576K(2)(a) would be limited to ‘employees’ and ‘employers’ within the meaning of subsections 5(1) and 6(1).

Amendment (33) – Schedule 2, item 9, page 100 (lines 17 to 19)

83. This is a technical amendment. The amendment clarifies the meaning of ‘enterprise award’ by making clear that an enterprise award is one which applies only to a single business.

84. The amendment would omit the definition of ‘enterprise award’ in proposed section 576U and substitute a new definition.

85. The definition of enterprise award is relevant to proposed subsection 576V(3), which provides that a modern award cannot be expressed to bind an employer that is bound by an enterprise award in respect of an employer to whom the enterprise award applies.

Amendment (34) – Schedule 2, item 9, page 100 (line 21)

86. This item would make a minor technical amendment to the definition of ‘outworker term’ in proposed section 576U, and would be consequential to the amendments proposed by amendment (33).

Amendment (35) – Schedule 2, page 104 (after line 22)

87. These amendments are consequential to amendment (32), which would provide that modern awards may include terms relating to outworkers. To ensure that modern awards are able to include terms relating to outworkers regardless of their employment status, it is necessary to provide that, for the purposes of the definition of outworker in proposed section 576K(1), references to employer and employee have their ordinary meaning.

Amendment (36) – Schedule 5, item 6, page 119 (line 18)

88. This amendment would correct a typographical error in item 6 of Schedule 5 to the Bill. Currently that item requires the Australian Industrial Relations Commission (AIRC) to be satisfied that all parties to the ‘termination’ agree to the termination of an old IR agreement.
This amendment would correct this error and require the (AIRC) to be satisfied that all parties to the ‘agreement’ agree to the termination.

**Amendment (37) – Page 119 (after line 19), after Schedule 5**

89. This amendment would add proposed new Schedule 5A to the Bill to enable the AIRC to extend the nominal expiry date of, and vary, preserved collective State agreements in a similar way to the arrangements set out for pre-reform certified agreements under proposed Schedule 5 to the Bill. As for pre-reform certified agreements, this amendment minimises the need for a ‘double transition’ pending the Government’s forthcoming substantive reforms to workplace relations laws.

90. As would be the case for pre-reform certified agreements, before making an order to extend or vary a preserved collective State agreement, the Commission would have to be satisfied that:

- all parties bound by the agreement genuinely agree to the extension or variation, and
- none of the parties have, from the day after the day the Bill was introduced into the House of Representatives, organised or engaged in, or threatened to organise or engage in, industrial action, or applied for a protection ballot in relation to proposed industrial action.

91. In the case of a variation of the terms of a preserved collective State agreement, the Commission would also need to be satisfied that the preserved collective State 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 the relevant State award in relation to the employees and any law of the Commonwealth, or of a State or Territory, that the Commission considers relevant.

92. The ‘relevant State award’ would be defined to mean:

- if, immediately before the reform commencement, the employee was bound by, or a party to, the original collective agreement to which the preserved collective State agreement in question relates – the State award that would have bound the employee at that time but for that agreement; or
- otherwise – the State award that would have bound, or but for the application of a State employment agreement would have bound, the employee at that time if the employee had been employed by the employer at that time.

93. The amendment would also extend the prohibition against coercion in relation to the termination of preserved collective State agreements to variations and extensions of such agreements.