THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

WORKPLACE RELATIONS LEGISLATION AMENDMENT (YOUTH EMPLOYMENT) BILL 1998 (No. 2)

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of the Minister for Employment, Workplace Relations and Small Business, the Honourable Peter Reith MP)
Workplace Relations Legislation Amendment (Youth Employment) Bill 1998 (No. 2)

Outline

These amendments, to be moved on behalf of the Government, amend the Workplace Relations Legislation Amendment (Youth Employment) Bill 1998 (No. 2). This Bill was introduced in the House of Representatives on 24 June 1999.

The proposed amendments are designed to:

- clarify the principal object of the Workplace Relations Act 1996 (the Act) regarding youth employment;
- clarify the objects of Part VI of the Act regarding youth employment;
- expand the criteria in Schedule 5 of the Workplace Relations and Other Legislation Amendment Act 1996 regarding youth employment;
- insert new provisions into the Act reinforcing that the Australian Industrial Relations Commission is to take a case by case approach to determining whether junior rates of pay should be appropriately included in awards, varied or removed from awards; and
- ensure that certain types of trainee wage provisions are exempted from the operation of the anti-discrimination provisions of the Act.

Financial Impact Statement

The proposed amendments will have no significant impact on Commonwealth expenditure.
NOTES ON CLAUSES

Amendments to Schedule 1 of the Bill

Amendment (1)

1. Item 1 of the Bill would amend the principal object of the Act by inserting a new paragraph relating to protecting the competitive position of young people in the labour market, promoting youth employment and assisting in reducing youth unemployment. This amendment to item 1 would broaden the scope of the new provision to also include reference to promoting youth skills and community standards.

Amendments (2) and (3)

2. Items 2 and 3 of the Bill would insert new objects into Part VI of the Act relating to protecting the competitive position of young people in the labour market, promoting youth employment and assisting in reducing youth unemployment. These amendments to items 2 and 3 would broaden the scope of the new provision to also include reference to promoting youth skills and community standards. The amendments would also reinforce that the Australian Industrial Relations Commission, in exercising its functions under Part VI of the Act, should implement this new objective in awards on a case by case basis.

Amendment (4)

3. Item 4 of the Bill would insert a new provision to clarify that junior wage provisions in awards do not constitute discrimination on the basis of age, to ensure that paragraph 88B(3)(e) of the Act does not operate to prohibit award clauses containing junior wage provisions. This amendment would insert a similar provision clarifying that certain types of trainee wage provisions also do not constitute discrimination on the basis of age.

Amendment (5)

4. This amendment would insert a new item 4B into the Bill. This item proposes to insert two new subsections into the Act. Proposed subsection 113(3A) would clarify that an organisation or person who is bound by an award may apply to the Commission to vary an award so that it includes a junior rate of pay, or so that it includes a different junior rate of pay, or so that the award no longer includes a junior rate of pay. Proposed subsection 113(3B) would clarify that where a party to an award makes such an application, the onus of demonstrating that the award should be so varied rests with the applicant.

Amendment (6)

5. Item 5 of the Bill would amend subsection 143(1C) of the Act, which sets out criteria to which the Commission is have regard to when making awards. Item 5 would require the Commission, when making awards that apply to work that is or could be performed by young people, to ensure that they support youth employment by including junior rates of pay where appropriate. This amendment would amend Item 5 to require the Commission, when making an award that applies to work that is or may be performed by young people, to ensure that it protects the competitive position of young people in the labour market, promotes youth employment, youth skills and community standards, and assists in reducing youth unemployment, by including junior rates of pay in awards, where the Commission determines
that this is appropriate. The amendment would also reinforce that the Commission is to take a case by case approach to determine whether junior rates of pay should be appropriately included in an award.

Amendment (7)

6. This amendment would insert a new item 5A into the Bill. This new item would amend subsection 143(1D) of the Act by inserting a new paragraph 143(1D)(aa), clarifying that certain types of trainee rates of pay in awards do not constitute discrimination against an employee for the purposes of paragraph 143(1C)(f) of the Act. This new provision is similar to existing paragraph 143(1D)(a), which exempts junior rates of pay from the operation of the anti-discrimination provisions in paragraph 143(1C)(f).

Amendment (8)

7. This amendment would insert a new item 6A into the Bill. This new item would amend subsection 170LU(6) of the Act by inserting a new paragraph 170LU(6)(aa), clarifying that certain types of trainee rates of pay in agreements do not constitute discrimination against an employee for the purposes of subsection 170LU(5). This new provision is similar to existing paragraph 170LU(6)(a), which exempts junior rates of pay from the operation of the anti-discrimination provisions in subsection 170LU(5).

Amendments to Schedule 2 of the Bill

Amendment (9)

8. Item 1 of Schedule 2 would amend the criteria applied by the Commission when simplifying awards under the provisions of the Workplace Relations and Other Legislation Amendment Act 1996. Item 1 would require the Commission, when simplifying awards that apply to work that is or could be performed by young people, to ensure that they support youth employment by including junior rates of pay where appropriate. This amendment would amend Item 1 to require the Commission, when simplifying an award that applies to work that is or may be performed by young people, to ensure that it protects the competitive position of young people in the labour market, promotes youth employment, youth skills and community standards, and assists in reducing youth unemployment, by including junior rates of pay in awards, where the Commission determines that this is appropriate. The amendment would also reinforce that the Commission is to take a case by case approach to determining whether junior rates of pay are appropriately included in an award.