INDUSTRIAL RELATIONS REFORM
BILL 1993

First Reading

Bill presented by Mr Brereton, and read a first time.

Second Reading

Mr BRERETON (Kingsford-Smith—Minister for Industrial Relations and Minister Assisting the Prime Minister for Public Service Matters) (3.08 p.m.)—I move:

That the bill be now read a second time.

In doing so I wish to begin my speech with a quotation:

This Bill starts with a confession that it is based on a humanitarian interpretation of the principles and obligations which form the very basis of civilised society. It leaves to its opponents the creed whose God is greed, whose devil is need, and whose paradise lies in the cheapest market.

That could easily be a quote from the 1993 election campaign but in fact the words are those of Alfred Deakin, the man whom the Leader of the Opposition (Dr Hewson) described as the founder of modern Liberalism. The words are taken from Deakin's second reading speech for the Conciliation and Arbitration Act of 1904, the act which until 1989 was the very basis of our federal industrial relations system. How ironic then that those noble sentiments of Deakin are much more in tune with the industrial relations policies of the modern Labor Party than they are with the policies of those who claim his tradition—the Liberal-National Party coalition, the coalition which in the 1990s has undertaken, or attempted to undertake, one of the greatest attacks upon employee working conditions this century.

While Labor, through this legislation, may be about to change the methodology of industrial relations, it will remain true to the principles of fairness that have underpinned a century of conciliation and arbitration. Our opponents remain true only to their latter-day ideology, to the ideology of minimum standards, of individual contracts, of $3 an hour youth wages.

At the turn of the century Deakin observed that those opposing his bill believed 'that the proposal is made in the interests of the employees—that it is a one-sided measure which casts a burden upon employers, and yields advantages only to those whom they engage'. Eighty-nine years on those accusations have a familiar ring. Only now those who make
them are Deakin's disciples—those sitting opposite.

No-one living in Victoria or Western Australia would say that their industrial relations policies are made in the 'interests of the employees'. That accusation is directed only at Labor, and it is one we are happy to admit to.

Our policies will promote business flexibility within a framework of employee protection—what could be more in the interests of employees?

The accusations may be the same, but one thing that has changed since 1904, and radically so, is the nature of the Australian economy. What was a protected, insular and agrarian economy is now open, multifaceted and outward looking. And, as this new economy looks outward, it looks to the most dynamic and exciting region in the world—the Asia-Pacific; a region which in Deakin's time was alien and threatening, but which in ours is both challenging and enticing.

In its previous incarnation our economy could live comfortably with a system of centralised arbitration and high tariff barriers. In the modern era—it cannot. The glorious isolation promoted by decades of conservative rule has, for this generation, become the deadweight of lost opportunity. As always it is incumbent upon a Labor government to make the necessary changes—to marry the best aspects of the past with the needs of the future.

This legislation marks the culmination of the government's break with the past—our move as a nation from a centralised to a decentralised industrial relations system, to a system based primarily on bargaining at the workplace, with much less reliance on arbitration at the apex. Over time that process of change has parented a number of accords, a rewriting of the federal act, and two major pieces of amending legislation. Today it spawns a new system, a new system for a new era.

In embarking upon this great change, employees and employers alike can and will benefit. Bargaining by nature should involve potential gain for both parties. It will be willingly embraced where it does. In creating a framework for fair, mutually advantageous bargaining, the legislation is vigilant in protecting those who have little to bargain, in protecting the weaker party. And that weaker party will almost invariably be the employee.

In the bargaining process employees want and deserve the security of knowing they cannot be worse off—worse off in totality. The security of knowing that the conditions they currently enjoy are not to be traded off without something being offered in return. It may not always be a pay rise, it may be extra training, more flexible rosters or just greater job security; it will be something nevertheless. From Victoria, from Western Australia, they have got nothing.

Today, and while ever Labor remains in power, employees can be assured that their conditions will be protected, protected by way of the award system, protected by way of the no disadvantage test in the federal act. Those who cannot have access to such protection in federal awards will at least enjoy fair national minimums based on standards prescribed by the UN's International Labour Organisation.

Some may challenge those standards, but what sort of government would seek to deny its citizens a fair minimum wage, a right to equal pay, protection against unfair dismissal and 12 months unpaid parental leave? The same governments which oppose an $8 safety net rise for the low paid and who rip away basic award entitlements.

It is the award that guarantees unionists and non-unionists alike legal protection for the conditions they currently enjoy. To remove the award is to remove employee bargaining power. And, where the award is replaced by minimum standards, as the opposition proposes, then everything not covered by those standards is no longer the employee's to trade. That is not bargaining. Employers do not have to negotiate with their employees on working conditions; the government removes everything but the basics, and does so at no cost to the employer. Under those circumstances employees do not start the bargaining process with their existing conditions, they start with the bare minimum.

Where that is the case, reform can never be trusted by employees, it can only be feared, and now in Victoria, and elsewhere if the
Victorian example is followed, it can be escaped—escaped because at the federal level we still have a concern for the employee. We still offer the protection of an award and a no disadvantage test. That is the approach of Labor and it is one this government is pleased to present to the people of Australia in this legislation.

After its passage Australians will have a clear choice, the choice to have enterprise bargaining with the protection of an updated, flexible award system, or to embrace it with the protection only of spartan minimum standards, without an accompanying no disadvantage test. If Victoria was to be the benchmark those standards would be a minimum hourly wage, four weeks annual leave, one week non-cumulative sick leave and 12 months unpaid parental leave. All else covered by awards would not be for negotiation; it would have already been expropriated.

In the federal government we, as much as anyone, recognise the need to promote a healthy private sector. We just do not see wages and conditions as a necessary casualty. We have no doubt it will be the private sector that is the engine of job growth and we are pleased to note that profits are at record levels. Through this legislation, for businesses—unionised and non-unionised alike—opportunities for greater profits and productivity will beckon.

Productive, cooperative workplaces are our ultimate objective. Acrimonious, them and us workplaces are what we have known and what we have scorned. The government will not be going down that path. We will take the path that has seen 1,200 cooperative workplace agreements cover 37 per cent of federal award employees. We now seek to make these cooperative agreements more widespread, in both union and non-union workplaces. Under our legislation, working conditions will increasingly be tailored to fit individual workplaces. Most importantly, the new enterprise flexibility agreements will do so without the prerequisite of a union or an interstate dispute.

Selective use in the federal jurisdiction of the corporations power will allow any matter pertaining to the employment relationship to be covered by agreement. The only major condition will be that the pre-existing federal award is not undercut in the process. The parties to that award, unions and employers, will have a right to be heard. But in the end the independent specialist commission will make a determination.

To those who argue this is such a deterrent to seeking genuine change, we say, ‘What is there to hide?’ Secret agreements without a safety net for workers are not our idea of reform, nor will it ever be a part of Labor's approach. Ours is a flexible, public and fair approach. This legislation is its embodiment. It will bear testimony to the differences between the fair Labor way and the non-Labor way of Victoria, of Western Australia and of the honourable member for Bennelong (Mr Howard).

Unlike in these conservative states the reform legislation has been framed following an extensive period of consultations. The views of business, unions, state and territory governments, community organisations and academics have been sought and included in its development. It is now crucial that the new opportunities for flexibility and the vital protections that are a feature of this bill are made available as soon as possible. For honourable members will see the changes being introduced are not only vital; they are truly extensive.

For that reason I am presenting the bill today so that honourable members and interested parties may take the opportunity provided by the two-week parliamentary recess to study its detail. Following on from that, I expect to provide a number of technical and drafting amendments when the bill is debated. Given the artificial constraints imposed on the handling of parliamentary business, I consider this process will deliver the best product.

Even with this extra scrutiny, no legislative package can ever hope to satisfy the competing views of all groups with an interest in industrial relations. What is encouraging is that I have, in my consultations, found a measure of consensus on the need for reform of the kind we are proposing, although there is obvious discord on the detail of how it should be achieved. For its part the govern-
ment believes that the proposals strike the right balance between enhancing flexibility and ensuring an adequate safety net of employee protection.

The importance of a viable safety net to underpin enterprise bargaining was stressed by the Australian Industrial Relations Commission in its decision earlier this week on the review of wage fixing principles. It spoke of 'a rational and equitable wage system based on accommodating both a national framework of minimum award rates and a primary focus on enterprise bargaining'. The government believes its legislation achieves just that. I will now outline the main elements in the bill.

New Objects and Restructuring of the Industrial Relations Act 1988

Under a broad banner emphasising the economic prosperity and welfare of the people of Australia, these new objects will focus on:

- the facilitation of enterprise bargaining;
- the protection of wages and conditions of workers through awards and by ensuring that labour standards meet Australia's international obligations; and
- the provision of a framework of rights and responsibilities consistent with the move towards a more decentralised system.

The act will also be restructured to reflect the revised framework, with distinct parts dealing with the award system, minimum entitlements, and the promotion of bargaining and agreements.

The Safety Net

The bill contains a number of amendments aimed at maintaining and strengthening the award system, with the commission given responsibility to ensure secure, relevant and consistent wages and conditions of employment. The award framework will be maintained so that it provides an effective safety net underpinning direct bargaining, while having proper regard to the interests of the parties and the wider community. In determining safety net increases in wages and conditions, through test cases, for example, public interest considerations will continue to be of particular importance.

While the emphasis is on a consistent framework of minimum award rates, provision is made for paid rates awards to continue and be maintained in areas where employees have customarily had access to them. However, if the integrity of such awards is not maintained, they will be able to be cancelled or varied appropriately. The government expects that many presently on paid rates awards will progressively move to comprehensive certified agreements. The amendments are also directed at making awards more streamlined and modern, with detailed prescription about the organisation of work increasingly being a matter for agreements. The commission will have an important responsibility to keep awards up to date and easy to understand.

The more widespread insertion of enterprise flexibility clauses into awards will be encouraged. This will allow agreements to be reached at individual enterprises or workplaces to vary award provisions in line with their particular needs, subject to the employees concerned not being disadvantaged. The award safety net will be extended by guaranteeing to all workers without adequate protection access to minimum entitlements based on international conventions relating to minimum wages, equal pay for work of equal value, termination of employment, and unpaid parental leave. This aspect of the legislation will implement Australia's obligations under relevant treaties.

In the case of minimum wages, the commission, on application, will be able to establish minimum wages for groups of employees where they do not have access to adequate protection based on compulsory arbitration. These provisions give effect to Australia's obligations under the ILO convention on minimum wages.

For equal pay, the commission will be able to make orders to ensure that equal remuneration, including over-award payments, is established without discrimination directly or indirectly based on sex. This does not prevent differential rates of pay based on genuine job related grounds. The commission would, where appropriate, defer to other jurisdictions which it felt offered an adequate alternative remedy. Such provisions give effect to Aus-
ustraliа's obligations under the ILO convention on equal remuneration.

The termination provisions will apply where employees have no protection that adequately meets our international obligations, such as the protection already widely available through the 1984 termination, change and redundancy test case. The new court will be able to order reinstatement or other appropriate relief, including compensation, for employees dismissed in breach of employers' legal obligations set by our treaty obligations. Conciliation proceedings before the commission will be available prior to court determination. The commission will also be able to make orders regarding severance allowance.

In cases of termination for economic, technological or structural reasons, where the employer decides to make redundant 15 or more employees, the commission will be able to make orders regarding consultation with workers' representatives. There will also be a statutory obligation to notify the Commonwealth Employment Service. These provisions give effect to Australia's obligations under the ILO convention on termination of employment. The new court will be able to order reinstatement or other appropriate relief, including compensation, for employees dismissed in breach of employers' legal obligations set by our treaty obligations. Conciliation proceedings before the commission will be available prior to court determination. The commission will also be able to make orders regarding severance allowance.

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Parties will be able to include a provision in their certified agreement that, in some circumstances, enables them to vary it in a manner set out in the agreement. This will encourage longer term agreements. On their expiry, certified agreements continue to apply indefinitely as awards, unless replaced by another award or agreement. The legislation provides new procedures for the variation of agreements after expiry, in order to increase certainty and to provide an incentive for the parties to negotiate further workplace agreements.

To provide access to the non-union sector, enterprise flexibility agreements will operate for employers and employees at an enterprise who are subject to federal award coverage. The agreement will be able to cover any matters pertaining to the employment relationship. It will not be restricted to matters under the award or awards concerned. Such agreements should be for a specified term, and be closed and non-variable during their term un-

Direct Bargaining

The package of reforms will accelerate the spread of enterprise agreements and make formal workplace bargaining more widely accessible. A separate part of the Industrial Relations Act will deal with the bargaining stream. The making of agreements, particularly in relation to single businesses, will be encouraged. A new division of the Australian Industrial Relations Commission is to be established to deal with the promotion of bargaining and agreement making.

Two forms of agreements are provided for—certified agreements and enterprise flexibility agreements. Both types of agreements must not disadvantage employees in relation to their terms and conditions of employment considered as a whole. To gain access to these agreements, employees' terms and conditions of employment must be covered by an award, providing the benchmark for the no disadvantage test.

The no disadvantage test has been an important innovation. Applying as it does to the overall package of employee entitlements, it allows for a wide range of variations to award conditions. It also allows for agreed reductions if these are judged not to be against the public interest, for example, as part of a strategy for dealing with a short-term business crisis and revival. However, as the government has consistently stressed, the provision is intended to protect well established and accepted standards which apply across the community, standards such as maternity leave, hours of work, parental leave, minimum rates of pay, termination change and redundancy provisions and superannuation.

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less the parties specify otherwise in the agreement. As is the case for certified agreements, their provisions would not be able to flow automatically into the award stream.

The operation of enterprise flexibility agreements will be supported by the use of the corporations power. This removes the requirement for an interstate dispute and makes the arrangements more accessible. However, we are not seeking to intrude on areas of state jurisdiction by this mechanism. Enterprises will have access to such agreements where they are already covered by one or more federal awards to ensure that there is an appropriate benchmark for the no disadvantage test and to avoid intrusion into the state jurisdictions. Only employees under those awards will be able to be a party to such an agreement.

There will be a strong protection for employees, including the same no disadvantage test included in certified agreements provisions; the right to union representation for union members; a requirement for consent by a majority of employees; the protection of unionists from discrimination in an agreement's negotiation; and the rights of relevant unions to be given the opportunity to be a party to an agreement and to be heard on whether an agreement should be ratified. Unions will not be able to veto an enterprise flexibility agreement.

The legislation recognises that non-unionised employees require further protection. Accordingly, the commission may refuse on public interest grounds to approve an enterprise flexibility agreement because of exceptional circumstances. Agreements are not to be taken to be contrary to the public interest merely because they are inconsistent with the general principles established by the commission in relation to awards.

To promote efficient bargaining, the commission will be given the power to make orders that a party take actions consistent with its bargaining in good faith. There is guidance in the legislation as to what constitutes good faith. This includes attendance at agreed meetings; disclosure of relevant information; compliance with agreed bargaining commitments; not withdrawing or adding bargaining term capriciously; and not refusing to bargain with an organisation entitled to negotiate on behalf of employees. The promotion of good faith bargaining is a development of the commission's conciliation responsibilities, and it is intended to be applied in a manner which is non-legalistic and facilitates the speedy resolution of disputes.

**Industrial Action**

The development of a more coherent framework for bargaining emphasises the need for a fairer and more effective regime to regulate industrial action and sanctions. A right to take action in the negotiation of agreements, and a distinction between the negotiation phase and the period when the agreement is in force is the norm in most OECD countries.

Industrial action—including strikes and lockouts—which takes place during a bargaining period for a proposed single business certified agreement will be immune from sanctions. Action involving personal injury, wilful or reckless damage or the unlawful taking of property, or defamation, will, however, not be immune from sanctions. This aspect of the legislation will give effect to Australia's international obligations in respect of the rights of workers to engage in industrial action, subject to reasonable restrictions.

For access to the bargaining period, a party must give notice to the other party of an intention to seek an agreement and must comply with directions from the commission regarding bargaining in good faith. The commission will be able to terminate a bargaining period on application if it considers a party is not genuinely trying to reach an agreement or is not complying with directions related to bargaining in good faith. The commission may terminate the bargaining period if the industrial action is threatening to endanger the safety, health or welfare of the public or cause significant damage to the Australian economy.

Recognising the importance of parties abiding by the terms of their agreements, maximum penalties for breaches in this area will be significantly increased—fivefold, in fact—to $5,000, and $2,500 for each subsequent day on which a breach occurs. The
parties will be able to vary the daily penalty by agreement.

Sanctions

Sections 45D and 45E of the Trade Practices Act 1974 will be transferred in their industrial relations application to the Industrial Relations Act. This new equivalent to section 450 will apply to secondary, not primary, boycotts. The defences currently available under section 45D will be clarified and made more effective. Remedies of injunctions and damages arising from prohibited industrial secondary boycotts will remain. The pecuniary penalty of $250,000 now applying under the Trade Practices Act will, however, not apply to industrial boycotts covered by the Industrial Relations Act. This penalty has never been applied since its inclusion in 1977.

The prohibition on anti-competitive boycotts currently in the Trade Practices Act will remain in that act, but will be reframed so that it does not apply to boycotts which do not have the purpose and the effect of lessening competition. This prohibition, the form of which was developed after consultation with the minor parties in the Senate, will not apply to genuine environmental or other protest action which does not have the purpose and effect of lessening competition. The concerns of environmental and civil liberties groups about the application of section 450 to genuine environmental and other protests have been met.

There will be a requirement for pre-litigation conciliation by the commission where, in relation to an industrial dispute, there is a contravention of the secondary boycott prohibition by a federally registered union or its members. This will be for a maximum period of 72 hours. It will be available only once in respect of a particular boycott; it will be calculated from the time the boycott is notified to the Australian Industrial Relations Commission and will be cumulative for repeated boycotts. Any award of damages arising from the application of the legislation will be calculated from the time the harm commences.

These provisions are intended to meet a number of objectives. It is necessary to provide an effective remedy to deal with secondary boycotts. It is also efficient and desirable to have industrial problems addressed in the first instance by industrial tribunals. Furthermore, the ILO's Committee of Experts has expressed concern that section 45D in its current form has been too wide in its application to primary boycotts and sympathy action. The Government has also sought through its legislation to address the views of the majority report of the Senate Standing Committee on Employment, Education and Training about the scope and operation of sections 45D and 45E.

The Australian Democrats have raised issues relating to the coal industry in this area. After I have finished consulting with those concerned, I will be giving careful consideration to the appropriate institutional framework for this industry and the question of integrating the Coal Industry Tribunal with the commission. I can also assure the Democrats that the coal industry is not intended to be treated any differently from other sectors in relation to secondary boycotts.

New Industrial Relations Court

The bill provides for a new specialist federal court, the Industrial Relations Court of Australia. As a result the industrial relations jurisdiction of the Federal Court of Australia will be absorbed into the new court. This will include:

- the enforcement and interpretation of awards and orders of the commission
- certain matters concerning registered organisations and their members; and
- actions brought for the contravention of the prohibition on industrial secondary boycotts.

In addition the court will enforce employees' entitlements under the new minimum entitlements provisions that are based on international conventions.

Institutional Arrangements

In addition to the establishment of a new court, the bill makes some other changes to existing institutional arrangements. The commission will be required to encourage the establishment and use of industry consultative councils, which are already provided for in
the existing Industrial Relations Act, but seldom used. These councils will provide a forum for parties in an industry to develop measures to improve efficiency and address barriers to workplace reform.

In line with the findings of the International Labour Organisation in relation to our current recurrent costs of the new court. I commend the government’s proposals to the House and I present the explanatory memorandum to this bill.

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Conclusion

In essence, this bill will create a receptive framework for enterprise bargaining and build on the reforms of the last decade. By tailoring those reforms to the needs of 21st century Australian workplaces, it will give our firms the ability to compete with the best companies in the world, many of which are located in the Asia-Pacific region, the region we have only recently begun to call our own.

The legislation treats as sacred the principle that flexibility should not compromise employee entitlements. The challenges and ever increasing demands of modern economies leave us all a little insecure. If we deny employees protection that insecurity can easily translate into fear, and into poor performance. That is not the sort of workplace we want to create.

In a decentralised system the role of the government is necessarily small, necessarily facilitative. With the enactment of this bill the onus will be on the industrial relations players—it is their opportunity.

Financial Impact

In finishing, I should make clear that the proposals in the bill could result in an increased workload for the Australian Industrial Relations Commission. Running cost supplementation may therefore be sought if required. The resource implications of establishing the Industrial Relations Court of Australia have not yet been fully assessed. It is proposed that the Industrial Relations Court share registry and other facilities of the Federal Court wherever possible. Such an arrangement would help to minimise the establishment and recurrent costs of the new court.
Consideration resumed from 22 November.

Second Reading

Mr BRERETON (Kingsford-Smith—Minister for Industrial Relations and Minister Assisting the Prime Minister for Public Service Matters) (4.02 p.m.)—I move:

That the bill be now read a second time.

The Industrial Relations and Other Legislation Amendment Bill 1993 is a portfolio bill which amends eight acts. The Defence Act 1903 is to be amended to change the title of the ‘Chairman’ of the Defence Force Remuneration Tribunal, adopting the gender neutral title ‘President’. The proposed amendments of the Industrial Relations Act 1988 will enable the Australian Industrial Registry to act as registry for state industrial bodies, including state industrial relations tribunals, industrial courts and workers compensation tribunals. This measure complements steps which have already been taken in South Australia to collocate the state and federal industrial registries. The proposed amendments will enable integration of the state and federal industrial registries to take place in any state where the federal minister and the appropriate state authority agree. In other words, the Commonwealth will not be able to impose integration on any state that does not want it. Negotiations are already under way with the South Australian government that may see the Australian Industrial Registry assuming state registry functions in South Australia.

Minor amendments are made to the Maternity Leave (Commonwealth Employees) Act 1973 which contribute to the government’s policy of ensuring adequate occupational health and safety protection for the Commonwealth’s own employees. In particular the amendments:

clarify the application of the act to employees who do not work in offices or factories;

strengthen the reporting requirements in relation to accidents and dangerous occurrences; and

broaden the regulation making powers under the act to allow the Commonwealth to meet its commitment to achieve a national, uniform system of occupational health and safety.

Amendments are proposed to the Remuneration Tribunal Act 1973 and the Sex Discrimination Act 1984 to provide procedures for the removal of discriminatory provisions from determinations of the Remuneration Tribunal. The amendments will enable the Sex Discrimination Commissioner to refer discriminatory provisions to the Remuneration Tribunal. The tribunal will be required to conduct a hearing into the matter and, if it is satisfied that a provision is discriminatory, to take action to remove the discrimination. The process will be initiated by complaints to the Human Rights and Equal Opportunity Commission. The Sex Discrimination Commissioner will have a discretion not to act upon complaints which, in the opinion of the

The proposed amendments of the Maternity Leave (Commonwealth Employees) Act 1973 will give the Presiding Officers of the Senate and the House of Representatives the same powers under that act as are currently held by the Public Service Commissioner. This means that the Presiding Officers will have the power, in specified circumstances, to declare the position held by a female officer who is on maternity leave to be vacant, with the consequence that the officer concerned becomes an unattached officer. The amendments also give the heads of the five parliamentary departments certain powers and functions in relation to the administration of maternity leave in their departments. To date these powers have been exercised under delegation. The amendments are consistent with the intention that the administrative arrangements governing the parliamentary departments be independent of the wider Australian Public Service.

Amendments are proposed to the Occupational Health and Safety (Commonwealth Employment) Act 1991 which contribute to the government’s policy of ensuring adequate occupational health and safety protection for the Commonwealth’s own employees. The proposed amendments:

clarify the application of the act to employees who do not work in offices or factories;

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commissioner, are frivolous, vexatious, misconceived or lacking in substance.

In addition, the Remuneration Tribunal Act is to be amended to require the tribunal, when determining the remuneration of executives of government business enterprises, to take into account the superannuation entitlements of those executives. The Remuneration Tribunal Act is also to be amended to change the title of the ‘Chairman’ of the Remuneration Tribunal, adopting the gender neutral title ‘President’.

The proposed amendments of the Safety, Rehabilitation and Compensation Act 1988 will assist Comcare and licensed authorities to recover certain overpayments which may occur when an employee who is receiving workers compensation benefits retires and becomes entitled to superannuation benefits. The proposed amendment introduces a scheme that will enable the overpayment to be recovered from the superannuation fund concerned, rather than from the individual.

The opposition proposed amendments in the Senate which, taken as a whole, would have had the effect of preventing the government’s proposed recovery mechanism from operating. The opposition was concerned that the amendments gave Comcare and licensed authorities—presently, Australia Post and Telecom—unprecedented access to a retired employee’s superannuation funds. Let me emphasise that the recovery mechanism only operates if the retiree actually receives, or rolls over, a superannuation benefit. Where the benefit is preserved, the amendments will not operate.

The scheme does not provide untrammelled access to the superannuation savings of former Commonwealth employees. Numerous safeguards have been included in the legislation to protect the rights and the income of the individual retiree:

- if superannuation payments have commenced, the proposed recovery mechanism will not operate. This protects the retiree’s income stream;
- Comcare is required to advise retirees that it has issued a notice that may require the superannuation administrator to delay commencement of superannuation payments until any overpayment of compensation has been calculated and that any such overpayment will be recoverable from superannuation payments as they fall due;
- Comcare will be required to continue to pay full compensation until it receives confirmation from the superannuation administrator what the employee’s superannuation entitlement is (It is anticipated that in most cases the initial superannuation payment will cover the overpayment of compensation); and
- Comcare’s determination of the amount of the overpayment will be reviewable by the Administrative Appeals Tribunal on application by a retired employee.

Honourable members should also note that the proposed scheme is comparable to the scheme for recovery of overpayments of certain social security benefits established by the Social Security Act 1991. Under that act, where the Commonwealth has paid such benefits and the recipient then becomes entitled to compensation from another source, the Commonwealth is able to recover the amount of the overpayment direct from the compensation payer. In addition, the Senate Standing Committee for the Scrutiny of Bills did not make any adverse comment on the operation of this part of the bill and the Attorney-General’s Department has advised that there are no adverse privacy implications arising from the scheme and that the proposed administrative review mechanisms are appropriate.

The opposition was also concerned that the commencement of superannuation payments could be delayed at the whim of Comcare or a licensed authority. This is not correct. Under the proposed legislation, within two days of becoming aware of an employee’s exact superannuation entitlement, Comcare or the licensed authority must issue a notice to the superannuation administrator that will enable superannuation to commence being paid. Only at this time will the compensation be reduced in accordance with the Safety Rehabilitation and Compensation Act 1988.

Against this background, the government is not prepared to accept the opposition’s
amendments because they would undermine the proposed recovery mechanism in part 7 of the bill. However, the government will be reviewing the operation of the new scheme and will take action as necessary to ensure it is working effectively and in a manner which safeguards the rights of individuals.

The proposed amendments of the Tradesmen’s Rights Regulation Act 1946 will enable regulations to be made prescribing fees to be charged, on a cost-recovery basis, for certain functions which the Department of Industrial Relations performs in support of the local and central trades committees established by the act. Since 1989 the department has been charging fees, on a partial cost-recovery basis, to applicants for trade skills assessment under the act. The fees were imposed administratively and the department was recently advised that there is no statutory authority for them. The collection of fees ceased pending the coming into effect of the necessary legislation.

Financial impact

The bill will have no significant impact on Commonwealth expenditure. However, as mentioned in the explanatory memorandum, it is expected that the amendments of the Tradesmen’s Rights Regulation Act will result in the payment to the Department of Industrial Relations of fees totalling approximately $180,000 per annum. I commend the bill to the House and present the explanatory memorandum.