Australian Industrial Relations Commission

Victorian Common Rule Applications

Commonwealth Submission

July 2004
Overview

1. This submission sets out what the Commonwealth regards as an appropriate approach to the consideration of applications for federal awards to be declared common rules in Victoria.

2. The Commonwealth submits that the Australian Industrial Relations Commission (the Commission) should declare federal awards to be common rules in a way that will minimise cost and confusion, and maximise flexibility and choice, for Victorian employees and employers.

3. The Commission should fully consider the statutory role of awards as a safety net of fair minimum wages and conditions of employment and, conforming with the objects contained in section 3 of the *Workplace Relations Act 1996* (WR Act), encourage agreement-making between employers and employees at the workplace or enterprise level.

4. Small businesses are disproportionately represented among the businesses that are likely to become subject to common rules. The Commonwealth, therefore, submits that the Commission should take full account of the economic impact on small businesses.

5. In this regard, no retrospective liabilities should be imposed upon small business as a direct result of declaring awards to be common rules. The Commission has power to ensure that there is no retrospectivity by virtue of subsection 141(1) of the WR Act which provides that it may declare any term of an award to be a common rule ‘subject to such conditions, exceptions and limitations as are specified in the declaration’.
6. In addition, savings provisions in awards that seek to protect entitlements at a higher level than the award minima should not be declared to be common rule.

7. The Commonwealth submits that it would be appropriate for the Commission to exempt people with disabilities who are employed by business services that receive funding under the *Disability Services Act 1986* from the application of any terms of awards that are declared common rules.

8. In considering declaring federal awards to be common rules in Victoria, priority should be given to minimising overlap between awards and ensuring that only simplified awards are declared to be common rules. In addition, the Commonwealth submits that, so far as possible, terms and conditions of employment that are fixed by statute should not be duplicated in awards nor, therefore, declared to be common rules.

9. In relation to superannuation, the Commonwealth submits that the Superannuation Guarantee provides an appropriate minimum standard for general application. The Commonwealth supports the agreement reached by the parties during conciliation in this Case to preserve existing superannuation fund arrangements for employers in Victoria who are not yet regulated by federal awards.

10. The Commonwealth considers that if any superannuation fund provisions in awards are to be declared common rules, they should provide employees with the capacity to choose their own superannuation fund arrangements.
Background

11. The *Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003* implemented Victoria’s referral to the Commonwealth of the power to declare federal awards to be common rules in Victoria so that they apply to all employers in an industry, not only to employers that are respondents to the award.

12. The power of the Commission to declare federal awards to be common rules in a Territory is set out in subsection 141(1) of the *Workplace Relations Act 1996* (the WR Act):

   (1) Where the Commission is dealing or has dealt with an industrial dispute, the Commission may, if it appears to be necessary or expedient for the purpose of:

   (a) preventing or settling the industrial dispute; or

   (b) preventing further industrial disputes;

   declare that any term of an award shall, subject to such conditions, exceptions and limitations as are specified in the declaration, be a common rule in a Territory for an industry in relation to which the industrial dispute arose.

13. Section 493A of the WR Act, inserted by the *Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003*, extends this power to the declaration of awards to be common rules in Victoria:

   (1) The object of this section is to provide access for all employees in Victoria to the award safety net of fair and enforceable minimum
wages and conditions of employment established and maintained by the Commission in accordance with Part VI.

(2) Without affecting its operation apart from this section, this Act also has effect, subject to this section, as if a reference in section 141 or 142 to a Territory were a reference to Victoria.

(3) To avoid doubt, regulations prescribing requirements for any of the following:

(a) publication of a notice in accordance with paragraph 141(4)(a);

(b) giving notice of a place and time in accordance with subsection 142(3);

(c) publication of a notice in accordance with subsection 142(4);

may specify particular requirements for the publication, or the giving of notice, in accordance with paragraph 141(4)(a) or subsection 142(3) or (4) (as those provisions have effect because of subsection (2) of this section).

(4) Despite subsection 152(1), this section is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this section. In particular, a common rule as it has effect because of this section is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with the common rule.

14. Subsection 141(5) of the WR Act sets out a number of matters that the Commission must take into account in deciding whether to declare a term of an award to be a common rule. So far as relevant here, it provides:
(5) In deciding whether to declare a term of an award to be a common rule under subsection (1) or (2), the Commission must take into account the following:

(a) the importance of avoiding overlap of awards and minimising the number of awards applying in relation to particular employers;

(b) for a declaration under subsection (1)—whether there are other awards applying to work performed in the industry in relation to which the industrial dispute arose, and if so, the extent to which the first-mentioned award is the most relevant and appropriate award for the work performed in that industry; …

15. As common rule awards are declared, it is likely that there will be a substantial decline in the number of Victorian employees whose minimum wages are set by orders made under section 501 of the WR Act and whose minimum terms and conditions of employment are set by Schedule 1A to the WR Act.

16. A number of trade unions, represented by the Victorian Trades Hall Council (VTHC), have lodged applications with the Commission for the following federal awards to be declared common rule in Victoria:

- **Clerical and Administrative Employees (Victoria) Award 1999** [C2004/1831];

- **Clothing Trades Award 1999** [C2004/1832];

- **Transport Workers Award 1998** [C2004/1833];

- **Poultry Industry Award 1999** [C2004/1834];

- **Storage Services - General - Award 1999** [C2004/1835];
• *Horticultural Industry (AWU) Award 2000* [C2004/1836];

• *Pastoral Industry Award 1998* [C2004/1837];

• *Poultry Farm Employees (A.C.T.) Award 1999* [C2004/1838];

• *Security Employees (Victoria) Award 1998* [C2004/1840];

• *Catering - Victoria - Award 1998* [C2004/1841];

• *Building Services (Victoria) Award 2003* [C2004/1842]; and

• *Clerks (Road Transport Industry) Award 2000* [C2004/2827].

17. This submission, filed in accordance with Commission Directions of 18 May 2004 (Print PR946849), describes a number of broad principles that the Commonwealth regards as appropriate to the consideration of applications for federal awards to be declared common rules in Victoria. This is consistent with the public interest nature of the Commonwealth’s intervention under subsection 44(1) of the WR Act.

18. The Commonwealth reserves its right to make submissions in future on particular awards in relation to which applications are made. It will be in the context of particular awards that issues will arise, not only in relation to the application of subsection 141(5) of the WR Act, but also in relation to whether it is appropriate to make a particular common rule declaration subject to a condition, exception or limitation.
Cost impact of common rule declarations

**Award safety net**

19. In considering common rule applications, the Commission should take into account the WR Act’s intention that awards should act as a minimum safety net rather than a comprehensive prescription of pay, terms and conditions – the latter being more appropriately dealt with by agreement making at the enterprise level.

20. Section 3 of the Act provides:

   The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by: …
   (d) providing the means: (i) for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards; and (ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; …

21. More specifically, subsection 493A(1) of the Act provides that the object of section 493A, which empowers the Commission to declare an award to be a common rule in Victoria, is ‘to provide access for all employees in Victoria to the award safety net of fair and enforceable minimum wages and conditions of employment established and maintained by the Commission in accordance with Part VI.’

22. Section 88B of the Act provides that the Commission must perform its functions under Part VI, which include the declaration of common rule
awards, in a way that furthers the objects of the Act and of Part VI. The latter objects, set out in section 88A of the Act, include:

- to ensure that: … (b) awards act as a safety net of fair minimum wages and conditions of employment; (c) awards are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises; …

23. In ensuring that a safety net of fair minimum wages and conditions of employment is established and maintained, the Commission must have regard to the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community, economic factors including levels of inflation and productivity, and the desirability of attaining high levels of employment.

**Employment impact**

*Legislative context*

24. The principal object of the WR Act, set out in s.3, makes it plain that the pursuit of high levels of employment is an important means of achieving that object:

The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

- (a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and …

25. As noted above, section 88B of the Act provides that the Commission must perform its functions under Part VI, which include the declaration
of common rule awards, in a way that furthers the objects of the Act and of Part VI. The latter objects, set out in section 88A of the Act, include:

- to ensure that: … (c) awards are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises; …

**Small business**

26. Small businesses are disproportionately represented among Schedule 1A employers. In considering common rule applications, it is important to take into account the particular circumstances and constraints faced by the small business sector.

27. Data on industrial coverage in Victorian workplaces are somewhat limited. The Australian Bureau of Statistics does not regularly collect such information. The most recent available data comes from a report prepared by ACIRRT for the Victorian Industrial Relations Taskforce in 2000.\(^1\) Despite some methodological problems, the report, which focused on comparing pay rates in Schedule 1A and federal award workplaces, is the best recent source for Victorian industrial coverage data. Its results are sufficiently reliable to give a broad picture of Schedule 1A employees in Victoria and the probable consequences of making those employees subject to common rule awards.

28. Many of the employees currently employed under Schedule 1A of the WR Act are employed in small businesses. The ACIRRT survey concluded that 118,850 Victorian workplaces (or 45.1 per cent of

---

Victorian workplaces) had all their employees covered by federal awards or agreements; 142,080 (53.9 per cent) had all their employees covered by Schedule 1A; and 2,775 (1.1 per cent) had some employees covered by federal awards or agreements and some covered by Schedule 1A.

29. According to ACIRRT, 115,685 Schedule 1A workplaces (or 81.4 per cent of Schedule 1A workplaces) had fewer than five employees, compared with 84,784 federal award or agreement workplaces (71.3 per cent). Small businesses, then, are more heavily concentrated in the Schedule 1A sector of the Victorian labour market.

30. Over time, then, as awards are declared to be common rules, it is reasonable to expect that more than 100,000 small businesses with fewer than five employees will be obliged to comply with new and more generous minimum standards set out in those awards. These include standards relating to penalty rates, leave entitlements, a wide range of allowances and superannuation contributions.

31. Affected businesses will incur considerable costs: the cost of the benefits that flow from the new minimum standards and the administrative costs associated with introducing those benefits.

32. It is more difficult for small businesses to adjust their processes to changing regulatory requirements than it is for larger businesses. Small businesses do not, as a rule, have human resources professionals to manage such issues. Frequently, all management functions fall to the proprietor to perform.

33. Moreover, the requirements of most federal awards are much more complex and detailed than those of Schedule 1A. In considering common rule applications, it would be appropriate for the Commission to take into
account the impact that a declaration would have on costs to small businesses and the consequent effects on employment in the small business sector. This could mean giving consideration to phasing in new obligations for small business.

**Retrospectivity**

34. The Commonwealth submits that service before the commencement of a common rule declaration should not count towards benefits conferred by the award that are based on length of service. This is relevant for entitlements such as redundancy pay and holiday leave loading.

35. If service before the commencement of a common rule declaration were counted toward such benefits, an employer would be exposed to substantial liabilities as a result of hiring decisions made under a different set of legal requirements and in circumstances where it had no way of knowing that such liabilities would arise, or of making financial provision for them.

36. A prospective approach to the accrual of benefits under common rule awards would be consistent with subsection 141(10) of the WR Act, which provides that, unless the Commission is satisfied that there are exceptional circumstances, a declaration of a common rule cannot come into force before the day on which the declaration is made. This creates a presumption against retrospectivity in declaring awards to be common rules. It is also consistent with the terms of subsection 146(2) of the WR Act which provides that the operation of an award is not to be retrospective unless there are exceptional circumstances.

37. In the VTHC’s submission in this Case of 30 June 2004, it is argued that service before the commencement of a common rule award should count
towards the calculation of service-based benefits. In doing so, the VTHC refers to three authorities relating to annual leave loading – decisions of the Commission set out in Prints K6813, K8971 and L8637.

38. The first two decisions do not deal explicitly with the question of whether service before the operative date of the variation sought should count towards the calculation of annual leave loading. In the third decision, the Full Bench accepted submissions from the State of Victoria that backdating the effect of the leave loading clause to before the commencement of the award was unwarranted.

39. It is also important to note that, in its recent Supplementary Decision in the Redundancy Test Case on 8 June 2004 (Print PR062004), the Commission decided that the severance pay scale to apply to small business should not take into account service rendered prior to the operative date of any order giving effect to the new scale.

40. In taking this approach, the Full Bench accepted that small business employers may not have the financial reserves necessary to meet a redundancy situation immediately, even though currently trading profitably. In the Commonwealth’s view, the same applies to the very many small businesses that would become subject to common rule awards if these applications were granted.

41. The Commonwealth submits that it would be appropriate for the Commission, in considering applications to declare awards to be common rules, to adopt as a principle that service before the commencement of a common rule award should not count towards benefits conferred by the award that are based on length of service.
Savings provisions

42. The Commonwealth submits that after a relevant common rule declaration, Victorian employees whose employment conditions are currently governed by Schedule 1A will, in most cases become entitled to a range of new minimum conditions. Employers currently subject to Schedule 1A requirements are likely to become liable for many new entitlements.

43. If awards are to perform their statutory function as a safety net, rather than a complete prescription of pay, terms and conditions, they need to set out only applicable minima. Any pay, terms and conditions above the award minima should be negotiated at enterprise or workplace level. In particular, employees and employers should be free, so far as is consistent with the WR Act, to negotiate offsets between the new, higher minima and existing pay, terms and conditions in excess of the Schedule 1A minima.

People with disabilities employed in business services

44. The Commonwealth submits that it would be appropriate for the Commission to exempt employees with disabilities who are employed by business services that receive funding under the Disability Services Act 1986 from the application of any terms of awards that are declared common rules.

45. Traditionally, business services have operated outside the formal workplace relations system and the terms and conditions of employment of their employees with disabilities have not been regulated by awards or agreements, although a small number of business services are respondent
to the federal *Australian Liquor, Hospitality and Miscellaneous Workers Union Supported Employment (Business Services) Award 2001*.

46. In some States, business services are specifically exempted from the operation of awards by workplace relations legislation, for example, subsection 80(1) of the *Industrial Relations Act 1984* (Tas) and section 113 of the *Industrial and Employee Relations Act 1994* (SA).

47. Workplace relations issues associated with the regulation of employment in business services are being considered by the Disability Sector National Industry Consultative Council established in 2003 under section 133 of the WR Act and convened by Vice President Lawler. Key issues under discussion include the question of appropriate workplace relations coverage for the industry and appropriate wage assessment tools that will enable business services to determine each employee’s productive capacity.

48. At this stage it would not be appropriate for business services in Victoria to become subject to awards that are declared to be common rules. If they did, they would be required to pay award wages to their employees irrespective of the productive capacity of those employees.

49. This problem would not be overcome by the inclusion of the Supported Wage System (SWS) in awards declared to be common rules. The SWS does determine pro rata award wages to reflect the productivity of employees with disabilities. However, it was designed to improve employment opportunities for employees with disabilities in open employment, not in business services. This was clearly understood by all parties to the 1994 SWS test case. In Commission proceedings Mr M.J. Ferguson for the ACTU stated:
Sheltered workshop employment will remain a separate and distinct area of activity. The model clause will not apply with respect to people who are engaged in such an environment and, secondly, the comprehensive package outlined by Mr Core today on behalf of the Commonwealth government aimed at facilitating employment of people with a disability in open employment, does not relate to people employed in a sheltered workshop.²

50. This understanding is reflected in the SWS model clause which contains the following exemption under “eligibility criteria”, intended to ensure that the SWS does not apply to business services:

The clause also does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Service Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under s.10 or s.12A of that Act, or if a part only has received recognition, that part.

² Print L5723, transcript of proceedings 20 July 1994, page 24, pn 16 to 21.
Minimising administrative complexity

Avoiding overlap

51. Subsection 141(5) of the WR Act provides:

(5) In deciding whether to declare a term of an award to be a common rule under subsection (1) or (2), the Commission must take into account the following:

(a) the importance of avoiding overlap of awards and minimising the number of awards applying in relation to particular employers;

(b) for a declaration under subsection (1)—whether there are other awards applying to work performed in the industry in relation to which the industrial dispute arose, and if so, the extent to which the first-mentioned award is the most relevant and appropriate award for the work performed in that industry; …

52. For practical reasons the number of Victorian businesses whose employees are subject to different common rule awards should be minimised. An important means of achieving this is to minimise the number of awards that are declared to be common rules.

53. In its submission to the Commission filed on 30 June 2004, the VTHC noted that before the abolition of Victorian common rule awards by the Employee Relations Act 1992 (Vic), there were more than 220 such awards operative in the State. It also notes that more than 200 awards of the Queensland Industrial Relations Commission are common rules. It concludes from these numbers, without further argument, that ‘substantial numbers of awards are required to ensure that the award safety net is extended to all employees.’
54. The Commonwealth disputes this claim. As things now stand, minimum wage orders made under section 501 of the WR Act set out minimum wages for all Schedule 1A employees by reference to only 18 industry sectors. It seems quite implausible that eleven times as many common rule awards would be necessary to replace section 501 orders with an award-based safety net. It is more likely that the large numbers of common rule awards that applied in Victoria in the past are to be explained in terms of historical accident, superseded institutional arrangements and vested interests than by any objective need for so many common rule awards.

55. At paragraph 66 of its 30 June 2004 submission, the VTHC states, ‘the historical coverage of such (that is overlapping) awards will be a relevant factor in the determination of the industry under which common rule is declared.’ It gives no argument to support this claim. Historical accident, defunct institutional arrangements and vested interests may be a good explanation for why Victoria had 220 common rule awards before 1992 but they are no argument for resurrecting that state of affairs 12 years later.

56. At paragraph 72 of its 30 June 2004 submission, the VTHC makes the claim that the Commission can effectively ignore overlap between awards because formal processes exist for dealing with the problems thus caused. The existence of such processes, however, will not be sufficient to eliminate the costs and confusion that overlap between awards involves, and the negative consequences for employment that follow:

- dispute resolution processes may involve considerable direct administrative costs; and
• uncertainty regarding award coverage may discourage or delay the making of commercial decisions by employers, including decisions to take on more employees.

57. The Commonwealth submits that it is crucial, in this common rule process, to minimise the number of awards that will apply to individual Victorian businesses.

**Statutory minima**

58. The Commonwealth submits that, so far as possible, terms and conditions of employment that are fixed by statute should not be duplicated in awards nor, therefore, be declared to be common rules.

59. In the Award Simplification Decision (1997) 75 IR 272 the Full Bench of the Commission, in reviewing various award provisions, indicated that it was prepared to delete award provisions where legislation, including subordinate legislation, sets a standard equal to or greater than the award. For example, in relation to Time Wages Books/Sheets, the Full Bench stated at 295:

> we have also indicated that we are prepared to delete award requirements with respect to records because the Regulations require all that the award requires and more.

60. Another example, illustrative of the same submission, is in relation to sexual harassment. At page 282 the Full Bench stated:

> For similar reasons we have deleted cl 14.1.2. We point out that remedies are provided in other legislation for sexual harassment where it occurs. Whilst the unlawful dismissal provisions are relevant to the matters contained in both subclauses, sexual
harassment is specifically made unlawful by the Sex Discrimination Act 1984 (Cth) and similar legislation in all States and both Territories.

61. In this regard, see also paragraphs 52 and 85 of the Commission's 1999 Superannuation Decision (Print R7700) referred to at paragraph 67 of these submissions.

62. The Commonwealth acknowledges that many existing awards, including awards that have been through the award simplification process, do contain provisions relating to matters that are also the subject of statutory regulation, for example, provisions for jury service, long service leave, public holidays and superannuation. It is also acknowledged that matters that are regulated by statute are explicitly permitted to be dealt with in awards by virtue of s.89A of the WR Act.

63. Nevertheless, for the sake of clarity, certainty and ease of administration, it is undesirable for the same provision to appear in two separate regulatory contexts. For this reason, it is submitted that, if the Commission is disposed to declare to be a common rule a term of an award that deals with matters that are also dealt with by statute, it should not declare to be a common rule any term that does no more than substantially duplicate a statutory provision.

64. In this regard, the Government’s Workplace Relations Amendment (Award Simplification) Bill 2002 proposes to remove a number of allowable award matters from subsection 89A(2) of the WR Act where these matters are regulated in statute elsewhere.
Superannuation

65. The Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Act 1992 (the SG legislation) set out the minimum community standard and a single set of obligations and entitlements in relation to employment related superannuation. The Commonwealth submits that this is the standard above which employers and employees can negotiate at the workplace level.

66. The 1994 Superannuation Test Case decision (Print L5100) established a number of principles for dealing with award superannuation, along with a framework superannuation clause.

67. Subsequent Commission decisions refined this approach in light of changes to the SG legislation. In particular, the Commission’s 1999 Superannuation Decision for simplifying the superannuation provisions in the building and plumbing industries (Print R7700) found that awards should not, in general, replicate provisions contained in the SG legislation, due to the complexity and evolving nature of the legislative requirements.

68. Impending changes to earnings base provisions and to choice of fund arrangements (refer below) in SG legislation will have an impact on the future approach that the Commission must take in dealing with award superannuation. Legislative changes will, in time, render further award superannuation provisions obsolete.

69. For example, in the modified framework clause developed by the Commission in the 1999 Superannuation Decision, the provisions dealing with choice of earnings base (s.31.1.2) and superannuation fund (s.31.4)
will be overridden by new provisions in the SG legislation from 1 July 2005 and 1 July 2008 respectively.

70. The Commonwealth urges the Commission to consider the impact on award superannuation of impending changes to the SG legislation when making decisions on superannuation clauses in awards in relation to which common rule applications have been made.

71. On 23 June 2004 the Superannuation Legislation Amendment (Choice of Superannuation Fund) Act 2004 (Choice of Fund Act) was passed by the Parliament. This Act will provide all employees with the right to choose the superannuation fund into which their SG contributions are paid with effect from 1 July 2005.

72. From 1 July 2005 employers who make SG contributions under an award must provide existing employees with a standard choice form allowing the employee to nominate, either in writing or by using the standard choice form, any complying superannuation fund to accept employer contributions.

73. The Choice of Fund Act recognises employers that make superannuation guarantee contributions under an Australian Workplace Agreement, a certified agreement or a State award as being in compliance with the choice of fund requirements.

74. There is evidence to suggest that the flexibility provided by choice of fund arrangements is attractive to many employees, giving them more control over their retirement savings.

75. For example, in Western Australia, a choice of fund regime was instituted in 1998 under the Industrial Relations Act 1979. In evidence provided to the Senate Select Committee on Superannuation in 2002, it
was stated that more than fifty per cent of new employees elected to have their SG contributions deposited into a pre-existing superannuation fund.

76. The Commonwealth supports the in-principle agreement reached during conciliation conferences by the parties in this Case that will enable employers who are making superannuation contributions into any complying fund at the time of the common rule declaration taking effect to continue to do so.

77. The Commonwealth submits that it is in the public interest to preserve the existing superannuation fund arrangements for employees and employers who are currently subject to regulation under the SG legislation. This will avoid significant disruption in the funds management market and confusion among employers and employees.

78. The Commonwealth considers that if any superannuation fund provisions in awards are to be declared common rule they should provide employees with the capacity to choose their own superannuation fund arrangements. This could mean, that where an award does not provide this choice, the superannuation fund provisions should not be declared common rule until after the operative date of the Choice of Fund Act, i.e. 1 July 2005.

79. In addition, the *Superannuation Laws Amendment (2004 Measures No. 2) Act 2004*, was passed by the Parliament on 24 June 2004. From 1 July 2008, this Act will, inter alia, remove provisions which allow earnings bases specified in industrial awards, superannuation schemes, occupational superannuation arrangements or a law of the Commonwealth, State or Territory to be used to assess an employer’s SG charge liability and require all employers to calculate their SG charge liability against an employee’s ordinary time earnings as defined in the SG legislation.
80. The objective is to remove the complexity and inequity present in the current arrangements. The basic principle is that persons on similar overall levels of remuneration should receive similar levels of compulsory employer superannuation contributions.

81. The Commonwealth submits that the Commission should carefully consider the impact of impending changes to the SG legislation on award superannuation, particularly in the context of declaring any superannuation provisions to apply as common rule in Victoria.

Conclusion

82. The Commonwealth submits that it is in the public interest that, in considering applications for federal awards to be declared as a common rule in Victoria, the Commission should fully consider the economic impact on small businesses which are less able to absorb the costs involved. In addition, the Commission should take this opportunity to minimise the confusion and complexity of award coverage and carefully consider the overlap and duplicated regulation that might occur through the making of common rule awards in Victoria.