

SECOND READING SPEECH

INDUSTRIAL RELATIONS (COMMONWEALTH POWERS) **BILL 2009**

Mr Speaker, this Bill will put in place the referral of industrial relation powers necessary for a single national system for the private sector.

The referral will cover any private sector employment that the Commonwealth cannot currently cover under the Corporations Power of the Australian Constitution as well as the local government sector and the Community sector in Tasmania.

Mr Speaker, this Bill does not include the Public Sector. Industrial relations for the Tasmanian Public Sector will continue to be overseen by the Tasmanian Industrial Commission as is the current situation.

As you are aware all constitutional corporations were taken in under the Federal system under the previous Australian Government's Work Choices legislation. The legality of the previous Government's approach was confirmed by the High Court in response to a challenge by all States.

The remainder of the private sector however remained under State industrial jurisdiction and this includes all those entities that are not

constitutional corporations such as sole traders, partnerships and trusts.

The matter of a National Industrial Relations System for the private sector was clearly enunciated by the current Federal Government at the last election through its “*Forward with Fairness*” and “*Forward with Fairness Policy Implementation Plan*”.

The Australian Government is in the process of delivering on that undertaking and as mentioned already has constitutional coverage of the bulk of the private sector.

At the Workplace Relations Ministerial Council meeting on 11 June 2009 the Commonwealth sought from jurisdictions a referral of powers to the Australian Government for the remainder of the private sector to implement a national system for all private sector employees and employers.

The Tasmanian Government has agreed to this request in order to create a single Industrial Relations system for the private sector.

This Bill is the outcome of that agreement and will refer the State’s powers in respect of industrial relations to the Commonwealth to allow Fair Work Australia the necessary heads of power to deal with industrial matters involving the private sector in so far as those

employers and employees are currently not covered by Fair Work Australia.

Victoria and SA have also agreed to refer their powers and in fact Victoria has already passed the legislation to refer its powers and South Australia's referral bill is currently before their Parliament. NSW and Queensland have agreed in principle to refer their powers leaving WA as the only State not to refer.

As part of the lead up to this decision I consulted with Unions Tas, TCCI and the Small Business Council of Australia.

I can also advise that as a result of discussions with Local Government and relevant Unions their request for the continuation of existing industrial relations arrangements will be supported by the Act. This means that the referral of powers will include local government which are currently covered by Federal Awards.

Similarly there was a clear consensus from employers and the Unions covering workers in the Community Sector, the TCCI and from the Department of Health and Human Services who is the major funder of the Community Sector at the State level that the Sector should be covered by one jurisdiction and that jurisdiction should be national.

All of those with whom it was discussed in the Community Sector, including TASCOS, highlighted the frustrations and uncertainties caused by the lack of a clear definition of what is a corporation capable of being covered by Fair Work Australia and one that is not.

Only the High Court of Australia can make that final determination which can be an expensive and time consuming operation. We currently have the situation in Tasmania whereby a number of community sector employers covered by State Awards are open to jurisdictional challenge at any time - a situation that is not sustainable in the long term.

The reasons for the support of stakeholders include the fact that a contemporary legislative and administrative framework will be introduced. Tasmania's current industrial relations system was established under the *Industrial Relations Act 1984*, a time when industrial processes lacked the complexities of modern business practice and as a result many aspects of the system are inconsistent with other employment law.

Participation in the new National Workplace Relations System will improve rigor, consistency and address the current jurisdictional and procedural problems.

There are a number of important aspects to the national scheme:

Contemporary employment conditions and arrangements for employees and employers – Participation in a new National Workplace Relations System will ensure that Tasmanian workers enjoy the benefits of a contemporary workplace relations system, comprising a safety net of employee conditions and other arrangements that apply nationally and are at least as good as those under Tasmania’s *Industrial Relations Act*. Employers will also enjoy the benefits of safety-net conditions and other arrangements with added flexibility or employer protections.

Equity within Tasmania and between Tasmania and other states – Participation in a new National Workplace Relations System will ensure that Tasmanian workers have equitable access to the same industrial relations system as their counterparts interstate doing similar work. Participation would also provide a level playing field locally for Tasmanian employers.

Improved efficiency and the economic benefits that flow from the elimination of duplication from within the private sector industrial relations system

Clarity concerning federal coverage for the community services sector and local government – The status of some local government and government-funded community service organisations is currently unclear. Referral will provide clarity.

Mr Speaker this legislation has in built protections to ensure that the Tasmanian Government can always determine whether the policies of the Australian Government are detrimental to the interests of working Tasmanians. This protections is achieved in two ways.

The first is through revocation of the referral and I refer members to clauses 7, 8 and 9 of the bill which allows for an orderly exit from any national system should it be shown that it imposes general harm on industrial parties.

The other safeguard is a recently negotiated intergovernmental agreement which has been finalised between all States and Territories and the Australian Government with the exception of Western Australia. This Agreement incorporates the principles of the Commonwealth's Fair Work Act and introduces a process by which the Australian Government would be unable to enact any amendments to its legislation that in the opinion of one or more jurisdictions runs counter to those principles unless two thirds of referring State and Territories agree to its introduction of those changes. This is a sensible and sound proposition that has the full weight of an intergovernmental agreement behind it.

I would like to read the principles of the Intergovernmental Agreement into Hansard

The following are the fundamental workplace relations principles under this Act:

- (a) that the Commonwealth Fair Work Act should provide for, and continue to provide for, the following:
 - (i) a strong, simple and enforceable safety net of minimum employment standards;
 - (ii) genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to join and be represented by a union or participate in collective activities;
 - (iii) collective bargaining at the enterprise level with no provision for individual statutory agreements;
 - (iv) fair and effective remedies available through an independent umpire;
 - (v) protection from unfair dismissal;

- (b) that there should be, and continue to be, in connection with the operation of the Commonwealth Fair Work Act, the following:
 - (i) an independent tribunal system;
 - (ii) an independent authority able to assist employers and employees within a national workplace relations system.

These principles are contained in clause 4 of the bill before the House

Finally I would like to say that the success on the ground of the implementation of the new system depends on a thorough and comprehensive education campaign, a matter on which I have had a number of discussions with the Deputy Prime Minister. This is especially important in our State given the number of small employers we have.

I am pleased to say that the Commonwealth has recently announced funding of \$12.9 million through the Fair Work Education and Information Program. This program will ensure employees, employers and small businesses understand the new workplace relations system.

In Tasmania this will involve 85 activities across metropolitan and regional areas, including 49 workshops, 32 seminars and 4 briefings. There will also be consultations undertaken on a one-on-one basis for people with limited access to services in regional, remote and rural areas. The Commonwealth Government has also committed to a further round of funding under this program to be specifically targeted at employees.

There will also be additional services for the unincorporated private sector resourced through the Fair Work Ombudsman.

The Fair Work Ombudsman has committed to undertaking a further 10,800 advice sessions through the Fair Work Infoline.

These activities will be in addition to services provided for the incorporated private sector in Tasmania.

The Fair Work Ombudsman will provide a transitional education service for a period of three years from referral to assist Tasmanian employers transferring to the national workplace relations system. The transitional education services would comprise Transitional Education Visits (TEVs) to these employers. The TEVS would be unobtrusive and focussed on supporting employers to understand their workplace obligations

I will be liaising with the Deputy Prime Minister as the education program rolls out

I believe that this bill is good for the industrial relations practices in our State and is testament to what can be achieved when the two tiers of government work cooperatively to implement good public policy

I commend the Bill to the House

CLAUSE NOTES

Clause 1 Short Title

Sets out the short title to the Act.

Clause 2 Commencement

Provides for the commencement of the Act on a day or days to be proclaimed. It is probable that the Act will commence on one date - concurrently with the commencement of the balance of the *Fair Work Act 2009* (Cwlth). It has part commenced with last sections due to commence on 1 January 2010.

Clause 3 Interpretation

Defines terms used in the Bill.

Subclause (1) includes the following definitions—

Commonwealth Fair Work Act means the *Fair Work Act 2009* of the Commonwealth;

excluded subject matter means a range of matters which would generally remain within state powers except to the extent that the Commonwealth Fair Work Act 2009 as already enacted deals with those matter (directly or indirectly), or requires or permits instruments made or given effect under that Act so to deal with those matter. In essence if they are covered in the Fair Work Act as enacted this year the Commonwealth can continue to cover the matters but cannot extend the Commonwealth Act to those matters except under the amendment processes. This definition is used in limiting the scope of the reference under clause 5(1)(b) (the **amendment reference**) as referred subject matters exclude the excluded subject matters (see defn of referred subject matter));

referred subject matters is defined by listing certain subject matters dealt with in the Commonwealth Fair Work Act as enacted. This is used in defining the scope of the amendment reference – it excludes the matters which the State proposes to retain in the definition of excluded subject matter;

referred transition matters means matters of the making of laws with respect to the transition from the regime provided for by the *Workplace Relations Act 1996* (Cwlth) or a Tasmanian law relating to workplace relations, to the regime provided for by the Commonwealth Fair Work

Act. This defines the matters for the purposes clause 5(1)(c) (the **transition reference**);

scheduled text means the text set out in the schedule to the Bill. This is the proposed text of a new Division 2A of Part 1-3 of the Commonwealth Fair Work Act, which would be inserted into that Act by the proposed Fair Work (State Referral and Consequential and Other Amendments) Bill 2009 of the Commonwealth. This text forms the basis of the text-based reference under clause 5(1)(a) (the **initial reference**);

Subclause (2) provides that where words are not defined in this clause but are defined in the Commonwealth Act those definitions apply to the terms in this Bill.

Clause 4 Fundamental workplace relations principles

These are the fundamental principles which underpin the intergovernmental agreement on the referral of powers and the national Fair Work scheme.

Clause 5 Reference of matters

The clause provides for the reference of matters to the Commonwealth Parliament, subject to the exclusions in clause 6.

Subclause (1)(a) (the initial reference) refers to the Commonwealth the matters to which the **initial referred provisions** relate, but only to the extent of enabling the Commonwealth to make laws with respect to those matters by including them in the Commonwealth Fair Work Act, as originally enacted, in the terms, or substantially in the terms, set out in the scheduled text.

Subclause (1)(b) (the amendment reference) refers to the Commonwealth the **referred subject matters** as defined in clause 3(1), but only to the extent of making laws with respect to any such matter by making express amendments of the Commonwealth Fair Work Act. The processes for gaining State and Territory agreement to such amendments are contained in the intergovernmental agreement.

Subclause (1)(c) (the transition reference) refers to the Commonwealth the capacity to deal with the referred transition matters as defined in clause 3(1).

Subclause (2) makes clear that the references have effect only to the extent that the referred matters are not otherwise included in the legislative powers of the Commonwealth Parliament and are within the

legislative powers of the State Parliament. The Commonwealth constitutional powers over corporations cover a large part of the Fair Work Act and this referral merely supplements and clarifies their coverage.

Subclause (3) makes clear that any references under subclause (1) do not affect the operation of any other reference under subclause (1).

Subclause (4) makes clear that the State Parliament does not intend to impede the power of the Commonwealth to amend or otherwise alter the operation of the Commonwealth Fair Work Act using legislative powers the Commonwealth has in addition to the references under clause 5(1).

Subclause (5) provides for the period during which the references will have effect.

Clause 6 Matters excluded from reference

The clause specifies the matters excluded from the references under subclause 5(1).

Paragraphs (a) to (f) exclude certain matters from the references in respect of public sector employees, public sector employers, police officers and certain other persons.

Clause 7 Termination of reference

The clause provides for termination of the references. All of the references, or the amendment reference or transition reference separately, terminate on a day fixed by the Governor by proclamation.

Subclauses (2) & (3) allow for the revocation of a termination proclamation prior to it coming into effect

Subclause (4) allows a fresh proclamation to be made terminating a reference.

Clause 8 Effect of termination of amendment reference or transition reference before initial reference

The clause provides that termination of the amendment reference or transition reference before the initial reference is terminated does not affect laws then in place.

Clause 9 Period for termination of references

Subclause (1) provides that generally a termination proclamation must give at least six months prior notice of the intention to withdraw the reference.

Subclause (2) provides for the termination of the amendment reference on only three months notice if it is considered that changes being made to the Commonwealth Act are inconsistent with the principles in clause 4.

Subclause (3) requires the tabling in both Houses of a report by the Minister on the termination of the amendment reference.

Clause 10 Administration of the Act

The clause assigns the administration of the Act to the Minister for Workplace Relations and the Department of Justice.

Schedule I – Scheduled Text

The Schedule contains the text from the Commonwealth legislation which applies the referred powers in relation to industrial relations in those jurisdictions which have enacted referral legislation.

As noted in the definitions above the Schedule sets out Sections 30K to 30R which will become a new Division 2A of Part 1-3 of the Commonwealth *Fair Work Act*.

The sections will be inserted into that Act by a proposed *Fair Work (State Referral and Consequential and Other Amendments) Bill 2009* of the Commonwealth. This text forms the basis of the “text-based reference” under clause 5(1)(a) (the ***initial reference***) of this Bill.

FACT SHEET

INDUSTRIAL RELATIONS (COMMONWEALTH POWERS) BILL 2009

- This Bill will put in place the referral of industrial relation powers necessary for a single national system for the private sector. The Bill will also allow for the referral of industrial relations powers for the Local Government sector and the Community Sector but not the Public Sector which will continue under the aegis of the Tasmanian Industrial Commission.
- The Local Government Sector is currently under the Federal jurisdiction and the Community Sector is currently split depending on the constitutional form of the employer leading to uncertainty and potentially costly jurisdictional wrangles.
- All States and Territories with the exception of WA support the referral of powers.
- The benefits of referral include Contemporary employment conditions and arrangements for employees and employers, equity within Tasmania, and between Tasmania and other states, improved efficiency and the economic benefits that flow from the elimination of duplication from within the private sector industrial relations and clarity concerning federal coverage for the community services sector and local government.
- A significant education program will ensure all employers and employees are informed of the changes prior to its implementation on 1 January 2010.