

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 matters. In essence if they are covered in the Fair Work Act as enacted in 2009 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);

public sector employee and **public sector employer** these definitions are used in section 6 to describe the scope of the public sector that is excluded from reference

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 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 initial 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 Workplace Relations System.

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 IGA

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.