

LABOUR RELATIONS LEGISLATION AMENDMENT AND REPEAL BILL 2012 — GREEN BILL

Statement by Minister for Commerce

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [2.02 pm]: It is with pleasure that I table a draft of the Labour Relations Legislation Amendment and Repeal Bill 2012 and an accompanying draft explanatory memorandum. The draft bill is being tabled as a green bill and, as such, I will be seeking the views of stakeholders on the proposed reforms. It is the government's intention to progress the draft bill in 2013 should it be re-elected for a second term.

In 2006 the then federal government used its constitutional powers to exclusively regulate industrial relations matters for employers that are constitutional corporations. This substantially changed the industrial relations landscape in Western Australia and the rest of the country. In 2008 the Barnett Government determined not to refer industrial relations powers to the commonwealth, but instead to review the state industrial relations system and tailor it specifically to those covered by the system.

In December 2010, the government publicly announced its proposed industrial relations reforms. The government undertook extensive consultation on the proposed reforms in May 2011. The draft bill was subsequently developed taking into account stakeholder feedback. The changes in the draft bill will modernise the state industrial relations system. The current state system is at least 10 years out of date and 10 years behind what modern employers and employees need and expect to ensure workplace flexibility and productivity. The proposed changes will ensure that the state industrial relations system promotes Western Australian business growth, employment opportunities and fair conditions of employment.

The state industrial relations system covers around one-third of Western Australian employees. Most of these employees are employed in the state public sector and by unincorporated small businesses in the private sector. Approximately 95 per cent of employing businesses in Western Australia are small to medium employers. The state industrial relations system should promote, rather than hinder, small business employment.

In summary, the draft bill proposes to amend the Industrial Relations Act 1979 as follows —

- streamline the structure of the Western Australian Industrial Relations Commission but retain the commission's strong conciliation and arbitration powers. The draft bill would abolish the President's position and enable a Supreme Court judge to sit on the Full Bench. It would also abolish the constituent authorities, which deal exclusively with government officers in the public sector, and transfer the functions and jurisdiction of the constituent authorities to a single commissioner of the commission;
- require the commission to undertake an award modernisation process of all state private sector awards. As part of this process, interested parties will have the opportunity to make submissions to the commission. Once the award modernisation process is completed, the commission will be required to review all state awards every four years to ensure they remain relevant and up to date;
- provide that industrial agreements can only be terminated by the commission and extend the maximum nominal expiry date of industrial agreements to four years and enterprise orders to three years;
- broadly harmonise the Industrial Relations Act's unfair dismissal provisions with those of the federal Fair Work Act 2009. For example, employees will be able to claim unfair dismissal only if they have worked for a minimum period of 12 months for a small business employer or six months for any other employer;
- broadly harmonise the Industrial Relations Act's right-of-entry provisions with those of the Fair Work Act. Union officials will be required to meet a "fit and proper person" test before being issued with a right-of-entry permit. Unions will generally be required to give at least 24 hours' written notice before entering premises, unless the entry relates to a suspected contravention of occupational safety and health laws. Civil penalties will apply where right of entry is abused or hindered;
- streamline the process for determining minimum wages by removing the requirement that the commission hold a formal hearing. When making its state minimum wage order, the commission will be required to consider, amongst other things, the national minimum wage order and the capacity of employers to whom the order extends to bear the wage increase, rather than all employers in Western Australia as is currently the case;
- strengthen the regulation of registered organisations and associations under the Industrial Relations Act;
- more effectively regulate industrial agents that provide industrial relations services and represent parties in proceedings before the commission and the state industrial courts;

- more closely align the powers of industrial inspectors under the Industrial Relations Act with those of inspectors under the Fair Work Act; and
- increase the maximum penalties for contravention of an industrial instrument, order of the commission or statutory minimum condition of employment.

The bill will also —

- repeal the Minimum Conditions of Employment Act 1993 and incorporate statutory minimum conditions of employment in the Industrial Relations Act. This will provide employers and employees with a one-stop-shop for locating their employment obligations and entitlements. It will also update statutory minimum conditions of employment;
- among other things, employees with a disability will be entitled to statutory minimum conditions of employment, employers will be prevented from making unreasonable deductions from employees' pay, permanent employees will be entitled to take paid compassionate leave and employees will be required to notify their employer when they take personal leave;
- prohibit the engagement of children on unpaid trial work under the Children and Community Services Act 2004; and
- repeal the Coal Industry Tribunal of Western Australia Act 1992, the Conspiracy and Protection of Property Act 1900 and the Labour Relations Reform Act 2002.

As is the purpose of a green bill, the government intends to consult further with stakeholders and to seek written comments on the draft bill until 31 January 2013. All comments and submissions regarding the draft bill will be considered prior to finalisation of the government's position.

Finally, I would like to acknowledge the sad passing of one of the drafters of the bill, Tony Dowling. Mr Dowling was a valued member of Parliamentary Counsel's Office from 1979 until his retirement in 1997. He continued to offer his specialist services when they were needed after his retirement. I understand that Mr Dowling passed away shortly after the draft bill was concluded. I acknowledge his distinguished service to the state of Western Australia over many years and offer my sincere condolences to his wife and family.

I table the draft bill and the draft explanatory memorandum.

[See papers 5381 and 5382.]