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WESTERN AUSTRALIAN GOVERNMENT PROPOSED RESPONSE TO THE AMENDOLA REVIEW OF THE WA INDUSTRIAL RELATIONS SYSTEM

The federal Work Choices legislation, followed by the Fair Work Act, has had a significant impact on industrial relations in WA by removing all employees of constitutional corporations from the state jurisdiction. The State jurisdiction now essentially covers only public sector employees and unincorporated businesses or authorities. The Amendola Review was commissioned by Government to fundamentally review the statutory framework underpinning the Western Australian industrial relations system in light of the federal Fair Work Act 2009. A key theme of the review was the potential for harmonisation, if any, of the federal and state industrial laws. The comprehensive report was delivered to Government by Mr Amendola on 30 October 2009 and contains 193 recommendations.

The Government has used the Amendola review, and an assessment of previous systemic reviews (by former Commissioners Fielding and Cawley, Professor Ford and Mr Whitehead) over the last 15 years, to determine what measures can be adopted to modernise and harmonise the system. In releasing the report the Government is also setting out the broad directions it has in mind for reform of the system which will be the focus of extensive consultations, through the Department of Commerce, early in 2011, leading to legislation being introduced to Parliament in the second half of the year.

The Structure and Jurisdiction of the WAIRC

The Amendola Review recommended that the WAIRC and its jurisdiction be reduced or transferred to the court system. Although the volume of work of the Commission has been significantly affected by the enlargement of the federal jurisdiction, the Commission retains broad community support and specialist skills and knowledge. The Commission should be retained and streamlined as follows:

- Retain the broad definition of "industrial matter" and the general powers for conciliation and arbitration pursuant to sections 32 and 44 of the Act
- State awards under the WA industrial relations jurisdiction be retained and modernised
- Retain the power to determine minimum wages
- Retain the ability for individuals to make claim to the Commission for denied contractual benefits
- The Occupational Safety and Health Tribunal and the Road Freight Transport Industry Tribunal should be retained and their jurisdiction performed by a Commissioner
- The Employment Dispute Resolution Act 2008 should be retained and Division 4 of Part 2 (relating to Commonwealth provisions) be updated and harmonised
- The constituent authorities of the Public Service Arbitrator, Public Service Appeal Board and Railways Classification Board and the Coal Industry Tribunal should be abolished and their jurisdiction be performed by a Commissioner
- The position of President of the Commission is no longer required on a full-time basis and its role in Full Bench appeals and enforcement of orders should be performed by a judge of the Supreme Court on an as required basis
- Union rules matters will be dealt with by the Chief Commissioner or Senior Commissioner

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- A Commission in Court Session (3 Commissioners, one of whom must be the Chief or the Senior Commissioner) will deal with union registration, amalgamation and de-registration
 - Matters which were subject to the Public Service Appeal Board will continue to be beyond appeal
 - The jurisdiction of the Industrial Magistrate's Court will be retained
 - Appeals will continue to be heard by the Full Bench and the Industrial Appeal Court

Harmonisation

The Amendola Review identified on the potential for harmonisation between the federal and state laws. There is merit in:

- Broadly harmonise the provisions for unfair dismissal between the jurisdictions
- Broadly harmonise with the federal right of entry provisions, including the "fit and proper person test"
- Facilitating cooperation between Fair Work Australia and the WAIRC by mutual dual appointments and exchange of administrative/registry support
- Accepting his recommendations relating to the adoption and adaption of Fair Work Act provisions for compliance and enforcement

Modernisation

The Amendola Review made various recommendations designed to update the state legislation or remove unnecessary provisions. There is a need to:

- Consolidate the regulations and regulation making powers in relation to the Commission's jurisdiction
- Review the registration of industrial agents under the Act
- Provide broader capacity for the Commission to order costs, particularly where a party frivolously or vexatiously brings or defends a claim
- Provide immunity and protection to the Registrar and Deputy Registrars in performance of their duties under the Act

In considering the report there may be other features of the report or earlier reviews that individuals or organisations would want to see adopted by the Government as part of the reforms. These views can be conveyed and considered during the consultations that are to be conducted by the Department.