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INDUSTRIAL RELATIONS AMENDMENT (INDUSTRIAL COURT) BILL 2013

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.11 p.m.], on behalf of the Hon. Michael Gallacher, I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Australian workplace relations system has undergone significant changes over the past 10 years.

The introduction of WorkChoices in 2006 and the subsequent referral of industrial relations powers to the Commonwealth by various State governments in 2009 resulted in the transfer of almost all private sector workers to the Federal industrial relations system.

These reforms significantly reduced the number of workers falling within the remit of the Industrial Relations Commission. As a result, the commission experienced a significant decline in workload. Between 2003 and 2011, the number of matters received by the commission dropped by around 50 per cent.

The effect on the Commission in Court Session, otherwise known as the Industrial Court, was even more pronounced. In the same period, filings in the Industrial Court dropped by more than 70 per cent, making work health and safety prosecutions a core component of the court's workload for the first time.

The implementation of nationally consistent work health and safety laws in 2012 caused a further reduction in the Industrial Court's workload, as that Act transferred most work health and safety prosecutions to the District Court.

As a result of these changes, the President of the Industrial Relations Commission, the Hon. Justice Boland, advised me earlier this year that there would only be enough judicial work for one Industrial Court judge by the end of 2013.

The Government investigated a number of options to transfer additional work to the Industrial Court. For example, the Government looked at whether the court might be able to hear employment-related work that is currently handled by the District and Supreme courts, such as matters relating to restraint of trade clauses in employment contracts.

However, between them the District and Supreme courts receive on average fewer than 40 of these matters per year. Transferring these cases to the Industrial Court would not have made a real difference to the Industrial Court's workload.

The Government also considered whether any employment-related tribunal work could be transferred to the Industrial Court. However, tribunal work is not judicial in nature and does not suit the Industrial Court's status as a superior court of record. The Industrial Court's specialised nature and superior status means that other opportunities to confer work upon the court are extremely limited.

As a result of the Industrial Court's reduced workload, the Attorney General informed Parliament on 11 September that four of the Industrial Court's five judges have decided to retire before reaching the mandatory retirement age of 72.

I take this opportunity to once again thank the Hon. Justice Boland, the Hon. Justice Haylen, the Hon. Justice Staff and the Hon. Justice Backman for their dedicated service to the Industrial Relations Commission and to New South Wales.

Each of the retiring justices has made a significant contribution to the development of the law in this State, and I commend each of the judges for the fair and impartial manner in which they have conducted themselves during their time on the bench.

The Hon. Justice Michael Walton, the current Vice President of the Industrial Relations Commission, will take over as President when Justice Boland retires. Justice Walton is an accomplished judicial officer and a highly experienced member of the Industrial Relations Commission. I am confident that Justice Walton will uphold the Industrial Relations Commission's reputation for fairness and efficiency during his presidency.

As there will be only sufficient judicial work for one full-time judge in future, the Government will not make any permanent judicial appointments to replace the retiring judges. This means that the Industrial Court will have one full-

time judge from the beginning of 2014.

The fact that the Industrial Court will have a smaller judicial membership does not mean that the Industrial Relations Commission is being abolished. To the contrary, this bill preserves the structure of the Industrial Relations Commission. The Industrial Court will remain part of the commission, and it will continue to be a specialist forum for resolving disputes regarding industrial law.

There are, however, a small number of matters filed in the Industrial Relations Commission that currently require the presence of three judges. It is therefore necessary to amend the Industrial Relations Act and certain other Acts to make sure these matters can still be dealt with once Justices Boland, Haylen, Staff and Backman retire.

The matters that currently require the use of three judges are:

- proceedings for contempt;
- appeals from the Local Court;
- public sector promotional and disciplinary appeals;
- appeals regarding the summary dismissal of police officers;
- de-registration of industrial organisations; and
- appeals from decisions made by a single judge of the Industrial Court.

The Government believes that it is important to preserve the Industrial Relations Commission's jurisdiction wherever that is possible. Accordingly, this bill provides for all but one of these matters to stay within the Industrial Relations Commission's jurisdiction.

For example, the amendments would enable proceedings for contempt, appeals from the Local Court, and promotional and disciplinary appeals to be heard by a single Industrial Court judge sitting alone. Single judges already hear these types of matters in other New South Wales courts.

Appeals regarding the summary dismissal of police officers will also remain within the commission. These appeals are not functions of the Industrial Court at the moment. They are functions of the Industrial Relations Commission, and the Government believes that the Industrial Relations Commission is best placed to handle these matters quickly and efficiently.

These changes have been made in consultation with the Police Association.

The amendments also enable matters relating to the deregistration of industrial organisations to be heard by a full bench of the commission, rather than a Full Bench of the Industrial Court. While these matters will be removed from the court's jurisdiction, the Industrial Relations Commission is the most appropriate forum for hearing deregistration matters.

To ensure that these matters continue to be heard by members with appropriate legal expertise, the amendments also provide that full benches of the commission must be made up of one judicial member and two other members who are Australian lawyers when hearing appeals in relation to police dismissals and proceedings for the deregistration of industrial organisations.

The only matters that will be transferred away from the Industrial Relations Commission as a result of these amendments are appeals against decisions made by a single judge of the Industrial Court. The bill provides for the Court of Appeal or Court of Criminal Appeal to hear these matters in future.

Transferring these appeals to the Supreme Court cannot be avoided. Judges of the Industrial Court are equivalent in status to Supreme Court judges and it is appropriate that their decisions be reviewed by a panel of three superior court judges.

However, appeals to the Full Bench of the Industrial Court from a single judge represent a very small percentage of the Industrial Relation Commission's total caseload at the moment. Transferring these appeal functions to the Supreme Court will therefore not fundamentally alter the Industrial Relations Commission's workload.

This bill does not make any other changes to the Industrial Relation Commission's jurisdiction. The commission will remain in place, and will continue to provide a seamless and efficient service to its users after its judicial membership is reduced.

While the Opposition has stated that there is a backlog in the Industrial Relations Commission of around 1,000 cases, this is not the case. Recent Industrial Relations Commission statistics show that there are only around 350 pending matters before the commission at the moment.

There are currently five full-time commissioners at the Industrial Relations Commission, and I am confident that these hardworking and dedicated people will be able to manage the commission's work between them. The Government will closely monitor the workload of the Industrial Relations Commission to ensure that adequate resources are available.

As there will only be sufficient judicial work for one judge from the end of this year, Justice Walton will be able to

manage the Industrial Court's workload. Justice Boland will also remain at the Industrial Relations Commission for a period of 12 months as an acting judge to assist with cases.

To ensure that additional judicial resources can be made available if temporary workload fluctuations do occur in future, this bill also includes provisions that will enable judges of the Supreme Court to hear particular matters in the Industrial Court, and vice versa.

These amendments do not combine the functions of the Supreme Court and Industrial Court in any way. The provisions simply enable judicial resources to be shared between the two courts if that becomes necessary to address a short-term increase in filings. Both courts will remain independent from each other.

It will be up to the President of the Industrial Relations Commission whether these provisions to allow Supreme Court judges to sit in the Industrial Court are used. The amendments have been drafted so that the Chief Justice may nominate a Supreme Court judge only after the President makes a request.

Similarly, judges of the Industrial Court would sit in the Supreme Court only if the Chief Justice makes a request. Similar arrangements are already in place between the Land and Environment Court and the Supreme Court.

The Industrial Relations Commission has a proud history in New South Wales. For more than a century, its members have played a pivotal role in promoting fairness, opportunity and economic stability in this State. The amendments contained in this bill will ensure that the commission can continue to do that.

I commend the bill to the House.