NSW Legislative Council Hansard
Extract from NSW Legislative Council Hansard and Papers Wednesday 15 November 2006.

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.24 p.m.], on behalf of the Hon. John Della Bosca: I move:

That these bills be now read a second time.

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

Leave granted.

It gives me great pleasure firstly to bring before the House today the *Industrial Relations (Child Employment) Bill 2006* to protect children in New South Wales from the harsh impact of WorkChoices.

This is another example to families in New South Wales of the benefit of having a State Labor Government in power. Let's bevery clear, those on the other side would leave working children unprotected from what we now know is the very unfair and unbalanced federal *Workplace Relations Act 1996*.

I also move that the *Industrial Relations Further Amendment Bill 2006* and the *Workers Compensation Amendment (Permanent Impairment Benefits) 2006* be read a second time. I will deal with these bills after I have made some comments about the *Industrial Relations (Child Employment) Bill 2006*.

The New South Wales Government has drafted the *Industrial Relations (Child Employment) Bill 2006* to provide a safety net of minimum conditions to protect children from substandard wages and conditions if and when they enter into workplace agreements or other arrangements. The bill also gives children who are unfairly dismissed remedies that are no longer available under the *Workplace Relations Act 1996*.

Section 16(3)(e) of the Federal *Workplace Relations Act 1996* clearly states that State child labour legislation is a non-excluded State law. In other words, child labour remains a matter with respect to which the States may legislate. This Government has independent legal advice to that effect. Minister Andrews has confirmed that the States can make these laws—so that's what we are doing.

Before WorkChoices it was not regarded as necessary to make child specific labour laws in this State. General industrial relations law applied to children and continues to do so. State industrial relations instruments continue to provide appropriate wages and conditions for children at work.

The problem that this bill seeks to remedy is that the Federal Workplace Relations Act generally applies to children employed by a constitutional corporation. If the New South Wales Government had not have used its initiative to propose these new child labour laws those children would remain in the wilderness of WorkChoices, without the safety net of properly maintained award protections.

Employees under 18 years of age are likely to lack the knowledge, skills and ability to directly negotiate their wages and conditions of employment with an employer. The only safeguard that WorkChoices offers a child when presented with a take-it or leave-it individual workplace agreement is that their parent or guardian must authorise the agreement. As there is no real choice and little scope for bargaining, rather than protecting a child, this forces parents and guardians to be accomplices to what in many circumstances will be substandard wages and conditions of employment.

Requiring an adult to sign a child's individual agreement is an admission that the general protections under WorkChoices are inadequate. It is certainly no replacement for the 'no disadvantage test' which previously operated to ensure that employees in the Federal system could not be offered deals that would make them worse off than the relevant award. What is not clear is why the Federal Government and the Opposition cannot admit to this and why the Federal Government has not made laws that take this into account.

The *Industrial Relations (Child Employment) Bill 2006* sets out clear and simple rules for employers in constitutional corporations to follow when establishing wages and conditions of employment for children under workplace agreements. Unlike the Federal Government's approach to labour relations, this is a 17-page bill, not a 687-plus wall of legislation for employees and employers to grapple with. Employers will only have to reach for a State award and apply a few pieces of legislation to work out appropriate minimum wages and conditions for children.

Most importantly, this bill protects children employed in constitutional corporations from being capriciously dismissed from employment. Quite deliberately, WorkChoices provides little or no protection from unfair dismissal. Again, this State Government has taken responsibility to protect our children from the harshest aspects of WorkChoices. If the State Opposition had its way it would take the WorkChoices path and leave children unprotected.

Importantly, you will see that this bill does not introduce new and unnecessary red tape which may burden an employer deciding to engage a child. The emphasis in this bill is an appropriate amount of regulation to ensure the well-being of a child at work.
There are at least 150,000 children formally employed in New South Wales under 18 years of age. The bill will introduce a consistent approach to wages and conditions for all employers if they offer Federal workplace agreements in particular industries, for example in the retail and the hospitality industries where the majority of children are employed. Hopefully, it will end the situation where an employer will try and gain a competitive advantage with another business by simply reducing the wages and conditions of children on individual and collective Federal workplace agreements.

It is of great concern that according the Office of Employment Advocate 598 individual workplace agreements were offered by employers to children under the age of 15 between July of last year and May 2006. It is just as concerning that employers have sought to reduce conditions of employment on 7,779 occasions under individual AWAs for children between 15 and 18 years of age. According to the OEA, almost half of individual workplace agreements do not include rest breaks. Half of the individual agreements entered into remove penalty rates, annual leave loading, shift allowances, overtime loadings, skills payments and public holiday pay.

That's the brave new world of WorkChoices that the Federal Government and their supporters opposite are happy to foist on children and the rest of the workforce.

It is important to note that this bill does not prevent employers and employees from choosing what type of industrial instrument they should enter into. It merely provides an appropriate safety net, and that safety net will continue to be monitored and set by an independent umpire, the New South Wales Industrial Relations Commission.

This Government has consulted widely about this bill by releasing an exposure draft for comment. Arguments raised about the effects of this bill are as unconvincing and unsubstantiated as the arguments the Federal Government continues to make about the removal of unfair dismissal laws on job creation. There is simply no evidence that removal of unfair dismissal laws have created jobs.

Reading some of the submissions I have received about this bill only confirms that making these laws is a necessity. Indeed, those organisations with children's best interest at heart, the Commission for Children and Young People and the Youth Action Policy Association support this bill in its entirety.

It is important to note that incentives such as penalty rates and shift loadings for apprentices should not be overridden by individual workplace agreements. In all the confusion about individual contracts, this bill will provide some certainty for those children taking up apprenticeships that important conditions of employment established by the New South Wales Industrial Relations Commission will be safeguarded.

Part 1 of the *Industrial Relations (Child Employment) Bill 2006* defines the terms used in the Bill. Unlike the WorkChoices legislation there are very few new definitions for employees and employers to understand. A 'child' is defined as a person under the age of 18 as has long been the case at common law. Words like 'employer' and 'conditions of employment' have the same meanings as in the New South Wales Industrial Relations Act.

Part 2 clause 4 of the Bill sets out when minimum conditions contained in State law apply to a child. Under clause 4 (1) of the Bill a child is protected by minimum conditions if employed under an agreement or other arrangement entered into after 27 March 2006. The employer must be a constitutional corporation that is not bound by a State industrial instrument. There must also be a State award that covers employees performing similar work to the child which does not bind that employer.

This Bill does not apply to child employees who are already covered by State awards and enterprise agreements. They continue to be directly protected by those instruments.

Nor does the Bill apply to child employees covered by federal awards, pre-WorkChoices agreements, 'notional agreements preserving State awards' or 'preserved State agreements' under WorkChoices. All of those instruments were tested against a 'no disadvantage' or 'no net detriment' test before they came into operation. We do not seek to interfere with their continued application to employer/employee relationships.

Instead, the minimum conditions defined in this Bill apply to those child employees who enter into an individual or collective federal workplace agreement or where wages and conditions of employment are set by a common

law contract of employment and the child is employed by a constitutional corporation. These new federal instruments and arrangements are no longer tested for a disadvantage or detriment, and are therefore liable to result in a child missing out on important protections. The Bill's effect is to reintroduce a safety net.

Such an employer must ensure that a child is provided with minimum conditions of employment for a child. An affected employer must provide at least the minimum conditions of employment contained in a comparable State award and the legislation that would have applied if that child were covered by that State award. Importantly, if the conditions of employment provided for the child are different to those minimum conditions I have referred to, then the conditions of employment must not, on balance, result in a net detriment to the child when compared with the comparable State award and legislation.

In other words an employer in a constitutional corporation can choose simply to provide a child with at least the wages and conditions contained in a comparable State industrial award. If an affected employer decides to offer a child employment under an individual or collective federal workplace agreement with different conditions to the State award, then the conditions of employment provided to the child must not, on balance, result in a net detriment to the child.

To provide guidance on what is a 'net detriment', the Bill requires the Full Bench of the Industrial Relations Commission to set 'no net detriment' principles within six months of the commencement of the Act. In determining the 'no net detriment principles', the Full Bench of the Commission is to have regard to pertinent issues surrounding the employment of a child including the provisions of any State award or industrial relations legislation that are particularly important for ensuring the well-being of children at work.

The legislation ensures that all industrial organisations will be consulted and that they can have their say about the setting of the 'no net detriment principles'. Industrial organisations will be able to make submissions to the Full Bench on setting and reviewing the principles.

To ensure that employers and children are aware of the relevant minimum conditions, employers will be required to exhibit a copy of the comparable State award at the workplace.

For each child, employers will be required to keep records consistent with the requirements under the Workplace Relations Act and the New South Wales Industrial Relations Act.

Under Division 2 of the Bill, industrial inspectors may issue compliance notices where an inspector is of the opinion that minimum conditions of employment for a child have been contravened. This will provide an employer with the opportunity to remedy the contravention without suffering penalty. Compliance notices will provide valuable guidance to employers on how to ensure they do not contravene the requirements of this legislation.

Where an employer disputes a compliance notice, that dispute can be taken to the Industrial Court which will determine whether the notice should be varied or revoked.

A failure to provide the child with appropriate conditions of employment will be a civil penalty offence, just like a breach of an award or enterprise agreement under the Industrial Relations Act. Prosecutions for such an offence will only be able to be brought by an inspector in an Industrial Court.

In determining the amount of a pecuniary penalty against an employer, natural justice is introduced by allowing the Industrial Court to take into account whether or not the employer has made a reasonable effort to provide the child with the minimum conditions of employment. Importantly, the Court may also take into account whether the child understood and consented to the provisions that the employer had actually provided to the child.

The Bill provides that the tried and true mechanisms that already exist under the New South Wales Industrial Relations Act will be available for recovery of remuneration and other amounts.

This Government has never hidden behind rhetoric in our opposition to the federal government's removal of unfair dismissal remedies, particularly where that right has been removed from persons who are vulnerable in the labour market.

That is why members of the opposition will not be surprised that the New South Wales Government has introduced under Part 3 of the Bill provisions restoring the right of a worker less than 18 years of age the ability to seek remedies where they have been unfairly dismissed by a constitutional corporation. These will be the same remedies as those available under the New South Wales Industrial Relations Act. All employers, regardless of size, will have to ensure that they exercise their power to dismiss child employees in a fair manner.

The Bill only introduces new provisions where it is necessary given the new unfair provisions under the Workplace Relations' Act, and this Bill is designed to balance employers' needs with the need to protect the

welfare of children at work.

Employees under the age of 18 years should not be subject to take-it or leave-it conditions of employment, and they should not be subject to capricious dismissal by a corporation. It has been left up to the New South Wales Government to take responsibility for the welfare of children and return fairness to the industrial relations system. That is what this government seeks to achieve by this Bill.

I commend this Bill to the House.