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

Industrial Relations Further Amendment Bill 2006

The second Bill I bring before this House is the *Industrial Relations Further Amendment Bill 2006*.

The *Industrial Relations Further Amendment Bill 2006* aims to counteract the destructive effects of the federal government's WorkChoices legislation.

In introducing this Bill, I should make the very important point that unlike the federal government, we don't consider it to be responsible public policy to contemptuously and arrogantly foist unannounced and untested new legislation onto the people of New South Wales.

To that end, on 19 September 2006 the New South Wales Government released an exposure draft of the Bill for consideration.

We circulated the draft to key stakeholders and invited submissions from other interested parties, a testament to the fact that we encourage the public to play a genuine and meaningful role during the legislative process.

In contrast to the Howard Government, we value public comment and feedback. That feedback has now been considered, and where appropriate, incorporated into the Bill now before the House.

The *Industrial Relations Further Amendment Bill 2006* aims to deliver stability and comfort for business owners and workers throughout the state by introducing five key measures, as follows:

1. Protection of injured workers

2. Protection for raising legitimate OH&S issues at work

3. Alternative Dispute Resolution services delivered by the NSW Industrial Relations Commission

4. Joint sittings of the NSW and interstate tribunals

5. Electronic publishing of the industrial gazette

6. There are also minor clarifying amendments to other provisions of the *Industrial Relations Act 1996*

The federal government has claimed that occupational health and safety matters and workers compensation matters will continue to be regulated by the States and Territories.

To ensure that certain occupational health and safety matters and workers compensation matters continue to be appropriately regulated by New South Wales, the Bill adopts and transfers protections for persons raising occupational health and safety concerns and injured workers from the *Industrial Relations Act 1996* to the *Occupational Health and Safety Act 2000* and the *Workers Compensation Act 1987* respectively.

The Bill seeks to ensure that remedies for employees making health and safety complaints or carrying out health and safety functions in the workplace are appropriately contained within occupational health and safety legislation.

The Bill makes an amendment to the *Occupational Health and Safety Act 2000*. Under the Bill new section 23A provides for reinstatement of a worker, or compensation, where that worker has been dismissed in contravention of section 23 of the *Occupational Health and Safety Act 2000*. Section 23 provides that it is unlawful for an employer to dismiss and employee for making an OHS complaint; or for being a member of an OHS committee or an OHS representative and exercising functions in those capacities.

These protections are an essential part of the occupational health and safety framework of this State. Employees must have the freedom and confidence to raise health and safety concerns in the workplace. People participating as members of OHS committees or OHS representatives should be encouraged to accept those roles and be supported in those roles. There should be no threats to job security for anyone functioning in these important roles - or indeed threats to any person doing the right thing by their workmates and their employers by raising health and safety concerns. Everyone needs to be able to raise health and safety issues in the workplace as and when they arise. This is in everyone's interest.

The protections for employees raising health and safety concerns are vital to the occupational health and safety regime in this State. It is appropriate that the Bill provides for these protections to sit within the *Occupational Health and Safety Act 2000*.

The Bill also transfers the injured worker protection provisions contained in Chapter 2, Part 7 of the *Industrial Relations Act 1996* to the *Workers Compensation Act 1987*. Those provisions provide an injured worker with the remedy of reinstatement. If that worker is dismissed from employment because the worker is not fit for employment because of that injury. The provisions also create an offence where an employer dismisses a worker because that worker is not fit for employment because of the injury and dismissal takes place within 6 months of the worker becoming unfit for employment.

The injured worker protections contained in the Bill are an integral part of the workers compensation scheme to get injured workers back to work and to ensure employers are engaged in this process. The duties of employers to find injured workers suitable duties; to commence workplace rehabilitation programs; and develop return-to-work programs would become meaningless if an employer was simply able to dismiss the worker to avoid these obligations.

The protections for injured workers in the Bill are an essential element of the workers compensation scheme in this State and it is appropriate that the Bill provides for these protections to sit appropriately within State workers compensation legislation.

These initiatives will guarantee that these important remedial provisions live on, providing reassurance to employers and their workers regarding their rights and responsibilities given the current climate of confusion.

As Honourable Members will be aware, various disputes can arise in the workplace from time to time, and sometimes the industrial parties require the assistance of an independent body to help them reach a resolution.

WorkChoices makes dramatic and far reaching change to the processes of dispute resolution, gutting the role of the AIRC and attempting to kick state Commissions off the field altogether. Instead WorkChoices provides for alternative dispute resolution by a body that the industrial parties nominate or in other cases the AIRC.

Many employers and employees want that nominated dispute resolution provider to be the NSW Industrial Relations Commission—a 'thumbs up' if you like, to the prompt and fair manner in which our Commission operates.

The NSW Commission has supervised Australia's largest state industrial jurisdiction for over a century. The merits of our Commission are most clear upon examination of its role in resolving a number of high profile disputes.

People all around the state are telling us that they want the well qualified and experienced members of the NSW Commission to continue to provide conferencing, mediation, conciliation and arbitration in the wake of the federal government's radical industrial agenda.

This Bill ensures that can happen. Where employers and unions in the federal system wish to do so, they can include in their federal workplace agreements terms that identify the Industrial Relations Commission of New South Wales as their preferred provider of Alternative Dispute Resolution.

The expertise and impartiality of our Commission's members has won the respect and confidence of employers, employees and their representatives who value its flexibility and responsiveness, and appreciate that it conducts its activities with a minimum of legal technicality.

By introducing this Bill, the NSW Government is ensuring that the accumulated wealth of knowledge and experience of our Commission will not dissipate and importantly, that this well respected tribunal continues to have an ongoing public role in the resolution of disputes.

This amendment is in addition to and does not derogate from section 146A which was inserted into the Act earlier this year. That section gives the Industrial Relations Commission jurisdiction to deal with disputes where the parties make private agreement to refer any disputes between them to the Commission.

The Bill also provides a mechanism to promote co-operation and comity between state and territory tribunals, enabling the NSW Commission to share resources and convene joint sittings with its other state counterparts.

Joint sittings would provide an effective alternative avenue to achieve consistent, sustainable wage increases and the consideration of the development of new national community standards through test case proceedings.

After this, binding decisions could be made by each state commission in accordance with their respective

governing statutes.

The Bill also aims to put the publication of industrial matters, awards, orders, enterprise agreements and contract determinations on a more modern and accessible footing.

To this end, the Bill provides for the online gazettal of official documents. This will also have the added benefit of decreasing the Registry's printing production costs.

Hard copies of the Gazette will continue to be published, albeit less frequently, for the benefit of people who don't have online access.

The Bill will also amend section 127(8) to extend the current offence to include any person who knowingly provides a false statement to a principal contractor regarding the payment of remuneration to employees of subcontractors. This amendment will cover any person, whether or not authorised by a subcontractor, and is intended to reduce reliance on statutory declarations by principal contractors when accepting statements given by any persons on behalf of a subcontractor.

In relation to outworkers, the Bill will include an additional paragraph in the definition of 'industrial matters' in section 6 covering the mode, terms and conditions under which work is given out to be performed by an outworker in the clothing trades.

This provision is intended to put beyond doubt the giving out of work to clothing outworkers, and the regulation of such work within a supply chain, are industrial matters under the IR Act for the purposes of award coverage and the resolution of disputes. Other amendments relating to the outworker provisions under Part 11 of the IR Act will make it clear that constitutional corporations which give out clothing trades work (or any work in the manufacture of clothing products) are required to comply with the statutory conditions applied under section 129B.

This will also extend to the keeping of records and disclosure of information relating to the giving out of work by constitutional corporations. Finally, the amendments will make it clear that the conditions of employment applied under section 129B of the IR Act to outworkers engaged by constitutional corporations are minimum employment entitlements for those outworkers which cannot be contracted out of.

The contents of the *Industrial Relations Further Amendment Bill 2006*, in concert with legislation passed earlier this year form the basis of the NSW Government's commitment to ameliorate the negative effects of WorkChoices in our state.

And this isn't all that we'll be doing. Let me assure you that the New South Wales Government will continue to examine and implement sensible strategies to circumvent the devastating practical effects of WorkChoices.

I commend this Bill to the House.