Agreement in Principle

Mr PAUL LYNCH (Liverpool—Minister for Industrial Relations, Minister for Commerce, Minister for Energy, Minister for Public Sector Reform, and Minister for Aboriginal Affairs) [10.03 a.m.]: I move:

That this bill be now agreed to in principle.

The amendment to the Industrial Relations Act 1996 before this House is intended to ensure that significant private sector awards in the New South Wales industrial relations system are not rescinded. This will be achieved by creating a new category of awards to be known as "non-operative awards". The New South Wales Industrial Relations Commission will be given the power to declare an award to be non-operative if it is satisfied that the award does not have current application to any employer or employee. The amendment will ensure also that the commission continues to maintain non-operative awards by applying State Wage Case decisions to their minimum rates of pay. It is expected that non-operative awards will be varied to reflect national decisions made from time to time by Fair Work Australia.

In appropriate circumstances, the New South Wales Industrial Relations Commission will apply these decisions to non-operative awards in the New South Wales system. Preventing the rescission of these awards is necessary for two reasons. Firstly, these awards play a benchmark role in the New South Wales industrial relations system and are the repository of many years of arbitral history. Secondly, the ongoing role of New South Wales awards needs to be considered, along with many other issues in consultation with the industrial parties, in a wide-ranging review of the New South Wales Industrial Relations Act. Since private sector industrial relations matters have been referred to the Commonwealth, the New South Wales Industrial Relations Commission clearly operates in a very different environment than it did previously.

Through legislation enacted by both the Commonwealth and New South Wales parliaments in December 2009, this State joined the national industrial relations system on 1 January 2010. While the New South Wales Industrial Relations Act no longer has any relevant application to national system employers and employees, it does, of course, continue to provide the framework for the conduct of industrial relations in the State public sector and the local government sector. Nevertheless, the principal effect of referral is the removal of most private sector employers and employees from the New South Wales jurisdiction. That said, there are still numbers of employees working in New South Wales who have their terms and conditions determined by State awards. These include those who work in the public and local government sectors and those who are deemed employees under schedule 1 to the Industrial Relations Act.

Notwithstanding their reduced application in a post-referral environment, the New South Wales Government believes current State common rule industry and occupational awards continue to play an important role. In fact, these industrial instruments have played, and should continue to play, an important benchmarking role within the New South Wales jurisdiction. Of course, this benchmarking role is particularly important to awards with continuing application and, accordingly, the continued existence of these awards has a wider public interest role. By means of background to this bill, it should be noted that section 19 of the Industrial Relations Act requires the commission to review each award at least once every three years. The purpose of each such review is to modernise and consolidate awards and at the same time rescind obsolete awards.

In a 1998 decision before the New South Wales Industrial Relations Commission to determine general principles for the section 19 review process, the commission noted that an obsolete award means there are no employees or employers under a particular award, the award is not a counterpart to a Federal award and there is no New South Wales enterprise agreement in force in the industry or occupations covered by the award. Sections 17 and 20 of the Act also provide for the possible rescission of awards outside the formal section review process. As previously alluded to, the upcoming review of awards under section 19 of the Act will take place in a different legislative context to that of previous reviews. Accordingly, the New South Wales Government has concerns that significant private sector common rule awards may be rescinded if there are not specific amendments to the current provisions of the Industrial Relations Act.

As it stands, the new national industrial relations system is less than 12 month old, having commenced on 1 January 2010 on referral of industrial relations powers by all States, except Western Australia. The full implications of both the operation of the national system, as well as how the New South Wales system is to operate in the medium term, are yet to unfold. As such, the New South Wales Government believes that a cautious approach to the existing features of the New South Wales industrial relations system is required. For this reason, and because of the benchmark role of common rule industry and occupational awards, the New South Wales Government believes that it is both necessary and appropriate to preserve and maintain these awards.

The bill begins by setting up a new category of awards called "non-operative awards" in section 4, Dictionary of the Industrial Relations Act. Awards in this category are New South Wales awards that do not have any current

application to any employer or employee. In practical terms, these are intended to be New South Wales common rule industry and occupational awards, which, as a result of the referral of powers, no longer apply to any employer or any employee. It will be the job of the New South Wales Industrial Relations Commission to determine whether a particular award is non-operative, either in the process of reviewing an award via section 19 or in the process of consolidating awards under section 20. The bill amends both of these Sections accordingly.

The bill also provides the commission with a broad power to declare an award to be non-operative by means of new section 20A. Section 20A also provides the commission with the power to declare that an award has ceased to be non-operative. The bill then amends section 17 of the Act to prohibit variation or rescission of non-operative awards. The bill makes one important exception to this prohibition, that is, to permit the variation of non-operative awards to give effect to any flow-on of national decisions, such as national minimum wage reviews, or to give effect to State decisions made by the commission under section 52. Under the terms of the bill, such variations will be made directly by the Industrial Relations Commission. Unions and employer groups will not be forced to waste valuable resources by making time-consuming applications. The commission will be required to keep a register of non-operative awards, and that register will be published on the New South Wales Industrial Relations website. Finally, in order to prevent any action to thwart the intention of this bill, the bill will be made effective from the date of introduction. I commend the bill to the House.