Agreement in Principle

Ms CARMEL TEBBUTT (Marrickville—Deputy Premier, and Minister for Health) [10.15 a.m.]: I move:

That this bill be now agreed to in principle.

The purpose of the this bill is to refer certain matters relating to industrial relations to the Commonwealth for the purpose of section 51 (37) of the Australian Constitution and to amend the Industrial Relations Act 1996. The primary role of the bill is to refer to the Commonwealth sufficient power to enable the creation of a national industrial relations system for the private sector. The establishment of this system is an event of great historical significance. It represents an unprecedented willingness of governments across Australia to work in the national interest. It demonstrates the very best aspects of cooperative federalism. It demonstrates an unwavering commitment to fairness and decency in the workplace.

The national industrial relations system will be based on the Fair Work Act—the legislation that did away with the insidious WorkChoices laws. This legislation will extend the coverage of the Fair Work Act to all private sector employees and employers in New South Wales. Employers who are sole traders, partnerships or non-trading corporations are currently covered by the New South Wales industrial relations system, and will be referred into the national system. By exclusion, this referral will not apply to the New South Wales public service or the New South Wales local government sector.

There is a seminal difference between what is happening today, in 2009, and what happened in 2006 under the former Federal Government. In 2006 the Commonwealth legislated against the wishes of the States to unilaterally seize powers and impose the insidious WorkChoices laws on the Australian people. WorkChoices did not merely impose on the Australian people a system that was both mired in complexity and fundamentally unfair; it failed in its attempt to create a national industrial relations system. WorkChoices redrew the basis on what was covered by Federal industrial laws. The corporations power of the Constitution was used to extend the application of Federal laws, overriding the limitations on the conciliation and arbitration power that had traditionally been the basis for Federal industrial laws. However, this left many organisations in limbo, not knowing what laws they were covered by. This uncertainty prevailed most strongly in the charitable sector, amongst employers and employees with the lowest capacity to seek legal advice or mount legal challenges.

The unilateralism of WorkChoices was equally offensive. The Howard Government had no mandate from the Australian people. Nor did it make any attempt to seek common ground in developing a national industrial relations system. Had the Howard Government done so, its laws would have been fundamentally different from WorkChoices. WorkChoices was as much a result of the Howard Government feeling unencumbered by checks and balances as it was of the Howard Government having an ideological obsession of removing fairness from the workplace. Today, in 2009, the situation is the antithesis of 2006. The Rudd Government has a clear electoral mandate from the Australian people, and it has engaged with the community, employer associations, unions, industry and State governments in developing the Fair Work Act. The national industrial relations system, which is in part created by this legislation, removes once and for all the ebb and flow of businesses between Federal and State laws.

Determining which industrial rules apply to a particular workplace will no longer turn on arcane and legalistic questions of whether an employer is a constitutional corporation. Similarly, the bill removes the need to apply the constitutional test as to whether an employer was genuinely part of an interstate industrial dispute. This referral will eliminate uncertainty about the status of employers, and ensure that the same broad industrial relations framework covers all employers and employees in the private sector. It will bring unincorporated businesses and charities into the system, which will, from 1 January 2010, cover all private sector organisations in Queensland, Victoria, Tasmania, South Australia and the two Territories. The House will appreciate the historic significance of this occasion. On the commencement of the provisions of this bill, New South Wales will join the national industrial relations system and a new era will be established in this country.

New South Wales has a proud industrial relations history. Laws passed by this House have provided a framework for minimum wages, maximum working hours, leave entitlements, and equality for men and women doing work of equal or comparable value. The independent industrial tribunal created by statute, the Industrial Relations Commission of New South Wales, has served our State with distinction for more than a century. The commission is recognised internationally for its expertise in resolving disputes and developing community standards to be enjoyed by all employers and employees in this State. Indeed, the New South Wales Commission has been at the forefront of developing many of the industrial relations principles we take for granted these days. For example, Justice Sheldon of the New South Wales Industrial Commission first enunciated the concept of a "fair go all round" in 1971. The fair-go-all-round concept is the very essence of industrial justice. It sets the jurisprudence in a bedrock of balanced interests and common human decency. This concept endures today, informing decision-making with respect to unfair dismissals and other matters nationwide.

In July this year the Rudd Government's Fair Work Act 2009 commenced, putting an end to the divisive era of WorkChoices, which undermined the principle of a fair go all round. The Fair Work Act restored fairness and balance to the national system. The Fair Work Act and its associated legislation were the result of extensive consultation between the Commonwealth Government, business, unions, and State and Territory governments. Significantly, the Commonwealth Government recognised that it could not create a truly national system other than by cooperation with the States and Territories. Consequently, extensive discussions have taken place between the governments about how to shape a new national system that will be fair, balanced and enduring. I take this opportunity to put on record the Government's appreciation of the considerable personal efforts of the Deputy Prime Minister and other State Ministers and their respective officials from across Australia in these consultations.

The contrast between this process and the unilateralism of WorkChoices could not be more stark. The Commonwealth Government drew on the vast reservoir of experience in this State to inform its legislative framework. These discussions have improved the quality of the Commonwealth's industrial relations law and clarified the demarcation point with many State laws. That is, the interaction between the Commonwealth's Fair Work Act 2009 and State laws dealing with public holidays, business trading hours, essential services and victims of crime leave is now much clearer. Unlike WorkChoices, which encouraged corporations to make Australian Workplace Agreements overriding these State laws, the Fair Work Act 2009 clearly recognises the continuing operation of these important State laws.

The Government took the necessary time to determine to participate in the national industrial relations system. We took a prudent approach. While the overall shape of the national system framework has been evolving for some time, it is only with the introduction of the Commonwealth's Fair Work Amendment (State Referrals and Other Measures) Bill that the final piece of the jigsaw puzzle is now in place. That bill shows us how referrals by the States will be accepted by the Commonwealth to establish a truly cooperative national system. The Commonwealth bill also establishes how the transition to the new system will operate for the thousands of private sector employers and their employees who are the subject of this referral. Furthermore, we have been able to observe the initial operation of the Fair Work Act.

The Government made the decision to participate in the national industrial relations system after it was certain what laws would be in place in the national system. I will make a few comments about creating the modern award system as part of the transition to the fair work laws. The Australian Industrial Relations Commission is creating these modern awards. The dimensions of the task being undertaken in this process should not be underestimated. The commission is consolidating literally thousands of industrial standards into approximately 120 new awards. The changes to pay rates, leave entitlements and employment conditions are quite significant in some industries and occupations. I am satisfied that the Commonwealth laws now include a range of measures that will ameliorate the transitional difficulties that some commentators have associated with the award modernisation process.

First, employers and employees affected by this referral will, by and large, retain their State award entitlements for at least one year. There are exceptions to this: all employees will be entitled to the benefit of the new National Employment Standards, and Fair Work Australia will be able to periodically adjust these conditions. Second, Fair Work Australia will manage the transition to modern awards over a full five-year period to 2015. This will give employers and employees a reasonable period to adjust to the new awards. Finally, take-home-pay orders will be able to be made by Fair Work Australia in order to ensure that no existing employees will suffer a reduction in net pay. While the New South Wales Industrial Relations Act has worked well to provide an industrial relations framework that is fair, just, efficient and productive, the fair work laws provide similar outcomes.

The national fair work system is built upon fundamental workplace relations principles that have been agreed between the Commonwealth, the States and Territories. These include a strong, simple and enforceable safety net of minimum employment standards; genuine rights to ensure fairness, choice and representation at work; collective bargaining at the enterprise level with no provision for individual statutory agreements; fair and effective remedies available from an independent industrial umpire; protection from unfair dismissal; an ongoing commitment to an independent tribunal system; and an independent authority able to assist employers and employees within the national system. These principles are mirrored in the Commonwealth's Fair Work Amendment (State Referrals and Other Measures) Bill and are established in the referring legislation of each of the other participating States. They are also set out in the multilateral intergovernmental agreement that all States participating in the national system will sign or have already signed.

The multilateral intergovernmental agreement is an important document. It emphasises that the new national system will be a joint endeavour amongst the participating jurisdictions. It commits all participating jurisdictions—the Commonwealth, the States and the Territories—to support the fundamental industrial relations principles. Importantly, if any future Commonwealth Government seeks to introduce an amendment to the Fair Work Act that would undermine the fundamental workplace relations principles, that issue will be able to be debated at the Workplace Relations Ministerial Council. If necessary, the council will vote on whether the amendment or proposed amendment undermines the principles. If a two-thirds majority does not support the amendment, the Commonwealth has committed to not proceed with it. This political commitment is reinforced in the legislation I

have introduced today, and in the Commonwealth bill that will accept State referrals.

If the New South Wales Government is of the view that an amendment or proposed amendment to Commonwealth legislation undermines the fundamental principles, a proclamation may be made declaring that that particular amendment will have no effect in the State of New South Wales. But this partial termination of the reference of powers will not affect the overall reference; that is, the rest of the national system as it operates in this State will not be affected by such a proclamation. This mechanism permits the State to precisely identify and quarantine any objectionable amendments to the Fair Work Act. This promotes the stability of the system whilst also providing the Government with the capacity to target WorkChoices-style laws. The consultative and deliberative arrangements in the multilateral intergovernmental agreement will ensure that the national industrial relations system evolves in a manner consistent with the fundamental principles of that system.

All the referring States, together with the Commonwealth and the Territories, are committed to working together to ensure that the new national system works effectively for all private sector employers and employees. I can inform members that New South Wales and the Commonwealth are close to finalising arrangements that will underpin this cooperative relationship. The Commonwealth has agreed that seven members of the New South Wales Industrial Relations Commission will be appointed to positions in Fair Work Australia, the tribunal that administers the Fair Work Act. Three of these members will work in Fair Work Australia on a full-time basis, four on a part-time basis.

All will maintain their membership of the Industrial Relations Commission. This will provide a significant boost to the membership of Fair Work Australia in New South Wales after the Howard Government eroded the membership of its predecessor, the Australian Industrial Relations Commission. It will ensure that the skills and knowledge of State tribunal members continue to be available to employers and employees throughout New South Wales. It also facilitates the establishment of Fair Work Australia in the vital industrial centres of Newcastle and Wollongong where Fair Work Australia will share premises with the Industrial Relations Commission.

There will also be considerable cooperation between the Commonwealth and New South Wales in the provision of education and compliance services. Inspectors from New South Wales Industrial Relations and the Fair Work Ombudsman will work together to deliver information and educational services to the workplaces of New South Wales. State inspectors will be trained and dual-badged as inspectors under the Commonwealth's Fair Work Act 2009. Currently, the agencies are preparing an educational program that will be delivered in a variety of ways to employers in this State. This will ensure that, as far as is practicable, businesses are well equipped during the transition to the new national system. I am advised that the program will particularly focus on unincorporated employers who are the subject of this bill. In this program employers from regional areas of New South Wales will be key targets.

I now detail the major provisions contained within this bill concerning the operation of this referral of power. The major elements of the bill are: the creation of fundamental workplace relations principles in clause 4, reflecting those principles I have described earlier; the creation of an initial reference of powers, a referral of the power to amend the referred laws and a referral of power to make transitional laws about the referred matters; the exclusion of a specified range of matters in clause 6; and the process for the termination of the reference in clauses 7 to 9 of the bill. Schedule 1 of the bill sets out the text that is required to be inserted in the Commonwealth Fair Work Act 2009 in order to effect the referral of powers.

I now detail the major provisions contained within this bill concerning consequential amendments to New South Wales legislation. Schedule 2 to the bill sets out the amendments to New South Wales law considered necessary to align State law with the national industrial relations system. Schedule 2 repeals section 146A of the Industrial Relations Act 1996 and amends section 146B of the Industrial Relations Act 1996. In the case of the repeal of section 146A, the commencement of the Fair Work Act 2009 clearly overrides the operation of these laws. The section is, accordingly, redundant.

The amendment to section 146B will permit members of the Industrial Relations Commission of New South Wales to be nominated as dispute resolution providers in federal enterprise agreements. This will ensure that many companies who continue to use the expertise of the Industrial Relations Commission will be able to continue these arrangements. The implementation period in 2010, and the transitional period through to 2015, will also require a positive contribution from unions, business and employer associations across New South Wales.

In order to ensure that the Government receives comprehensive advice on the operation of this new set of laws, the Government will form an Industrial Relations Advisory Committee. This body will provide an independent and regular source of advice to Government. Members will be drawn from employer and employee organisations, as well as professional bodies. This will ensure that the Government can respond quickly to any issues that arise during the implementation of the new system. There is an unprecedented level of support for the national industrial relations system.

I am reminded that the review of industrial relations undertaken by Professor John Niland 20 years ago had as

one of its primary recommendations that New South Wales should seek a uniform national set of laws. More than two decades later, the future has arrived. Today this House can heed that guiding principle from Professor Niland and from many other learned commentators. New South Wales should be proud to take its place amongst the referring States and to contribute positively to the implementation of this new national workplace relations system. I commend the bill to the House.