Agreement in Principle

Mr DAVID HARRIS (Wyong—Parliamentary Secretary) [10.14 a.m.]: I move:

That this bill be now agreed to in principle.

The purpose of the Industrial Relations Amendment (Consequential Provisions) Bill 2010 is to make a range of relatively minor amendments to the New South Wales Industrial Relations Act 1996 and to update terminology in industrial relations legislation in New South Wales. These amendments are necessary as a consequence of the changes brought about when this Parliament passed legislation that referred private sector industrial relations matters to the Commonwealth under the Industrial Relations (Commonwealth Powers) Act 2009. That Act took effect on 1 January 2010 and resulted in the creation of a national system for private sector employers and employees in this State.

The New South Wales Government's decision to participate in the national industrial relations system was made only after lengthy consultation and negotiations with the Commonwealth Government and only after the New South Wales Government was certain of the contents of the laws that would cover employers and employees in New South Wales. The final piece of the Federal legislation, the Fair Work (State Referrals and Other Measures) Act 2009, was introduced only into the Commonwealth Parliament in late October 2009. Given that there was very little time to draft and pass the referral legislation before Parliament rose in 2009, the New South Wales Government decided to introduce legislation necessary to give effect to the referral and its consequences in two parts.

Members will remember that historic day late last year when the New South Wales Government introduced the Industrial Relations (Commonwealth Powers) Bill 2009 into this Parliament. The legislative docking mechanism in that bill had to be introduced and passed before the end of the 2009 parliamentary session in order to ensure that the private sector industrial relations matters referred by New South Wales were part of the national industrial relations system when it commenced on 1 January 2010.

I now bring before the House the second part of the legislation, which makes transitional and consequential amendments to the Industrial Relations Act 1996 and other industrial relations legislation so that the jurisdictions are aligned and the terminology used in the new national system legislation is properly reflected in New South Wales Acts. Members will remember that under the arrangements agreed with the Commonwealth for the creation of a national workplace relations system for the private sector, which is reflected in the terms of the referral legislation of both New South Wales and the Commonwealth, the Minister for Industrial Relations is empowered to make an order declaring local government or State public service sector entities to not be national system employers. Where the declaration is endorsed by the Commonwealth Minister, the declared employers and their employees are thereafter covered by the State industrial relations system.

To ensure a smooth transition for these entities when they join the State industrial relations system, this bill makes provisions so that Federal awards and agreements that cover those entities and their employees are recognised and continue to apply as industrial instruments under the Industrial Relations Act 1996. To avoid disruption to employees and employers when their industrial relations regulation moves from the Federal to the State system, a new transitional State instrument will be taken to be an award or enterprise agreement to achieve the greatest deal of correspondence to the type of instrument it was under the Federal system. The nominal expiry date of a new State instrument will fall on the same date on which the former Federal instrument would have nominally expired or the date the instrument is rescinded or terminated, if those dates occur before a maximum nominal expiry date of two years from the date of transition.

The bill also provides the New South Wales Industrial Relations Commission with a broad discretion to exempt a party from the Act and vary or revoke any provision of such an award or enterprise agreement if it is satisfied that it is fair and reasonable to do so under the circumstances. Such circumstances may include assessing the appropriateness of terms and conditions of a former Federal industrial instrument having regard to the legislative minimum conditions and standards, test case principles and the no net detriment test in New South Wales. Also, the bill provides that a regulation can be made to ensure that any other matters necessary to ensure a smooth transition of these instruments can be achieved.

As part of updating terminology, this bill replaces references to the previous Commonwealth industrial relations laws, for example the Workplace Relations Act 1996 and the instruments under that Act, with references to the current Fair Work laws and the instruments under the new national industrial relations system.

Similarly, the bill replaces references to the Australian Industrial Relations Commission in the Industrial Relations Act 1996 with a reference to the new independent umpire established under the Fair Work Act 2009, Fair Work Australia. This is particularly relevant for section 50 of the Industrial Relations Act 1996, which requires that as soon as practicable after the making of a national decision a full bench of the New South Wales commission

must give consideration to that decision.

Under section 50, the Industrial Relations Commission of New South Wales must adopt the principles and provisions of a national decision for the purposes of awards and other matters under the Act unless it is satisfied that it is not consistent with the objects of the Act or that there are other good reasons for not doing so. Members will remember that before the introduction of the WorkChoices legislation by the Howard Government, there was a high degree of comity between State and Federal industrial relations tribunals. The WorkChoices laws were destructive in a number of ways and were no less divisive in how they broke up the relationship between independent tribunals throughout Australia, which had provided uniform annual wage outcomes across the nation each year. In the State Wage Case 2006 decision, the Industrial Relations Commission of New South Wales held:

> A decision of the Australian Fair Pay Commission has no statutory relevance for this Commission and it is only a "National decision" of the Australian Industrial Relations Commission that we are required to consider under section 50 of the Act.

The Industrial Relations Commission of New South Wales went on to state:

> The WorkChoices Act has no express reference to fixing safety net wages for the low paid according to either the hereto fundamental important criterion of fairness or the needs of the low paid.

Through section 284 of the Fair Work Act 2009, the Rudd Government has reintroduced the requirement for an independent body, Fair Work Australia, to establish and maintain a safety net of fair minimum wages. Unlike the Howard Government's Fair Pay Commission, Fair Work Australia is guided by a balanced set of factors similar to the Industrial Relations Commission of New South Wales to make fair and just decisions. That is why it is now appropriate for the Industrial Relations Commission of New South Wales to once again take into account national decisions such as annual wage review decisions, and consider whether it is appropriate to adopt those principles or provisions for the purposes of awards and other matters under the Industrial Relations Act 1996.

The jurisdiction of the Industrial Relations Commission of New South Wales still applies to the public sector and local government, and although most private sector industrial relations matters have been referred to the Commonwealth workers identified under schedule 1 of the Industrial Relations Act 1996 will remain subject to decisions of the Industrial Relations Commission of New South Wales. These are the workers who will benefit from the commission's consideration of minimum wage decisions of Fair Work Australia.

As part of aligning the New South Wales industrial relations laws with the new national industrial relations legislation, the bill also amends section 146B of the Industrial Relations Act 1996. Various provisions of the Fair Work Act 2009 and its predecessor, the Workplace Relations Act, made it possible for the parties to various types of Federal industrial instruments to nominate persons to provide dispute resolution services. Most preserved State agreements have now expired, but some have had their nominal duration extended pursuant to the provisions of the Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008, which was the first tranche of fair work laws.

It is appropriate for the New South Wales laws to be amended to ensure that rights of parties to nominate members of the State commission as their dispute provider is respected. In that context, the definition of Federal enterprise agreement has been broadened to include a preserved State agreement where such an agreement is still in its nominal term. The amendments to section 146B simply ensure that parties who have previously agreed may continue to nominate members of the Industrial Relations Commission of New South Wales to perform such dispute resolution services. The bill also makes a minor technical amendment updating terminology in section 4 (13) (a) of the Long Service Leave Act 1955 so that a Federal award includes a modern award and a division 2B State award.

The package of amendments in this bill moved by the Government are relatively minor but highly necessary, and this bill completes the job which commenced late last year of creating one set of laws for private sector industrial relations in New South Wales. The bill also ensures that where a government entity is declared to be more appropriately regulated under the State jurisdiction, the transition back into the State system will be as smooth as is possible. Conditions of employment applying to employees in instruments transitioning will be respected so long as they meet New South Wales minimum conditions of employment. The commission will be at hand to resolve any difficulties that may arise.

The bill also respects the wishes of parties in preserved State agreements to have their preferred commission members from the State Industrial Relations Commission resolve disputes. This is another example of the respect that the Industrial Relations Commission in New South Wales has from business and employees in this State. The New South Wales commission has played a vital role and will continue to be called upon by employees and employers in the public sector and the local government sector to resolve the most complex of disputes.

This bill finishes the job of creating a national system of industrial relations in New South Wales, with one set of

laws applying to each workplace—a great achievement in this State. The Government will continue to ensure that the industrial relations jurisdiction in this State remains fair, equitable, modern and productive. I commend the bill to the House.