NSW Legislative Assembly Hansard
Extract from NSW Legislative Assembly Hansard and Papers Tuesday 7 March 2006.

Second Reading

Mr JOHN WATKINS (Ryde—Deputy Premier, and Minister for Transport) [7.53 p.m.]: I move:

That these bills be now read a second time.

I bring before the House an issue that starkly distinguishes the values of the Labor Government from those sitting opposite. The Industrial Relations Amendment Bill and the Public Sector Employment Legislation Amendment Bill are one plank of the New South Wales Government's response to the Commonwealth Government's divisive WorkChoices legislation, which is a direct attack on the working conditions and living standards of ordinary Australians. It is an attack supported by the Opposition in this State. The so-called WorkChoices legislation offers no choice and no protection, and will lead to confusion and complexity for both employers and employees. Under the WorkChoices legislation, all foreign, trading and financial corporations will be forced to operate under WorkChoices—they will have no choice. [*Quorum formed.*]

The Commonwealth Government has sought to base the legislation on its constitutional power to legislate in relation to foreign, trading and financial corporations. The New South Wales Government believes that the WorkChoices legislation goes beyond the scope of this constitutional power. For this reason, the Government has launched a challenge to the legislation in the High Court. The High Court has indicated that this will be heard in May 2006. The WorkChoices legislation represents an unprecedented attack on the working conditions of ordinary Australian workers. It is an attack on family living standards. What will employees get from WorkChoices? They will get a substandard range of statutory protections to replace what were once comprehensive awards and agreements; the potential for a lower real minimum wage, if the Fair Pay Commission drives down pay rises; protracted disputes with employers over wages and working conditions; and a sidelined Australian Industrial Relations Commission without the ability to deal with industrial disputes easily and expeditiously.

By contrast, the New South Wales Labor Government supports an industrial relations system that promotes fairness and equity, and supports employers and employees in making decisions about the workplace. That is why the Government is introducing these bills. The Industrial Relations Amendment Bill makes three important amendments to the Industrial Relations Act 1996 to extend additional options and protections to those who are transferred to the Federal industrial relations system by the WorkChoices legislation. The bill does not add anything new in substance to employee and employer rights and obligations. Unlike our Federal counterparts, we are not trying to interfere with the industrial arrangements that the parties have entered into. We are attempting to maintain the rights and obligations that employees and employers now enjoy, before WorkChoices rolls over the top of them.

So what are we proposing to do? First, the bill will give industrial parties a further option for making and maintaining co-operative industrial arrangements outside the WorkChoices system. A critical part of such arrangements is access to a means of negotiating and settling the disputes that inevitably arise from time to time. WorkChoices guts the role of the Australian Industrial Relations Commission in dispute settling, and specifically prohibits it from being much more than an advisor to the parties. This is so, even if the parties agree to give the Federal commission a stronger role. The bill provides that, if the parties conclude a common law deed of arrangement, and they agree to give the New South Wales Industrial Relations Commission a role in resolving disputes about the application of the deed, the commission will be empowered to do so.

This gives the parties another option for making agreements if the State system is no longer available, and provides them with ready access to an expert tribunal as a means of supporting a co-operative industrial relationship. The bill further provides that those enterprise consent awards that currently apply to constitutional corporations will cease to operate, and will be replaced by enterprise agreements in the same terms as the previous award. Given that enterprise consent awards are made with—and cannot be made without—the consent of the parties, they are in substance no different from an enterprise agreement, and so should be treated as such. As a result, such agreements will be transferred to the Federal industrial relations system in a form that protects the agreed conditions to the maximum extent possible. This is in the interests of both employers and employees because it protects the integrity of the agreement that they have made.

Thirdly, the bill proposes some minor administrative amendments to the Industrial Relations Act 1996 to make it easier for the New South Wales commission to respond to the needs of industrial parties. This will be done by amending section 159 of the Act to clarify that the general power of the president includes a specific power to determine the way in which a matter or a class of matters is listed before the commission, and to determine the

allocation of matters or the way in which such matters are to be included. In addition, the bill will amend section 156 (2) of the Act to provide that a full bench of the commission must include at least one presidential member and at least one member who is a commissioner or—if no commissioner is available—one non-judicial presidential member. This will open up the membership of full benches so that non-judicial deputy presidents may be used to fill the non-judicial role on a full bench where no commissioner is available.

In the immediate term, these proposals will allow the president to prioritise matters likely to be affected by the commencement of WorkChoices. In the longer term, the commission's capacity to deal with emerging industrial relations issues will be improved. The reality is that WorkChoices severely restricts the choices available to employers and employees. It will be vastly more complex to work with and it will be more costly for all parties involved. This bill aims to mitigate some of those effects for those New South Wales employers and employees who will be conscripted shortly into the Federal industrial relations system.

I now turn to the second bill that the Government is introducing into the House. The Public Sector Employment Legislation Amendment Bill will make certain public sector employees the direct employees of the Government rather than individual statutory corporations. The Government believes that about 45 per cent of the New South Wales public sector may be exposed to the WorkChoices legislation. In particular, a range of public sector organisations are statutory corporations that could be characterised as trading or financial corporations for the purpose of the WorkChoices legislation. A number of these organisations employ key front-line staff, such as nurses and allied health workers in the health area, and teachers in TAFE institutions. The Government has a choice in how it employs its staff. And our choice is to take direct action where we can—to protect the working conditions and living standards of our own public sector employees.

WorkChoices does not apply to the direct employees of the Government of New South Wales. Therefore, by transferring public sector workers to direct Government employment, we are ensuring the continued application of the State industrial relations system for key front-line employees, such as nurses, ambulance staff, TAFE teachers and support staff, home care workers, and other employees of statutory corporations. About 45 per cent of the public sector—schoolteachers and support staff, police, firefighters, and other Crown employees—will not be covered by WorkChoices. This is because they are already employed by the Government in the service of the Crown, and not by a corporation. At this stage, the employees of State-owned corporations have not been included in this bill, and the Government is considering all available options for protecting their employees from the deleterious effects of the WorkChoices legislation.

The Public Sector Employment Legislation Amendment Bill amends the Public Sector Employment and Management Act 2002, the Health Administration Act 1982 and the Health Services Act 1997, and makes consequential amendments to the legislation establishing various statutory corporations. Generally, the bill removes the existing employment powers of the public sector corporations listed within it, and provides that the employees of these corporations instead will be employed by the Government of New South Wales in the service of the Crown under a new chapter 1A of the Public Sector Employment and Management Act. The bill makes it clear that the transition from employment by a public sector corporation to employment by the Crown will not change the terms and conditions under which these staff are employed, and will not break the continuity of their service. With the exception of TAFE administrative staff, the bill does not make any public sector employees into public servants.

Schedule 1 to the bill amends the Public Sector Employment and Management Act to create a new "Government Service of NSW", which will consist of people employed by the Government of New South Wales in the service of the Crown. Staff within the Government Service will be assigned to public sector corporations to enable them to exercise their functions. The New South Wales Government will employ staff in divisions of the Government Service. A new schedule to the Act will list the divisions of the Government Service. Part 1 of the schedule lists the public service departments, and part 2 lists the non-public service divisions within the Government Service. In practice, the staff currently employed by each statutory corporation will form part of the division that is assigned to assist that same corporation in exercising its functions. Part 3 of the schedule lists the special employment divisions within the new Government Service. The employment of staff within these divisions is subject to the limitations specified in relation to those staff. This division is intended to preserve the effect of existing powers that statutory corporations have to employ outside the Public Sector Employment and Management Act, such as powers to employ casual staff.

The bill does not include the teaching service, the police service or parliamentary staff, although these will continue to be defined as "public sector services" under the Act. The health service will not be included in the Government Service, but its staff will be transferred to Crown employment through amendments to health-specific legislation. Each division of the Government Service will have a division head who will exercise the Government's employment functions in relation to that group of staff. The person holding the position of division head will be listed in schedule 1 to the Act. In relation to public service departments, the existing director general or chief executive officer will be the division head. In relation to other public sector corporations, the division head generally will be the existing chief executive officer. Schedule 1 also contains a number of transitional provisions to facilitate the smooth transition of staff into the New South Wales Government Service, and ensure that their current employment terms and conditions are transferred to the new employer.

In particular, provision is made to ensure that the accrued annual leave, extended service leave and sick leave are transferred to the new employer. Further, if a Federal award or agreement applies to an employee prior to the changes the terms and conditions of the award will be carried over as a State instrument. The new arrangements also will preserve the current rights of employees to access appeals tribunals. As the Public Employment Office is a statutory corporation, it has been decided to de-corporatise that organisation to be absolutely certain that it will not be covered by WorkChoices. Therefore, the bill abolishes the Public Employment Office and replaces it with the "Director of Public Employment", who will be the Director General of the Premier's Department. The Director of Public Employment will have the same powers and functions as are currently held by the Public Employment Office.

In addition to amending the Public Sector Employment and Management Act, the bill also inserts a new part 1 into chapter 9 of the Health Services Act, dealing with the employment of staff in the New South Wales health service. The bill provides that existing public health sector employees also will be employed under this part by the Government of New South Wales in the service of the Crown. Staff will be employed within the New South Wales health service to enable the following health sector organisations to exercise their functions: Area health services and statutory health corporations, and the public hospitals that they control; prescribed affiliated health corporations, in relation to recognised establishments and recognised services; the Health Administration Corporation; and the Director General of Health, in relation to ambulance services, and the provision of health support services to public health organisations and the public hospitals that they control.

The bill provides that the Director General of NSW Health may exercise the Government's employer functions on its behalf in relation to the staff employed in the NSW Health Service. Again, consequential provisions ensure that all staff who become members of the newly constituted NSW Health Service will continue to be employed in accordance with the terms and conditions that applied to them as members of staff of the statutory corporation concerned. The bill does not change the salary, wages or employment conditions of these employees.

Special issues arise in relation to affiliated health organisations. These are non-government religious and charitable organisations, some or all of whose establishments or services are recognised as part of the public health system. The Health Administrative Corporation is currently the representative employer for these organisations. Given the non-governmental nature of these organisations, the bill provides that organisations may become declared affiliated health organisations by being prescribed as such in a regulation. However, they will not be prescribed if they do not concur. The staff of declared affiliated health organisations also will be employed in the NSW Health Service by the Government of New South Wales in the service of the Crown.

A provision has been included in the bill to ensure that only NSW Health Service staff whom the declared organisation considers will respect their health care philosophy will be able to work in their recognised services or establishments. Whether or not an organisation is declared by regulation for public health sector employment purposes will not affect its status as a public health organisation under the Health Services Act. Non-declared organisations, which are funded as part of the public health system, will be required as far as possible to provide terms and conditions of employment for their staff that mirror those for the NSW Health Service. Regulations will also be developed to facilitate mobility between non-declared organisations and the NSW Health Service.

In relation to the Ambulance Service, additional changes are necessary to preserve the exempt benefits for its employees under Commonwealth fringe benefits tax legislation. These are contingent on the staff being employed by the body charged with providing public ambulance services. Therefore, the Ambulance Service of New South Wales will no longer be a statutory corporation, but will retain its distinct identity as a service. The service will continue to comprise the highly professional group of staff dedicated to providing ambulance services for the people of New South Wales. However, they will be transferred to the NSW Health Service to form a distinct and separate service within it.

The bill repeals the Ambulance Services Act 1990, and inserts a new chapter 5A into the Health Services Act 1997 which will instead establish and regulate the Ambulance Service of New South Wales. In future, the Director General of Health will exercise the functions of employer of Ambulance Service staff and also will be vested with the statutory responsibility for providing ambulance services. Day-to-day operational management responsibility will continue to reside with the chief executive, and in all practical respects the Ambulance Service of New South Wales will continue to operate as it currently does.

Schedule 3 to the bill contains a set of amendments to the Health Administration Act 1982 that are required as a result of the changes to the NSW Health Service. Schedule 4 contains a set of amendments to the legislation constituting the various statutory corporations covered by the bill. These provisions expressly remove the power of the statutory corporations to employ staff. These corporations will instead draw on the employees of the Government Service of New South Wales to enable them to carry out their functions. The New South Wales Labor Government strongly opposes the Commonwealth's WorkChoices legislation and the impact it will have on the working conditions and living standards of ordinary Australians. These bills represent just one aspect of the Government's response to that legislation. They are strong measures that represent Labor's strong commitment to protecting fairness and equity within our community. I commend these bills to the House.