

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to refer certain matters relating to workplace relations to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purposes of section 51 (xxxvii) of the Commonwealth Constitution, which enables State Parliaments to refer matters to the Commonwealth Parliament.

The Bill operates by reference to certain text of the Fair Work Act 2009 of the Commonwealth (the Commonwealth Fair Work Act) that will apply that Act (and future amendments to that Act) to all employees other than State public sector and local government sector employees.

The Bill also makes consequential amendments to the Industrial Relations Act 1996.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation.

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Clause 3 defines certain words and expressions used in the proposed Act. The clause defines the subject matters of workplace relations to be referred and the matters excluded from those referred matters. The clause also defines the scope of employment within the State and local government sectors for the purposes of the exclusion of those employees from the referral.

Clause 4 sets out fundamental workplace relations principles under the proposed Act.

Clause 5 deals with the references to the Commonwealth Parliament. The references comprise the initial reference of the text set out in Schedule 1 (to cover the application of the Commonwealth legislation in the State), the amendment reference (to cover future amendment of the Commonwealth legislation) and the transition reference (to enable the transition from State to Commonwealth industrial relations arrangements).

Clause 6 deals with matters excluded from the reference, namely State and local government employees (including Ministers and Members of Parliament, parliamentary staff, and law enforcement officers).

Clause 7 deals with the termination of the period of the references under clause 5 (namely, the period ending on a day fixed by the Governor by proclamation). The clause enables the period of initial, amendment and transition references to be terminated or only the period of the amendment or transition reference to be terminated.

Clause 8 makes it clear that the separate termination of the period of the amendment or transition reference does not affect laws already in place. Accordingly, the transition or amendment reference continues to have effect to support those laws unless the period of the initial reference is also terminated.

Clause 9 requires 6 months' notice of the proposed termination of a reference. However, only 3 months' notice of the proposed termination of the amendment reference is required if future Commonwealth legislation is considered to be inconsistent with any of the fundamental workplace relations principles set out in clause 4.

Schedule 1 Text to be included in the provisions of the Commonwealth Fair Work Act

Schedule 1 sets out the relevant text of the Commonwealth Fair Work Act that will apply that Act to employment generally in the State (other than for the State public

and local government sectors).

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Schedule 2 Amendment of Industrial Relations Act

1996 No 17

Schedule 2 amends the Industrial Relations Act 1996 for the following purposes:

- (a) to provide a mechanism (authorised under the Commonwealth Fair Work Act) by which the Minister may declare specified State or local government employers (including certain subsidiary or related bodies) not to be national system employers and thereby excluded from that Act (provided the declaration is confirmed by the relevant Commonwealth Minister),
- (b) to recognise the referral of power and to make transitional provision relating to the updating of existing references in NSW Acts and instruments to State industrial instruments or agreements,
- (c) to repeal section 146A, which authorised the Industrial Relations Commission of New South Wales to deal with industrial matters by agreement with corporations subject to the previous federal workchoices legislation,
- (d) to revise provisions that refer to the federal legislation to reflect changes made by the Commonwealth Fair Work Act,
- (e) to enable savings and transitional regulations to be made consequent on the enactment of the proposed Act.