

INDUSTRIAL LEGISLATION AMENDMENT BILL 2011

Introduction and First Reading

Bill introduced, on motion by **Hon Simon O'Brien (Minister for Commerce)**, and read a first time.

Second Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [7.31 pm]: I move —

That the bill be now read a second time.

The Industrial Legislation Amendment Bill 2011 will amend various statutes, but the principal amendments will be to the Construction Industry Portable Paid Long Service Leave Act 1985. The Construction Industry Portable Paid Long Service Leave Act establishes a statutory portable long service leave scheme for employees in the Western Australian construction industry. The itinerant nature of the industry means that employees rarely have long service with one particular employer. The act bases the entitlement to long service leave on employees' service in the construction industry rather than with one particular employer.

The portable long service leave scheme under the act is administered by the Construction Industry Long Service Leave Payments Board. The board is responsible for administering the scheme's funds, which as at 30 June 2011 totalled \$208 million. In the 2010–11 financial year, the contribution levy collected by the board from employers totalled \$62.7 million, with the average number of employees contributed for being 62 047.

The Western Australian construction industry has experienced strong employment growth over the past decade, with an annual average increase of 4 100 employees. In this environment, it is timely that the Construction Industry Portable Paid Long Service Leave Act be updated to clarify the act's application to certain employers and to improve the administration of the scheme.

The bill will make a number of definitional amendments to the Construction Industry Portable Paid Long Service Leave Act. In particular, the bill will replace outdated references to commonwealth industrial laws and industrial instruments. These references are critical to determining who are employees for the purposes of the act. The act currently refers to federal awards made under the Workplace Relations Act 1996, which are being progressively phased out. If these references are not updated, over time the act will only apply to a small number of employees in the Western Australian construction industry. The portable long service leave scheme would effectively become redundant.

The bill will clarify that labour hire agencies are included in the definition of "employer" under the act. It is desirable that this be made explicit with the increasing incidence of labour hire, and to ensure the act achieves its primary objective of providing all employees in the Western Australian construction industry with paid long service leave.

The bill will rectify identified anomalies under the Construction Industry Portable Paid Long Service Leave Act. For example, the bill will ensure that what counts as service in the construction industry is consistent for both registered and unregistered employees under the act. The bill will also amend the act to prescribe a time frame for employers to submit contributions to the board. While the act requires employers to submit both a written statement and contributions, a time frame is currently only prescribed for submitting the statement.

Other amendments are designed to improve operational efficiencies and to reduce administrative red tape. Employees will no longer have to apply to the board to register under the Construction Industry Portable Paid Long Service Leave Act. They can be automatically registered by virtue of their employer submitting a statement with their details to the board.

The bill will change the process for selecting members to the board. The Minister for Commerce will now have discretion to appoint two ordinary members to the board, with one member to represent the interests of employers in the construction industry and the other to represent the interests of employees. This will enable broader industry representation on the board.

The bill will replace most of the offence provisions in the Construction Industry Portable Paid Long Service Leave Act with civil penalty provisions. Civil penalties are generally considered to be more appropriate for contraventions of industrial legislation than offence provisions. Proceedings for a civil penalty will be brought by an officer of the board in the Industrial Magistrates Court. The bill will also enable certain decisions of the board to be reviewed by a single commissioner of the Western Australian Industrial Relations Commission.

Aside from the Construction Industry Portable Paid Long Service Leave Act, the bill will amend the Industrial Relations Act 1979, the Minimum Conditions of Employment Act 1993, the Employment Dispute Resolution Act 2008, the Litter Act 1979 and the Occupational Safety and Health Act 1984.

In terms of the Industrial Relations Act, the bill will ensure the validity of certain statutory appointments made under the act, including those of industrial inspectors, the Registrar and deputy registrars of the Western Australian Industrial Relations Commission and the Clerk of the Western Australian Industrial Appeal Court. Case law has questioned the process for appointing these officers, and it is therefore necessary for the act to be amended to remove any uncertainty.

The bill will enable the Chief Commissioner of the Western Australian Industrial Relations Commission to waive certain publication requirements for awards and industrial agreements where appropriate. Currently, the Chief Commissioner can only waive the publication requirements in limited circumstances, which creates unnecessary administration. The bill will also replace outdated references in the Industrial Relations Act, the Employment Dispute Resolution Act, the Litter Act and the Occupational Safety and Health Act.

Finally, the bill will amend the Minimum Conditions of Employment Act to recognise special public holidays that may be declared from time to time under the Public and Bank Holidays Act 1972. The Minimum Conditions of Employment Act ensures that permanent employees who are not required to work on a public holiday are still entitled to payment.

In summary, the bill will ensure the ongoing viability of Western Australia's portable long service leave scheme in the construction industry, remove uncertainty concerning the validity of certain appointments under the Industrial Relations Act and replace outdated references in other legislation. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.