

CONTRACTUAL BENEFITS BILL 2007

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Minister for Child Protection)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan - Minister for Child Protection) [9.52 pm]: I move -

That the bill be now read a second time.

The Contractual Benefits Bill 2007 is a new piece of legislation that will restore the right of employees of constitutional corporations to make a claim for denied contractual benefits in the Western Australian Industrial Relations Commission. This right was taken away by the federal government's WorkChoices legislation. Following the introduction of WorkChoices, it became apparent that the WAIRC's ability to remedy denied contractual benefits for employees in the federal system had been excluded by the Workplace Relations Act 1996. The bill restores to employees of constitutional corporations the right to seek redress when they have been denied a benefit under their common law contract of employment. The bill provides employees with an accessible option for recovering benefits. Without this avenue, the primary alternative is to pursue potentially expensive common law actions in the court system. The bill essentially replicates the new expanded contractual benefits jurisdiction under the Industrial Relations Act 1979 that will exist following the passage of the Industrial and Related Legislation Amendment Bill 2007. Presently, an employee may refer a claim to the WAIRC under the Industrial Relations Act 1979 on the basis that he or she has been denied a benefit that is an entitlement under his or her contract of employment.

Amendments in the Industrial and Related Legislation Amendment Bill 2007 will empower the WAIRC to deal with an expanded range of contractual benefits claims. Consistent with the proposed amendments in the Industrial and Related Legislation Amendment Bill 2007, this bill empowers the WAIRC to deal with all denied contractual benefits under a contract of employment, not just those that are industrial matters. In certain circumstances the WAIRC will also be able to deal with denied contractual benefits implied into the contract of employment by the Minimum Conditions of Employment Act 1993. A contractual benefit does not include a benefit to which an employee is entitled under a commonwealth instrument.

Employees capable of making a claim will include former employees when the contract of employment has been terminated. The bill includes provisions allowing an employer to make a counterclaim, and enabling the WAIRC to set off claims and make certain orders on determining the claim. The bill contains a capacity for costs to be awarded against a claim or defence that is vexatiously or frivolously instituted or defended. The bill will also enable the WAIRC to transfer claims to the jurisdiction under the Industrial Relations Act 1979 where the employee has incorrectly identified his or her employer as a constitutional corporation.

The bill will restore an avenue for employees to claim benefits under their contract of employment without resorting to the courts. Western Australian employees have been able to enforce denied contractual benefits in the WAIRC since 1980. The bill will simply reinstate an entitlement that WorkChoices removed for employees of constitutional corporations. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.