INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 2021

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Industrial Relations)**, read a first time.

Second Reading

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Industrial Relations) [6.32 pm]: I move —

> That the bill be now read a second time.

In June 2020, the McGowan government introduced the Industrial Relations Legislation Amendment Bill 2020 into Parliament. Unfortunately, the bill did not pass before Parliament was prorogued before the last state election. The government made an election commitment to reintroduce the bill and progress various other industrial relations reforms should it be re-elected. I am now pleased to bring before the house the Industrial Relations Legislation Amendment Bill 2021, which is largely an embodiment of the 2020 bill. The bill will implement key recommendations of two independent reviews—namely, the 2018 review of the state industrial relations system conducted by Mark Ritter, SC, and Stephen Price, MLA, and the 2019 inquiry into wage theft in Western Australia conducted by Tony Beech.

I would like to draw attention to key reforms in the bill. The first, and possibly the most important, is to remove exclusions from state industrial laws that currently mean that some employees in Western Australia have no employment protections whatsoever. State industrial laws exclude various categories of employees from their coverage, including employees engaged in domestic service in a private home. It is an unacceptable situation in the twenty-first century. The commonwealth government has identified these antiquated exclusions as a barrier to Australia ratifying the International Labour Organization's Protocol of 2014 to the Forced Labour Convention, 1930. This important protocol aims to support the global fight against forced labour, people trafficking and modern slavery.

The Office of International Law within the commonwealth Attorney-General's Department has confirmed that the gap in coverage in Western Australia results in Australia's noncompliance with article 2(c)(i) of the protocol. The Office of International Law has advised the McGowan government —

> … this obstacle to compliance with the Protocol could be overcome by Western Australia enacting legislative changes to ensure that the Western Australian industrial relations framework applies to all workers in Western Australia who are not covered by the national industrial relations framework.

The bill will ensure that no category of Western Australian employee is excluded from state employment protections, thereby enabling the commonwealth government to ratify the ILO protocol.

At the heart of the state industrial relations system is the Western Australian Industrial Relations Commission. The bill will broaden the commission's jurisdiction to address contemporary workplace issues, including bullying and sexual harassment. This jurisdiction will be similar to that of the Fair Work Commission under the federal Fair Work Act 2009. Workers will have a quick and inexpensive avenue via the commission to stop workplace bullying and sexual harassment. These provisions complement work health and safety laws and will help to promote cultural change at the workplace, benefiting both employers and workers.

In terms of other reforms to the commission's jurisdiction, the bill will empower the commission to make equal remuneration orders so that employees receive equal remuneration for work of equal or comparable value; enable the commission to proactively take steps to ensure comprehensive award coverage for state system employees in the private sector; and enable suitably qualified commissioners to be concurrently appointed as industrial magistrates—namely those who qualify for appointment as a magistrate. This will increase the resourcing of the Industrial Magistrates Court and enable claims before the court, such as underpayment claims, to be dealt with more expeditiously.

The McGowan government is committed to ensuring that employees are paid their correct entitlements and that law-abiding businesses are not undercut by businesses doing the wrong thing by their employees. To this end, the bill will significantly increase pecuniary penalties for noncompliance with state employment laws and introduce tough penalties for employers who engage in wage theft.

In 2019, the McGowan government commissioned the former chief commissioner of the Western Australian Industrial Relations Commission Tony Beech to identify the reasons that wage theft occurs, the impact of wage theft on employees, employers and the community, and solutions going forward. The inquiry found that wage theft—meaning systematic and deliberate underpayment of wages and other entitlements—is occurring in Western Australia. The inquiry found the likelihood of wage theft to be higher in some industry sectors including cafes and restaurants, contract cleaning and horticulture. This finding is borne out by an ongoing proactive compliance campaign in the state's cafe and restaurant sector undertaken by industrial inspectors of the Department of Mines, Industry Regulation and Safety. Between October 2019 and June 2021, industrial inspectors inspected 234 cafes and restaurants. Of those

businesses, around 80 per cent were noncompliant with their employment obligations. The department recovered just over $650 000 in underpayments for 865 employees. These figures are alarming.

The bill will implement a number of recommendations of the wage theft inquiry for legislative reform. There will be a prohibition on cashbacks, made infamous by 7-Eleven franchisees, whereby employers require employees to pay back part of their wages in order to circumvent employment laws. There will also be a prohibition on an employer dismissing or otherwise disadvantaging an employee because of the employee's right to inquire or complain about employment conditions, a prohibition on sham contracting arrangements and a prohibition on employment being advertised at less than the applicable minimum wage for the position.

The bill will implement two important election commitments of the McGowan government: to make Easter Sunday a public holiday in Western Australia, and to introduce a minimum entitlement of five days' unpaid family and domestic violence leave for state system employees.

Easter Sunday is a day of cultural and religious significance for many Western Australians. Despite this, it is not currently a public holiday in this state. This means that if employees are required to work on Easter Sunday, they receive no additional recompense for doing so. The bill will make Easter Sunday a public holiday in Western Australia, thereby ensuring that employees who work in seven-day industries receive the benefit of the new public holiday. Easter Sunday is already observed as a public holiday in Victoria, New South Wales, Queensland and the Australian Capital Territory. All these jurisdictions also observe Easter Saturday as a public holiday, as well as South Australia and the Northern Territory.

Consistent with the Fair Work Act 2009, the bill will introduce a minimum entitlement to five days' unpaid family and domestic violence leave. This leave will be available to all employees, including casuals. It is an important measure to support employees in crisis and recognises the sad reality that around two-thirds of assaults and one-half of homicides in Western Australia are related to family and domestic violence. I commend the many Western Australian employers who have already voluntarily implemented policies to support employees experiencing this form of violence. The new leave entitlement is a minimum entitlement only, and will hopefully lead to other workplace initiatives to support affected employees.

The final aspect of the bill that I would like to comment on is a legislative mechanism to enable Western Australian local government employers and employees to be exclusively governed by the state industrial relations system. It is the government's strong view that local governments, as part of the body politic of the state, should be regulated by state industrial laws rather than federal laws. This is already the case in Queensland, New South Wales and South Australia. It should also be the case in Western Australia.

The majority of local governments in Western Australia currently operate in the national industrial relations system on the basis that they are "constitutional corporations" or "trading or financial corporations". The Fair Work Act 2009 is largely underpinned by the corporations power of the commonwealth Constitution. However, the ministerial review of the state industrial relations system identified that there is significant legal doubt whether local governments can be validly regulated by the corporations power. This is currently a moot point. Some local governments argue that Western Australian local governments are, in fact, constitutional corporations. They must, however, fully appreciate the consequences of this proposition. Using the corporations power, the commonwealth Parliament could regulate a wide range of local government affairs. For example, the commonwealth could specify the electoral system to be used to elect members of any Western Australian local government. This would be a most undesirable outcome and an unwelcome intrusion into local politics. I draw members' attention to section 7A of the Salaries and Allowances Act 1975, which provides for the determination of the remuneration of chief executive officers of local governments by the Salaries and Allowances Tribunal. This provision was inserted into the act in 2012 by the former Barnett government, with the full support of the Western Australian Local Government Association. If the Parliament of Western Australia is the appropriate place to pass laws to regulate the employment conditions of chief executive officers of local governments, logic demands that other local government employees be similarly regulated by state laws.

The McGowan government has sought to work cooperatively with WALGA to ensure there will be a smooth transition of local government employees and employers from the national industrial relations system to the state system. Existing industrial arrangements from the national system will move to the state system for a period to give local government employers sufficient time to adapt to the state system. There will be savings provisions to ensure that employees' entitlements are preserved when they move to the state system. I am confident that the majority of Western Australians would support the government's endeavours to ensure that local governments are regulated by Western Australian laws and not laws made in Canberra. The bill takes an important first step to achieving this objective.

In conclusion, the bill will strengthen protections for vulnerable workers, while at the same time modernise the state industrial relations system. The state system was last comprehensively reviewed and updated in 2002 by the Gallop Labor government. The system is overdue for reform, which this bill will comprehensively deliver on.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 889.]

Debate adjourned, pursuant to standing orders.

House adjourned at 6.42 pm