

# INDUSTRIAL RELATIONS AMENDMENT BILL 2005

## EXPLANATORY MEMORANDUM

### Introduction

1. The *Industrial Relations Amendment Bill 2005* (the Bill) will amend the *Industrial Relations Act 1979* (IR Act) to:
  - (a) enable an acting appointment of the President of the Western Australian Industrial Relations Commission (Commission), for a period of up to two years;
  - (b) enable the Governor to both extend a Commission member's period of office and appoint a new member to that office in prescribed circumstances;
  - (c) designate the Chief Commissioner as administrative head of the Commission;
  - (d) clarify that the Chief Commissioner may reconstitute the Commission once proceedings have commenced;
  - (e) enable the Chief Commissioner to delegate any of his powers or duties under the IR Act to another Commission member; and
  - (f) clarify that Industrial Inspectors may use their investigation powers under the IR Act for the purposes of the *Minimum Conditions of Employment Act 1993* (MCE Act), or any other Act that confers functions on them.
2. The Bill is the first-step towards the Government's longer term goal to restructure and improve the efficacy of the Commission. Two independent reviews of Western Australian industrial relations legislation have recommended that the Commission be restructured to abolish the Full Bench and the President's position.<sup>1</sup> The reviews also recommended that the Chief Commissioner be designated head of the Commission.
3. Currently under the IR Act, the President is appointed with tenure. The current President of the Commission retires on 5 October 2005. The Bill will enable a new President to be appointed on an acting basis, thereby facilitating future abolition of the position and the Full Bench.

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<sup>1</sup> Commissioner G.L. Fielding, *Review of Western Australian Labour Relations Legislation*, July 1995; Dr Sally Cawley, *The Industrial Relations Act 1979 and the Western Australian Industrial Relations Commission*, January 2003.

### **Sections 1 to 3 of the Bill**

4. The Act will be known as the *Industrial Relations Amendment Act 2005* and will amend the IR Act. The Act will take effect on the day after it receives Royal Assent.

### **Section 4 of the Bill**

5. Section 4 of the Bill will repeal section 16(1) of the IR Act and insert new subsections (1) to (1ac).
6. New subsection (1) will define the “Commission” in subsections (1aa) to (1ac) to collectively include the Full Bench, the Commission in Court Session and a constituent authority.
7. Subsection (1aa) will effectively designate the Chief Commissioner as administrative head of the Commission. The Chief Commissioner will be responsible for managing administrative matters such as:
  - (a) work-related travel arrangements of other Commission members;
  - (b) requests for leave of absence from other Commission members;
  - (c) the purchase of work-related equipment/resources such as computers and motor vehicles;
  - (d) support provided by the Department of the Registrar to Commission members. The Chief Executive Officer of the Department of the Registrar will retain responsibility for managing his own staff.
8. Subsection (1aa) will build upon other sections of the IR Act which already confer administrative responsibilities on the Chief Commissioner such as sections 16(2) and 113(1).
9. Subsection (1ab) will clarify that the Chief Commissioner may alter the Commission’s constitution in relation to a matter. The Commission in Court Session and the Full Bench consist of at least three Commission members. At times it may be necessary to replace one sitting member with another member once proceedings have commenced. A sitting member may become ill, die, retire or be otherwise unavailable due to extenuating circumstances.
10. Subsection (1ac) will provide for continuity of proceedings where a matter has been reallocated or where the Commission’s constitution has been altered. The Commission may have regard to any record of the proceedings or evidence taken before the reallocation or alteration occurred. This will enable the Commission to act with due speed without having to necessarily re-hear or revisit evidence.

## **Section 5 of the Bill**

11. Section 5 of the Bill will insert new section 16A into the IR Act. Section 16A will enable the Chief Commissioner to delegate any of his powers or duties to another Commissioner or to the President. The delegation must be made in writing. The Chief Commissioner will be able to amend or revoke the delegation in writing under section 59(1) of the *Interpretation Act 1984* (WA).
12. The Chief Commissioner will retain ultimate responsibility for the performance of his powers and duties. A Commission member to whom a power or duty is delegated will be unable to further delegate that power or duty.
13. Section 16A(4) will create a presumption that a delegate has not acted in breach of any condition, qualification, limitation or exception specified in the delegation. This is a standard provision commonly associated with a power of delegation.
14. Section 16A(5) is also a standard provision. It will ensure the Chief Commissioner can still request staff to do things on his behalf during the normal course of business, without having to make a formal delegation.

## **Section 6 of the Bill**

15. Section 6 of the Bill will insert new sections 17(1a) and 17(1b) into the IR Act.
16. Section 17(1a) will enable the Governor to make an acting appointment where there is a vacancy, or an expected vacancy, in the office of President. Currently there is no capacity for an acting appointment to be made in these circumstances under the IR Act.
17. Section 17(1b) will restrict the period of an acting appointment under section 17(1a) to a maximum of two years. However, a person appointed as Acting President will be eligible for reappointment on expiry of the initial appointment.

## **Section 7 of the Bill**

18. Section 7 of the Bill will insert new sections 18(3) and 18(4) into the IR Act.
19. Sections 18(1) and 18(2) of the IR Act currently enable the Governor to extend the period of office of a retired or an acting Commission member. An extension can only be made for the purpose of enabling the Commission member to complete outstanding matters (ie. the member cannot commence new matters).

20. New section 18(3) will enable the Governor to both extend a retired member's period of office under section 18(1) and appoint a new member to that office. The IR Act does not currently enable this to occur. This means, for example, that while a retired President's office may be extended to complete outstanding matters, no new matters involving the President may be commenced. Section 18(3) will overcome this situation.
21. Where the retired member is the President under section 18(3), the new appointment may be made on an acting basis. The IR Act does not generally allow for an acting appointment to a vacant office, except in the case of the President (as provided by new section 17(1a)).
22. Similarly, new section 18(4) will enable the Governor to both extend an acting member's period of office under section 18(1) and appoint a new member to act in that office. Where the acting member is the President, the new appointment may be made on a permanent basis if there is a vacancy in the office. This provision is limited to the President, as it is predicated on there being a possible vacancy in the office. The IR Act only allows an acting appointment to a vacant office in the case of the President.

### **Section 8 of the Bill**

23. Section 8 of the Bill will amend section 25(1) of the IR Act to make reference to new section 16(1ab). Section 16(1ab) empowers the Chief Commissioner to, inter alia, allocate and reallocate the work of the Commission. Section 25(1) prescribes how such allocation or reallocation may occur and is to be read in conjunction with section 16(1ab).

### **Section 9 of the Bill**

24. Section 9 of the Bill will amend section 98 of the IR Act to clarify that Industrial Inspectors may use their investigation powers for the purposes of the MCE Act, or any other Act that confers functions on them.
25. Section 98(1) will be amended to reflect that legislation other than the IR Act may confer functions on Industrial Inspectors. For example, Industrial Inspectors also perform functions under the MCE Act and the *Child Welfare Act 1947* (WA).
26. Section 98(6) of the IR Act will be amended to enable Industrial Inspectors to investigate implied minimum conditions of employment in contracts of employment and employer-employee agreements (EEAs). Section 98 does not currently extend Industrial Inspectors' powers to these particular instruments.

27. Section 98(6) will also be amended to collectively define an award, industrial agreement, order, EEA and a contract of employment as “instrument to which this section applies”.
28. Consequential amendments will be made to sections 98(2) and 98(3) as a result of section 98(6). In addition, the reference to “the regulations” will be deleted from section 98(2). This reference is superfluous as the reference to “this Act” in section 98(2) includes regulations made under the IR Act, by virtue of section 46 of the *Interpretation Act 1984* (WA).
29. New section 98(7) of the IR Act will ensure that the provisions of section 98 apply to any legislation that confers functions on Industrial Inspectors.