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Minister for Education

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SECOND READING SPEECH

**FAIR WORK (STATE REFERRAL AND CONSEQUENTIAL AND OTHER
AMENDMENTS) BILL 2009**

House of Representatives

27 MAY 2009

Today the Australian Government continues delivering on its election promises in *Forward with Fairness*.

The Australian Government delivered the death of Work Choices with the passage of the *Fair Work Act 2009* (the Fair Work Act). This is what Australians voted for at the 2007 election and it has been delivered.

The presentation of the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 into this Parliament was a further step forward in paving the way for delivering a balanced, modern workplace relations system for Australia and providing sensible and practical transitional provisions for movement into the new workplace relations system.

A key commitment in *Forward with Fairness* was the creation of a uniform national workplace relations system for the private sector – a workplace relations system where businesses, large and small, are covered by one national system and one set of laws.

We undertook to work cooperatively with the States to achieve this goal. To this end state and territory governments have been extensively consulted on all aspects of the Fair Work legislation.

The Australian Government proposed that a uniform national workplace relations system for the private sector would be achieved either by State Governments referring powers for private sector workplace relations, or other forms of cooperation and harmonisation.

I indicated in my second reading speech to the Fair Work (Transitional Provisions and Consequential Amendments) Bill on 19 March 2009 that I would introduce a further Bill in May that would deal with consequential amendments to other Commonwealth legislation resulting from the Fair Work Act, and additional amendments consequential to any state referrals of power.

I introduce that Bill, the Fair Work (State Referral and Consequential and Other Amendments) Bill 2009 (the Bill), to the House today with the additional announcement that this Bill provides a framework for the Victorian State Government to refer its workplace relations powers to the Commonwealth.

On 4 February 2009, the Victorian Minister for Industrial Relations, the Hon Martin Pakula MP, wrote to me confirming the Victorian Government's decision to make a new text-based referral to underpin the application of the Fair Work Act to all Victorian employers and their employees with effect from 1 July 2009.

The Australian Government anticipates that the Victorian Government's Bill to refer legislative power to this Parliament will be introduced into the Victorian Parliament shortly, and passed in time to coincide with the commencement of the Fair Work Act on 1 July 2009.

This will ensure that there are no interruptions in coverage for Victorian employers and employees. This will provide certainty of coverage to the working people and businesses of Victoria.

Given the importance of this Bill in providing certainty to Victorian employers and employees, I call on the Opposition to support the timely passage of this Bill.

It is anticipated that the Victorian Bill will refer to the Commonwealth Parliament, for the purposes of paragraph 51 (xxxvii) of the Constitution, the power to:

- enact text that would extend the Fair Work Act in Victoria to cover unincorporated and public sector employers and their employees, outworker entities, and extend the application of the general protections in a referring State;
- amend the Fair Work Act in relation to specified subject matters; and

- effect the transition of Victorian referral employees and employers from the system in place under the *Workplace Relations Act 1996*, as extended by the *Commonwealth Powers (Industrial Relations) Act 1996 (Vic)*, to the new system created by the Fair Work Act.

Under Work Choices, not all parts of the laws were supported by Victoria's subject matter referral, making the laws unduly complex and inconsistent in their application.

The making of a text-based referral by Victoria will ensure that all parts of the Fair Work legislation operate in the same way for all employees in Victoria.

Initial reference

The Bill amends the Fair Work Act to enable States to refer matters to the Commonwealth with a view to establishing a uniform national workplace relations system for employers and employees in the private sector.

In the short term, Victoria is likely to be the only State that would be a '*referring State*' under the Bill. However, the Bill establishes a framework that is ready to be adapted in future Commonwealth legislation to accommodate anticipated further references from other States.

The Bill also provides scope for referring States to choose the extent to which the Act would cover their public sector workforces.

The Australian Government is continuing to work cooperatively with other States to secure references of power in time for full commencement of the system on 1 January 2010. In this context, the Government anticipates that the reference framework provided in the Bill may be further amended to take into account the views and needs of the other States concerning their national system participation.

Amendment reference

The Bill will also reflect Victoria's reference to enable amendment of the Fair Work Act in respect of specified subject matters, so far as any such amendments would otherwise be outside Commonwealth power.

The Bill's amendment reference provisions will enable the Fair Work Act to be amended to apply to all employers and employees in a referring State uniformly.

The subject matters of the amendment reference provisions correspond with the matters regulated by the Fair Work Act.

Some subject matters reflecting areas of regulatory responsibility of the State (such as equal opportunity and discrimination, occupational health and safety, public holidays, outworkers and workplace surveillance) will be excluded from the subject matters of the amendment reference. These matters generally correspond to those State laws the operation of which is preserved by the Fair Work Act.

However, these exclusions will not prevent the Commonwealth from amending the Fair Work Act in relation to any of these matters to the extent that the Fair Work Act, as originally enacted, deals with them or enables modern awards and enterprise agreements to deal with these matters.

Transitional reference

The Bill will require a referring State to refer matters relating to the transition to the national system. Victoria's new reference will enable the Commonwealth to transition Victorian employers and employees from the system in place under the *Workplace Relations Act 1996* to the new system created by the Fair Work Act.

The anticipated Victorian Bill will refer legislative power to enable the Commonwealth Parliament to legislate to establish transitional arrangements for Victoria-specific awards and common rule awards underpinned by the existing Victorian reference.

To that end, the Bill will amend the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 so that it also applies in relation to "State reference transitional awards" and "State reference common rules". These instruments will be derived from Victorian reference awards, transitional Victorian reference awards and common rule awards currently dealt with under Schedule 6 to the *Workplace Relations Act 1996*.

Amendments will also be made to the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 so that the new legislative framework operates effectively in relation to State reference transitional awards and common rule awards from 1 July 2009.

Treatment of State public sector employees

The Bill makes clear that a State is a *referring State* for the purpose of the legislative scheme, even though the matters referred may be subject to certain exclusions relating to public sector employment.

This is consistent with the Australian Government's policy to enable referring States to decide the extent to which their public sector workforces should be covered by the new system.

The Bill will also amend the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 and the Fair Work Act to implement a process for the making of State reference public sector modern awards.

In the first instance, these awards will cover public sector employers and employees in Victoria that are within the scope of Victoria's reference of power.

Termination of reference

The Bill also makes it clear that a State will be a referring State notwithstanding that the State's referral law provides for the reference to terminate in certain circumstances. This is consistent with other Commonwealth references.

The Bill will provide however that a State will cease to be a referring State if any or all of the text, amendment or transitional references terminate. This reflects the need to ensure the Fair Work Act can be amended in a uniform, coherent way.

Consequential amendments

The Bill will also make transitional and consequential amendments to 67 Commonwealth Acts that refer to parts of the *Workplace Relations Act 1996* or to instruments under that Act, and which will be repealed by the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009.

These consequential amendments will replace references to concepts, institutions and instruments in the *Workplace Relations Act 1996* with references to corresponding concepts, institutions and instruments in the Fair Work Act. This includes changing references from the Australian Industrial Relations Commission and the Australian Fair Pay Commission to Fair Work Australia.

This Bill also makes amendments to certain other Commonwealth legislation to clarify the operation of that legislation in the new federal workplace relations system. The more significant of these amendments include:

- amendments to the *Human Rights and Equal Opportunity Commission Act 1986* to enable the Human Rights and Equal Opportunity Commission to refer to Fair Work Australia industrial instruments alleged to breach the *Age Discrimination Act 2004* and the *Disability Discrimination Act 1992*;
- amendments to the *Migration Act 1958* to align the powers of migration inspectors in relation to employee records with the powers of Fair Work Inspectors under the FW Act; and

- amendments to the *Privacy Act 1988* to apply that legislation to small business operators within the meaning of that Act who are also associations of employees.

Inter-governmental agreement

State Governments participating in the national system will also be governed by a multilateral inter-governmental agreement (IGA), which will outline the principles of the national workplace relations system for the private sector and the roles and responsibilities of those participating States and Territories and the Commonwealth.

The Australian Government has undertaken significant consultation with the state and territory governments and, while these discussions are progressing well, the multilateral IGA may not be finalised prior to the Victorian referral date of 1 July 2009. Accordingly, the Victorian referral will be governed by an interim bilateral IGA until the multilateral IGA is finalised with other participating States. The interim bilateral IGA sets out consultation arrangements between the Commonwealth and Victoria in relation to amendments to the Fair Work legislation.

Conclusion

This Government is well on the way to achieving its goal of a uniform national workplace relations system for the private sector. The new national system is based on fairness for working people, flexibility for business and the promotion of productivity and economic growth for the future prosperity of our nation.

The fundamental basis of the new system was established with the passage of the *Fair Work Act 2009*.

The Bill I have introduced today is the next step in the creation of the national workplace relations system for the private sector promised by this Government.

In making a fresh referral, the Victorian Government has recognised the benefits of a national workplace relations system, including eliminating the costs and confusion for business and employees of dealing with separate workplace relations systems and instruments.

Over the coming months we anticipate other States will also take the step of becoming full participants in implementing this crucial national reform.

I commend the Bill to the House.