

## **BY FACSIMILE**

The Honourable Colin Barnett MEd MLA  
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Dear Mr Barnett

### **The Amendola Report**

I refer to the above matter and to a number of press reports yesterday evening where you are reported to have said the following:

*"But Amendola came back with recommendations along the line of the Work Choices path and that's what the Government is not going to do."*

*"We are certainly not implementing the thrust of the Amendola report which is a Work Choices thrust."*

The fact is that the report did not contain a number of Work Choices type policies and nor did it provide a Work Choices thrust. It provided a number of recommendations which are, in summary:-

#### **Minimum Statutory Standards**

A set of statutory minimum standards based on those set out in the current Western Australian *Minimum Conditions of Employment Act 1993* and the *Fair Work Act 2009*;

#### **Awards**

A review of Western Australian awards in order to reduce their number and content and to be modernised through a process reflecting the constituency of the current system, being a small business private sector and parts of the public sector, and broadly in line with what has occurred in the federal system;

#### **Minimum Wages**

Tying minimum wage outcomes to what takes place under the *Fair Work Act 2009*;

#### **Agreements**

Providing for two types of collective agreements being an employee collective agreement and a union collective agreement as well as an individual agreement, all of which have to meet the same benchmark no disadvantage test and would follow the same requirement to come into force.

As you know the only type of collective agreement available under the current Western Australian system is with a union where no vote of employees is mandated and no benchmark test against minimum standards is required.

As you also know the system in Western Australian has provided for individual agreements since the early nineties and still does so, although the provisions relating to the making of an individual agreement run to some 64 pages.

My recommendation relating to individual agreements are neither Work Choices nor Work Choices type. An individual agreement under my recommendations would have to meet the same benchmark no disadvantage test as collective agreements.

My recommendations on agreements and agreement making reflect, to an extent, what was in the *Workplace Relations Act 1996*, pre Work Choices.

### **Unfair Dismissal**

On the issue of unfair dismissal I gave the Government a choice of having an unfair dismissal exemption for small business – 20 employees or less, or having a longer qualification period for all employees.

The former is not a Work Choices type recommendation but, in any event, was put forward as an alternative for the Government's consideration.

### **Right of Entry**

I recommended tightening up the right of entry laws which, as they currently stand, are completely inadequate. There is not a fit and proper person test as to who can get a permit allowing entry onto a site; there is no offence of a permit holder hindering or obstructing once on site; and the loopholes available to avoid prosecution for misbehaviour on a site are such that one could drive a truck through them. The recommendations I made are hardly Work Choices type.

### **Industrial Action**

I recommended a capacity to take protected industrial action, based upon the provision of the *Fair Work Act 2009* as opposed to the current situation in Western Australia where industrial action is unlawful but nevertheless seems to be taken with impunity and little consequence.

### **Size of the Tribunal**

Given that the workload of the WAIRC is about a third of what it was before Work Choices and the *Fair Work Act 2009* I recommended it be streamlined to reflect that or, alternatively that it become a division of the State Administrative Tribunal. Either way I did not think that Western Australians should be burdened with seven members of the WAIRC, support staff, a separate Industrial Magistrates Court and a separate Industrial Appeal Court which has had little to do since 2005.

### **Structure and Jurisdiction**

I made a series of recommendations in terms of the structure of the system, both legislatively and otherwise to reflect what would be seen as a logical structure by comparison with the, frankly, ridiculous structure that exists at present where there seems to be two of everything for no good purpose.

I also made recommendations about jurisdiction that reflect the current modern federal system where conciliation is truly conciliation and where arbitration is not at large. I asked the question "what jurisdiction should be available in the system?", as opposed to the approach taken over the years of "what jurisdiction can I get?" and followed the path of the current federal system.

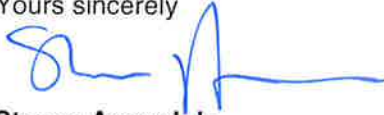
### **A Registration System for Agreements**

The only recommendation made that could properly be linked to Work Choices was that there be a registration system for agreements, as opposed to an approval system. That recommendation reflected the small business private sector constituency that would want a simpler system of agreements arising into place if they were going to engage in agreement making.

**General**

The report speaks for itself. It was commissioned by your Government and responded to the terms of reference. It is of course open to your Government to adopt all, some or none of the recommendations. However, so as not to cause unfounded damage to my professional reputation and that of my firm, I ask that when you comment on it publicly you do not misrepresent what it says.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Steven Amendola', with a long horizontal flourish extending to the right.

**Steven Amendola**

## PROJECT BRIEF

### INDEPENDENT REVIEW OF THE STATE INDUSTRIAL RELATIONS SYSTEM

#### Background

Between 15%-30% of employees in Western Australia remain in the state industrial relations system following Commonwealth policy to regulate industrial relations for employers who are constitutional corporations and their employees.

It is estimated that most private sector employees in the State system are employed by small business.

It is desirable a State system meets the needs of these particular employers and employees.

The Western Australian Government has committed to an independent review of the State industrial relations system. The primary purpose of the review is to ensure that the State industrial relations system:

- (a) provides flexibility and productivity; and
- (b) is competitive with elements of the new federal industrial relations system.

#### Terms of reference

1. The review of the State industrial relations system should take into account the Federal Government's *Fair Work Act 2009* and identify:
  - (a) which elements of the *Fair Work Act 2009* should form part of a reformed State industrial relations system; and
  - (b) potential areas for harmonisation of State and federal industrial relations legislation.
2. The review of the State industrial relations system should specifically identify areas of legislative reform including but not limited to:
  - a) **unfair dismissal**, to reduce the regulatory burden on business (especially small business), to discourage vexatious and frivolous claims and to streamline the process for resolving claims;
  - b) **employment agreements**, to ensure they meet the genuine needs of employers and employees, whether individually or collectively, provide sufficient flexibility, and are administratively simple;
  - c) **State awards**, to ensure State awards meet the genuine needs of industry, provide individual employers and employees with sufficient flexibility and are simple to understand;
  - d) **union right of entry**, to ensure that right of entry provisions appropriately balance the interests of the industrial parties including the basis of entry and its exercise;

- e) **minimum wages**, to streamline the process for setting and adjusting minimum rates of pay;
  - f) **dispute resolution** to enable effective and efficient prevention and resolution of industrial and employment disputes, including by mediation under the *Employment Dispute Resolution Act 2008*;
  - g) **statutory minimum conditions of employment**, to ensure they meet the needs of contemporary workplaces;
3. The review should make recommendations with respect to existing structures including the WAIRC and the Coal Industry Tribunal of Western Australia.
  4. The review **must** consider the likely impact of any changes to the State industrial relations system on public sector employment.

### **Consultation**

5. It is intended that stakeholders be given the opportunity to make submissions on the review. The reviewer may consult with stakeholders as he or she considers appropriate.

### **Available resources**

6. The Labour Relations Division of the Department of Commerce can assist the reviewer with research, legal and administrative support as required.
7. In addition, the Department of the Registrar of the WAIRC will provide data on applications made under the IR Act 1979.

### **Timeframe**

8. The review will commence in July 2009 and must be completed within four months of the commencement date.