

Legislation & Parliament Update – November 2003

1. Federal Uniform Systems Bill

The Federal Government has agreed to amend its Workplace Relations Act to incorporate the provisions of the Federal Uniforms Systems Bill passed by the Victorian Government in the Autumn Session of State Parliament. The Federal Government's decision to proceed with legislative amendments to Federal laws will mean the Victorian Government will not proceed with the establishment of an IR division at the Victorian Civil and Administrative Tribunal. The changes in the Federal laws will provide 20 allowance award conditions for employees who were previously covered by Schedule 1A benefits and for outworkers employed in the clothing industry.

2. State Government fails small business

On October 15th, a wide range of small business issues were debated in the Legislative Council on the following motion: *That this house condemns the Minister for Small Business for failing to adequately represent and advocate the interests of the small business sector in government and for failing to establish and implement an effective policy platform to advance the small business sector in Victoria.*

Not surprisingly, the latest Sensis report (formerly the Yellow Pages Report) indicates the Victorian and West Australian state governments are at the bottom of the states and territories table for business confidence in their small business policies. In the debate, I expressed concerns about the Bracks Government's failure to support small business in the ACTU redundancy test case, to address costly delays in local government planning decisions and the trend in Government legislation to extend rights of entry to a wider range of department and government agency representatives.

The debate is reported in Hansard for October 15th and can be accessed via the Victorian Parliament website on www.parliament.vic.gov.au

3. Shop Trading Reform (Simplification) Bill

The Minister for Small Business has made a third attempt at correcting the fiasco the Bracks Government created with the Easter Sunday shutdown concession to the Shop Distributive and Allied Employees earlier this year.

The legislation is an improvement in that it abolishes the schedule of exempt shops and allows chemists, petrol stations and cafes, restaurants and coffee shops as of right trading. It also allows any business with less than 20 employees at a specific business location and not more than 100 employees employed by the company in Victoria to also elect to open on Easter Sunday, Good Friday, Christmas Day and up to 1pm on ANZAC Day. A clause is included that allows retailers to elect whether or not they open, voiding any existing lease obligation on those days. The legislation also provides for the enforcement of trading hours legislation by a new inspectorate rather

than by the police. The new inspectors are expected to be Consumer Affairs Victoria inspectors.

The legislation is an improvement but still not inadequate. It still leaves the City of Melbourne shut to tourists on Easter Sunday and hardware stores closed in the busiest DIY sales period. It contains a gobbledygook clause about the powers of inspectors and the rights of a retailer not to incriminate themselves that Opposition will pursue. The Opposition's position is that all retailers should be able to trade on Easter Sunday if they wish to do so and the changes now proposed simply create new anomalies.

3. Fair Trading (Further Amendment) Bill

This legislation seeks to regulate the direct marketing/call centre industry, imposing new cooling off procedures, restricting calling times and providing for the maintenance of records of calls by telemarketers. Calling times will be limited to 9am to 8pm weekdays and 9am to 5pm at weekends. Some of the changes in the legislation are appropriate and address consumer concerns about telemarketing. However, the Liberal Party is most concerned that this legislation has been passed by the Bracks Government without allowing an industry code of practice to be implemented and evaluated first.

The Ministerial Council of Consumer Affairs Ministers, which includes the Victorian Minister, has developed an industry code of conduct in conjunction with the Australian Competition and Consumer Council and in consultation with the industry. The Liberal Party is concerned that the Bracks Government elected to legislate rather than implement the code. The legislation establishes different operating requirements to the national code issued in September 2003, thereby creating extra costs and compliance issues for the industry. The call centre industry believes that between 6000 and 12000 jobs could be lost in the industry as a result of the Victorian legislation.

4. Partnership (Venture Capital Funds) Bill 2003

This legislation introduced a new form of partnership, an incorporated limited partnership, to provide a vehicle to attract more venture capital funds to Victoria, particularly from overseas investment funds. The Bill will enable entities established under the legislation to attract an exemption on Capital Gains Tax and possibly other taxation concessions. The Bill preserves the legal status of the new form of partnership to sue or be sued.

The Liberal Party did not oppose this legislation but made the point in the debate that this initiative alone will not attract venture capital funds to Victoria. The Liberal Party emphasised the danger to investment in this state of the volatile industrial relations climate and the Government's policies and attitudes to contracts in the energy and transport industries and the Seal Rocks project.

5. Professional Standards Bill

This legislation addresses the professional indemnity insurance problem by capping the level of professional liability damages for economic loss for individuals and firms that are members of a professional or trade association and adhere to industry standards in their business activities.

The Bill is expected to improve the insurance market as it will provide more certainty to insurers in regard to their exposure to claims. The bill is template legislation which is being progressively enacted in all states and it establishes a national independent professional standards council to supervise association schemes. Schemes can run up to five years but the council will have the power to cancel, vary or extend them.

The Liberal Party supported the legislation but noted that we are concerned that industry associations should not unfairly or improperly use membership criteria as a barrier to entry of new practitioners in an industry.

6. Accident Compensation and Transport Accident Acts (Amendment) Bill

This legislation was introduced to maintain the viability of the Workcover scheme by addressing impairment provisions. The legislation specifically addressed issues raised in three court actions. One dealt with the rounding up or down of final whole person impairment values and a second dealt with entitlements to daily living and support expenses. The most significant change, however, removes heart attacks and strokes at work as automatically compensated injuries in the workplace. The legislative changes fell short of a sensible threshold in the Liberal Party view as they did not adequately address the issue of a causal link with a workplace illness or accident. In other words, the Workcover scheme and an employer could still be liable for a range of illness episodes such as an appendicitis attack or a miscarriage that have no link or association with workplace duties or conditions.

This legislation also clarified the rights of workers who are injured in New South Wales or South Australia while in the employ of a Victorian company and provides for the establishment of group incentive programs in which small and medium businesses can band together as a group to achieve lower Workcover premiums. The legislation also made some changes to return to work obligations for employers.

7. Wrongs & Other Acts (Law of Negligence) Bill

This legislation clarified certain legal principles relating to the law of negligence and principles relating to mental harm and introduced amendments to the Building Act 1993 to preclude the issuing of builders warranty insurance by unapproved offshore insurers. The legislation also amended current provisions relating to proportionate liability and medical panels procedures and clarified the liability of public authorities. The legislation also amended the Victorian Managed Insurance Authority Act 1996 to

allow the provision of temporary insurance cover to non-government bodies subject to certain conditions.

The legislation is one of the continuing reforms developed by Federal, State and Territory Governments to address the crisis in public liability, professional indemnity and medical indemnity insurance. The Bracks Government has indicated the key aim of the legislation is to achieve greater consistency in the application of the law in respect of negligence claims. It establishes an important new concept of “peer professional opinion” as a presumptive test of negligence, providing that courts should give consideration to widely accepted and competent professional practice.

8. State Taxation Acts (Further Miscellaneous Amendments) Bill

This legislation makes a number of amendments to existing State taxation law including a clarification of exemptions from the payment of duties on property transfers in a bona fide corporate reconstruction and a power to disclose taxation information to the director of fair trading or Australian Federal Police where it is in the public interest to do so.

9. Australia-United States Free Trade Agreement

The Federal Minister for Trade, Mark Vaile, has issued a briefing on the October round of the Australia-United States Free Trade Agreement. For further information, visit the website: www.dfat.gov.au/trade/negotiations/us.html

Debate on all legislation covered in this report can be accessed in Hansard at www.parliament.vic.gov.au Liberal Shadow Ministers and Spokespersons are able to provide any further information required.

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