



Peter KATSAMBANIS MLA



Member for Hillarys

Shadow Minister for Police; Road Safety; Corrective Services; Industrial Relations

The electorate of Hillarys includes the suburbs of Craigie, Hillarys, Kallaroo and Padbury, and parts of Sorrento, Marmion and Beldon.

1 May 2018

Mark Ritter QC
Ministerial Review of the State Industrial Relations System
Level 4 Gordon Stephenson House
140 William Street
PERTH WA 6000

Dear Mr Ritter,

Thank you for the follow up opportunity to provide a submission on the proposals outlined in the Issues Report of the review of the Western Australian Industrial Relations System.

This report is a comprehensive document outlining potential far-reaching changes in the industrial relations landscape in this state which require further consultation.

I have outlined some feedback below corresponding to the relevant term of reference. While it is not exhaustive, these are my own positions that follow on from the submission I made to you last year. Please note that these views do not in any way represent the formal position of the State Opposition.

Term of Reference 1

Based on the limited discussion and information contained in the Issues Report, I have no formal position on whether the Western Australian Industrial Relations Commission (WAIRC) should be abolished and replaced with an Industrial Commission Judicial Bench. If the review does make such recommendation, it is critical that:

- (i) The Final report provides a clear rationale for why any such change is necessary and clearly identifies the benefits that are to be derived from any proposed new structure; and
- (ii) That appropriate funds are made available in the State Budget across the forward estimates to properly resource both the Supreme Court and the new Judicial Bench to cope with any additional workload.



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Term of Reference 4

In relation to point 41 of the Issues Report, two points clearly outline the context of the gig economy, both within our industrial relations system and across our economy more generally:

(a) The operators of digital platforms in the gig economy are mostly if not entirely constitutional corporations.

...

(d) The State Parliament may have very limited, if any, legal authority to effectively legislate about the engagement, working conditions and termination of engagement of people working in the gig economy.

It would be far more efficient for our economy that if any additional regulations are considered necessary in this area, they should be introduced at a Commonwealth level. This would avoid creating Constitutional issues and would recognise the trans-border nature of the gig economy and of participants in this sector.

Term of Reference 5

In relation to point 49 of the Issues Report, it proposes a new condition with respect to long service leave be included in the new regime:

(a) Express provision for casual employees to be entitled to receive long service leave and guidance on how to calculate their continuous employment.

(b) Express provision for seasonal workers to be entitled to receive long service leave and guidance on how to calculate their continuous employment.

These two proposals will make it harder and more expensive for employers to engage flexible labour. It would therefore have a deleterious side-effect of reducing employment opportunities across certain sectors of the economy. As I pointed out in my first submission, long service leave is an incentive for employees to show loyalty and commitment to a single employer for a certain period of time under certain conditions.

Point 53 of the Issues Report requests additional submissions on the following:

Should the "casual loading" currently set at 20 per cent under the MCE Act be increased or should the issue be deferred to consideration by the WAIRC, either on an award by award basis, or as a possible updated or enhanced SES, to be determined by the Arbitral Bench.

Casual employees are already appropriately compensated with loading in their hourly rate of pay over those in full time employment. If the previous proposal is to proceed regarding long service leave, it would only be fair to reduce the hourly rate for casual loading to avoid the prospect of providing 'double compensation'.

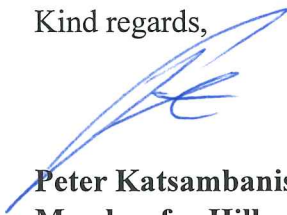
This review must keep in mind at all times the ability for private businesses, the main employer of Western Australians, to pay for any changes while gaining benefit from a flexible system which allows them to change and adapt to a dynamic and ever-changing business landscape.

If any proposed changes are too restrictive on employers, or if flexibility is reduced across the system, the Western Australian economy will suffer through lower economic activity, fewer job opportunities and a reduction in our state's capacity to grow.

I trust that this will be one of the primary considerations in any final recommendations made by the review.

I look forward to seeing progress made on this review in the near future and will comment further once legislative changes are proposed.

Kind regards,



Peter Katsambanis MLA
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