Speech by

GEOFF WILSON

MEMBER FOR FERNY GROVE

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WORKPLACE RELATIONS AMENDMENT BILL

Mr WILSON (Ferny Grove—ALP) (5.05 p.m.): As the Minister outlined in his second-reading speech to the Workplace Relations Amendment Bill, a key objective of the Bill is the protection of the State award system through ensuring that new and existing awards can continue to cover all relevant industrial matters and are not restricted to the 20 allowable matters presently contained in section 128 of the Workplace Relations Act 1997.

A key plank of Labor's election strategy was a commitment to ensuring the protection of wages and conditions of Queensland workers through a viable, relevant and up-to-date award system. As things stand under the current legislative provisions, unless immediate legislative action is taken prior to 27 September 1998, any award provision that is not allowable as defined in the Act will cease to have effect.

The Minister has indicated that, based on Federal industrial experience, which is a relevant benchmark against which to assess these matters, award simplification could lead to the removal of certain important termination and redundancy provisions in awards. These include requirements for employers to consult with employees on the introduction of changes at the workplace which may lead to redundancies. Such consultations should include discussions on measures to avert or mitigate the adverse effects of proposed workplace change. For employees feeling insecure about their employment situation, the loss of this award entitlement could be profound.

One of the most significant award developments in Australia and each of the separate State jurisdictions in probably the last 15 years has been that of clauses that provide for an important consultation process to take place between employers and employees in cases of imminent or threatened redundancy. That is for the very good purpose of seeking to avoid, wherever possible, throwing workers onto the scrap heap. We have started to see so much of that under the misguided philosophies followed in relation to the whole question of economic rationalism.

That very important award development has been achieved through the Federal and the State Industrial Relations Commissions over the last 15 years or so seeking in a bipartisan, independent way to establish a balance between the appropriate parties—the employers and workers—to regulate the harshest impact that the marketplace can have on workers, that is, to be thrown onto the employment scrap heap. That is a critical clause which would be effectively struck down under this Act unamended. An important industrial asset to workers would thereby be lost.

There is an exception of an interim nature to this legislative black hole. Section 501 of the Act provides an extension of 12 months for existing employees at the end of the interim period, to retain their non-allowable award conditions for a further 12 months. I should point out that, under the legislation, within the period of 18 months after the commencement of this section in the Act, unless section 501 took effect, there would be an automatic loss of award entitlements by all workers on awards throughout Queensland. That is because the Act provides in effect that the relevant clauses in each of the various awards that fall outside the definition of "allowable matter" would automatically cease to apply to workers 18 months after the commencement of that relevant section.

It was only the introduction of section 501—I believe through the assistance of the member for Gladstone—that countenanced the great probability that within that 18-month period the Industrial

Relations Commission and/or the respective parties would not have had the opportunity to successfully identify the matters falling beyond the definition of "allowable matters". Only through the involvement of the member for Gladstone was this further section included, which added another 12 months to the 18-month period set down.

As I said, it is interesting to note that this 12-month extension provision for existing employees was moved by the member for Gladstone. Clearly, there was a concern that the review of all awards would take longer than the statutory 18-month interim period. However, an unfortunate downside of section 501 was that it would create the inequitable result that employees doing the same work in the same workplace under the same award could be subject to different employment conditions.

Upon the expiry of the 18-month period in the Act, any new employee employed under the relevant award would be entitled to all of the award entitlements—minus those which fell outside of the "allowable matters" definition and which automatically in a sense evaporated from the document—and would be employed on a restricted entitlement basis, unlike any existing employee, who the day after the expiry of the 18-month period, enjoying the benefit of the extension of 12 months provided by section 501, would continue to enjoy, as they ought to, the then existing conditions and wages under that award. That could result in newly employed workers doing exactly the same work beside employees who may have been employed by that employer for a number of years being entitled to different benefits and wages because of the way in which this Act was set up. That is clearly an inequitable situation that should not be allowed to remain.

It is to be noted that in her comments in support of section 501 the member for Gladstone noted that she wanted to provide an additional time for existing employees to maintain all of their award conditions while they negotiated agreements in respect of their non-allowable award matters. In other words, at the expiry of the 18-month period existing employees at that time were in effect on notice that, by the time the further 12-month period expired, they would need to have successfully negotiated with their employer some new or amended set of entitlements in substitution for the matters that were outside the definition of "allowable matters", which they would lose upon the expiry of the 12-month period. It is a very hopeful expectation no doubt that such a negotiation process would be able to take place.

But even that intended additional protection of 12 months looks grossly inadequate when we see that no State award as yet has been amended to comply with the restrictions in the current legislation. No determination has been made by the Queensland Industrial Relations Commission to enable industrial parties to define an allowable or non-allowable matter for Queensland awards.

Further, from an analysis of the figures, the overall state of enterprise bargaining through the State industrial system is yet to achieve a position of dominance and maturity in the workplaces of Queensland, that is, with enterprise bargaining as the principal mechanism for regulating wages and working entitlements. For instance, only 46.8% of State award employees are covered by State certified agreements, and 0.2% of State award employees are covered by Queensland workplace agreements. Those figures are derived from the Department of Employment, Training and Industrial Relations enterprise bargaining database as at 15 July 1998. I believe my colleagues earlier addressed questions with respect to Queensland workplace agreements.

The concern by the member for Gladstone about negotiating agreements to take up stripped back award conditions is a real one, because one of the basic tenets of the current State Act and its Federal counterpart was to give the primary responsibility for industrial relations to employers and employees at the enterprise and workplace level and for them to consummate their new arrangements through agreement making individually or collectively. The award system was merely to provide a safety net of minimum wages and conditions, restricted—and I repeat "restricted"—to 20 allowable matters. This was a system called award simplification, which in the best of possible worlds might have in fact operated in that way. However, in reality it has been approached by employer associations in the various disputes that have ended up in front of the State Industrial Commission and, indeed, federally as an award-stripping exercise.

Mr Roberts: Just like QWAs.

Mr WILSON: Exactly. In reality, the stripping back of award conditions was to provide a key incentive to employers and employees to start talking, negotiating and arriving at agreement about customising employment conditions. This is the grand new era, so we would be led to believe, of employers and employees sitting down around the bargaining table overflowing with goodwill each for the other, with each arguing, debating and negotiating from comparable positions of power, and bargaining and arriving at a wonderful, acceptable compromise arrangement for both parties. Unfortunately, the real world does not work like that.

In reality, the fundamental flaws in the plans of the coalition parties for the award system stem from their fundamental approach of being concerned more with an award-stripping process both at a State and Federal level rather than the achievement of innovation and newly designed arrangements

for newly emerging workplace circumstances in new industries. In any event, even if there were to be some grand process of negotiation, that process has been hopelessly well behind the legislators' timetable set out in the legislation.

More critically important is the fact that the coalition parties—both at a State and Federal level—have refused to recognise that, as I said earlier, there is a fundamental imbalance for many employees, especially the young, unskilled and those genuinely in precarious employment, in the bargaining power between employers and employees, and that leads to exploitation. We might not like it, but that is a fact of life. One has only to have a cursory look at the history of industrial relations in Australia and in England, from which in many respects our industrial relations system was drawn, to see that that is the economic situation in which we live. We have to deal with the reality that more often than not there is an extraordinarily unbalanced distribution of bargaining power between the employer on the one hand and an employee on the other.

The relative bargaining power between the employer and the employee is not only a determinant of bargaining outcomes but it is also a determinant of where bargaining actually takes place, and this fact is borne out by the figures. The facts on enterprise bargaining indicate that the general state of bargaining is patchy and is concentrated in certain defined industries and regions that exhibit characteristics such as relatively higher levels of skilled employees who are often well organised. Also, the process of negotiating and bargaining is something alien to many employees, particularly those who are not organised, are unskilled and work in certain industries with little or no tradition of enterprise bargaining. Bargaining is not a skill which workers can pick up overnight.

Figures from the enterprise bargaining database of the Department of Employment, Training and Industrial Relations for State collective agreements indicate that most employees covered by certified agreements work in industries such as education, health and Government administration whilst the greatest number of agreements are in the construction and manufacturing industries. In comparison, an industry such as accommodation, cafes and restaurants has only 1.1% of all employees covered by State certified agreements. This same industry has only 2% of the total number of State certified agreements. Clearly, there is not a high incidence of enterprise bargaining in this industry in spite of the fact that enterprise bargaining has been legislatively promoted by this Parliament at least since the beginning of the 1990s.

The 1995 Australian Workplace Industrial Relations Survey bears out the fact that employees in industries such as accommodation, restaurants and cafes and retail have a high reliance on awards as opposed to enterprise agreements. This survey shows that employees in Queensland rural areas were likely to be reliant on award rates of pay as opposed to enterprise agreements. The enterprise bargaining database for State collective agreements emphasised this fact with the agriculture, fishing and forestry industry providing 2.9% of employees who are covered by State collective agreements. It is in those industries that employ large numbers of young workers—unskilled workers—and that use employment arrangements that are precarious in nature, such as casual employment, that award stripping provides the biggest threat.

Workers in industries that traditionally have not engaged in enterprise bargaining and who are in precarious employment appear to be expected overnight to engage in sophisticated workplace bargaining to replace stripped back award provisions and to successfully customise their conditions of employment with their employers. This expectation is fanciful. At the same time as this fanciful expectation has been maintained by the legislation, we know from our own direct experience of what happens in industry that, when employers line up on the other side of the table from the employee, the employer will have a $2,000 a day consultant sitting next to them at the same time that the employer refuses to sit down and negotiate with the union representing that individual employee. That is, in fact, a real case and it is the very opposite to the fanciful expectation of this legislation which, at the end of the day, we in this Chamber hope to see changed totally.

Workers in precarious forms of employment are indeed at risk from this award stripping process. I understand that the clothing and textile union is currently arguing matters before the Industrial Relations Commission federally. It can name many, many conditions under its awards that will be lost if the allowable matters issue is allowed to stand federally, unless Labor—as we hope and expect it will do—wins the next Federal election.

The Bill now before the House seeks to preserve the ability of the Queensland Industrial Relations Commission to continue to be able to make awards which can cover all relevant industrial matters. That is one thing that the Opposition ought to take note of, considering that it is a great defender of institutions in this country, and that is the Industrial Relations Commission.

Time expired.