Speech by

BRUCE DAVIDSON

MEMBER FOR NOOSA

Hansard 9 June 1999

INDUSTRIAL RELATIONS BILL

Mr DAVIDSON (Noosa—LP) (5.18 p.m.): In the Courier-Mail on Monday, 31 May, the Minister for Employment, Training and Industrial Relations said whilst photographed cuddling a lovely puppy, "Queenslanders lived in fear under the former coalition Government's 'dog eat dog' laws", when referring to the current Workplace Relations Act 1997 and the Industrial Organisations Act 1997. Let me tell the Minister that many small business owners in my electorate and all over the State of Queensland now have a fear that has nothing to do with dogs eating dogs, or even cuddly puppies. Their very real fear as of this date is being returned, as if in a time warp, to the days of union thugs demanding and getting from their public face, the Queensland Labor Party, the untrammelled right to again interfere in the legitimate management operations of business both big and small.

Less than 22% of employees in the private sector are members of a union. Thus it follows that 78% of employees in the private sector do not have the slightest interest in some union troglodyte whispering in their ears what the union can do for them. If for no other reason than this, it should be apparent to Mr Braddy, the Minister responsible for bringing this Bill into this place, that what his union pals and mentors in Queensland want is not what the great majority of Queensland's private sector workers want.

This Bill, if allowed to pass through this House, would impose a regime of a right of entry to business without the union official having to give notice to the employer, which is a return to the bad old days—a return to the unnecessary disruption of business over the length and breadth of Queensland. This Bill will allow a right of entry to a union official, who will have the unfettered right and ability to discuss any matter at all with employees during non-working time.

Apart from the bleating of the Minister's union dinosaur mates, is there or has there been any call from employees to be subject to this attempt at coercion? I cannot recall any thunderous, vociferous appeal for Jennie George, Bill Kelty or any other union predator to rush to Queensland post haste to save the workers from the clutches of the grasping employers. In fact, the reverse is the truth, even taking into consideration that Mr Beattie, "Mr Five Per Cent", the Premier of this State, would not do his job at Gordonstone with his union buddies and was happy to have "Bodgie Bob" come up to Queensland to do what he should have done himself.

Private sector employees are deserting the bullyboy tactics of unions in their droves and nothing that this Bill can or will do will arrest this flight. Even the dubious attempts to redefine who is an employee—its extensive range of cover will now include independent contractors—are but a shallow attempt to significantly alter common law definitions. It is another unsubtle endeavour to cast a wider net for the Minister. This Bill is nothing more than a touch of the forelock by the Minister to the major financial supporters of the Labor Party.

Earlier in my comments I referred to the possibility of coercion. I can hear Mr Braddy say, "My Bill specifically points out that coercion is not permitted." And so it does. A provision encouraging an employee to join or maintain membership of a union exists, and it does specifically state that coercion is not permitted, even though any union official can enter any premises to have a chat with a worker. We all know what that entails, given the past history of union visits to business. This clause is not only conflicting, confusing and unnecessary; it also appears to be in conflict with the freedom of association provisions. Apart from these provisions, this ability to enter business premises is an unwarranted

intervention in an employer's business by a third party and would only create disharmony in the workplace.

After all, just who do these people think they are? Have they ambitions to follow the Left Wing faction of Minister Spence and her Director-General, Marg O'Donnell, who have not waited for this legislation to pass through this House to commence their own version of "join up or else". I table documents sent to the staff of the Department of Fair Trading which very clearly spell out the position relative to unionism in the department. People do not have to have the Treasurer's qualifications to understand the ramifications of resistance to it. The memorandum signed by the Director-General of the Department of Fair Trading, Marg O'Donnell, states—

> "Together with the union, we will be establishing a consultative forum across both Departments that will provide an opportunity for staff and unions to directly contribute to the future direction of the Departments. As a member of the union"—

that is, Ms O'Donnell——

> "I am supportive of their work, and recognise that working together in a united way will ensure that we achieve the strategic goals of the Departments. I look forward to working with the SPSFQ and I encourage you to actively participate or contribute to these important forums."

There are three SPSFQ representatives on the joint departmental consultative committee—three union officials involved in formulating the future directions of the Department of Fair Trading. I believe that is nothing short of intimidation: "Join the union movement or lose your job". Of most importance, this Bill does not at any stage indicate how the commission will define coercion. Is it any wonder that business is anxious about and in fear of the consequences of this unbridled attempt to halt the march of membership from an insipid and irrelevant union movement?

As if to further restrengthen the slipping union grip, this Bill, under the title of certified agreements, does away with the greenfield agreements. In this new provision, a 21-day peace obligation has been inserted, which occurs 21 days after the giving of notice by either party of intention to begin negotiations for the agreement and ending no earlier than seven days after the nominal expiry date of an existing certified agreement. It is worth noting that the task force that prepared the basis of these changes recommended that this period be 28 days. The impact of this provision is that unions will be able to take action seven days after the expiry of a current agreement as long as notice has been given 14 days before the end date of that current agreement.

To top off all of this union indulgence, a new provision is included which will allow a relevant union to be heard on the application for certification of an agreement, including a non-union agreement. This should be a great help to demarcation disputes! But just to make sure none of the union buddies miss out on the cake, the commission is required to notify all relevant employer organisations of such an application and tell them they are entitled to be heard. What a terrific—in the true sense of the word—way to encourage employers to enter into certified agreements. Not only can those who do enter into them expect lengthy delays in getting agreements ratified; they will enjoy untrammelled and unwanted union intrusion in their affairs in gargantuan proportions. That represents another win to the Labor Party's financiers at the expense of business and employees.

Just to make certain that business continues to receive a proper caning from this Bill, which the Minister would have us believe represents a commitment to restore fairness and balance to Queensland's industrial relations system, it will now be lumbered with what is poorly termed "flow-on" of certified agreements. The existing provisions have been reworded and state that the commission "may include" in an award provisions that are based on the certified agreement if it is satisfied that it is consistent with the principles of the full bench in deciding wages and employment conditions and that it would not otherwise be contrary to the public interest.

The major concern here is that the changing of the wording, albeit very subtly, may see applications of this nature being made more frequently and more frequently succeeding and thus, as a flow-on, becoming an award. This will not encourage enterprise bargaining, because those who do not enter enterprise bargaining agreements will see their gains subsequently flowing into awards. Where is the incentive to enterprise bargain and thus enjoy the economic benefits to both parties that are enjoyed in other places where no such provisions or potential exist?

The ramifications of this Bill bring nightmares to the legitimate dreams and aspirations of the engine room of Queensland's economy: small business. The pandering by this Government to union demands will set back the nature of a balanced but flexible workplace in Queensland and, as a result, severely damage the engine room of this State's economy. Is it any wonder that business feels betrayed by the promises of this union-led rabble posing as a Government?

If all of what I have just said is not enough to deter even the most lion-hearted of entrepreneurs from doing business in Queensland, the potential to let the legal fraternity into this morass of industrial madness certainly will. Quite correctly, employers have maintained a strong opposition to allowing the

legal profession to appear in the Queensland Industrial Relations Commission without the consent of the parties concerned.

There is a misconception that by allowing solicitors to appear there will somehow be a lessening of involvement by aggressive independent consultants in the tribunal. However, allowing solicitors to represent parties will most likely see an increase in the amount of matters pursued by solicitors, who, in the main, are not familiar with the jurisdiction. As has been experienced in the Federal jurisdiction, the use of the legal fraternity by one party invariably sees the use of a lawyer by another party. In most cases this will be unnecessary, and the only reaction will be an increase in costs to everyone concerned. Of course, it will be argued that leave of the commission will be required before a solicitor can appear. Federal jurisdiction experience has amply demonstrated that it is rare for leave to be refused and, as such, the process almost becomes a formality. No doubt Mr Braddy's legal fraternity friends in the Labor Lawyers enclave will be ecstatic with this potential windfall. I know that small business in Queensland is a great deal less than enthused with this prospect, and with justification.

In his self-congratulatory media release of 24 May concerning this Bill, the Minister stated, when commenting on the unfair dismissal clauses of the proposed Bill—

> "The benefits to small business and workers will also be seen in the introduction of a mandatory three month probationary period for all employees. An Australian first, this change reflects the Government's belief that small business has a right to access the suitability of its new employees."

How touching! For the Minister's edification, I point out that the much-lauded three-month probationary period for all new employees is already available to employers where the parties agree. However, the new salary exemption, whereby employees whose annual income exceeds $68,000 are prohibited from bringing an application, will see an increased number of applications made by employees who are currently exempted. Similarly, the exemption for small businesses of 15 or fewer employees has now been removed, which will be a further incentive for employees to approach the commission and a further disincentive for business to employ workers.

That brings me to clause 83, which relates to what an employer must do to dismiss an employee. Apart from the period of notice and compensation provisions, this clause stipulates that dismissal can only take place if—

> "... the employee engages in misconduct of a type that would make it unreasonable to require the employer to continue the employment during the notice period."

Misconduct is then described as—

> "(a) theft; and
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> (b) assault; and
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> (c) fraud; and
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> (d) other misconduct prescribed under a regulation."

Now, this Government's previous industrial relations legislation waffled on in the same manner about misconduct. So let me tell members a story about one of my constituent employers and the matter of misconduct.

One of his drivers was taking an inordinate time to make his deliveries and was badgering his fellow employees to slow down their performance. I might add here that this particular driver was the only one who belonged to, as it is now called in politically correct language, an employee organisation within this firm. Naturally, the employer was concerned at this behaviour, which was not just incidental but a very common occurrence. As a result, the employer decided to follow this particular driver to find out at first-hand just why it was that this man took longer to do the job than the other drivers in his employ.

No sooner had the driver left the employer's premises than he proceeded to collect a very comely young lady who was definitely not the driver's wife. Needless to say, the extra time the driver took to make the delivery had absolutely nothing to do with the employer's business, since the employer's business was in no way funny. Consequently, the employer chatted the driver about his activities in company time and was promptly abused for his trouble. Nevertheless, the driver was not sacked, as he deserved to be, and continued to frolic with his lady friend as if nothing had occurred. Naturally, he was again asked to desist from this activity and, as a result of this chat, he verbally resigned.

However, surprise, surprise, the very next day the employee organisation's representative arrived to inform the employer that his organisation had advised the driver to seek compensation for wrongful dismissal. Further, the said rep from the union informed the employer that if he did not reinstate and compensate the driver, they would see the employer in the Industrial Relations Commission where, to quote this would-be thug, "We always win because the commission and the Government are on our side." Lovely industrial relations for you, Madam Deputy Speaker! This

particular employer did not take too kindly to this threat and advised the union minion to go ahead with his threat and that, given all of the circumstances, he, the employer, expected the Industrial Relations Commission to see things as they really were, given the verbal resignation—apart from the driver's job performance and misconduct.

Eventually, they all appeared before the commission. All of the evidence was produced and heard and, in the circumstances, one might have expected the driver—who, remember, had resigned verbally—to have been soundly advised by his employer of his responsibilities as an employee. However, I know that members will not be surprised to learn that the union minion had it right the first time. All that the hearing officer wanted to know from the employer was had he notified the driver properly in writing of his misconduct and the fact that such misconduct could lead to his dismissal? The employer correctly responded that he had not done so because the employee had verbally resigned and had never returned. Bad luck, Mr Employer! The commission not only found for the driver, in that he had not been properly notified, but also went on to award the driver $7,500 in compensation for all of his troubles and, further, awarded costs against the employer. Just add another $8,700 plus time to the bill for legal fees, etc. To add injury to the insult of this outcome, the driver then ran around the town boasting not only of his sexual prowess but also how he and the union had beaten the bosses. So much for misconduct, which obviously is a very costly commodity!

This Bill will take us back to that form of force and resurrect that type of costly result on business. And whilst on the subject of costs—just what will be the cost to this State with the proposed industrial tribunal and registry? This Bill provides for the appointment of a full-time President of the Industrial Court, a vice-president, a commissioner administrator, commissioners, registrar, president's advisory committee and inspectors—to say nothing of all of the attendant staff necessary to perform the stated duties. The mind boggles at the cost of the introduction of this army of officials and more so when one considers that all of this puffery is entirely unnecessary. Does Mr Braddy have some mates looking for a cosy job? Is this his way of reducing unemployment?

Obviously, there is a great deal more to this Bill than I have broached—and which my colleagues also have, and are contesting—but there are three things certain from what the Minister has presented to this House with these papers: one, the only winners with this document are the unions; two, the losers are Queensland business and the economy of this State; and three, the Labor lawyers have their tickets to the gravy train. If the Premier of this State—"Mr Five Per Cent"—wants to embrace this Bill, he can wave goodbye to the major plank of his election promises—jobs, jobs, jobs—and his promise of 5% unemployment.

The Premier and his Minister Mr Braddy may have a nice, warm and fuzzy glow from this gross attempt at social engineering on behalf of their Trades Hall comrades, but I can assure them both that the employers and employees of Queensland will come back to bite them where it hurts most—at the ballot box—when the true cost of this futile exercise in industrial relations reaches into the pockets of every business and employee in Queensland. This is no bone of contention. This is a fact. This Bill belongs in the rubbish bin.

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