Speech by

Mr M. ROWELL

MEMBER FOR HINCHINBROOK

Hansard 10 June 1999

INDUSTRIAL RELATIONS BILL

Mr ROWELL (Hinchinbrook—NPA) (4.35 p.m.): When the Industrial Relations Bill 1999 becomes law, it will govern the working relationship between everyday Queenslanders and their employers. However, neither the everyday Queenslanders, whom Mr Beattie claims he fights for so fiercely, nor the employers will really benefit from this legislation. Who is the winner? Who stands most to gain from this Bill? Of course the unions! Clearly, it is payback time for the financial backing of the unions that enabled the Beattie Government to get into power.

This Bill is a last-ditch attempt to force unions, which have flagging membership among everyday Queenslanders, back into the workplace where they are no longer wanted because they are no longer relevant. How can such a statement be made? I will take a look—and I mean a very close look—at the legislation. The first and most blatant attempt by the Beattie Labor Government to stick the union's nose into places where it does not belong is contained in the provisions relating to the certification of agreements. Clause 155(1) of the Bill, which refers to the right of an employee organisation to be heard, states—

> "All relevant employee organisations are entitled to be heard on an application for the certification of an agreement."

To those members who are not experts in this area, the significance of such a provision may not be clear. However, I point out that it means that unions, which have had no involvement whatsoever in the negotiation of an agreement—the agreement could have been made between the employer and his or her employees directly, or with another union—can stand up at a hearing for a certification of that agreement and oppose it. One might ask: how will they know that the agreement is being certified on that day? They will know because, under clause 155(2), upon receiving an application for the registration of the agreement, the registrar is required to notify all relevant unions of the date of the hearing. So if an employer and his employees want to create a non-union agreement, any or all unions, whether or not they have members in the establishment, can appear and oppose the agreement.

This provision will result in the death of the Queensland IR system, because the employers will go to the Federal jurisdiction and register the agreement as an Australian workplace agreement. Under this legislation, no employer in his or her right mind will negotiate a non-union agreement in Queensland because of the unwanted union interference and consequent delays that will result. Instead, they will go to the Federal jurisdiction. Indeed, a number of State union agreements will also go to the Federal jurisdiction, because of the infighting and demarcation disputes between the unions themselves. It is interesting that I do not see too many AWU spokesmen here today. Maybe the Beattie Government is more like the Kennett Government than I realised. Why does it not simply follow Kennett and cede the Queensland industrial relations system to the Commonwealth?

In another example of this Government selling out ordinary Queenslanders for the sake of the unions, new project agreements will be required to be done with all relevant unions. This means that employers have no choice over which union, if any, they enter into an agreement with. I am damned sure that I am not exaggerating when I say that this could result in no new major project agreements under the Queensland jurisdiction and could impact on jobs for ordinary Queenslanders.

I turn to the right of entry by union officials. As one would expect, this Government has returned to the past. Clause 372 of the Bill now states that a union official may enter a workplace during business hours and no warning is required. Currently, 48 hours' notice has to be given and even the Federal Act provides for 24 hours' notice. In addition, this section provides that the union official is permitted to discuss with any member employee or employee eligible to become a member any matter arising under the Act during working time or any other matter during non-working time. Currently, all discussions have to occur during non-working time, that is, lunch breaks, after work and so on.

There is no doubt that this provision will cause unnecessary disruption to business. Employers would prefer to receive notice of intended entry in order to minimise disruption to payroll officers and to allow sufficient time to collect the information requested. I think that that is fair and reasonable. These changes occur against the background of only 21.5%—as we have heard time and time again today—of Queensland employees in the private sector having union membership, and even that rate is on the decline. Under the new Bill, a provision encouraging an employee to join or maintain membership of a union is permitted and the provision stating that preference clauses are void has been removed. Arguably this is inconsistent with the freedom of association provisions also contained in the Bill.

Other areas of significant concern for Queensland employers in this Bill include the fact that the new definition of "employee" in clause 5(1)(d) may extend where the commission deems it appropriate to include independent contractors. That is provided for in clause 275, which states that the commission may make an order "declaring a class of persons who perform work in an industry under a contract for services to be employees". This is a legislative attempt to significantly alter the common law definition of "employee" and has the potential to open the floodgates of the industrial relations system to a category of employees that have not traditionally been covered. This could include subcontractors in, say, the building industry or it could include any contractor in any industry.

The tests that the commission must apply in determining whether a person is an employee on application by an organisation, meaning a union, a State peak body, meaning the ACTU, or the Minister are:

relative bargaining power of the class of persons; or

economic dependency of the class of persons; or

particular circumstances and needs of low-paid employees; or

whether the contract is designed to or does avoid the provisions of an industrial instrument; or

particular circumstances and needs of employees including women, those from a non-English speaking background, young persons and outworkers; or

the consequences of not making an order for the class of persons.

This is an area where much litigation is likely to arise. What would be argued first is whether the "class of persons" are also employers by definition, because the Act cannot regulate conditions between employers. Then there would be argument about all the tests mentioned above. Each of those six tests could be subject to extensive debate. For example, let us take the definition "the economic dependency of the class of persons on the contract". Almost anyone who contracts, for example, to one principal only would be expected to be dependent economically on that contract. This provision appears to be aimed primarily at the building industry, where a contractor may have several subcontractors working for him who are mostly labour-only contractors, who are dependent on that contract and who are engaged as such to avoid the union and to obtain tax relief. Imagine the principal's difficulties if his subcontractors are found to be employees whose conditions should have been subject to an award. What of the tax implications? This is a big sleeper in the proposed legislation, disguised as good law, to allow trade unions to organise subbies for membership and apply for award coverage for them.

Under clause 276, the commission has the power to void or amend contracts. The legislation would allow a person or company to enter into an agreement and then, finding that they were unable to fulfil that agreement, they could escape their commercial obligations without any penalty or obligation whatsoever. The significance of certainty in commercial arrangements cannot be overstated. It is vital that, once a contract is struck, both parties abide by their respective obligations. That is the cornerstone of the law of contract. Although the law of equity may intervene in cases where one party has engaged in unconscionable conduct, there has never been and should not be a broad power for contracts to be swept aside or altered at a commissioner's discretion. This provision will not encourage the development of new businesses.

A party should not be allowed to compete for a contract and win it on the basis of one price and undertakings, and then apply to the commission for it to award a different price and undertakings. I

suppose that one thing this provision does is allow the AWU to legitimately renege on its meter reading arrangements, and I think that is well documented.

Clause 259 of the Bill will prescribe the criteria for selecting and appointing commissioners. The Bill does not prescribe that a selection criterion will be a person's ability to deal with commercial contracting matters. This ability to void or amend contracts has the potential to create complex legal problems.

The Bill changes the structure of the commission. The President of the Industrial Court will also be appointed president of the commission. There will be a vice-president of the commission, a commission administrator and at least six other commissioners. Why there needs to be a president, a vice-president or a commission administrator remains a mystery. Additional powers have been given to the commission so that claims for unpaid wages that do not exceed $20,000, which previously went to the Industrial Magistrates Court, can be made to the commission. This brings into question whether the evidential elements of any such cases will be relaxed and appeals made on the grounds of error of law made more difficult.

Lawyers will be able to appear in the commission by leave of the commission if there are special circumstances that make it desirable for legal representation, or if the commission is satisfied that a party can be adequately represented only by a lawyer. In the past, lawyers could appear in the commission only by consent of the other party. This will now result in more matters being litigated, involving more expense for parties so represented.

The Bill limits working hours for award employees to six days in any seven consecutive days, 40 hours in six days and eight hours per day, except where an industrial instrument provides otherwise. The prohibition on dismissing an employee with a WorkCover injury—clause 93—has been extended from three to six months. This poses a big problem for employers, and any attempt to overcome this by providing for replacement employees does not provide any relief, because it is not a realistic solution.

In addition, the application time for reinstatement of injured employees has been extended from 21 days to 12 months, and this is retrospective. This could give an injured employee who was terminated some time ago under the previous legislation the ability to bring an application for reinstatement. There is no justification for extending this time limit. In addition, this is inconsistent with the 21-day time limit for bringing an unfair dismissal claim. Although the unfair dismissal provisions have not really altered, the exemptions have. The most notable of the changes is that the exemption for employers of fewer than 15 employees disappears.

Mr Purcell: You don't care about workers.

Mr ROWELL: I do care about workers. I have been a worker. I have been everywhere the honourable member has been. He should not talk to me about workers.

Mr Purcell interjected.

Mr DEPUTY SPEAKER (Mr Reeves): Order! The member for Bulimba!

Mr ROWELL: I seek some protection, Mr Deputy Speaker.

Mr DEPUTY SPEAKER: Order! The member for Hinchinbrook will receive protection if he speaks through the Chair and not to other members.

Mr ROWELL: I will adhere to your ruling, Mr Deputy Speaker.

In its place there is now to be a statutory period of three months probation to which the unfair dismissal provisions will not apply, except where the dismissal is for an "invalid reason", which means a reason which is discriminatory, for example, and except where the employer and employee agree in writing that there be a shorter probationary period or no probationary period at all.

The Bill provides for probationary periods in excess of three months, provided it is in writing and reasonable given the nature of the work. Unless the employer requires a probationary period of more than three months, employers need not stipulate a period of three months probation in their letters of appointment. Unlike under the current legislation, this legislation will mean that employers will not have to tell employees up front that they are on probation if it is for less than three months, and can still legitimately terminate them during this period without facing the unfair dismissal laws. This does not really seem fair to everyday Queenslanders.

Another notable difference is that employers will be required to observe the statutory notice provisions if dismissing staff during a period of probation. This means that a probationary employee who has been with an employer for only one day but who is clearly not appropriate is entitled to one week's notice or pay in lieu thereof.

Mr Robertson: They currently are.

Mr ROWELL: No, they are not. Currently, they are not entitled to any notice at all. Under the current Act, if the commission found reinstatement or re-employment to be inappropriate, it could order

compensation instead. Under the new Bill, if—and only if—the commission considers reinstatement and re-employment to be impractical, it can order compensation. The ability to stand down an employee has not altered under this Bill. However, what has changed is that the new Bill allows for the ability for removal through the provisions of an agreement. Therefore, it is more than likely that in the future unions will request that a clause removing the ability to stand down employees be inserted in their agreements.

Significantly, this Bill attempts to restore a centralised industrial relations system by strengthening the role of the awards. The desired effect is to stamp out enterprise bargaining and to assist unions to increase their relevance in the workplace by creating a level playing field. The role of the awards will be restored by——

Time expired.