Speech by

Mr M. HORAN

MEMBER FOR TOOWOOMBA SOUTH

Hansard 10 June 1999

INDUSTRIAL RELATIONS BILL

Mr HORAN (Toowoomba South—NPA) (9.39 p.m.): In joining the debate on the Industrial Relations Bill, I make the point that it is interesting that we are only halfway through the debate on the Bill and we have already seen the first strike. I do not believe that any of the Government members in the AWU faction have spoken to this Bill yet. Already, the Bill is failing. Things are not going too well.

Those of us who represent regional towns and cities like Toowoomba where so much of the employment relies upon small business know that if this Bill is ever passed by the Parliament it will be disastrous for small business. Amongst the many achievements of the previous Government, one of its greatest achievements was the Workplace Relations Bill that was introduced by the then Minister, and the flexibility and opportunities that that legislation gave to small business in particular.

When we reflect on the way that people have to put their hands into their own pockets, mortgage their homes and borrow money from the banks to get established in small business, we must have a bit of respect for what they are doing for the community. Certainly people will take up a small business in order to, hopefully, develop capital assets and develop a particular level of salary, but small businesspeople face some enormous challenges. A person can open a shop and, before they know it, Woolworths or Coles expands into the same sort of business, someone else opens a similar operation just around the corner or trends change.

Small business is accredited with providing something like 75% of the jobs in our society and good government should be about providing small business with the maximum opportunities to employ people. If somebody asked small businesspeople whether they would like to employ additional staff, I am sure they would all respond that they would dearly love to put on another one or two employees.

Mr DEPUTY SPEAKER (Mr D'Arcy): Order! There is too much audible conversation in the Chamber.

Mr HORAN: Obviously a couple of members are not interested in small business, even though it contributes to so many jobs in their electorates. Every possible opportunity should be provided for small business operators to employ additional staff, and they all want to do so. Many small businesses are run as mum and dad operations that perhaps employ one or two other employees. They would desperately like to employ additional staff because they are probably working 70, 80 or 90 hours a week. They work hard and without a break.

Mr Lucas interjected.

Mr DEPUTY SPEAKER: Order! I name the member for Lytton under Standing Order 123A. He has already been given a warning. If the member speaking starts to take interjections, I will allow it. However, I will not allow that gabble to continue in the Chamber.

Mr HORAN: Under the proposed new laws, small business will be hit for six. It is strange that the Labor Government, which puts on the front of wanting to create more jobs, is doing the very thing that is going to put hurdles in front of small business operators who want to employ more staff—hurdles like the unfair dismissal laws. The 12-month probationary period gave businesses that employed 15 or fewer people the opportunity to dismiss a person who was not satisfactory. The best asset that any decent business has is a good, loyal and faithful employee. Anyone who is any good at business will look after their employees, see that they have good working conditions and the best salary that can be

provided out of the income that is generated from the business. That person will endeavour to keep those people for as long as possible.

Occasionally, an employee comes along who does not fit the bill or who will not pull their share of the weight. That is one of the greatest hurdles to small business in terms of employing staff. The employers do not want to go through all the bureaucracy, the red tape and the processes of the unfair dismissal laws if they have the misfortune to employ a person who simply does not work out, is a bad worker, is lazy or is bad for the business. However, it is commonsense that any decent employer with a small business will do everything that they can to keep a good employee because that employee is an asset to the business, just as good management is.

Small businesspeople are also worried about the union preference provisions and the fact that the legislation will allow union officials to walk into a small business without giving notice. How would anyone on the other side of the House like to be running a business operation when, at the drop of a hat, a union official can walk in and say that he wants to inspect this, that and the other thing. It is their business, it is their money, it is their risk, it is their family putting their shoulder to the grindstone and it is their operation, and someone wants to walk in without any notice or courtesy and demand to see this, that and the other thing. It is about time that we put some commonsense into this legislation—the sort of commonsense that existed under the legislation of the coalition Government, which did not allow union officials to walk into businesses on the spur of the moment.

One thing that people are very concerned about in relation to this legislation is the change to the definition of "employee". Not a lot has been said about this during the course of the debate, although the member for Clayfield very clearly alluded to the issue. It is one aspect of the Bill that is of great concern to the Queensland business community in particular. One of the strengths of so many organisations and small businesses operations is the system of contractors. That system has existed in the building industry, the trucking industry and many other industries for ages. It has been one of the strengths of a vital and strong business sector. It is obvious to all of us here that it is no accident that the definition of "employee" has been changed. The new definition ropes in all the subcontractors who previously escaped—thanks to the protections contained within the coalition Government's Workplace Relations Act—the ever-lengthening and creeping tentacles of the union movement in this State, which is like a big octopus that is trying to drag in as many additional people as it can to build up its flagging numbers.

It is important that members of the House are aware that there has been a significant alteration to the definition of "employee". Clause 5(1)(c) states that the definition of an "employee" is—

> "... a person employed in a calling, even though—
>
> (i) the person is working under a contract for labour only, or substantially for labour only; or
>
> (ii) the person is a lessee of tools or other implements of production, or of a vehicle used to deliver goods; or
>
> (iii) the person owns, wholly or partly, a vehicle used to transport goods or passengers ..."

There is no other qualification to that part of the definition. The existing Workplace Relations Act gives qualification to that definition. It states, "If that is the only reason for not holding the person to be an employee". The omission of that qualification effectively strikes out the usual and the established common law test of what an employee is and what an independent contractor is. This alteration has the potential to alter the status of persons who are currently treated under law as independent contractors, deeming them to be employees. Once they are deemed as employees for the purposes of the Act, they would be subject to the provisions of the Act, such as award entitlement, and termination and long service leave provisions. However, this may be only for the purposes of the Act. For taxation purposes, if they are an independent contractor then they have already satisfied a Federal Act that they are independent contractors and not employees.

Therefore, when one reads the independent task force report, it would seem that the intention of the independent task force was to address a situation that applied to outworkers in the clothing industry. There was no evidence or significant submissions sought on this point or, indeed, any sort of academic or analytical study done on the current size and nature of the use of independent contractors in the Queensland industry before such a significant change in legislation was proposed.

Something that was not emphasised was that this definition now significantly departs from what has been an established definition of "employee" that reflected common law principles in determining who are classed as employees that had been held for a significant period. I do not believe that a number of people who currently choose to be independent contractors are even aware of the alterations that this legislation may make to their current status. For the community and the House to properly consider this, I believe that the Minister should provide answers to the following questions on the intention of the Government in this regard.

The definition may still be unclear because it uses the word "employee". In that regard, I call on the Minister to respond to the following issues. The Minister would be aware that the majority of concrete trucks are owned and operated by owner/drivers who are engaged in a contract for service. The contractor owns the vehicle and is usually paid per cubic metre of concrete delivered. The contractor usually works solely for a concrete company such as Boral, Pioneer or CSR. In relation to a person in such an arrangement, will this legislation deem that person to be an employee, or would they remain as an independent contractor?

In the construction industry, and in particular the housing industry, a high proportion of people are treated as independent contractors. They supply their own tools and often materials, yet their contract would be substantially for labour. They are commonly known as PPS contractors. The question I put to the Minister is: is it the intention and his understanding that the effect of this alteration is that PPS contractors in the construction industry will now be deemed as employees?

The third example that I wish to bring to the attention of the House is that of a courier driver who supplies his own van and who is currently under a contract for service and paid a rate per parcel delivered. These couriers usually work solely for one major company, whether it be a major transport company or even a bus company, such as McCafferty's or Greyhound. Under this legislation, where they provide a vehicle and work solely for a company, are they now to be employees or independent contractors? If the person is deemed to be an employee by virtue of this definition, the situation will arise whereby their contracts will need to be reviewed and probably altered significantly so that award entitlements, including the minimum types of engagement, can be reconsidered. For taxation purposes they remain as independent contractors.

In addition, there is now an expanded definition of the term "worker" in the WorkCover Act which may also have different considerations. It is easy to see that this will significantly disturb a number of existing arrangements even where there does not appear to be any commonsense reason to do so. Although there is no technical commonsense let alone other commonsense, whether looking at it from a taxation, contractual or any other point of view, in my view it makes good sense for the unions—and for the unions only.

As I said at the outset, this is all about roping more employees into the net of union membership, which is the real reason why this Bill is before the House today and why the Labor Government is attempting to tear down all of the good legislation put in place by the previous coalition Government, which will be to the detriment of small business in particular and jobs in Queenslander.

As the shadow Minister, the member for Clayfield, stated in his speech to this House, even under the coalition's industrial relations laws there was a decrease in union membership in Queensland from 395,400, or 31%, of all employees in 1996 to 394,100, or 30.9%, in 1997. Not even the coalition's so-called dreaded industrial relations legislation was sufficient to encourage freedom loving Queenslanders to go back and join the union movement.

Mr Speaker, there you have the real reason why this Bill is laden with so many pro-union clauses and so many provisions such as the one I have just outlined, namely, the question of contractors as it relates to the definition of "employee". The Bill has been introduced to prop up a dying union movement that has lost its way and abandoned its core task. That core task was to deliver effective and responsible industrial representation.

This Bill seeks to shore up the electoral, financial, intellectual and preselection base of the Labor Party—the union movement. This Bill should be about providing jobs and decent protection for workers. It should also have been about providing protection and flexibility for businesses, not about underhanded ways of providing funds for the Labor Party or shoring up the traditional sources of support so that Labor Party members can be elected to the Parliament.

The Premier and the Minister have totally mucked up when it comes to balancing the vicious and competing interests of the various unions in this State. That is very bad news for Queenslanders, who today were confronted with a rise of 0.5% in the unemployment rate. That should serve as a clear signal to this Government that the best thing it can do for employment is to abandon consideration of this Bill and go back to the drawing board or, better still, leave in place the outstanding and exceptionally good industrial relations legislation left behind by the coalition.

Today, on the very day we are debating this Bill, the latest unemployment figure was released, indicating that there had been a 0.5% increase to 8.3%. That is a tragedy for the people caught in the unemployment net. On the anniversary of the Beattie Labor Government's 12 months in Government, 400 more people are out of a job than there were in Queensland 12 months ago.

Mr Healy: It's an absolute shame.

Mr HORAN: It is a shame.

Tragically, when the workers compensation Bill, which was forced through this House previously, and this legislation take effect—if, tragically, it gets through—it will become harder and harder for businesses to give people a decent, secure and permanent job.

This morning, the problems at the meatworks were alluded to. The massive increase in workers compensation premiums in that industry has meant that it is now teetering on the brink. They can probably do only one thing to save their soul, that is, put off people. Anyone who has run a business knows that when workers compensation goes up by massive amounts it is not just a matter of pulling a bit more out of the kitty; more sales have to be made. If the workers compensation premiums go up by half a million dollars, a business would probably have to generate another $5m worth of sales to be able to pay that cost. We are seeing the creeping cancer of workers compensation and we will also see the creeping cancer of this bad industrial relations legislation, if we have the misfortune to see it passed through this Parliament.

Parliamentarians are supposed to be honest about employment and not turn the issue into a pantomime by saying, "We're trying. We're doing our best. We know it's going to be hard." Queenslanders will get sick of hearing that from the Premier. They want to see genuine, practical measures put in place that will mean real jobs for people, not fairy floss, a few schemes, stunts and media releases and then bad workers compensation and industrial relations legislation that does the exact opposite and destroys jobs and people's hopes but props up the union movement and the whole system behind the Labor Party. It is bad government to bring in legislation for all the wrong reasons.

In conclusion, I will address the issue of the right of entry. I wish to mention some of these iniquitous provisions in this area. The provisions in relation to the right of entry would have to be one of the most alarming aspects of this Bill. An authorised industrial officer, that is, a union official, can obtain virtually unlimited entry to a workplace during an employer's business hours. There is no requirement of notice, with the exception that the official notify the employer's representative immediately upon arrival or, in the case of a representative's absence, the requirement is waived.

Mr Healy: More fear for small business.

Mr HORAN: As my colleague said, this will generate more fear for small business.

During any visit, the union official can discuss with workers during working time matters under the Bill—presumably the time and wage records and related issues. We all know how they turn up in the middle of a concrete pour. We have all seen that at different times. During non-working times the official can discuss with workers any other matter, which literally means any subject. Therefore, the official has virtually unlimited access to any workplace where it is alleged that the union has callings or entitlements of coverage. It will be impossible for employers to police whether the discussions relate to the Bill or not. This is to be contrasted with the provisions of the coalition Government's Workplace Relations Act, where the relevant provisions provide that relevant unions—that is, those which have the registered callings—may enter a workplace after giving a decent 48 hours' notice. This was intended to and has operated to ensure that the process of workplace inspections by unions are a businesslike arrangement and not at the whim of a union official. Further, the current Act——

Time expired.