



Speech by

**Hon. V. LESTER**

**MEMBER FOR KEPPEL**

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Hansard 11 June 1999

### **INDUSTRIAL RELATIONS BILL**

**Hon. V. P. LESTER** (Keppel—NPA) (2.35 p.m.): In this contribution, I wish to talk about the standard minimum provisions which are provided for in this Bill. They are provisions which tip the balance very strongly against the employer—the small businessperson—who has to employ the people who benefit from the standard minimum provisions which are included in this Bill.

Prior to the coalition Government coming to power in Queensland, the sick leave provisions under the Industrial Relations Act 1990 were as follows. All employees covered by an industrial instrument—other than casual employees—were entitled to at least one week's sick leave per year, unless employed for less than 12 months, where the entitlement was one day's sick leave per two months. An employee was entitled to receive sick pay if the leave entitlement had been accrued. If the illness exceeded two days, a doctor's certificate had to have been produced for the employee to be eligible for sick leave payment. The doctor's certificate had to have specified the nature of the illness and the approximate period for which the employee would be absent, or the employee had to have supplied to the employer other evidence of the illness to the employer's satisfaction. However, an employer was never bound to pay more than seven weeks' sick leave in any one-year period.

Annual leave applied to those employees under an industrial instrument. Annual leave was exclusive of public holidays and was not to be taken into account on any unpaid period exceeding a three-month period. Annual leave could be taken wholly or partly in advance before an employee became eligible for the entitlement with the employer's consent. An employer and employee had to have agreed as to when an employee would be given and would take annual leave.

An employer could give an employee 14 days' notice of the date from and to which the annual leave would be taken, and the employee had to have complied. Annual leave was to be paid for by the employer in advance. If the employment of an employee was terminated, the amount of any annual leave remaining and all public holidays that would occur in this period had to have been paid for. Pro rata annual leave was paid to those employees whose employment had been terminated prior to working for an employer for one year. Prior to the coalition Government coming to office, the industrial relations system did not incorporate family leave provisions in the Industrial Relations Act 1990. When the coalition Government came into power the Queensland Workplace Relations Act 1997 was introduced. Under Chapter 17 of this Act, the sick leave and annual leave provisions of the Industrial Relations Act 1990 continue to have effect. The Queensland Workplace Relations Act 1997 contains a division specifying provisions for parental leave only. It caters for maternity and paternity leave.

A mother and father become eligible for parental leave when they have worked for their employer for a continuous period of 12 months. The period of leave to be granted is 52 weeks and must begin on the later of either the first day of leave stated in the application or the estimated date of birth and must not extend past the child's first birthday. However, the total of both parents' parental leave must equal 52 weeks. Furthermore, except for one week at the time of the birth of the baby, the employee and the employee's spouse must take their parental leave at different times.

Pre-approved unpaid leave—other than maternity leave—annual or long service leave, or the spouse's leave, reduces the term of maternity leave. A mother must be granted leave if she notifies the employer of the date of birth at least 70 days from the date of confinement and gives 28 days' notice before the first day of leave. The application must state the first and last days of leave and must accompany a medical certificate verifying the pregnancy, the expected date of confinement and a

statutory declaration confirming the father's intention to take parental leave. The declaration must further state the child's primary caregiver and that the mother will not engage in any conduct inconsistent with the employment contract.

The Act specifies that certain aspects of these provisions may be altered for the mother and father as a result of a premature birth. Maternity leave must be extended if the employee provides 14 days' notice and states the first and last dates of the extension. The shortening of maternity leave is dependent upon the agreement of the employer. If the child dies, the pregnancy is terminated or the mother is no longer the primary caregiver, the employee must notify the employer of her intention to return work and the employer must give the employee at least four weeks' notice of her first day back at work.

When returning to work after being on maternity leave, an employee must return to the position held immediately before she was either transferred to safer duties, began working part-time or went on maternity leave. If the position no longer exists, the mother should be given either another position and/or compensation.

For an employer to grant paternity leave to a father, the employee must provide the employer with notice of the length of leave required and the dates associated with the leave and a medical certificate specifying the spouse's name and the expected date of confinement, or that the mother gave birth to a living child on a specified date, if applying for long paternity leave. Furthermore, he must provide a statutory declaration specifying the dates of any unpaid annual, long service or maternity leave for which the mother is intending to apply, as well as information detailing who will be the primary caregiver and that he will not engage in conduct inconsistent with the employment contract. The period of leave and the processes for the lengthening or shortening of paternity leave remain the same as in the case of the mother. When returning to work from paternity leave, the father must resume the position held immediately prior to going on leave unless the position no longer exists, in which case he would receive either another position and/or compensation.

The Beattie Labor Government's industrial relations reforms vary from previous legislation in the following manner. The Industrial Relations Bill conforms with the Queensland Workplace Relations Act 1997 with the exception of some new clauses and subclauses. Differentiating itself from the previous legislation, the Bill offers employees at least eight days' paid sick leave per year, unless employed for less than 12 months, in which case the entitlement is to be one day's sick leave for every completed six-week period of employment. As a result, the Bill does not confer sick leave entitlements on an employee which the employee did not have before the commencement of this clause. The Industrial Relations Bill incorporates three new additions within the annual leave division of the Bill. Firstly, unlike previous Acts, the Bill establishes shift workers as employees entitled to annual leave. A shift worker is defined as an employee who works a rotating roster where shifts are available 24 hours per day, seven days a week. Under this clause, an employee who is not a shift worker is entitled to four weeks' annual leave per year. Employees who are shift workers receive five weeks' annual leave per year.

Secondly, the Bill introduces new arrangements for the time at which annual leave may be taken. For example, if the employer and the employee cannot agree, the employer may decide when the employee is to take leave and, in doing so, give the employee 14 days' notice of when the leave is to begin. Finally, under the previous Acts, an employer had to pay annual leave in advance. The Bill has altered this by stating that, unless an employee and employer otherwise agree, the employer must pay the employee for annual leave in advance.

The Industrial Relations Bill changes the title of "parental leave" in the Queensland Workplace Relations Act to "family leave" in the Bill and now incorporates the following new sections. Firstly, the division applies to long-term casuals only insofar as it relates to maternity leave. Secondly, the Bill introduces adoption leave. An employee can take up to 52 weeks' unpaid adoption leave which will not extend beyond one year after the child was born or adopted. Thirdly, the amount of notice required for maternity leave has been altered to at least 10 weeks' notice of intention to take the leave with at least four weeks' written notice of the dates associated with the leave. The notice for parental leave, other than maternity or adoption leave, is the same, with the exception that the employee must provide a doctor's certificate and a statutory declaration as specified in the Workplace Relations Act. The notice and documents required for adoption leave have been added and are the same as for leave other than maternity leave.

There is a new clause specifying that the employee does not fail to comply with adequate notice if the child was born, or terminated, before the expected date, or the adopted child was placed before the expected date of placement, or for any other reason considered reasonable within the circumstances. The notice of change to the period of leave must be given within two weeks after the birth or placement of the child and a doctor's certificate must be produced stating the date on which the child was born.

A new clause entitled "Notice of change to a situation" has been introduced specifying that the employee must give two days' notice of change to the employer. The Bill provides the conditions under

which parental leave is automatically cancelled. This occurs when the employee withdraws the application for leave by written notice, the pregnancy terminates or the child dies, or the placement of the child for adoption does not proceed. Under the Bill, an employee can interrupt parental leave by returning to work on either a full-time, part-time or casual basis, but only if the employer and the employee agree. This Bill states that the period of parental leave can only be extended once.

When returning to work after parental leave, an employer must make available to an employee a position to which he or she is entitled. If a long-term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to the hours equivalent to those worked immediately before the hours were reduced. Under the Bill, employers are obligated to give prescribed information to the employee at the time when the employer first becomes aware that the employee or the employee's spouse becomes pregnant or that the employee is adopting a child.

The Bill prohibits dismissal based on pregnancy or parental leave. Under the Bill, before employing a replacement employee an employer must give the employee written notice of the temporary nature of the employment and the parent's right to return to work. The Bill provides for the safe transfer of a female employee because of her pregnancy or breastfeeding, a risk to the health or safety of the employee, or of her unborn or newborn child. The clause provides that the assessment of this risk is to be made via the Workplace Health and Safety Act 1995 and a medical certificate.

There has also been the introduction of special maternity, sick and adoption leave, which provides for the unpaid leave of an employee where the pregnancy terminates or the employee suffers illness related to her pregnancy. The period of leave is to be determined by a doctor except in the circumstances surrounding an adoption, which is up to two days' unpaid leave. Carer's leave has been introduced, allowing employees to use up to five days of their sick leave entitlement to provide care and support for members of their immediate family or members of their household when they are ill. An employee cannot take carer's leave if another person has taken leave to care for the same person. An employee may take unpaid carer's leave with their employer's consent. In relation to bereavement leave, the Bill provides that employees, other than casual employees or pieceworkers, may take paid leave on the death of a member of their immediate family or household in Australia. An employee may take unpaid bereavement leave with the employer's consent. Furthermore, the Bill has effect despite another Act or industrial instrument or order to the extent that these provide an employee with a benefit that is less favourable to the employee.

The Beattie Labor Government's reforms, which I have outlined, create apprehension when considering their effects on employers, competitors and the like. Firstly, the definition of "spouse" in relation to family leave needs to be amended to remove the current restrictions in relation to gender. Particular consideration should be given to the discriminatory definition of "spouse" in the current legislation. That may be so, but it fails to accept that, industrially, the provision of family leave is meant to encompass close family members and the recommendation is an expansion of the ordinary meaning of the original expression.

Secondly, minimum entitlements should apply only to award employees. That applies to both the annual and sick leave provisions in the Bill. There should not be a core of minimum conditions that are unable to be altered in awards or agreements as enterprise bargaining is predicated on flexibility and the need to depart from minimum standards where appropriate. Furthermore, workplace relations legislation is not the appropriate place for prescribing certain minimum standards. The Queensland Industrial Relations Commission should undertake that role, after extensive submissions by all interested parties, and any minimum standards arising should apply only to award employees.

Finally, combining the parental, maternity and paternity leave provisions in the Workplace Relations Act under the general family leave provisions in the Bill is highly recommended, because this reflects the principles and standards in the Family Leave Award.

It is ever so important that we make sure that industrial relations in the State of Queensland and, for that matter, Australia are dealt with in a way that is fair to all concerned. Industrial relations should favour neither the employee nor the employer. At the end of the day, we have to make sure that we get a fair day's work for a fair day's pay. The awards should encourage employees to build a good relationship with their employers. At the same time, employers in Australia have a responsibility to make sure that they foster a very good working relationship with their employees. Mr Speaker, you and I have a record of keeping those who work with us for a long time.

Time expired.

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