



Speech by

## John-Paul Langbroek

MEMBER FOR SURFERS PARADISE

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### INDUSTRIAL RELATIONS AND OTHER ACTS AMENDMENT BILL

**Mr LANGBROEK** (Surfers Paradise—Lib) (12.49 pm): Mr Deputy Speaker, before I begin speaking to the Industrial Relations Amendment Bill, with your indulgence I would like to wish well the two honourable members of this House who fell ill yesterday. I refer to the Minister for Communities and Disability Services and the Speaker. I place on public record my admiration for the work of my colleague the honourable member for Moggill for his speedy provision of assistance to the two members and his willingness to drop everything to assist other members of this House regardless of the side of the House on which they sit. It is sad that some members see fit to tarnish the selfless work of the honourable member for Moggill by suggesting that his motives after the events were to gain exposure in the media. One honourable member said that to his face. I will not name those members; however, I urge those members—they know who they are—to apologise to the honourable member for Moggill. I hope those members realise that the media sought out the honourable member for Moggill, not the other way around.

I am pleased to rise to speak to the Industrial Relations and Other Acts Amendment Bill 2005. In doing so, I will outline two significant reservations I have with the legislation. Over the course of last week, when looking at legislation that was due to be presented to parliament, I took particular interest in some of the provisions of this bill and thought a number of them deserved special attention in the second reading stage. Those two reservations relate to the clause concerning cultural leave and the clause relating to the reversal of the onus of proof. I was very interested and pleased to see that the Scrutiny of Legislation Committee raised these two issues as the first issues in scrutinising this bill.

First, I would like to suggest that perhaps when the Scrutiny of Legislation Committee looked as the issue of cultural leave under this bill and asked the question, 'Does the legislation have sufficient regard to Aboriginal tradition and island custom?', it was asking a different question than that which most needs to be asked in this instance. The committee came up with the answer that, yes, there is sufficient regard for Aboriginal and Torres Strait Islander custom. That is because, indeed, there is sufficient regard given to that.

As has been explained, the intention of the bill is to help people balance work and family life. That is all well and good. However, one of the significant provisions of the bill is to have cultural leave of five days per year awarded to a person of Aboriginal or Torres Strait Islander descent to attend functions they are required to attend by custom. I find the concept very appropriate, and it is a very good way of helping people in this situation balance their work and family or cultural lives. However, why does it extend to only Aboriginal and Torres Strait Islander custom and people? I am sure that there would be ample occasions on which five days cultural leave could be used or claimed by members of the Islamic faith when observing their cultural customs. Or, in a more Anglo-Australian context, I am wondering if there is not a case where, for instance, a devout Catholic could feel that they could use these days to observe special days on the liturgical calendar such as Ash Wednesday. I would ask the minister not to explain to the House the benefits of this provision to the Aboriginal and Torres Strait Islander people, as they are significant and obvious, but to clarify why these provisions are not extended to people of other cultural backgrounds.

Moreover, I believe the balance is somewhat askew in paragraph (d) of the clause in question. It states—

A person, if notice is not practical, need not give notice that they are taking a cultural leave holiday until the first opportunity.

In other words, a person can not turn up to work and then explain later why that is the case. This defeats the purpose of the preceding paragraphs relating to the reasonableness of a request and the disruptiveness to work. These provisions need to be looked at carefully.

I will also make some brief submissions on the provisions in this bill that reverse the onus of proof in some criminal cases. There needs to be a great deal of evidence to justify a reversal of the onus of proof. The question rightly asked by the Scrutiny of Legislation Committee was exactly that, and it has asked the parliament to consider this. At a literal level, I find it difficult to accept the argument of the minister when he says that the reversal of the onus of proof in cases of freedom of association will in fact strengthen that very freedom. To prima facie accept a person's accusations as truth and accept it as sufficient to uphold a case against an applicant impinges on other freedoms that have been borne out of years of common law and natural justice.

While I recognise that there are cases where the reversal of the onus of proof is acceptable and has worked, these provisions have only been brought in with tried and tested knowledge that the rights of the respondent will be upheld. I do not believe that in this case there are sufficient grounds to reverse the onus of proof as it may be very difficult to do that. It may be that there are accusations made against a person by someone who was demoted or similar and that there may have been well-founded reasons for their demotion. Unfortunately, these reasons do not refute the accusations—perhaps they lack truth—that may be levelled against the respondent. As such, the prima facie argument may stand because of the sheer difficulty of disproving this type of action. I would hate to see the rights of a respondent and their reputation compromised simply to create administrative ease.

Apart from that, I commend the extended provisions for bereavement where they are legitimate. This is a very sensible move, as are most of the other provisions in the bill. I know that the Liberal Party also has issues with the superannuation clauses, but I will let my colleague the honourable member for Currumbin, the Liberal Party spokesperson for industrial relations, expound on this further. With those few remarks, I ask the minister to clarify these issues to the House.