Speech by

Gary Fenlon

MEMBER FOR GREENSLOPES

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INDUSTRIAL RELATIONS ACT AND OTHER LEGISLATION AMENDMENT BILL

Mr FENLON (Greenslopes—ALP) (4.20 pm): I rise to speak in support of the Industrial Relations Act and Other Legislation Amendment Bill 2007. The bill before us includes amendments to apply to working children who are under the age of 18 years and who are employed by a constitutional corporation under federal agreements or other common law arrangements entered into after 26 March 2006. If we look at exactly who benefits from the amendments, we see that the bill does not apply to children employed under notional agreements preserving state awards or preserved state agreements which commenced under WorkChoices on 27 March 2006. The entitlements in these instruments are effectively those that applied in state industrial instrument entitlements at that date which had already been tested against a no disadvantage test or approved by the Queensland Industrial Relations Commission before they came into operation. The bill does not apply to child employees who are already covered by state awards or agreements, nor does the bill apply to child employees covered by federal awards or agreements prior to the introduction of the federal WorkChoices legislation. However, the bill does apply where a child was employed under a preserved collective state agreement that has since been terminated and not replaced by another agreement or arrangement.

The purpose of this bill is to amend the existing legislation to ensure adequate protection is afforded to children working in Queensland under WorkChoices. Queensland's child employment legislation, coupled with the existing industrial laws, provides adequate protection to children at work in this state. However, since the introduction of WorkChoices, even though that legislation provides for the continued operation of child labour laws, some doubts have arisen about just what employment entitlements and protections are available to children working in Queensland.

This bill makes it clear what employment entitlements and protections are available to children working in this state under a federal agreement, be it collective or individual, entered into after the introduction of the federal WorkChoices legislation. This approach is consistent with the measures taken in New South Wales, where amendments to that state's industrial relations legislation protecting the entitlements of children at work were enacted in December 2006.

This bill has been drafted on the basis that a provision introduced through the WorkChoices amendment, that is section 16(3)(e) of the Workplace Relations Act 1996, explicitly preserves a state's right to legislate in the area of child labour. Our legal advice is that legislation of this type in this bill falls within the area of child labour legislation and is, therefore, not overridden by WorkChoices. The rationale for the types of employment covered by this bill is that federal agreements or arrangements entered into after the commencement of WorkChoices are no longer subject to a no disadvantage test to assess whether there has been a reduction in employment entitlements and protections. The federal government has introduced a sham fairness test which does not fix the real problem. Employees can still lose pay and conditions if their employer is struggling or where the offer of a job itself is deemed sufficient compensation or where the employee is provided with something they did not need as sham compensation.

Importantly, the bill provides for Queensland's existing no disadvantage test provisions under the Industrial Relations Act 1999 to be used in assessing whether there has been a reduction in employment entitlements or protections as a result of entry into federal agreements or other arrangements. This is the same test that would apply if an agreement was to be entered into under the state system. Employment under a federal award or agreement whose provisions have previously been subject to a no disadvantage type test or approval process by an industrial tribunal will be unaffected by this bill. It is only those employers seeking to reduce conditions of employment in a new federal agreement or other arrangement who will feel any impact from these provisions.

I welcome the changes which see industrial relations inspectors empowered to assess whether a child employee's entitlements or protections have been reduced under a federal agreement or other arrangement. Where there has been such a reduction, inspectors will issue compliance notices providing an employer with the opportunity to remedy the contravention without suffering a penalty. However, failure to comply with an improvement notice will be an offence which may be subject to prosecution in the Industrial Magistrates Court. These compliance notices will provide valuable guidance to employers on how to ensure that they do not contravene the requirements of this legislation. I also welcome the fact that the Queensland Industrial Relations Commission will be responsible for dealing with disputes over compliance notices and making decisions on whether an agreement or arrangement has reduced a child employee's entitlements and protections.

The commission—the independent umpire—will be empowered to determine whether a compliance notice should be varied or revoked or whether an order should be made varying the agreement or arrangement to comply with the aims of the bill. Where the commission decides that an agreement has reduced employment entitlements or protections, it may also order payment of an amount that would have been payable under the Industrial Relations Act 1999 or a state award or order that would have applied to a child's employment if it had not become subjected to the agreement or other arrangement. This system of enforcement allows for choice between prosecution and dispute resolution with legally enforceable orders. This is consistent with the measures already in existence in relation to underpaid wages under the Industrial Relations Act 1999.

Another feature of the bill before us is that it will be made clear that the dismissal provisions in the Industrial Relations Act 1999 continue to apply to children employed by a constitutional corporation. In effect, a child worker will be able to seek remedies where they have been unfairly dismissed. These will be the same remedies as those available under the Industrial Relations Act 1999. All employers, regardless of size, will have to ensure that they exercise their power to dismiss child employees in a fair manner.

The amendments before us also amend the Child Employment Act 2006 so that the existing prohibition on employers requiring or permitting children to work while nude or partially nude is extended to children working as apprentices or trainees in a work experience or vocational placement.

This corrects an anomaly where these classes of work are currently excluded from the application of this provision of the Child Employment Act 2006. There can be no doubt that all workers need a hand in fighting off the WorkChoices assault on pay and conditions. That is why in this instance young workers especially need the state to act on their behalf. Traditionally, young workers are among those who are most at risk of being ripped off if only because of their inexperience. I welcome the opportunity to support this bill. I urge all members to do so. I commend the bill to the House.