Speech by

Hon. John Mickel

MEMBER FOR LOGAN

Hansard Wednesday, 18 April 2007

INDUSTRIAL RELATIONS ACT AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. RJ MICKEL (Logan—ALP) (Minister for State Development, Employment and Industrial Relations) (11.30 am): I move—

That the bill be now read a second time.

The federal government's WorkChoices legislation threatens to undo over 100 years of justice and fairness in Australia's industrial relations sphere by giving employers greater leverage in negotiations with their employees.

Until WorkChoices, Queensland employers were free to choose between the federal and state system. Overwhelmingly, some 70 per cent of businesses chose to use the Queensland industrial relations system to manage their workforce and set wages and conditions. The result has been strong economic growth and social justice for all employers and employees which has benefited all Queenslanders. As well, industrial disputation was at rock bottom levels and jobs growth attracted thousands of Australians each month into Queensland.

However, all this changed on 27 March 2006 with the introduction of WorkChoices. Overnight, more than half a million Queensland employees were moved into the federal jurisdiction—approximately 30 per cent of employees—on top of the 30 per cent of employees who were already in the federal system. These workers were no longer afforded the protections of the Queensland system such as unfair dismissal protections, a strong set of awards and the application of a 'no disadvantage test'.

That is why the Queensland government is presenting these amendments—to restore some balance for the state's workers and their families. The bill before us will establish an ombudsman to promote fair work practices, as well as enshrining the rights of child workers and setting up a low-cost common law jurisdiction for employees on low incomes who cannot afford the costs of litigation in the courts to enforce conditions outside of formal agreements.

In June 2006, the Queensland Industrial Relations Commission was directed to hold an inquiry into the impact of WorkChoices on Queensland workplaces. Some of the issues raised were—

- concerns over changes in unfair dismissal provisions;
- literacy problems amongst employees resulting in a lack of understanding of the content in individual contracts or Australian workplace agreements, AWAs;
- the removal of choice for incorporated businesses which previously chose to operate in the state system;
- the complexities of WorkChoices was compounded for businesses that did not employ human resource personnel, leaving employers and employees confused;

- the federal Office of Workplace Services', OWS, failure to appropriately advise employees of their rights, despite having an obvious prima facie case for unlawful dismissal; and
- employees seeking advice from the Office of Workplace Services about unlawful dismissal cases being discouraged to pursue their case because of cost factors and the complexity of the WorkChoices legislation.

Overall, the inquiry found that the major areas of concern were the removal of unfair dismissal laws, confusion over what constitutes unlawful dismissal and unfair dismissal, and the reduction of wages and entitlements through the use of individual agreements.

As a result of its findings, the inquiry recommended the establishment of a Workplace Rights Office—a 'one-stop shop' service to assist employees and employers negotiate the unwieldy complexity that is WorkChoices.

The Queensland government remains committed to facilitating and encouraging the fair treatment of all workers in Queensland. So, despite over half a million workers being moved into the federal jurisdiction, the government believes these workers should still have access to full and frank information and advice which will be provided through the Queensland Workplace Rights Office.

The Industrial Relations Act and Other Legislation Amendment Bill 2007 changes the existing act to alleviate the hardship or potential hardship Queensland workers and their families face under WorkChoices. The bill before us amends the following acts—

- Industrial Relations Act 1999
- Magistrates Courts Act 1921
- Child Employment Act 2006
- Education (Work Experience) Act 1996
- Judicial Review Act 1991
- Public Service Act 1996
- Workers' Compensation and Rehabilitation Act 2003
- Workplace Health and Safety Act 1995.

If we turn to the changes to the Industrial Relations Act 1999, these amendments establish the Queensland Workplace Rights Office and Queensland Workplace Rights Ombudsman. As I mentioned earlier, the Queensland Workplace Rights Office will be a one-stop shop. It will utilise existing hotline and web site services and offer advice, information and promote fair industrial relations practices in Queensland.

The ombudsman will report on any findings and highlight these in the public arena to educate workers, as well as referring cases of unlawful workplace practices to the appropriate authorities. Importantly, one of the duties of the ombudsman will be to provide advice to the Queensland government on strategies to mitigate the negative effects of WorkChoices. This will be achieved by advising on ways to improve protections for vulnerable workers and promote 'best practice' in Queensland's industrial relations.

The ombudsman has two main functions: to facilitate and encourage the fair treatment of workers in Queensland and provide advice to the state government on strategies to mitigate the negative effects of WorkChoices.

Specifically, the bill spells out that the role of the Queensland Workplace Rights Office will be to—

(i) inform, educate and consult with any person the ombudsman considers is affected by industrial relations and other work related matters, utilising existing hotline services and web site services;

(ii) to facilitate and encourage fair industrial relations and work practices in Queensland including developing codes of practice;

(iii) promote informed decision making by persons affected by industrial relations legislation, including information on agreement making, and encouraging fair industrial relations and other work related matters;

(iv) investigate and publicise complaints and report on unlawful, unfair or otherwise inappropriate industrial relations and work practices, where appropriate referring people to the appropriate authority or services; and

(v) highlight cases of unfair treatment in the public arena to demonstrate the negative impact of WorkChoices and encourage employers to adopt fair employment practices.

The Queensland government will rely on data from the Queensland Workplace Rights Office which, as a result of its investigations, will be in a strong position to provide advice on strategies to promote fair and equitable industrial relations and work practices in Queensland.

Specifically, the bill proclaims that the Queensland Workplace Rights Office will—

(i) monitor and report to the minister and parliament on industrial relations and work practices in Queensland;

(ii) investigate and report to the minister on the impact of any aspect of industrial relations arrangements in Queensland; and

(iii) advise on strategies to mitigate the negative effects of any legislation relating to industrial relations and work related matters including improved protections for vulnerable workers and promote fair and equitable industrial relations and workplace practices.

This education function will be vital because the federal government is unwilling to provide a transparent assessment of the impact of WorkChoices on workers and their families. We know this because, when the Office of the Employment Advocate reported its findings of a survey of 250 Australian workplace agreements in May 2006, it embarrassed the federal government and consequently the Employment Advocate has decided against any further samplings.

That survey of 250 AWAs demonstrated that AWAs are a useful tool only in stripping away award conditions—

- 100 per cent excluded at least one protected award condition such as rest breaks, overtime and annual leave loading or allowances;
- 64 per cent removed leave loadings;
- 63 per cent removed penalty rates;
- 52 per cent removed shift work loadings; and
- 40 per cent removed payment for gazetted public holidays.

The amendments to the Magistrates Court Act 1921 establish a specialist, low-cost employment jurisdiction for breach of contract claims by employees on low incomes who would not normally be able to afford the costs of litigation in the courts. The amendments rely on the existing jurisdiction of the Magistrates Court but reduce the costs of proceedings.

Most employees' terms and conditions of employment are derived from a combination of statutory awards and agreements and common law contracts of employment. Many contracts of employment cover matters that are not included in standard awards or agreements, such as fringe benefit and salary packaging arrangements, telecommuting agreements or hours of work to suit an individual's family responsibilities. Many contracts of employment also provide for terms and conditions that are higher than those provided in standard awards and agreements, such as bonuses and incentives.

In Queensland, an estimated 35.5 per cent of employees rely either wholly or partly on their contract of employment to set wages and conditions. These contracts may be oral or in writing. The problem is that employees who are covered by the federal WorkChoices legislation can only seek relief for a breach of their contract of employment through the federal or state civil courts. These proceedings can be time consuming and costly, both for employers as well as employees, and often require the use of lawyers because technical rules of law and evidence apply.

Employees who are covered by the state industrial relations system can avoid these costs by seeking the assistance of the Queensland Industrial Relations Commission to resolve a dispute about the contract of employment. This option is not available in the federal industrial relations jurisdiction.

Obviously, it is desirable that disputes between employers and employees are resolved as quickly and efficiently as possible with minimum expense and downtime for the parties involved. These amendments will help achieve that objective by reducing costs for the parties and providing for a speedy conciliation process prior to any hearing.

The new, low-cost procedure will be available to employees earning up to $98,200 a year, consistent with the income threshold for employees in the state system seeking a remedy for unfair dismissal in the QIRC.

Court filing fees will be lower than those applicable in the Magistrates Court's general civil jurisdiction and will be consistent with the application fee for unfair dismissal claims in the QIRC. Costs will not be awarded against a party unless that party has unreasonably caused costs to be incurred or if the claim is frivolous or vexatious and employee organisations will be entitled to represent the parties. To help resolve claims with maximum efficiency for all concerned, a compulsory conciliation procedure will apply prior to any hearing at no cost to the parties.

These measures will help both employers and employees by keeping costs down when a dispute occurs and allowing the dispute to be resolved with a minimum of time and expense.

The amendments to the Child Employment Act 2006 make it clear what employment entitlements and protections are available to children working in Queensland who are employed under a federal agreement—be it collective or individual—entered into after the introduction of the federal WorkChoices legislation.

This bill has been made 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 indicates that legislation of the type in this bill falls within the area of child labour legislation and is therefore not overridden by the federal WorkChoices legislation.

The bill applies to children working 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. The bill does not apply to children employed under 'notional agreements preserving state awards' or 'preserved state agreements' which commenced under WorkChoices.

The entitlements in these instruments are effectively those that applied in a state industrial instrument 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. 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 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 made prior to the introduction of the federal WorkChoices legislation.

The rationale for the types of employment covered by the 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 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 entering into the prescribed 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 of industrial relations.

In view of the length of this statement, I seek to have the rest of my statement incorporated in *Hansard*.

Mr DEPUTY SPEAKER: I have reviewed the contents of the speech and I am happy to incorporate. Is leave of the parliament granted?

Leave granted.

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.

The Bill empowers inspectors under the Industrial Relations Act 1999 to assess whether a child employee's entitlements or protections have been reduced under a Federal agreement or other arrangement. Inspectors may issue compliance notices. This will provide an employer with the opportunity to remedy the contravention without suffering a penalty.

However, failure to comply with a compliance notice will be an offence which may be subject to prosecution in the Industrial Magistrates Court. Compliance notices will provide valuable guidance to employers on how to ensure they do not contravene the requirements of this legislation.

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 will be empowered to determine whether a compliance notice should be varied or revoked or whether an order should be made varying an agreement or arrangement to comply with the aims of the Bill.

Where the Commission decides that an agreement has reduced employment entitlements or protections they 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 the child's employment if it had not become subject to the Federal agreement or other arrangement.

This system of enforcement allows for choice between prosecution and dispute resolution with legally enforceable orders, which is consistent with measures already in existence in relation to underpaid wages under the Industrial Relations Act 1999.

Another feature of the Bill 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.

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.

Finally, the Bill amends 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 or in work experience or vocational placements. This corrects an anomaly where these classes of work are currently excluded from the application of the Child Employment Act 2006. To allow this amendment to operate effectively, a minor consequential amendment has been made to the Education (Work Experience) Act 1996.

Mr Speaker, the Federal Government's Work Choices Protected By Law advertising blitz was a smoke and mirrors ploy which lulled Australian workers into thinking their conditions were protected.

The fact is that a John Howard Government cannot be relied upon to assist workers or report on the impact of Work Choices on workers. Nor has the Federal Government been willing to maintain vital research on the Australian Workplace Industrial Relations Survey (AWIRS), thereby making it more difficult to gauge the impact of Work Choices.

For these reasons, the Queensland Government is establishing its own watchdog to ensure fair treatment for all Queenslanders.

Now, if I can turn to some of the specifics of the Bill.

1.1 Amendments to objects of the Act—Right for employees to collectively bargain

The right to collectively bargain is recognised and protected by the International Labour Organisation (ILO) to which Australia is a signatory. The Queensland Government supports and encourages collective bargaining.

This amendment seeks to strengthen the principle of collective bargaining by adding to the objects of the Industrial Relations Act 1999 an object "to promote collective bargaining and to establish the primacy of collective agreements over individual agreements".

This statement of intention will not prevent employers and employees from making individual agreements.

1.2 Other Amendments to the IR Act

a. Proportionate long service leave

This amendment provides for proportionate long service leave to be paid to employees on rolling, fixed-term contracts that extend for more than seven years where they had a reasonable expectation that they would continue in employment and they have not refused a further contract. Currently, it cannot be paid if an employer does not renew the contract.

b. Long service leave and continuity of service

State long service leave provisions are preserved under Work Choices, however it is unclear if the same applies to continuity of service and employment provisions. This amendment clarifies that continuity of service and employment is part of the State long service leave provisions as contained in the IR Act and therefore would not be excluded by Work Choices.

c. Calculation of notice for transmitted employees

This amendment clarifies that the notice period will be based on the total period of employment. Currently there is confusion about whether the notice given to an employee by the new employer should be based on the period of time the transmitted employee has been employed by the new employer or the total period of employment including time with the old employer. The amendment clarifies that the total period of employment is to be used when determining the notice to be given.

e. Applying for certification of an agreement

This amendment enables an application to be made to certify an agreement although all the parties to the agreement have not signed the agreement, provided all the terms have been agreed and the agreement has been approved by a valid majority of the employees in a properly conducted ballot.

f. Signing of certified agreements

This amendment gives the QIRC discretion to certify agreements where the application to certify the agreement is lodged within a reasonable time, all the parties have agreed to the terms and conditions of the agreement and a valid majority of employees have approved the agreement in a properly conducted ballot, although all the parties haven't signed it. The amendment makes the signing of an agreement a technical rather than a mandatory requirement in the approval process of the QIRC which can be waived in appropriate circumstances.

g. Persons bound

This amendment enables an employer or employee organisation to be bound by an agreement regardless of the fact that one or more of those entities did not sign the agreement, provided the QIRC has decided that the agreement did not need to be signed, in all the circumstances.

h. When judge is appointed

This amendment provides for the appointment, by Governor in Council, of the President of the Industrial Court of Queensland who may be either a sitting Supreme Court judge or a lawyer of at least 5 years standing.

i. Commissioner may be appointed ombudsman

This amendment provides that a commissioner may be appointed as an ombudsman under the new Chapter 8A of the Act. Although the commissioner retains his/her appointment as commissioner, he/she may not undertake any duties as a commissioner during the appointment as ombudsman. The commissioner's service as ombudsman is taken to be service as a commissioner for all purposes.

j. Applications for Declarations

This amendment provides a mechanism for applications for declarations to be made to the QIRC. At the present time, no mechanism exists to make such declarations.

k. Unregistered industrial associations

This amendment extends the power of the QIRC to make orders to control the activities of unregistered employee associations. Previously, the QIRC had no jurisdiction over these associations because they were not registered.

l. Participation in alternative national body

This amendment allows for the result of a joint session with other Federal or State industrial tribunals to be given practical effect by a full bench of the QIRC by way of a general ruling or a statement of policy. The full bench must also decide if any further hearings are required in relation to the matter.

m. Appeals from Industrial Court for matters heard at first instance

This amendment provides an appeal process for offences that are heard by the Industrial Court at first instance (for offences against the IR Act for which jurisdiction is not expressly conferred on a magistrate). At present, no appeal is available.

n. Removal of double appeal process

This amendment clarifies and corrects an unintended consequence of the current provisions. The amendment confirms that a decision of the Full Bench of the QIRC on appeal from a single Commissioner is final.

o. Working time for employees

This amendment ensures that provisions about working time for employees (excluding public servants) under industrial instruments made before 1 September 2005 are similarly applied to instruments made after 1 September 2005.

1.3 Alternative Dispute Resolution with respect to Common Law Agreements

This amendment will allow the QIRC to exercise its dispute resolution functions if the parties to a dispute agree in writing to refer the dispute to the QIRC.

The amendments will help unions and employers to make and enforce agreements without the interference of the Federal Government, which does not trust employers and unions to make agreements to suit their own circumstances but tells them, through the Work Choices legislation, what they can and cannot make an agreement about.

The amendment allows parties to agree, in writing, to refer a dispute to the QIRC and for the QIRC to undertake any functions provided in the agreement. For example, the parties might agree for the QIRC to act as a mediator, or provide that the QIRC can make orders binding on the parties.

Mr Speaker, these amendments recognise the well-founded trust and confidence that employers and unions have in the QIRC, and the QIRC's ability and expertise to resolve disputes that occur in this State.

Amendments to the Workers' Compensation and Rehabilitation Act 2003 and amendments to the Workplace Health and Safety Act 1995

Mr Speaker, the amendments to the Workers' Compensation and Rehabilitation Act 2003 strengthen the role that the security of employment provisions for injured workers play in achieving rehabilitation and return to work outcomes. In 2006, these provisions were moved from the IR Act to the Workers' Compensation and Rehabilitation Act.

The Bill amends the Act to enable inspectors appointed under the IR Act to continue to monitor and enforce compliance with these provisions under the Workers' Compensation and Rehabilitation Act. It does this by extending the meaning of the "authorised persons" of Q-COMP under the WRC Act who are tasked with this role to include industrial inspectors for this purpose.

The Bill also aligns more closely the eligibility requirements to self-insurer under Queensland's workers' compensation scheme with other jurisdictions by removing the mandatory requirement that employers have $100M in net tangible assets.

The Workplace Health and Safety Act 1995 gives authorised representatives of unions the authority to enter workplaces on prescribed health and safety grounds.

Since the introduction of these provisions, the Department of Employment and Industrial Relations has been working with unions and employers to resolve any issues arising out of a union right of entry.

While the vast majority of these issues are resolved quickly, some of these matters involve a number of complex issues between the parties. To ensure an independent, transparent and efficient approach for resolving these more complex issues, the Bill introduces an additional dispute resolution process using the Queensland Industrial Relations Commission.

Under this proposal the inspectorate will remain the first point of call; however, where an issue remains unresolved after this intervention, a conciliation and arbitration process can be entered into by either the representative, the employer or at the request of an inspector.

The Bill also contains an amendment to clarify beyond doubt the Act's application to certificates previously issued under the Workplace Health and Safety Act 1989 and the Inspection of Machinery Act 1951 and which have been continued in force under the current legislation. These relate predominantly to certificates that allow people to work in certain prescribed occupations such as fork-lift and crane operations.

Finally, the Bill amends provisions of the Workplace Health and Safety Act 1995 relating to designers and project managers for construction work that have not yet commenced. After working with the design industry to develop appropriate compliance guidelines, it is considered that the reporting provisions in question, which will need to be improved with experience, are best dealt with in guidance material rather than legislative form.

Mr Speaker, there can be no doubt that Queensland workers and their families have suffered under Work Choices. The Beattie Government promised to fight these draconian laws and that's what it has done and will continue to do until they are overturned.

This legislation doesn't scrap the harsh laws but it goes a long way to ensuring some degree of fairness is maintained, at least until a future Federal Labor Government can abolish Work Choices and bring some sanity back into the national industrial arena.

I commend the Bill to the House.