Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Wednesday, 11 November 2009

FAIR WORK (COMMONWEALTH POWERS) AND OTHER LEGISLATION BILL

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (7.37 pm), in reply: Apart from all the noise and the bluster, the chest beating, the self-justification about how consistent they say they have been about their position on industrial relations policy and their faux arguments about putting Queensland first, there was one noise that dominated the LNP's argument during this debate on the Fair Work (Commonwealth Powers) and Other Legislation Bill. What was that noise? It was the noise of a shredder and the shredding of the opposition's political, economic and public policy credibility on a very significant issue for our state and our nation. Why do I say that? Because, as a serious matter of public policy, the Liberal National Party—although we have seen the death of the Liberal Party with the introduction of certain private members' bills into the parliament—

Mr Wilson: Now the Country Party.

Mr DICK: The Country Party. It is not just the National Party that has rolled over and destroyed the Liberal Party; they have got rid of that, too. They have gone back to the Country Party. The Country Party is seriously suggesting that we should have two systems to regulate the private sector in Queensland: one to regulate corporations and one to regulate the balance of the private sector. That is the legitimate public policy argument they are putting to the Queensland people—a two-track system, a dual system.

Where was the discussion in the debate about the Constitution of the Commonwealth of Australia, the nature of constitutional corporations and trading and financial corporations? Where was any of that? Where was the jurisprudence of the High Court that says: 'Corporations are now regulated by the Commonwealth'? There was none of it—not one word. Of course we did not hear the words that they dare not speak their name.

Mr Wilson: What's that?

Mr DICK: Work Choices. They did not come out of his mouth in this debate.

Mr Springborg: Go and read *Hansard*.

Mr DICK: There was no public policy argument.

Mr Springborg: You must not have even listened.

Mr DICK: Oh, he is embracing Work Choices. I apologise, Mr Deputy Speaker. How could I forget how closely they held Work Choices to their breast? The ideologues were seeking to crush workers in the workplace. It was a system that was stacked against workers and in favour of employers. It was the most unbalanced industrial relations system in our nation's 100-year history. That is what they stand for.

Mr Springborg: You are not Premier yet. You are not far away, but you are not Premier yet.

Mr DICK: I am closer than you will ever be, brother. We will have two systems. We will have one system where corporations are regulated by the Commonwealth. We know that is the outcome of the Work

Choices decision of the High Court. On our estimate, I am advised that 75 per cent to 80 per cent of the private sector in Queensland is already regulated by the Commonwealth and always will be. The world changed when the High Court handed down its Work Choices decision.

What are we hearing about the balance—of the 20 or 25 per cent of private sector employees in Queensland? 'They can be regulated under another system.' This is the party of the private sector. This is the party of the efficient economy saying, 'We'll have two systems. We'll have two retailers next to each other—a corporate retailer and then another retailer run as a private business, say a partnership, or a sole trader maybe run by a trustee corporation, or two foundries or two manufacturers or two other entities in the private sector. But we will have two separate arrangements, two separate award conditions, two separate terms and conditions of employment.' How does that help a state of 4.4 million and a nation of over 20 million? How does that create a seamless economy in a world of six billion people? How does that create an efficient economy? It is laziness. In 150 years of self-government in our state this is the best resourced opposition in 150 years, and we have the laziest opposition that has ever filled the opposition benches in this state.

We did not hear anything of substance during the debate. We heard nothing of substance on a very significant issue for our state. We heard nothing about constitutional corporations. We heard nothing about the Constitution. We heard nothing about the High Court. We heard nothing about what has happened in the last few years in Queensland. They say to business, 'Let's have two systems'. Two agribusinesses, say two farmers next to each other. One might be a corporate entity and one might be two brothers running a business, but we'll regulate them separately because we have vacated the field when it comes to public policy formulation on the future of our economy in this state and the future of the economy in our nation.

They are bankrupt when it comes to good public policy, bankrupt when it comes to the future nature and form of the Queensland economy, bankrupt when it comes to the future prosperity of our state, bankrupt when it comes to any ideas for a progressive future for our state. So much for the launch of the LNP last year. It is one year old—the party of progressive politics. Do you remember that slogan they ran on?

Mr Moorhead: Progressive conservatives.

Mr DICK: It was nothing more than a sham to hide the destruction of the Liberal Party—

Mr Springborg: Is this your launch for the premiership?

Mr DICK: No, I take the interjection from the Deputy Leader of the Opposition. What it is, I hope, is a complete demolition of someone who has sat in this parliament for 20 years pretending to want to lead this state. That is what it is. I want to be on the record clearly advocating the Labor case, because it is the duty of those of us in government, it is the duty of those of us who want to lead Queensland into a progressive future to make difficult decisions about the future of our state, the future of our state's economy and the future for our state's children.

What do we hear from the opposition—nothing. The Liberal National Party policy tumbleweed goes on, living in the twilight zone, the eternally contradictory arguments that they put up on every bill I have heard debated in this parliament. They want it every which way. They see themselves ahead in the polls and what do they do? They do what they have done for 20 years since they lost government. They have no policy initiatives or policy ideas. This was demonstrated by the first private member's bill brought into this House by the member for Surfers Paradise. What did he do? He photocopied something that twice before the Deputy Leader of the Opposition, the member for Southern Downs, had tried to trawl through the parliament. That is—can you believe it?—the best that the opposition leader could do. There he is on television with his smug face and nodding head but no answers to questions. What about a political threshold limit? No idea. It is the party of no ideas.

Well, I stand for the party of ideas. I stand with everyone on this side of the House and we engage with very significant public policy positions, and we will engage with the serious issues facing our state and nation. What is more, we will work with the federal government to ensure that cooperative federalism develops. It will not be like what we had with Work Choices—dictated on high by John Howard, filled with the hubris and arrogance of power, taking control of the Senate and saying to the most vulnerable workers in our nation, 'You will not have overtime, you will not have holiday pay, you will not have long service leave; you will have 2c an hour more,' as was indicated by the member for Everton and the member for Waterford.

Mr Messenger: How are the sales of Midnight Oil going over there?

Mr DICK: The policy tumbleweed goes on, and that is the best they can do.

The other thing we have got is the mirror of WA. Not only can they not think of their own ideas; they reflect what is happening in a Liberal National Party government in Western Australia. Let us stay outside of the system. Well, let us see what business says about that. I make this pledge through you, Mr Deputy Speaker: in every boardroom that I speak at between now and the election, I will let business know the

bankrupt policy failure that the LNP represents and what they do when they come into this parliament. Every businessperson that I speak to will know what they have done. They say that we can have an inefficient economy, we can have a two-track system, we can have a dual system, and I will tell them at every board meeting this is what this alternative government wants.

How hard it is to say those words—alternative government—because they are not an alternative government. They are sitting there waiting for the chance. They think they fly high in the polls. They think there is no work to be done, but what would we expect—nothing more than the policy failure of 20 years. We will run this argument. We will tell the community what we are willing to do for Queensland in contradistinction to the members of the opposition. All this is is rank political opportunism to run their lines through the parliament without any substance at all.

What I will do is put on the record the policy substance behind this important initiative for our state. As I said in my second reading speech, the purpose of the Fair Work (Commonwealth Powers) and Other Provisions Bill 2009 is to refer to the Commonwealth the state's industrial relations power for the private sector. This bill implements possibly the most significant cooperative reform to industrial relations since Federation, by allowing Queensland to join a national industrial relations system that protects the rights of workers. The shape of the national system and its underlying safety net means employees and employers will still have access to a fair, balanced and equitable system of industrial relations overseen by an independent umpire in Fair Work Australia.

The national system will allow employers to operate under a seamless system where they know that their obligations in Queensland are no different from those in the other referring states and territories of the Commonwealth. The Queensland government is satisfied that the national system of industrial relations will be an effective system which provides fair protection to employees but also reduces the regulatory burden on employers and provides clear benefits for business and for the economy through the reduction of red tape and the increased productivity which will result from a single national system. We hear them cry about red tape all the time. They cry about overregulation of business, and here we have a demonstrated opportunity for them to do something to create a unified economy and what do they do? They walk off the field yet again, back to the showers, not interested in engaging in matters of substance.

The bill refers Queensland's industrial relations powers for the private sector to the national system but retains powers over public sector and local government employment in the state industrial relations system. The referral decision was made neither lightly nor without consultation with industry and union representatives—unlike Work Choices. The referral decision was also made only after an extensive consultation and negotiation process with representatives of the Commonwealth government—unlike Work Choices. As a result, Queensland has included provisions in the bill and successfully negotiated several important concessions from the Commonwealth to protect important current state industrial relations entitlements of Queenslanders as they transition to the national industrial relations system.

Mr Wilson: Unlike Work Choices.

Mr DICK: Unlike Work Choices. I take the interjection from the Minister for Education and Training. Employees transferring to the national system will have certain superior state award and agreement entitlements protected for the period of transition into the national industrial relations system. These include entitlements in relation to overtime, sick leave, annual leave, annual leave loading, public holiday penalty rates, long service leave payments, cultural leave, payments for bereavement leave and carers leave for casual employees. Training arrangements and conditions of employment for apprentices and trainees—an area in which Queensland has led the way for many years—will continue to be regulated in the national industrial relations system under provisions preserved from the relevant Queensland legislation and orders. This arrangement will continue until Fair Work Australia completes a comprehensive national review of apprenticeship and traineeship systems.

It has also been agreed as part of the referral to preserve certain award wage rates arising from Queensland Industrial Relations Commission decisions affecting the community and disability services sector. Of particular importance is that the bill includes provisions which would allow Queensland to withdraw from the national system should the Commonwealth make amendments to the national system laws impacting on Queensland's referred jurisdiction without the agreement of the Queensland government. We want to protect Queensland against the sorts of ideologues who introduced Work Choices, and they are the protections in this system.

I now want to address some issues raised by members opposite. The member for Southern Downs declared that the opposition would be opposing this bill. He has asserted that Queensland should retain industrial relations powers for the private sector so that a future Queensland government can create an IR environment that gives Queensland business a competitive advantage over other states. How competitive will we be when we have the dual-track system proposed by the opposition leader? Exactly how would a future LNP government change the IR environment to create such an advantage? Well, the LNP is suggesting that, given the opportunity, it would go back to the dog-eat-dog world of Work Choices. It would cut workers' entitlements—that makes for an advantageous competitive environment—to give businesses some advantage. It wants to set us backwards as a state, not embrace progress and the opportunity to reform for the advantage of all Queenslanders. At its heart the LNP does not stand and never has

understood or stood for fairness in the workplace. It wants to go back to the past and back to Work Choices. It wants to cut workers' entitlements. It is opposing a cooperative industrial relations system that will reduce red tape on business, increase business productivity and reduce the complexity for business and workers alike.

The member for Southern Downs claimed that this was an 'unnecessary' step. This is simply and fundamentally wrong. Since March 2006, with the introduction of Work Choices, the Commonwealth has regulated the employment relationships of constitutional corporations, an arrangement upheld by the High Court. This has created significant confusion for employers and employees regarding whether they are covered by the state or Commonwealth industrial relations system. A single national system for the private sector will reduce the regulatory confusion and complexity for business. But if we listen to the Liberal National Party, that is not something it wants. Whereas the Work Choices regime was unfair and heavily weighted in favour of employers, the new Commonwealth Fair Work Act 2009 introduces a system for the regulation of workplace relations which is fair and balanced, and the Queensland government supports this system.

The new Commonwealth system revives awards as modern, relevant industrial instruments that provide a genuine safety net; sets national employment standards as statutory minimum terms of employment that apply to all employees; provides a greatly improved legislative framework for achieving equal remuneration for work of equal and comparable worth; revives the industrial tribunal's role in settling disputes, establishing award conditions, reviewing the national employment standards and approving agreements; and setting minimum wages. Most critically, it requires good-faith collective bargaining for enterprise agreements. It requires that enterprise agreements pass the 'better overall' test and it eliminates individual workplace agreements. Unfair dismissal remedies are restored for small business employees. But we would not want that, listening to the LNP!

Queensland now has the opportunity to cooperate with the Commonwealth to achieve a fair national system for the private sector while retaining a state system for the public sector, including all local governments and local government owned corporations. The member for Southern Downs also raised the issue of the fate of the Brisbane City Council under the referral power. I want to be very clear for the member in simple terms so he can understand that there is no change to the City of Brisbane Act and no responsibility for the Brisbane City Council to do anything, such as decorporatise. What this referral means is that the council will be caught as a non-national employer and treated accordingly. The Fair Work Act replaces much of the Workplace Relations Act 1996 and provides the regulatory framework for the Fair Work regime. The aim was always to establish a national system for the entire private sector. No consideration was ever given to extending this regime to the public sector across the nation.

It is appropriate for the state government to retain control over the industrial relations environment within which government policies are carried out and government services are delivered. This includes being able to regulate the ethical conduct of employees, matters of discipline, terms and conditions of employment, and how industrial action is dealt with. Retaining the Queensland Public Service in the state system allows any future government to make changes to strengthen the state conciliation and dispute-settling procedures if this is appropriate for guaranteeing minimal disruption to key public services.

There are also sound arguments for having local governments remain in the state. Local governments supply services for the public good. As the third level of government within the state, it is appropriate that they fall within state industrial relations regulation. Further, all stakeholders in local government agree that jurisdictional uncertainty and fragmented jurisdiction should be resolved, and agreement was reached that the most appropriate jurisdiction for their management was the state system.

The member for Southern Downs queried how the state would ensure workers' entitlements under the referral. Queensland and other referring states have been asked to sign an intergovernmental agreement, otherwise known as an IGA, which outlines the arrangements that the parties have agreed to for the operation of the national industrial relations system for the private sector. Enshrined in the IGA are a number of fundamental industrial principles which include: (1) a strong, simple and enforceable safety net of minimum employment standards; (2) genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to join and be represented by a union or participate in collective activities; (3) collective bargaining at the enterprise level with no provision for individual statutory agreements; (4) fair and effective remedies available through an independent umpire; and (5) protection from unfair dismissal. These fundamental workplace relations principles will be also enshrined in the Queensland legislation along with the following principles: that there should be and continue to be an independent tribunal system and an independent authority able to assist employers and employees within a national workplace relations system.

Queensland was successful in negotiating governance arrangements within the IGA which require that any amendment or proposed amendment which undermines any of these principles must be approved on the basis of a two-thirds majority of referring states, territories and the Commonwealth. The states will be at the heart of the new system. We will be part of any change that occurs. In addition, Queensland has adopted a model which allows us to terminate our amendment referral on three months notice if we

consider that the Commonwealth has breached the fundamental workplace relations principles. In this situation, Queensland would remain a referring state but any future Commonwealth amendments to the Fair Work Act would not be able to take effect in Queensland's referred jurisdiction.

The member for Southern Downs further questioned the job security of workers after the referral. For the first 12 months of Queensland's referral, state awards will continue to operate as federal instruments and will be subject to the national employment standards safety net and national minimum wage order on a no-detriment basis, meaning that the more beneficial entitlements in a state award or agreement will continue to apply. For the first 12 months state awards will have the same content as they do now, subject to those Commonwealth safety net arrangements just mentioned where they are more beneficial, and they will apply to the same parties as they do now. During these 12 months Fair Work Australia is required to make arrangements to transition employers and employees from the state referral transition awards to a relevant modern award by 1 January 2011. At the end of the 12-month period, employees and employers in Queensland's referred jurisdiction will move onto the Commonwealth award system.

Fair Work legislation deals with the issue of avoiding reductions in take-home pay during the transition to modern awards. The legislation expressly provides that the award modernisation process is not intended to result in a reduction in take-home pay of employees or outworkers. The legislation gives power to Fair Work Australia to make an order—a take-home pay order—where it is satisfied that an employee or class of employees has suffered a reduction in take-home pay. Take-home pay is the actual pay an employee receives, including wages, incentive based payments and additional amounts such as overtime and allowances. Once made, a take-home pay order continues to have effect so long as the modern award continues to cover the employee or employees.

Amendments to the act are currently before the Commonwealth parliament to extend take-home pay provisions so that they apply to employees transitioning into the national system from referring states. Like state awards, state agreements would be preserved and continue to operate until they are replaced by a new agreement under the Fair Work Act 2009, are terminated by agreement of the parties and approved by Fair Work Australia or are terminated after the nominal expiry date of the agreement on application by one party to Fair Work Australia, subject to the termination being appropriate and not contrary to the public interest.

The member for Southern Downs asked why Queensland has not moved to close the loophole raised in the Trans-Tasman Mutual Recognition Act. I would like to confirm for the member and for all the other honourable members opposite that Queensland has addressed this issue, with the Premier writing to the Prime Minister earlier this month to progress that matter.

Finally, the member for Southern Downs raised the issue of regional service delivery. Queensland strongly advocated for consideration of the impact that the transfer of the currently undertaken workloads of existing staff of the Office of Fair and Safe Work Queensland will have on regional issues. As a result, the Commonwealth has factored in increased expenditure in Queensland to deliver compliance and education services. Queensland will participate fully in the processes set up under the terms of the intergovernmental agreement to continue to monitor the performance of federal responsibilities to ensure compliance with the Fair Work Act and that that regional Queensland is provided with the best services possible.

In this context, the member also raised concerns about smaller operators being forced in to a 'one-size-fits-all' model. I would like to assure all members of the House that that is not the case. One of the main advantages of referring Queensland's industrial relations power is that the entire private sector will operate in the federal jurisdiction. The purpose of having one industrial relations system is to decrease complexity for the parties involved—not that members would accept that if they listened to the Liberal National Party.

As part of the overhaul of Australia's industrial relations system, the Australian Industrial Relations Commission is undertaking an award modernisation process. Modern awards are required to be simple to understand, easy to apply and must promote flexible, modern work practices and efficient and productive workplaces. While the number of awards operating in the workplace relations system will be reduced through this process, the purpose of award modernisation is to simplify awards for the benefit of all parties to the award, not to provide a one-size-fits-all system that does not take into account the needs of the parties.

The federal government has incorporated measures into the award modernisation process that are designed to protect the parties affected by changes to the system. For instance, the Australian Industrial Relations Commission has encouraged input from all parties, exposure drafts on each modern award have been published and all stakeholders and interested parties have been given reasonable opportunity to comment upon the drafts. This recognition of the integral role that stakeholders play in the creation of modern awards serves to ensure that parties are protected—unlike Work Choices.

While the federal government has taken measures to mitigate negative impacts that this process may have, concerns have been raised by some parties, including horticultural employers. In response to concerns raised by employers in this industry, the Deputy Prime Minister and minister for workplace relations, Julia Gillard, varied her award modernisation request to the Australian Industrial Relations Commission to have the full bench deal with concerns raised about pay rates, hours of work and penalty provisions.

The member for Gaven suggested that industrial action will increase as a result of the Fair Work Act. The Fair Work Act ensures that industrial disputes are governed by understandable, but tough rules. Under the Fair Work Act, industrial action can be protected only if it has been authorised by a mandatory secret ballot when bargaining for a new industrial agreement. The Fair Work Act also requires that bargaining agents for a proposed enterprise agreement must bargain in good faith. The requirement for good faith bargaining will decrease the incidence of protracted industrial action, I am advised, when one party refuses to negotiate. Any other industrial action is unlawful and Fair Work Australia has the authority to issue orders to prevent it.

The independent umpire, Fair Work Australia, also has the power to make a binding special agreement for low-paid workers to settle matters in dispute during the bargaining process. It has broad powers to mediate or conciliate. At any time a party to the negotiations can ask Fair Work Australia to resolve issues in dispute by making a low-paid workplace determination. In addition, where protected action is causing or is threatening to cause significant harm to the Australian economy, or part of it, Fair Work Australia is able to order the parties to cease taking industrial action. If further conciliation does not lead to an agreement, Fair Work Australia may determine a settlement. Fair Work Australia may similarly act to end the industrial action and resolve a settlement for the bargaining participants where protected industrial action is protracted, is causing or threatening to cause imminent significant economic harm to the bargaining participants, and the dispute will not be resolved in the foreseeable future.

But I must confess that the lowest point of what was a very low debate, the most galling and base political moment in this debate, was the suggestion by the member for Gaven that opposition to this bill was an act supporting of national unity that is comparable to storming the beaches of Gallipoli. I will not dignify the member's grandiose delusions of glory, suffice to say that to make such a comparison on any day would be deeply misguided, but to make it today is simply grotesque. If the ghost of Banjo Paterson could be heard, he would express how violated he would feel to be quoted in such a base and unnecessary fashion by the member for Gaven.

The finalisation of this referral bill has been a significant and major piece of work. Negotiations with the Commonwealth and other jurisdictions have been conducted over a period of time and with constant regard to the rights of the Queensland workforce. I place on the record my thanks to all the officers from the Department of Justice and Attorney-General who were involved in these negotiations, in particular Deputy Director-General Barry Leahy, head of the Office of Fair and Safe Work Queensland, who did a mighty job in progressing this matter for Queensland and to all of the officers involved in the development of this bill, namely the hardworking team in the private sector industrial relations unit in my department as well as strategic policy officers and those officers from other agencies, including Queensland Treasury and the Department of Communities. I strongly commend the bill to the House.