Speech by

Lawrence Springborg

MEMBER FOR SOUTHERN DOWNS

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FAIR WORK (COMMONWEALTH POWERS) AND OTHER PROVISIONS BILL

Mr SPRINGBORG (Southern Downs—LNP) (Deputy Leader of the Opposition) (3.58 pm): I indicate at the outset that the LNP will not be supporting the Fair Work (Commonwealth Powers) and Other Provisions Bill before the parliament. I think it is probably a matter of public record that we actually do have some concerns with regard to the transfer of all residual matters under the state industrial relations system to the Commonwealth government, with the exception of certain matters in the public sector involving public servants in Queensland, local authority employees and judges, MPs et cetera.

I have been on the public record for a number of years personally expressing my concern about the centralisation of the industrial relations system, and I remember some years ago I actually voted with the government in relation to that particular matter. So my view has been personally quite consistent on this throughout, and I will go through the reasons for that.

I believe that this legislation is somewhat unnecessary and somewhat dangerous. I think in many ways it will deprive small businesses in Queensland—those trust businesses, those mum and dad small businesses—of the opportunity to be protected under the state industrial relations system, which I actually believe can and does provide better safeguards for them, better options for them and a simpler system. Not only that, as I will outline throughout my contribution, I do believe that those particular workers who are covered in Queensland by the state industrial relations system in the residual areas are going to be very, very seriously disadvantaged in their basic rights by actually being referred off to the Commonwealth industrial relations system, or Fair Work Australia as it is now known.

Mr Finn interjected.

Mr SPRINGBORG: I will go through that shortly for the benefit of the member for Yeerongpilly and those members opposite. For any of us in this parliament who actually believe in the role of the states—the role of not only cooperative but also competitive federalism—I believe that the continuing distribution of our powers, our responsibility and our authority to the Commonwealth jurisdiction in many ways renders us increasingly irrelevant. Many people are actually raising that question out there as the state government continues to cede its responsibilities and further transfers its responsibilities to the Commonwealth jurisdiction. We then raise the question of what will ultimately be left in Queensland for the state to do in so many areas. Can the government actually blame people in the community for seriously engaging in this increasing debate about the relevance and the role of the state when it continues to do these sorts of things?

I concede that there are provisions in this legislation under the referral powers that actually do allow a government—whether it is this government or any successor government—to give notice and to take back responsibility for those particular residual matters which have been referred to the Commonwealth. Most notably, if a matter has been referred in the main and if six months notice is given to the Commonwealth, those matters can be taken back by the state. If it actually relates to an amendment of the Fair Work (Commonwealth Powers) and Other Provisions Bill, as I understand it is actually now called—

the successor to Work Choices—that is, if amendments have been made to that act that are repugnant to the state government, the state government can give three months notice and it can take it back. I am not sure if there has ever been an example of a power or a responsibility actually being referred to the Commonwealth and this state government or any of its predecessors choosing to exercise the power to put it back under their responsibility.

Mr Schwarten: The feds transferred the IR system back in the twenties.

Mr SPRINGBORG: I bow to the superior knowledge of our parliamentary historian who indicated there was an incident back in the 1920s. What I would say to the honourable member for Rockhampton is that, notwithstanding that fact, there probably was not the burden of state matters which had been transferred to the Commonwealth jurisdiction at that time that we are seeing today. I mentioned before my fundamental belief and the belief of the LNP insofar as the federation is concerned about the notion of cooperative federalism—

Mr Finn interjected.

Mr SPRINGBORG:—and competitive federalism. It is very important for the states to understand that we can achieve excellence and some level of competitive advantage by actually developing systems, whether it be in the industrial relations area or any other area, that allow us to create an environment which is more attractive for businesses in Queensland than in other places around Australia. That is what a state government can do, because it has the machinery of government in a competitive way to be able to say, 'Yes, we see the regulatory restrictions that operate in an IR system around the rest of Australia and we can overcome that in Queensland and provide an opportunity to use that as a tool to attract businesses and make our businesses in Queensland far more competitive.' Once the government completely centralises all of those matters outside the public sector jurisdiction to a Commonwealth jurisdiction—and I understand that Western Australia has yet to make up its mind on whether it is going to fall into this system—

Mr Finn interjected.

Mr SPRINGBORG: This is a view that I have actually held for a long time. If the honourable member for Yeerongpilly looked at my statements both in this place and externally over the last few years, he would see that I have consistently said there is a need to maintain state control over industrial relations matters. You have put all your eggs in one basket, and that is not necessarily advantageous to a competitive industrial relations system.

I think it is also fair to say that there may be advantages, arguably, for bigger businesses or companies to come under one system because they have the capability to deal with a lot of the complexity of it. Often they have legal divisions in their companies which are far larger than crown law in Queensland. But once we start to get down to the mum-and-dad sized businesses, I think we run into some very serious issues.

If people believe that business in Queensland may not necessarily be worse off under this, they should look at what we have seen happen in recent times in Queensland under the awards harmonisation process, which is being undertaken for those awards which are remaining in state jurisdiction but for which there has been an effort to have harmonisation across jurisdictions under the guidance of the federal system. We know of the outcry there was with regard to the horticultural industry in Queensland, particularly the additional costs which were being proposed with the new award for piece workers for overtime, and in some cases we were looking at up to 25 per cent. It grew to such an extent that we saw the personal intervention of the federal industrial relations minister, Julia Gillard, who actually came in and put those particular new provisions on hold for at least two years after which they were going to be reviewed.

That just indicates that having a federal system, a one-size-fits-all approach, even through an awards harmonisation process, is not necessarily advantageous for all businesses and all industries given their unique nature and often given the regional issues involved. Those sorts of concerns with regard to awards harmonisation did not necessarily relate only to the horticultural industry. They related, as I understand, to the hospitality industry, the tourism industry and potentially even others. They raised their concerns as well.

Under this particular amendment that we are debating here today, the government will also be moving to take the City of Brisbane out of the jurisdiction of the Commonwealth and transfer it back under state responsibility. That will be in line with what it did only last year with regard to the decorporatisation of local government and actually taking responsibility for local government deliberately out of the Work Choices regime and placing it back under the state system. Because the City of Brisbane had its own separate act of parliament that had not happened, so we are going to have transferral back into the state system of all local government entities with the amendment to the City of Brisbane Act.

The government sought to do that last year, in my view, because it was not serious. If the government were serious about having a truly competitive regime and having local government being able to have excellence in its contractual arrangements with its workforce, then it should have been serious about leaving that in the Commonwealth jurisdiction. When it went through things such as the forced amalgamation of local authorities, it was talking about efficiency gains and the capacity to achieve this through size and negotiation with the workforce—all of those sorts of things—but it seriously then restricted the capability of those local governments to do it under the federal regime, where many of them were actually supplanted at that time.

I understand there is a case at the moment where one of the local authorities has a matter before a Commonwealth court to look at the constitutionality of what the state government has done in that area. The government wants to have its cake and eat it, too.

I indicated earlier that some serious concerns had been raised regarding the transferral of these residual matters to the Commonwealth jurisdiction, and the honourable member for Yeerongpilly said, 'How would workers be disadvantaged if there is a transferral of these particular matters?'

Mr Finn: I didn't say that.

Mr SPRINGBORG: Sorry, a member from your side interjected—and I thought it might have been you—and asked how these workers were going to be disadvantaged when these matters were transferred to the Commonwealth jurisdiction. I will quote from the Queensland Workplace Rights Ombudsman, who is an officer under the Minister for Industrial Relations. He makes some extremely salient points for consideration. I am going to read extensively from the annual report that he presented to the Minister for Industrial Relations. The report states—

With serious consideration being given by the State to the referral of the remainder of the private sector industrial relations to the Commonwealth, it is important I believe to reflect on the possible effects on Queensland workers and businesses.

For example: Currently, permanent full-time and part-time employees of sole traders and partnerships employing fewer than 15 employees may seek reinstatement via the Queensland Industrial Relations Commission in the event of an unfair dismissal if they have more than three months service. If the industrial regulation of these employees is referred to the federal system, the qualifying time for a permanent full-time or permanent part-time employee to be eligible to apply for reinstatement would become 12 months.

So there would be a lessening of the protection for workers in Queensland who are currently covered by the state industrial relations laws. That is very clear from the concerns of the Ombudsman. It continues—

Employees of sole traders and partnerships employing 15 or more employees would have their qualifying period of service increased from three to six months.

Again, that is a disadvantage for those workers. It states further—

This would constitute a tangible reduction in the job security that these workers currently have.

I will read that again—

This would constitute a tangible reduction in the job security that these workers currently have.

They are not my words; they are the words of the Workplace Rights Ombudsman in Queensland. The report states—

Another area of concern arises in that all Queensland employees of sole traders or partnerships are currently able to access the services of the State Industrial Inspectorate if they suspect an underpayment of wages.

State inspectors currently provide assistance by investigating complaints with a view to resolving wage related problems promptly and, where necessary, prosecuting for the recovery of wages.

Moreover, the State Industrial Inspectorate conducts both systematic and random checks of time and wages records to ensure compliance in the area of sole traders and partnerships. Prior to July 2006, the State Inspectorate, under contract arrangements with the Commonwealth Government, delivered industrial compliance and information services in both federal and state jurisdictions. This service helped provide fairness to Queensland workers as well as employers given that wages book audits also help maintain a competitive level playing field between employers. With the withdrawal of this arrangement by the former Federal Government, the level of assistance provided by these officers was restricted to sole traders, partnerships and their employees.

Without the restoring of an ongoing agreement with the Commonwealth allowing these skilled inspectors to resume this work these benefits will be lost.

I am not aware that these particular matters have actually been dealt with under Fair Work Australia. The report continues—

Also in today's employment market for both blue and white collar occupations, the increasing trend has been for employment arrangements to be contained in contracts, be they registered with an industrial authority or simply a common law contract. Reflecting this, the Queensland Government has also provided its inspectors the power to investigate and claim above award rates if they have been agreed to by the employer and the employee by way of contract. This safeguard (s. 391(3)) was available to all Queensland workers but only if their employment was covered by State awards as the Commonwealth law does not provide the same level of protection. This too would be lost to Queensland workers should the industrial relations powers regulating sole traders and partnerships be handed to the Commonwealth.

In Queensland, since the introduction of WorkChoices, only employees of sole traders and partnerships are still protected by this service while workers employed by trading corporations must instigate their own legal action if they wish to pursue a contractually agreed rate.

A further concern is that, in the event of a transfer of the remaining private sector industrial relations to the Federal system, the audit and prosecution roles for all private employers, including sole traders and partnerships, would become the sole responsibility of the Federal Government's Fair Work Ombudsman, and, if that's the case, many Queensland employees of employers, big and small, could be excluded from assistance by virtue of the litigation policy recently adopted by the Federal Fair Work Ombudsman.

To explain, the Fair Work Ombudsman's litigation policy, adopted in July this year, describes certain circumstances and issues to be considered before providing assistance to workers where the amount to be resolved is less than $5,000.00. I am aware of one worker already denied assistance pursuant to this policy. (The relevant part of the Fair Work Ombudsman's policy is attached at Appendix A).

In my experience those provisions could affect Queensland workers who currently enjoy the safety net provided by the Queensland Government through the State Industrial Inspectorate.

The motivation to pay employees correctly is not necessarily prosecution of employers but more likely the possibility of prosecution. If the likelihood of prosecution diminishes so too does the incentive to comply.

They are very concerning and salient comments by our workplace ombudsman in Queensland. I would have thought if somebody should practically know of concerns, legitimate or otherwise, about referring residual private matters to the Commonwealth jurisdiction it should be this person who has had the opportunity to critique not only the former Work Choices legislation but also the legislation governing Fair Work Australia. It is quite clear from this particular report that, for workers in Queensland covered by those residual matters that have not yet been transferred to the Commonwealth, they are going to be seriously disadvantaged in so many ways. Unless the Commonwealth government is prepared to address those particular issues and provide at least the same protection for those Queensland workers who this government professes to stand up for, we should be very cautious about the transferral of those particular residual matters to the Commonwealth regime.

I would ask honourable members who have not seen this to take the opportunity to look at it. They may have an answer to it, but I would be very interested to hear those answers and what arguments they can put forward to mitigate the concerns that have been raised by our Workplace Rights Ombudsman in Queensland, who has had the opportunity to practically look at the effect of changes starting with Work Choices about three-odd years ago.

Another amendment contained in the legislation before the parliament today that I want to touch on briefly relates to the Trans-Tasman Mutual Recognition Act. A couple of years ago this parliament put in place an enforcement regime for those retailers who sought to retail drug implements in the state of Queensland. I understand that other states, particularly South Australia, also have restrictions or bans on retailers actually trading in drug implements. We are talking about bongs, for example. I would seek clarification from the Attorney if anything I have said departs from the intention of this particular amendment before the parliament.

However, under the Trans-Tasman Mutual Recognition Act, notwithstanding the banning of the domestic sale of drug implements within a state itself, a person who is retailing those drug implements or bongs is able to trade into another jurisdiction. They can plead ignorance or legitimacy when it comes to the sale of that particular implement.

As I understand it, the Prime Minister has recently written to the various states asking them to put in place a particular provision that actually allows freedom of trade under the Trans-Tasman Mutual Recognition Act so that that loophole can be closed at least in the case of South Australia. After the passage of this amendment in South Australia those people who retail drug implements will not be able to retail those drug implements within their own state or argue that they have a legitimate right to retail them in another jurisdiction that has been covered under that act. I would seek clarification from the Attorney if my understanding of that is absolutely right.

The question that I would like to raise is that, given there was bipartisan support in this parliament for an amendment moved by the opposition's then shadow health minister to actually ban the sale of these drug implements or bongs—whatever you want to call them—why have we not hastened to seek exactly the same sort of confirmation, the same sort of authority that the South Australian government has to ensure that those particular traders who are retailing these drug implements outside of Queensland are able to be stopped from doing that? Clearly, they cannot retail them in Queensland but they can retail them outside of Queensland.

My proposition to the government is to actually hasten on this particular matter and match its colleagues in South Australia to ensure that not only are these drug implements banned from retail in Queensland but also there is no opportunity for them to be sold in another jurisdiction under the Trans-Tasmanian Mutual Recognition Act. I would like to hear the Attorney's response to that particular matter.

There are some other minor amendments in this bill about which the opposition does not have concerns. Obviously, we support the amendments to the Trans-Tasman Mutual Recognition Act, but we do have concerns that another state has got in ahead of us. We should be going the same way. Certainly as a matter of principle or ideology we object to the transferral of the remaining private industrial relations matters to the Commonwealth jurisdiction for the reasons that I have outlined. Therefore, the LNP will not be supporting the bill which is before the parliament.