



INDUSTRIAL LAW REFORM (FAIR WORK) BILL
9 November 2004

Adjourned debate on second reading.

(Continued from 8 November. Page 761.)

Mrs PENFOLD (Flinders): I support the sentiments of my Liberal colleagues and very strongly oppose Labor's Industrial Law Reform (Fair Work) Bill. The bill is just payback for union involvement in getting Labor members elected to parliament and an attempt to shore up Labor's financial support base. Many of my constituents may not be aware that unions affiliated with the Australian Council of Trade Unions are branches of the Labor Party and that officials of those unions owe their first allegiance to the union, then to the Labor Party and lastly to members. Where there is a conflict of interest, the union and the Labor Party win out over the interests of members. Instances of this occur frequently in the workplace.

In one particular instance of Labor and union officials wanting to strike, a significant majority of the membership voted against striking. The members were ignored and the strike was called. One of those opposing the strike received death threats. His family was threatened and he was told that his legs would be broken. Very little of the intimidation and blackmail that is part of the union movement is made public. However, it is very real and frightening. There are even examples from Port Lincoln. However, I would be worried that individuals could be identified if I used them here, as our community is so small.

Under this legislation, such unionists would have access to offices even in homes and even if the business does not have any union members but only potential ones. Labor wants to enforce union membership, and a proportion of affiliated union subscriptions goes to the ACTU and to the Labor Party. This in practice means that members of those unions are compelled to financially support a political party. That in itself is bad enough, but the compulsion means that they must support a party to which they may be diametrically opposed. Imagine the outcry if any other political party in Australia tried that tactic, yet Labor gets away with it.

Imagine what would happen if workers were told that, before they would be employed, they had to make a donation to the Liberal Party or, much to Labor and ACTU horror, perhaps to Family First. More and more people are questioning the undemocratic principles behind Labor and its associated unions. However, the bill that we are debating today attempts to kill union opposition while strengthening Labor support. According to the March 2004 Review:

Unions donated nearly \$5 million to the ALP in 2002-03 and since 1995-96 have donated around \$40 million.

The ALP was described as a wholly-owned subsidiary of Australia's union bosses. This is money taken from struggling families and young people, sometimes by coercion. In one instance, information from the Australian Electoral Commission concerning donations to the Liberal Party produced headlines suggesting collusion between a company donor and the coalition. The donation accounted for less than 1 per cent of the coalition's fundraising while the total of trade union donations to the Labor Party was 10 times bigger, but no headline suggested that the ALP policy was a payback for union donations.

This payback arrangement is quite blatant even in the Labor government, with just this year a \$20 000 seniors grant being used to fund a union history, despite arts grants being available for such projects. Seniors grants under the former (Liberal) government were highly valued by my small volunteer groups, as they were used to provide such things as disabled toilets, access ramps, self-opening doors and airconditioning for elderly people who have given so much to their communities in the

past. I quote from the Review as follows:

These double standards demonstrate the depths to which Australian democracy has descended. The fact that the Labor Party tolerates the provision of discriminatory preferences to its largest donors is accepted without complaint but, when a corporation decides to donate to the Liberal Party, the story is turned into a major controversy.

This controversy helps to ensure that businesses donate equally to Liberal and Labor or do not donate at all.

This bill will particularly affect small, non-unionised businesses that are already struggling to comply with the reams of red tape and Public Service deadlines that have to be complied with or severe fines are incurred, when the same department can take months or even years to complete its requirements and no excuse is given or penalties applied. It seems that, even now, Labor does not want to understand that an unviable business cannot employ. Even a viable business cannot employ when profits are diminished.

The Premier's assertion that his government is pro-business is empty talk designed for media consumption. This bill indicates that some Labor people would rather workers went on the dole and help keep a large unionised bureaucracy employed, despite knowing what this does to the self-esteem of the unemployed and their families. One constituent wrote to a minister in these terms, and I concur:

I totally agree with steps to ensure that unscrupulous employers do not take advantage of workers, provided that such steps are balanced and fair. Unfortunately, the rather draconian measures in your proposed bill are not so. Existing laws relating to unfair dismissal already lean towards employees. Introducing further imposts will make people like me even more reluctant to either own businesses or employ additional staff. The proposals relating to labour hire firms ignore the reasons why some employers use labour hire firms at extra cost. Some employers do so to avoid the pitfalls associated with being an employer.

Your proposed additional powers for the Industrial Relations Commission will be a further disincentive to employ. The clauses deeming contractors and volunteers as employees are simply foolish. I have been actively involved in giving dozens of school students work experience. Your proposed bill will put an end to this.

All in all, the letter's comments on the bill can be summed up as pointing to a reduction in jobs and therefore employment options for workers, a reduction in businesses and therefore also employment options for workers. Far from being a fair work bill, it is a no work bill that will increase and foster unemployment.

The bill as it stands will target services to our elderly, disabled and their carers among the business activities that will be affected. I quote from a letter from the manager of an organisation that provides these community services. It states:

We achieve a very cost effective and quality service through a brokerage model in which we do not employ but contract people to provide the services. Some 175 people are registered with us and on average 80 contractors per week are providing services to the aged, disabled and their carers. . . The majority of our contractors only provide two to three hours assistance per week and that is all they want to do. Contractors have a choice of the hourly rate, the service type they want to provide, the hours of availability and level of qualifications to pursue based on the service types to provide.

We as an agency match the contractor skills/qualifications with the clients' needs, and the client has a choice as to which contractor they want, when they want the service and how they want it delivered. The client can at any time choose to change the contractor. This works to everyone's satisfaction and benefit. When we have asked contractors whether they would value coming under a union/award their response has been negative. They value being 'self-employed' choosing when they work and their work lifestyle.

The average hourly rate is \$17.70. After clients contribute to the cost the final hourly rate to the organisation is \$15.58 per hour. If we had to deem these contractors as employees then the additional cost and conditions of service would change considerably. Certainly not to the clients' benefit and certainly would raise the hourly cost thereby reducing the number of clients that could receive a service with the same amount of government funding. At a time when governments are being pressured to find increasing funds for a wide range of human services this proposal would either reduce the number of clients able to be serviced or would require an increase in funding. . . additional costs would amount to. . . a 25 per cent increase in funding and this does not include costs such as staff development, insurance, travel and motor vehicles. If contractors became casual employees penalty

rates would also apply. For example, a half hour service would have to be paid at a minimum call out of three hours!

In summary, we believe that implications of bringing all contractors into an employee status or under an award condition be reconsidered most seriously. The implications as they stand will:

xlimit flexibility in service provision away from consumer choice;

xincrease the costs of services, or the reduction in services or both; and

xforce contractors to become employees (no choice in remaining self-employed).

The International Labor Organisation (ILO) has grappled with labor regulation for about seven years. One of its statements issued in 2003 reads:

While laws and regulations should be sufficiently clear and precise leading to predictable outcomes, they should avoid creating rigidities and interfering with genuine commercial and genuine independent contracting arrangements.

The bottom line of the effect of this bill will be to reduce employment opportunities, threaten the viability of some businesses and reduce services to the most marginal and impoverished in our communities. That is the outcome for what is termed a fair work bill. But then the main thrust of this bill is not for workers, it is not for businesses and it is certainly not for those who need assistance to manage their daily lives: the main thrust of this bill is to increase union power and dominance and make workers more dependent and less empowered while also increasing funding to the Labor Party. One ILO conclusion states:

Changes in the structure of the labour market and in the organisation of work are leading to changing patterns of work within and outside the framework of the employment relationship.

But the Labor Party does not want this to happen. If such a move as that recognised by the ILO goes unchecked, the Labor Party's funding will be affected. It will lose some of its control of the Australian work force and may have to justify its existence as a political party rather than just being a subsidiary of certain unions.

In line with the sentiments of this legislation, Labor's 2004 national conference supported the idea that 'union-friendly' firms should be favoured in the awarding of government contracts. These firms are usually the bigger businesses located in the cities, ensuring that, once again, small businesses—particularly those located in country areas—are discriminated against. Were the Liberal Party to propose a measure whereby government contracts were more likely to be awarded to companies that were employer and individual worker friendly, the outrage would be widespread. The whole thrust of the bill goes against the ILO, because the ILO is dealing with the world as it is today, not as it was more than a century ago when the Labor Party was formed. The ILO states:

Self-employment and independent work based on commercial and civil contractual arrangements are by definition beyond the scope of the employment relationship.

The bill prolongs a fallacy that is prevalent in Australia. We have been trained to look at industrial relations from one perspective: the alleged workers' rights image. In fact, industrial relations is a double image, with a second picture being about the core nature of how business is allowed to be done in Australia. Labor considers only the first half of industrial relations and simply does not want to know and understand the second part, which relates to how business is best done to increase employment and the standard of living of our nation.

Small businesses are the incubator for big businesses. People who take risks and go into business often fail before they succeed and regularly risk everything they have. As I have been in an accounting practice for 10 years and run my own business, I am well aware that, for many years, many owners earn less and have fewer holidays than the people whom they employ before they find their feet, if indeed they ever do. Yet this bill proposes that unfair dismissal laws be strengthened when already I am aware of business people who just pay out rather than taking time out of their business and pay lawyers they cannot afford.

However, under one proposed amendment the business would also have to pay punitive damages of up to six months' wages to the employee, in addition to other payments awarded. With this hanging over their head, many businesses would choose not to employ at all, ensuring that they would never become bigger businesses and major employers.

One of the many letters I have received states:

It appears that the more this highly complicated, wordy and convoluted bill is studied the more it is understood for being an attack against the rights of workers and businesses across a broad spectrum.

I urge all members to reject this bill outright.