



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

**FAIR WORK (TRANSITIONAL
PROVISIONS AND CONSEQUENTIAL
AMENDMENTS) BILL 2009**

**FAIR WORK (STATE REFERRAL
AND CONSEQUENTIAL AND
OTHER AMENDMENTS) BILL 2009**

Second Reading

SPEECH

Tuesday, 2 June 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner
Speaker Thomson, Kelvin, MP

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Mr KELVIN THOMSON (Wills) (12.54 pm)—It is interesting to follow the member for Kennedy in a typically wide-ranging contribution. He had a lot of interesting things to say and I am happy to associate myself with his remarks about the need to learn from the lessons of history, both in the sense of employer and employee relationships and in the way workers get exploited if they do not have unions to represent them and look after their interests in a collective way, and also the importance of learning the lessons of history in a historical sense. The previous Prime Minister managed to lose his own seat at the 2007 election because he took insufficient notice of the fate of Stanley Melbourne Bruce, a previous conservative Prime Minister, who lost his seat in the 1920s in seeking to do precisely the same thing, to prevent workers from being represented in a collective fashion.

This legislation, the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009 and the Fair Work (State Referral and Consequential and Other Amendments) Bill 2009, sets out transitional and consequential changes to ensure a smooth, simple and fair transition to the new Fair Work scheme, but it also seeks to provide for certainty. It is designed to ensure the universal application of a safety net that includes 10 National Employment Standards and minimum wages that will apply to all national system employees from 1 January next year. I believe a national system of guaranteed minimum standards is a necessary economic safety net for workers during what are uncertain economic times. At a time of heightened economic vulnerability it is now more important than ever that workers feel protected, and I think that the reintroduction of unfair dismissal provisions from 1 July is a welcome development in ensuring that adequate measures are in place to support workers. For the Liberal Party to have equivocated on supporting the reintroduction of unfair dismissal provisions demonstrates their inability to let go of Work Choices.

I want to remind the House about the need for unfair dismissal provisions by referring to an article published in the June 2008 *Journal of Industrial Relations* titled 'The impact of Work Choices on women in low paid employment in Australia: a qualitative analysis'. This was a study of the experiences of 121 women across five Australian states who were affected by the changes arising from Work Choices. I point out that this was at

a time of rising employment growth. In the area of job security what emerged from the study was significantly compromised ability to bargain in the workplace due to diminished job security as a result of the absence of unfair dismissal laws.

Alarming, the report indicated that 57 of the 121 women—over half—had been dismissed or forced to resign in circumstances that would previously have been challenged as unfair. Many of the dismissals occurred suddenly without warning or notice. Interviewees had no chance to defend themselves or to negotiate. Most were not dismissed because of poor work performance. Many were given no reason for their dismissal but could trace a link between it and factors such as notification of pregnancy, questioning of management decisions and behaviour, complaining of long hours, refusal to change hours or agree to other unreasonable demands or contact with a union. In some cases dismissals occurred as a result of intolerance to personal circumstances which previously had been constrained by the award and by the Industrial Relations Commission processes that no longer applied. For example, women were dismissed for missing work to care for a sick child who had become seriously ill or following a revelation that the worker was subject to domestic violence.

Contrary to the previous government's spin that Work Choices would facilitate direct negotiation between an employer and an employee, the study revealed that low-paid women were vulnerable to a 'take it or leave it' culture and they were vulnerable to unilateral action. Most employees made it quite clear that they were not in a position to negotiate directly with their employers and would not be able to unless they had some job protection. So much for Work Choices promoting workplace negotiation and bargaining. It is a myth that a tight labour market protects low-paid workers from cuts to wages and conditions.

This legislation sets out the transitional provisions that move employers, employees and organisations from the old Workplace Relations Act to the new Fair Work system. I want to make two observations about transitional provisions. First, a national system requires uniformity of laws to enhance the economic dividend and administrative advantage that such a system seeks to achieve. That is why I think the differences between

the Fair Work Act and the Building and Construction Industry Improvement Act are inconsistent with a move towards a national industrial relations system. I do not believe that there is any sound justification for laws that create two standards—one for construction workers and one for everybody else.

I am aware that research by the consultancy firm Econtech has been cited as justification on economic grounds for a separate set of rules for the commercial construction industry. I want to draw to the parliament's attention a paper co-authored by Griffith University's Professor David Peetz, called *Constructing figures: the mythology of productivity in the Australian building and construction industry*, which points out fundamental flaws with the Econtech reports that have been used to support an ongoing role for the Australian Building and Construction Commission. It is this report's conclusion that there is no economic case for legislation that specifically targets the construction industry. Professor Peetz finds that there is no economic case to continue special legislation that provides fewer rights for workers in the construction sector than are available to those elsewhere and that the old ABCC should not have separate powers that go beyond those available to other industrial and occupational safety inspectors and administrators. The authors of the report emphasise:

The construction industry is one of the most dangerous industries in the economy. It may be that there may be greater economic benefits in focusing on effective occupational health and safety regimes in the industry. It is almost certainly the case that there would be greater social and ethical benefits in doing so.

It is troubling that, since the introduction of the Building and Construction Industry Improvement Act, safety in the industry has not improved, with deaths having increased from 19 in 2004-05 to 40 in 2007-08. This is a significant concern for all parties in the industry, where it is agreed that successful management of occupational health and safety is critically important.

I believe the Building and Construction Industry Improvement Act was overly prescriptive in its regulation and cast such a wide net in terms of required conduct as to render almost all industrial action in the building industry unlawful. There have also been disproportionate penalties applied to construction workers for breaches of its provisions. The International Labour Organisation has recommended that the act be changed to eliminate excessive impediments, penalties or sanctions against industrial action in the building and construction industry. As a member of the ILO, Australia has voluntarily agreed, and is bound, to implement international labour standards in Australian labour law,

including the application of international benchmarks protecting the right to strike from legal sanctions. The right to silence is a common-law privilege against self-incrimination, yet workers in the building and construction industry have been denied this basic right, facing a penalty of six months imprisonment for failing to cooperate with the ABCC. I think these things need to be understood by the parliament.

The second matter I want to draw to the attention of the parliament and the government is a concern raised by one of my constituents who is a member of the CEPU and has worked for Telstra for over 20 years. He says that last year the CEPU balloted its members to support taking industrial action against Telstra. He says:

90% of members who voted in the ballot supported taking industrial action in an effort to get Telstra to negotiate a collective agreement.

He goes on to say:

But as a consequence of the transitional bill, that ballot will effectively be declared null and void—because of the introduction of a new bargaining framework.

He is concerned that members stuck on AWAs and non-union agreements under Work Choices have to live with those agreements to 2012 or until replaced, regardless of a new bargaining framework. You will appreciate, Mr Deputy Speaker, that the cost of running ballots is not small. My constituent is worried that Telstra can drag wage talks out 'with the knowledge that it will take time and cost to re-ballot CEPU members'. He observes that the CEPU has offered:

- to institute a grace period suspending industrial action,
- enter into good faith bargaining with Telstra; and
- if talks broke down, to allow the AIRC to review the behaviour of bargaining parties during negotiations and then allow employees to resume their industrial action ...

I think these are significant matters. I hope that the government and the parliament take them into consideration. I strongly support the measures that the government has introduced here and I wish these bills speedy passage through the House and through the Senate.