

WORKPLACE RELATIONS AMENDMENT (RIGHT OF ENTRY) BILL 2004:

Contribution by Dr. Craig Emerson to debate

Second Reading 14th March 2005-04-04

Dr EMERSON (Rankin) (8.25 p.m.) —Based on previous form, I am surprised the government has not called the Workplace Relations Amendment (Right of Entry) Bill 2004 the 'Workplace Relations (Better Right of Entry) Bill 2004'. On previous occasions the government has employed such Orwellian language in respect of allowing businesses with 20 or fewer employees to dismiss their staff unfairly. The government introduced enabling legislation called the Workplace Relations Amendment (Fair Dismissal) Bill 2004. It introduced into the parliament the Workplace Relations Amendment (Better Bargaining) Bill 2005, which substantially weakens the remaining bargaining power of working Australians. The government also introduced into the parliament the Workplace Relations Amendment (Protecting the Low Paid) Bill 2003. That piece of legislation protects the low paid against a pay rise.

George Orwell has been alive and well, but in this term of the parliament the government has been far more open in its intentions and the Workplace Relations Amendment (Right of Entry) Bill 2004 is a very clear intention on the part of the government to effectively take away any remaining collective bargaining capacity that working Australians might have. It is an undisguised onslaught on collective bargaining. It is an onslaught that severely restricts the abilities of unions to organise and represent their members. Right of entry amendments were made in the first wave of the industrial relations legislation of 1996. That legislation has meant that, since 1996, unions have had to give notice of their intention or desire to enter a premises.

It has also meant that unions could not in any way disrupt operations and that they would need to enter only during breaks. The legislation of 1996 also specifies that unions must meet with potential and actual members in a place designated by the employer. In reality what that can mean and what it has meant in many circumstances is that employees are expected to file past the office of the employer on the way to a meeting with unions, thereby revealing their interest in joining a union or in discussing matters relating to the workplace with union officials. This has been used as a method of intimidating employees not to hold such discussions or to express an interest in joining a union. It has also meant that an employer can specify that meetings cannot occur in a lunch room but need to occur in a room out the back. That is the existing workplace relations legislation as it impacts on right of entry.

But the government has not been satisfied with such restrictions on the capacity of unions to enter workplaces. As a consequence, it has introduced the Workplace Relations Amendment (Right of Entry) Bill 2004. This legislation contains a number of very severe provisions, and I will not go through all of them.

However, one such provision is the entry notice that is required to be produced by a union official. It is highly detailed; it must be filled out well in advance; and it is designed, obviously, with a mind to making entry more difficult.

A second provision of the legislation is that it overrides state right of entry laws. It always astonishes me that just about every day in the parliament you will hear a Liberal or a National Party member championing the cause of choice, saying that Australians deserve a choice. But when working Australians choose to be represented in a state industrial relations system, the Howard government changes its tune and says that no such choice should be available to working people to operate in a state system. Therefore, this legislation is but one attempt to override the relevant provisions in state legislation—in effect, to bring about a hostile takeover of state industrial relations laws.

The third provision of this legislation that I wish to spend some time on is the limit on entry for recruitment purposes to not once a month, not every two months, not every three months but once every six months. A union can enter the same workplace only once every six months in order to consult with union members and to recruit prospective union members. The impact of

this is effectively to ban recruitment of prospective union members in workplaces. I say that with reference to the definition of 'premises'. 'Premises' is defined in section 4 (1) of the Workplace Relations Act as including:

... any land, building, structure, mine, mine working, ship, aircraft, vessel, vehicle or place ...

This legislation specifies one visit every six months to a high-rise office building, a large hospital, an education institution or a mine spanning a vast area. By allowing only one visit to such premises so broadly defined is to effectively ban a union official from speaking to all relevant employees even on that one occasion every six months.

The government is aware of how severe this legislation is, and I was amused that the previous speaker, the member for Fisher, was saying that this is balanced legislation. If this is the government's idea of balance, then the Australian people are in for a rude shock in the coming three years, because the legislation does not seek in any way to balance the interests of employees and employers. The government, as I say, is aware of these concerns. On page 57 of the Hansard of the Senate Employment, Workplace Relations and Education Legislation Committee hearing on 18 February, Mr James Smythe, Chief Counsel of the Department of Employment and Workplace Relations, said:

Following a number of concerns raised by submissions to this inquiry, the minister has decided to consider some possible amendments to aspects of the bill. These aspects are the limitation in the bill on a permit holder being able to engage in recruitment conduct only once every six months ... Mr Smythe goes on to speak of other possible amendments. I have endeavoured during the day and just now to obtain details of the amendments that the minister is going to move to relax this incredibly tough provision that unions are allowed to enter a workplace only once every six months, and I cannot find any such amendment. I have checked with the clerks and they are unaware of any such amendment. Perhaps the Minister for Ageing at the table could enlighten us as to any such amendments that were foreshadowed by Mr James Smythe, chief counsel to the department, who seemed quite confident that the minister would see some sense and relax this incredible provision that allows unions to enter a workplace only once every six months—but there is no evidence of it. The Senate committee report is being brought down tonight. I will be interested in the government's response to that report, but I will not be holding my breath. I would love to be proved wrong and have the government amend this incredibly severe provision.

There are many other outrageous provisions contained in this legislation. They are covered in submissions from the ACTU, the Queensland Council of Unions, Unions New South Wales and various other individual unions and state bodies. But this legislation is properly seen as a full-frontal assault on the remaining capacity of working Australians to bargain collectively. I say 'remaining capacity' because that capacity was severely weakened in the 1996 legislation.

The 1996 legislation specifies that even though employees may wish to be represented collectively in negotiations, and in particular by a union, the employer can veto the employees' chosen representative. This has been a fact of life since 1996. A fundamental right in most Western countries is the right of working people to bargain collectively. That right no longer exists in this country. I asked the Minister for Employment and Workplace Relations about this on 23 June last year in the parliament during question time:

Now that the government has extolled the virtues of collective bargaining for businesses, will the government restore the right to collective bargaining for workers ...

The minister responded by saying:

... what the government proposes in relation to small business is precisely what employees in this country already have ... Employees can collectively bargain either through their unions or under non-union certified agreements, which are a form of collective bargaining.....

The reality is that, for both small business and employees, we are saying that they can have the choice of collectively bargaining or having individual arrangements, which is something that the Labor Party will not support.

The Labor Party will support the choice of working Australians to bargain collectively, but it is a choice that they do not have if the employer vetos it. A right vetoed is no right at all, and yet we have government ministers, including the minister for workplace relations, insisting that working Australians have the right to bargain collectively.

Labor supports the government's intention to allow small businesses supplying larger businesses the right to bargain collectively, but we also support as a fundamental right the right of working Australians to bargain collectively. The minister is saying that that right exists when it does not. But he is not alone, because his predecessor, now the Minister for Health and Ageing, when he was at a lockout at Morris McMahon in Sydney, said:

People who want a collective agreement can have one. That is not the case. People who want a collective agreement cannot have a collective agreement if the employer decides that they will not have a collective agreement.

The truth of the matter is that this is all part of the blame game. After the national accounts figures came out last year and there was some evidence that there might be movement on the part of the Reserve Bank to increase interest rates, the Treasurer hit the hustings and he hit this chamber of parliament saying that the fault for our economic problems lay in the working men and women of Australia and, in particular, the trade unions of this country. I refer to a statement that he made here in this parliament in response to a question from the member for Blair, who asked about the national accounts figures.

The Treasurer said: The best thing we could do for the Australian economy is to pass the government's reform agenda, particularly in relation to industrial relations ...And here in parliament we are debating one aspect of that agenda. So the Treasurer is saying that the source of the economic problems in this country is some rigidity in the industrial relations system, that it is the working men and women of Australia who want to bargain collectively and, most particularly, that it is the fault of the unions.

This year on 8 February in the parliament the Treasurer was asked the question by the member for Cook—very much along the same lines, I have to add. He said “We have to lift the barriers and the speed limits on the Australian economy and ensure that we do not get a build-up of wage pressure or a build-up of cost pressure. This requires strong economic reform. This government believes that strong economic reform is the key to taking Australia further. In particular, I want to name industrial relations reform as the key area of reform for the Australian economy in the future. Those political parties that want to join in economic reform will be supporting the government's program in the Senate in relation to changes on unfair dismissal, in relation to bargaining, in relation to ballots and in relation to enhancing the productive capacity of this economy. Australia needs another round of vigorous, real industrial relations reform to take us into the future and to ensure that we lift the productive capacity of this country.

The Treasurer is blaming the trade union movement and the working people of this country who want to bargain collectively. In Canberra it is called the blame game, but there is plenty of blame shifting going on because there is plenty of blame that needs to be borne by this government and, in particular, by the Treasurer. A detailed inspection of the national accounts, which came out on the same day as the Reserve Bank announced that interest rates were going up, in fact provides a very strong rationale for further tightening of monetary policy—that is, further increases in interest rates. It shows that final domestic demand rose by four per cent during 2004 and was still rising at that sort of rate in the December quarter. It shows that demand is being strongly boosted by the government's own actions. In fact, the government's own purpose outlays rose by more than 10 per cent in real terms on average in 2004.

As Saul Eslake of the ANZ Bank points out, this is a rate exceeded only once since the Whitlam era. When was that? It was in 1983 when, as Mr Eslake points out:... the Fraser Government was trying to spend its way into a fourth term in office, with rather less success (as it turned out) than the Howard Government achieved with much the same strategy 21 years later. A large part of the spending was directed toward boosting household incomes; very little of it towards improving the potential for growth in the 'supply' side of the economy.

What he is pointing out is that after 14 years of economic expansion—most of it on the back of a reform agenda initiated by the previous Labor government—you are in the end going to come up against capacity constraints unless the government of the day has enough foresight to ensure those capacity constraints do not appear. But this government, instead of investing in the new sources of productivity growth and ensuring that those bottlenecks in infrastructure and skills did not occur, had been busy spending its way back into office with a \$66 billion spending spree.

The consequence of that is that when those capacity constraints are reached, as they have been, that strong consumer demand that has been fuelled by the government's own spending spree has to find an outlet somewhere, and that is through increased domestic prices and through imports—a current account deficit of seven per cent of GDP, a current account deficit not seen since the early 1950s.

So there are genuine economic problems in this country, but they are not being addressed by this government because it has a better idea, and that better idea is to blame the unions, the Australian trade union movement and those working Australians who want to be able to be represented collectively in their negotiations. The outlook is that if commodity prices ease off in six, nine or 12 months there is more likely than not to be a significant depreciation of the Australian dollar. If that happens, the Australian-dollar cost of imports will go up, feeding into inflation and forcing the Reserve Bank to take extra action through monetary policy tightening.

The government ought to be acting on these problems now, given that it has neglected them for nine years, but it finds it easier instead to blame working Australians—in particular, those Australians who want to be represented as a collective in their bargaining with an employer. Who are those Australians? The reality is that they are the Australians who do not have the individual bargaining power to obtain significant wage rises, who know it is in their interest to bargain collectively—and it is precisely this group that the government is targeting. It wants to ensure that Australia's lowest paid workers—those who rely on collective bargaining—will not be able to exercise any right to bargain collectively and to get a pay rise.

We have seen the government's response to the submissions to the national wage case. The government has said it does not want the Industrial Relations Commission to set the minimum wage in this country. It is all part of the government's agenda of blaming working people in this country—in particular, low-paid workers—for its economic sloth and the lack of an economic reform program. This legislation is yet another instalment in its attack on the rights of the working men and women of this country.