# WORKPLACE RELATIONS AMENDMENT

# (BETTER BARGAINING) BILL 2005

## Second Reading - Speech 7 September 2005

**Dr EMERSON (Rankin) (5.47 p.m.)** — The Workplace Relations Amendment (Better Bargaining) Bill 2005 is a vicious, nasty piece of legislation. It is dressed up as usual with an Orwellian title so that an unsuspecting public is unaware of its full content. I hope those who are listening today and those in the media do understand the far-reaching consequences of this bill. The government has form in titling its legislation in this way. The legislation that has been debated in the parliament something like 42 times that would allow employers with fewer than 20 employees to dismiss their staff unfairly, in the best traditions of George Orwell, was called the Workplace Relations Amendment (Fair Dismissal) Bill. That legislation now has now been junked in favour of a foreshadowed piece of legislation that would extend that exemption from the provisions of unfair dismissal to businesses with 100 or fewer employees.

The next piece of legislation that comes to mind is the 'Fair Termination Bill', very much out of the George Orwell mould. Then there is that fantastically titled bill called the 'Protecting the Low Paid Bill'. That bill protects the low paid from a pay rise. I am sure that the low paid would not really want to be protected from a pay rise. We know that this government boasts about increases in wages under its period in office. The truth is that it has opposed every national wage outcome since it came to office, and if the government had got its way the minimum wage would have been $50 a week lower. When it boasts about protecting the low paid and giving them pay rises, the truth is that these pay rises have been directly against the wishes of the Howard government but have been awarded by the Australian Industrial Relations Commission upon submissions by the ACTU.

Now we come to the Workplace Relations Amendment (Better Bargaining) Bill 2005. This bill fundamentally undermines the capacity of unions and workers generally to bargain collectively. It undermines their bargaining power. The single purpose of this legislation is to undermine the bargaining power of unions and of workers engaged in collective bargaining. It is a bill that is written for, and probably by, employer organisations for that express purpose. It is one in a long line of bills since 1996 that have been designed explicitly to do this. I want to go through some comments that the Minister for Employment and Workplace Relations made about this legislation in the second reading speech. He said:

We are reintroducing this bill to facilitate the use of workplace bargaining processes, to make them more user-friendly and as fair as possible.

That is completely misleading. The legislation is designed to tilt the bargaining power even more heavily towards employers. The bill clarifies that no industrial action can take place during the life of an agreement. That is, as other members have commented, a response to the Emwest case. The point here is that, if there are matters that are not contained in a certified agreement, until this legislation it has been possible for employees to take industrial action that is legal, so long as it relates to matters not covered in the agreement. This legislation would obliterate that capacity.

The legislation speaks of cooling-off periods and provides that the Industrial Relations Commission can come in and order a cooling-off period. It can already. What this does is make it much more readily available to the commission to order a cooling-off period. Why? To ensure that employers bargain in good faith? No, because there is no requirement on the part of employers to bargain in good faith. To ensure that employers agree to bargain collectively? No, because there is no requirement on the part of employers to bargain collectively if they do not wish to do so. The cooling-off periods are

directed squarely at unions, at the work force, but not at employers. How do we know that? Because there is no provision in this legislation dealing with lockouts.

If the government were fair dinkum and wanted a modicum of balance in this legislation it would order cooling-off periods in relation to lockouts, but it does not apply to lockouts. Why? Because lockouts give employers bargaining power at the expense of employees. There is the pattern. Wherever there is a remaining capacity on the part of employees, of workers, to bargain collectively and exert some bargaining power, the government undermines that capacity, which is specifically what this legislation does today.

Who are the targets of this legislation? We need look no further for an answer than the second reading speech. The second reading speech—and I have checked this—closely resembles the second reading speech of the original bill, which was introduced in the last parliament and specifically identifies clients of health or community services and educational institutions and other businesses. Who are the clients of health or community services and educational institutions? We are talking here about hospitals—about nurses and other hospital workers. The legislation is directed at child-care workers, at teachers and at academics. Let us understand that Minister Andrews has developed a piece of legislation which fundamentally undermines the bargaining capacity of child-care workers, of nurses and of people engaged in our educational institutions. It is not as if child-care workers have enormous bargaining power. When was the last time child-care workers organised industrial action in Australia? They have virtually no bargaining power now, but for an abundance of caution this government has introduced legislation specifically directed at child-care workers, at nurses and at other people engaged in the health sector and community services. What has this government got against these low-paid workers having a little bit of bargaining power, a small modicum of capacity to bargain? They are the targets, as was reported in the media well in advance of the first bill that was introduced in the last session.

The way that this bill will operate if it is passed by the Senate—and we have to understand that that is a very high probability—is that third parties can apply to the Industrial Relations Commission for a suspension of the bargaining period. In other words, any person or body directly affected by industrial action can apply to the commission. That means that anyone who takes their child to a child-care centre can apply to have the bargaining period suspended and make the industrial action illegal. Again, anyone who is affected by any industrial action in the health sector can apply to get the bargaining period suspended and made illegal. The criterion is whether the action is threatening to cause significant harm to any person other than a negotiating party. So it does not have to have caused any harm, just as long as someone says: ‘This could possibly affect me. I am now going to the commission to get a suspension of the bargaining period and make any industrial action illegal.’ This legislation is directed at those who have the weakest bargaining power in our community. When I said at the outset that this is a nasty, vicious piece of legislation, I hope now that this parliament understands why I made that statement.

Other provisions in the legislation clarify that industrial action is unprotected ‘when it is taken in concert with employees of different employers’ and so it goes on. The whole point is that this legislation is very one-sided. In supporting my claim that it is one-sided, I mentioned that it does not deal with lockouts, which is a form of industrial action; but, in this case, the industrial action is taken by the employer in locking out employees. There have been some infamous lockouts even in the last few years, but one of the more infamous is the Morris McMahon dispute. At the Morris McMahon dispute the then Minister for Employment and Workplace Relations, Mr Abbott—who is the Minister for Health and Ageing at the moment—went to the picket line and met a Vietnamese person named Van. At that time, Van was receiving about $11 an hour. Van said to the minister: ‘Yes, but we do not want the agreement with them, the Australian workplace agreement. I have my right. My choice is the union. If the union can help us, yeah.’ Do you know what the minister said? The minister replied:

You have every right to ask for a collective agreement, every right in the world.

This is a very tricky minister, as we know, because he put in the word ‘ask’. He did not say: ‘You have every right to a collective agreement.’ His words were very carefully chosen. He said, ‘You have every

right to ask for one.' Under the 1996 industrial relations changes introduced by this government, the employer has every right to say, 'No'. The fact of the matter is that a right vetoed by an employer is no right at all. There is no right to bargain collectively in Australia. This is a consequence of the 1996 industrial relations legislation. It makes us one of the few countries in the Western world where employees who gather together—either represented by a union or not represented by a union—to collectively exert a little bit of bargaining power can go to an employer and ask them to engage in collective bargaining and the employer can veto it. We are one of the few countries in the Western world where there is no right to bargain collectively.

This minister is very tricky. He is the minister who set up a trust fund called Australians for Honest Politics and lied about it. He is the minister who, when asked whether he had met Archbishop George Pell, said he had not. But when challenged about the date and the time, he immediately remembered that in fact he had. This is the now Minister for Health and Ageing, who knew that the cost of the Medicare safety net was blowing out, yet under the Charter of Budget Honesty there was no disclosure that the cost was blowing out. So again he deceived the Australian people. And over the last few days he has been called 'disgusting' by his colleagues for his performance in relation to the former opposition leader in New South Wales, Mr John Brogden.

That is the sort of standard set by workplace relations ministers in this parliament. That was the standard that was set by the then workplace relations minister, and that low standard has been continued by the current Minister for Employment and Workplace Relations. On 23 June 2004, I asked a question of the current Minister for Employment and Workplace Relations:

Now that the government has extolled the virtues of collective bargaining for businesses, will the government restore the right to collective bargaining for workers, with the Industrial Relations Commission empowered to direct the parties to bargain in good faith?

The conclusion of the minister's answer was:

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.

That is untrue. The minister made that statement in this parliament, and it is a completely untrue statement. Employees do not have the choice to collectively bargain, as the minister has asserted on a number of occasions and the Prime Minister has joined him. Under the 1996 legislation, that right was withdrawn.

Let us ponder that for just a moment. Imagine a situation in which, akin to an employer being able to veto a union as the employee's chosen representative, any government passing legislation that says, 'In any dispute between two employers or between two businesses, legislation will specify that one has a veto over the other's chosen representative.' Imagine if they were represented by two law firms and one business legislatively, legally, could say, 'We insist that you not be represented by that law firm in this dispute.' There would be outrage in the business community. Yet when it comes to bargaining between employees and employers, the employer has the right to do exactly that—that is, to veto the employee's chosen representative, in this case a union.

This legislation is nasty and it is vicious. One of the supreme ironies is that this is one of the last pieces of legislation being debated in this parliament before the introduction of a very large piece of legislation which will abolish the Workplace Relations Act. This legislation amends the Workplace Relations Act, which has been developed over decades—even the far-reaching and very unfair 1996 changes were amendments to the pre-existing Workplace Relations Act. But here the government is amending the Workplace Relations Act in the full knowledge that, around October, it will introduce an entirely new Workplace Relations Act based on a very different constitutional power, the corporations power. The current legislation is essentially based on the interstate dispute-settling powers in the Constitution. The government will scrap that completely and undertake this complete rewrite of the Workplace Relations Act based on the corporations power.

We are advised that this legislation is being drafted by five or six law firms. It is going to be a dog's breakfast: it will be full of holes, it will be full of anomalies and it will be full of unfairness. When you envisage five different law firms with pieces of legislation lying around the floor, it certainly reminds me of that James Taylor song *Fire and Rain*. There is a line where he says:

Sweet dreams and flying machines in pieces on the ground.

These are the Prime Minister's sweet dreams and flying machines in pieces on the ground in five or six different law firms. This legislation is John Howard's dream of ensuring that, in the future, there will be no effective capacity to bargain collectively because his dream is that everyone is placed on an individual contract, an Australian workplace agreement. The Prime Minister does not believe in enterprise bargaining or in collective bargaining. The Prime Minister believes in a single weak employee being confronted by a large powerful employer who says to the employee, 'Here is an Australian workplace agreement, you sign it or you don't get the job, or if you don't sign it you lose the job.' That is the Prime Minister's sweet dream, and it is lying in pieces on the ground.

What a supreme irony! We are amending an act that will be trashed in four, five or six weeks and replaced by another act. So why are we debating this legislation at all? Because it is part of the government's obsession with ensuring that vulnerable working Australians do not have the capacity to exert any bargaining power in their negotiations. This government is philosophically committed to vulnerable Australians entering a race to the bottom, competing against the countries of East Asia, on the basis of wages. This government has not announced that it will remove the Industrial Relations Commission from having any role in setting minimum wages in order that minimum wages should rise. It will have its own lap-dog organisation which will ensure that real minimum wages fall.

That is the government's agenda. Right across the legislation that will come into this parliament at some time this year the unifying theme will be to weaken and remove the capacity of the vulnerable to exert any bargaining power in their negotiations with employers. This is a 30-year dream of this Prime Minister. It is lying in pieces on the ground. When it comes together it will be a dog's breakfast. It will be challenged in the High Court, because it is completely unfair legislation and it should never see the light of day in this parliament.

**The DEPUTY SPEAKER (Hon. AM Somlyay)** — Order! Before I call the member for Fisher, I point out to the member for Rankin that, in the course of his remarks, he used a term in relation to the Minister for Health and Ageing, which previous Speakers have ruled unparliamentary. I ask him to withdraw.

**Dr EMERSON** — Mr Deputy Speaker, in deference to you, I will withdraw. But I should also point out that other Speakers have allowed that particular phrase to stand.

**The DEPUTY SPEAKER** — Thank you.