

2 December 2008

FAIR WORK BILL 2008

Second Reading

Mr BRADBURY (Lindsay) (9:16 p.m.) — This is a very special moment for me because tonight I have the opportunity to make good on the promises that I made to members of my community throughout the election just a little over a year ago. The issue of Work Choices was without question the No. 1 election issue in my electorate of Lindsay. Having campaigned for a period of about seven months and having doorknocked extensively—some 23,000 homes during that time—I can say that Work Choices was the one issue that kept coming up. It was the issue that had turned many people who had previously supported the Howard government away from that government and into the arms of the Labor Party. For the first time in a long time, those people supported us. They supported us because they understood a number of very basic propositions.

Firstly, they believed instinctively—and I think it has been shown to be true by the evidence that has emerged, certainly since that time—that the Work Choices laws had gone too far and the pendulum had swung too far away from employees. The balance in the workplace had shifted that pendulum towards employers and had left employees vulnerable and at the mercy of arbitrary action in their workplaces. Many of them told me their stories about how Work Choices had impacted on them, on their children, on other members of their family and on their friends. These laws violated one of the most fundamental principles that we in this country believe in, and that is the fair go—the principle of the fair go.

I have yet to meet a person who believes that in the workplace, in the overwhelming majority of cases, an employee can sit down and somehow bargain with equal power with their employer. This is one of those principles that the Australian people understood. People understand the dynamics of their workplace. There is no question that there are some people who, due to their skills and the bargaining power that they bring to the table, will be able to negotiate a reasonable agreement. As someone who previously worked as a solicitor for a large firm of lawyers I can say that I saw many people who had trained for many years at university to advocate on behalf of clients, to take up a case against an opponent and to prosecute that case with vigour. Yet I have to say that, in my observation, many of those in my workplace who had been trained in all those skills and made a living out of advocating on behalf of others found it very difficult to put their own case forward when they sat down for their own remuneration discussions.

Now, if a person who has been trained at high levels to do that, who spends every moment of their working day out there representing other people, finds it difficult to sit at a table one-on-one with their employer and prosecute their own case, then what hope do the unskilled have? What hope do those who have a poor understanding of the English language or of their legal rights have? What about those who have not had the experience of advocating on behalf of others, those who would otherwise be disenfranchised within their workplace? This is something the Australian people understood very clearly, and it was something that they were moved to take action against.

What we see in the Fair Work Bill 2008 that is before the parliament is that for the first time we will have a truly national system of industrial relations, and I think that is important. The shift that is being

undertaken here, away from conciliation and arbitration powers to a reliance on corporations and external affairs powers, is one of great significance. It is a shift that recognises that we are reforming our Constitution. We might not be able to do that through referenda, but we are reforming the way in which we operate at a governance level within this nation to reflect the new realities of a global economy. We have recognised the need to have a seamless national economy—and there is no reason why our system of workplace relations should not transcend the boundaries that were written on to the maps back at the time of Federation.

This is a system that is based on the principle that all employees deserve to be respected and given a fair go at work. The bill manages to bring back balance to our industrial relations system by ensuring a strong safety net, a safety net that protects the minimum conditions of all Australian workers. The bill achieves a system that restores the focus to bargaining at the enterprise level and ensures that that bargaining will occur in good faith. The bill recognises that the productivity gains that our nation needs to secure are best achieved through cooperation and negotiation at the enterprise level. That is best done collectively where employers and employees have some opportunity to negotiate on something that is a little bit closer to a level playing field.

The bill provides greater protection from unfair dismissal, and this is an important point. One of the biggest issues that had resonance in my community throughout the last election campaign and through the many interactions that I had with people in my community was the fear in those workplaces of fewer than 100 employees, and we were told anything with fewer than 100 employees was a small business. If I can just digress for a moment, the only suggestion that was ever put forward in the preceding term of parliament before the 2004 election by the then Howard government was that they would introduce new unfair dismissal laws that provided an exemption to small businesses with fewer than 15 employees. That strikes me as something closer to a small business than something with fewer than 100 employees. In making that point, I think it is important to note that one of the things that people resented most about the Work Choices laws—and I know that they resented this because they kept telling me—was that the Howard government went to the 2004 election without putting these plans on the table. Introducing the Work Choices laws occurred only because the Howard government secured a majority in the Senate. They saw an opportunity. The then Prime Minister saw an opportunity to deliver on one of the great dreams that he had always held, and that was to reform the industrial relations system in a way that shifted the pendulum dramatically in the direction of the employer. He did not miss the mark, but people resented the fact that he did not put his proposals on the table before the election.

We heard from the member for Mitchell who says that Work Choices is dead, yet there he was with the defibrillator trying to bring it back to life. In fact, it is not dead at all when it comes to those on the other side. The old saying that a leopard never changes its spots is absolutely true when it comes to those on the other side. This is an article of faith for them. Maybe this is just Lazarus with a triple bypass, but I can tell you that they believe in this stuff. They will not be giving up on it lightly and, in the same way they went to the 2004 election without telling people that they had plans to introduce Work Choices, they will go to the next election telling people they have no such plans. In the same way as after their electoral defeat in 1993 they suffered as a result of their attempts to try and introduce the GST and to introduce more radical industrial relations reform, they said, 'Look, we have learnt; we have heard the message of the Australian people'. They heard it all right, but at the very next opportunity they had they went back to their old form and tried to introduce the very reforms that the Australian people had already rejected.

I hear those on the other side, and in particular the member for Mitchell, say, 'What a terrible thing to be introducing laws like this at a time when the international economy is taking a turn for the worse.' Let me make this point: there is no question that this country is facing greater pressures when it comes to unemployment in the same way as other nations throughout the world are because of the impact of the global financial crisis and the flow-through effects of that to the rest of the economy. There is no question we face those challenges. But what do people in our communities expect and demand of us? I know what they demand of me in my community, and that is that I make good on the election commitments that I made to restore some balance to our workplaces by providing some protection against unfair dismissal occurring in an arbitrary way.

I heard many stories throughout the course of my discussions with people about how these laws, these Work Choices laws, were used to kick people out of their jobs, to sack them without any good reason and without any explanation. I remember one case in particular, a man from Cranbrook who I doorknocked. He worked for the same company for 20 years and was then dismissed without a reason and with no recourse to any protection under unfair dismissal laws. This was the sort of unfairness that was allowed to occur under the former regime and this is what we are dismantling. People in my community expect us to provide sufficient protections in the workplace so that they will be protected against arbitrary and unfair dismissal.

On the issue of individual agreements and contracts, we know that those on the other side have refused to rule out bringing them back. When this parliament last considered legislation in relation to individual statutory contracts, the Howard government refused to rule that out. This was at the very heart of the unfairness of the system. They decided to weaken the award system, to strip away the safety net and then, at the same time, to unleash the individual contract. There were many instances in my community where people came forward and told me about their unease with these individual contracts. They told me about how they were effectively being offered on a take-it-or-leave-it basis.

We have seen from data that has been released by the Minister for Employment and Workplace Relations earlier this year that the Workplace Authority provided to the government details in relation to AWAs that were lodged between April and October 2006. In relation to that data, the analysis revealed the so-called protected award conditions that were most frequently removed. These included: 70 per cent removed shiftwork loadings, 68 per cent removed annual leave loadings, 65 per cent removed penalty rates, 63 per cent removed incentive based payments and bonuses, 61 per cent removed days to be substituted for public holidays and the list goes on.

In my community many people survive on their penalty rates. Many people see their penalty rates as being the thing that supplements their income to give them the basic and decent standard of living that they require to provide for themselves and their families. To put them in a position where their penalty rates were under threat was to threaten the very viability of the household budget for many people—and that is why people revolted against this. I am pleased to see that there will not be individual statutory contracts. There will be opportunities for flexibility in the form of individual flexibility arrangements.

My predecessor the former member for Lindsay would often say that one of the great things about AWAs was that they allowed people to secure better, more family-friendly outcomes in their agreements. Well, I have not seen many of those—in fact I have seen no evidence of that at all. But these provisions—

individual flexibility arrangements—will allow that sort of flexibility to be achieved. Most importantly, as with all bargaining under this regime, it will have to satisfy the ‘better-off overall’ test. It is that test, combined with the strong safety net, that will protect the rights of working people.

In addition to that, we are restoring the strength of an independent umpire. Those on the other side under the former regime decided to whittle away the power of the independent umpire because they believed in freedom of contract, so they kept telling us. I just want to make one point about freedom of contract which I find to be bizarre—and that is in relation to these transmission of business provisions. The transmission of business provisions that were introduced by those on the other side basically said that, for a company acquiring a new company or business, after 12 months the effect of any employment agreements that were in place basically came to an end. I find that to be bizarre, because anyone who has ever acted in matters involving the acquisition of businesses knows that anyone looking to acquire a business or a company undertakes due diligence; and when you acquire the new company you acquire it with all the encumbrances—the legal contractual obligations that the company has already entered into. So if we believe in freedom of contract and we believe in the free market then why should the employment contracts with individual workers be any different to that? Well, the answer is that they should not be and that is why we are restoring the position there and addressing that issue.

I want to conclude by quoting Ross Gittins, the economist and columnist with the Sydney Morning Herald. He said on Saturday 29 November this year:

... the new industrial relations legislation the Rudd Government unveiled this week establishes a reasonably even-handed treatment of employers, employees and their unions.

He goes on to say in relation to bargaining:

Of course, to be even-handed in a situation where the bargaining power of an employer and that of an individual employee are so hugely unequal requires government to provide employees with a degree of assistance.

That’s what was so unfair about Work Choices. It reduced the degree of protection afforded to employees while promoting individual contracts ...

We can add to that that the unfairness of it was in stripping away protections under unfair dismissal to make people even more vulnerable in the workplace. This legislation will right a massive wrong that was inflicted upon the Australian people. Those on the other side will say that Work Choices is dead but we know that in their heart of hearts they still cling to this stuff because they believe in it. We will keep fighting them on it because the Australian people deserve better than Work Choices; they deserve what they are getting here. I conclude by commending the minister for the outstanding work that she has done in bringing together the disparate views that exist in this debate to achieve what I think is an outstanding piece of legislation, and I am very proud to be able to get up and speak in support of it tonight.