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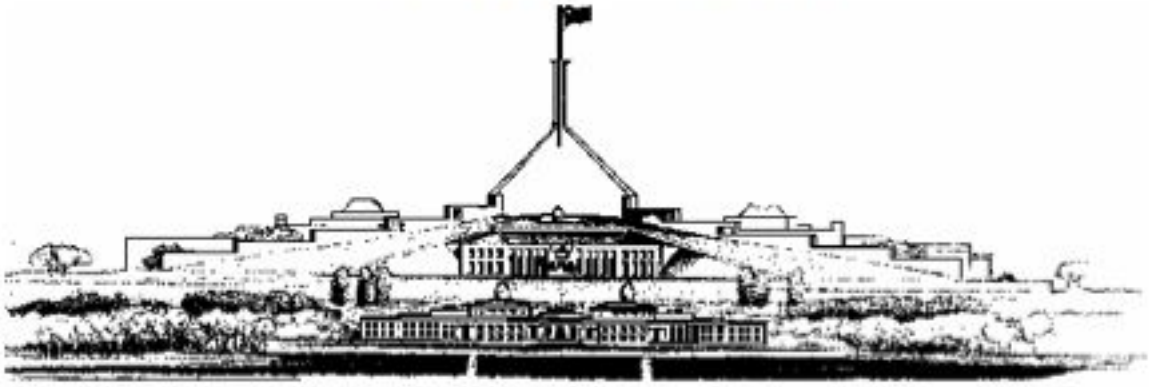

HOUSE OF REPRESENTATIVES

FAIR WORK AMENDMENT (STATE REFERRALS AND OTHER MEASURES) BILL 2009

Second Reading

SPEECH

Tuesday, 17 November 2009

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Speaker	Keenan, Michael, MP	**Question No.**	

Mr KEENAN (Stirling) (5.03 pm)—The Fair Work Amendment (State Referrals and Other Measures) Bill 2009 seeks to build on the reforms commenced by the Howard coalition government in 2006, which took the first brave steps in seeking to create a truly national system of workplace relations. The coalition has always held the view that a national system is better than a patchwork of varying state systems. That view has not changed and to this end the coalition is supportive of the outcomes that this bill seeks to achieve. We want a national system. We started the reforms to achieve that end and we acknowledge the significant benefits that a national system can deliver to a sophisticated and modern economy such as Australia's, particularly one in which many businesses cross over state borders. However, the way in which this bill seeks to achieve a national system is fraught with danger and has been mishandled from the start. Put simply, we like where this bill is going but we do not like how it plans to get there. I therefore indicate to the House that the coalition will oppose this bill.

Our opposition to this bill is based on two broad concerns. The first of these is that we must get the federal Fair Work laws right before we drag the states and non-incorporated bodies into the Commonwealth system. Secondly, in order to achieve a truly national system the Commonwealth must not hand control over its future direction and shape to the state governments. I want to make a few comments about these two concerns in detail but before I do I will talk briefly about the consultation with stakeholders that the government undertook, or rather failed to undertake, in relation to this bill.

The government has made much of how it consults with business, and it consulted in a commendable way when developing and introducing the Fair Work system. It utilised a number of processes to do this, including the Committee on Industrial Legislation. Strangely, in relation to this bill there has been absolutely no consultation with stakeholders whatsoever. The Senate Standing Committee on Education, Employment and Workplace Relations heard last week that the first time that people were aware of the contents of this bill was when it was introduced into parliament. This included groups such as the Australian Chamber of Commerce and Industry and the Ai Group, who were surprised that there had been no consultation in the lead-up to the introduction of this bill. This created significant difficulties, given the tight time frames that exist for consideration of the effect of this bill and that we are in the final two sitting weeks of the year.

The rationale for the complete lack of consultation in relation to this bill is unclear to the coalition. In addition, in order to understand how this bill will work in total, it has to be read in the context of the intergovernmental agreement that has been developed between the states, the territories and the Commonwealth. Yet this intergovernmental agreement only became public last Friday. Until then, stakeholders and the opposition were completely in the dark about the bill's terms and were missing a crucial piece of the jigsaw puzzle that allowed them to understand how this bill works.

I fully endorse the observations that were made by my coalition Senate colleagues. I hope that this is not a sign of things to come in how the government will deal with future legislative developments within the national workplace relations system, as was noted in the minority committee report. We have heard a lot of rhetoric from the government about how their new system is going to work and about how it is going to transform Australian workplaces. We were subject to all sorts of platitudes and descriptors when these laws were introduced about how they were going to operate and how the system was going to benefit workers and businesses. We heard phrases about productivity and flexibility; we heard a lot about balance and about getting the system right. In short, the minister and the government promised the world with their new system. They said it was going to be simpler, they said it was going to be less complex and they said it was going to enhance productivity. They also said it was still going to retain the necessary flexibilities that a modern labour market deserves and requires.

The reality and truth of what is happening under the Fair Work changes could not be further from this spin that the government put about prior to their introduction. It is clearly only early days for the new laws, but we are starting to get an idea about the sorts of cracks that are beginning to appear within the Fair Work system. We have already seen an upward trend in strikes and workplace disputes, claims for unfair dismissal are on the rise, costs for business, in particular small business, are increasing and we are moving back to the days of a one-

size-fits-all system for every enterprise and every worker across the country regardless of what industry they are involved in, regardless of how they wish to structure their workplace and regardless of requirements of that particular enterprise. We are moving back to a time when the government say that one size fits all and it should be the same in Cairns as it is in Hobart or in Western Australia.

We should not forget that Labor made many promises to Australian workers and to business about what these laws mean and how they would work. As I have said, they promised that they were going to deliver fairness, simplicity, balance and productivity, but the government have failed to make good on any of these promises. Labor's Fair Work system does not bring fairness to the workplace. True fairness exists when everyone operates on a level playing field. Labor's Fair Work laws prioritise the interests of certain stakeholders ahead of others. Unions, for example, have an automatic right to be involved in collective agreement making, but a business does not have an automatic right to legal representation before the industrial umpire.

Despite the assertions to the contrary, it is true that a worker can drag their employer before an industrial umpire without having any cause or genuine reason to do so, and then the employer is forced to pay money to make that claim go away. The coalition always pointed out that the go-away money was a feature of Labor's unfair dismissal laws, and the minister promised us that the go-away money was not going to return under her new system. I have been made increasingly aware of situations where an employer is forced to pay go-away money. One such situation that has been brought to my attention affected a very small business, which, despite having complied with the fair dismissal code, still got dragged before the industrial umpire and was forced to defend its decision. Ultimately it was forced to pay money to settle the claim as it was just too expensive to defend, despite the conciliator appointed by the umpire being unable to identify problems with the process followed or the reason for that dismissal. When laws give an unfair advantage to one party over another then they can never deliver fairness to the workplace and they will always be capable of exploitation. The government's laws put business, and in particular small business, on the back foot at the expense of genuine fairness for them.

One of the other claims that has turned out not to be true is that Labor's Fair Work system would provide balance. We all know that the government owes the union movement a massive election debt, and it is now doing everything it can to pay off that debt. For example, developments in the application of Labor's so-called good-faith bargaining regime have the effect of ensuring a business owner can no longer talk directly with their staff to negotiate working conditions. It is truly extraordinary that an employer could not sit down with their workforce and discuss the best way to establish working conditions within that enterprise. Businesses and their workers can no longer make an agreement at their workplace without unions being notified. If one worker on the building site is a union member, that entire workforce regardless of their view will have a union negotiate their pay and conditions on their behalf. Labor's laws contain over 60 new rights for unions but very few new rights for workers and virtually none for businesses and employers.

Another great claim about the Fair Work system is that it would enhance productivity. We were repeatedly promised that productivity was at the heart of the Fair Work system. The government never bothered to do any homework; they never bothered to do any analysis to see how these new laws would affect productivity. They never bothered to actually assess how they were going to impact on the economy. They just claimed it in the parliament and in other forums and made repeated assertions and hoped that everybody would believe them. Even the body that is required to oversee these new laws, Fair Work Australia, has not set up a system to monitor how the laws will increase productivity. There is absolutely not one shred of evidence that these laws have done anything at all to enhance productivity in Australian workplaces.

Of course, one of the major problems with the new system has been the so-called award modernisation process that the coalition have been very critical of. Labor's award system takes Australian workplaces back to the bad old days when the concept of one size fits all takes precedence with very rigid and complex rules. When the minister established a framework for creating modern awards on 19 March 2008 she said, 'I can give the guarantee that no worker from this bill we have passed today into Australian law will be worse off.' We have always agreed that we should consolidate the thousands of complex industrial awards into a simple set of national industry awards, but we have always wanted to do it in a way that made the industrial relations framework simpler. What we have seen from Labor's botched award modernisation process is just an ongoing disaster. By taking a one-size-fits-all approach to this process and rushing it through in impossible time frames set by the minister, the Australian Industrial Relations Commission has created modern awards that go nowhere near to meeting the aims of the minister's original request.

The minister directed the Industrial Relations Commission to make modern awards that do not disadvantage employees or increase costs to business. Clearly, the commission has been unable to meet these aims and, clearly,

these are impossible aims that the minister has asked the commission to meet in the first place. The result of this process will be that wage costs will go up, people will lose their jobs, services will have to decrease and small businesses will be particularly hurt. I want to go through some examples of how this process will impact Australian workers and businesses. If you are an owner of a small retail shop in New South Wales and employ two full-time and two casual employees, you will have to pay an extra $22,000 a year to your existing staff. A newsagent in Queensland will pay 31 per cent more for just one casual staff member. The AHA in Western Australia, my home state, is predicting job losses of between 3,000 and 4,000 workers within their industry if the award goes through in its original format. Small independent country supermarkets will cut staff numbers, reduce trading hours, or simply be eaten up by the larger players. Even the Baking Manufacturers Industry Association of Australia said that this legislation will cause the price of bread to increase. Worryingly and most disconcertingly about this botched award modernisation process is that most of the jobs that will be lost will be those of part-time working mums, casual students and female workers.

When the coalition sensibly tried to amend the legislation so that the terms of the minister's original request would enshrine in law that nobody would be worse off through this process, businesses would not face increased costs and workers would not lose any of their entitlements, the Labor Party voted against us. Subsequent to that, the minister refused to guarantee workers that no job would be lost as a result of her bungled process. I will give an example of how the spectre of the forthcoming modern awards process has been received in the real-life business sector. Only last week, I was invited to attend a meeting of hairdressers and beauticians in Western Australia who are concerned about the terms of the so-called new modern award that will apply to them in six weeks time, on 1 January 2010. They had arranged a meeting of concerned small business owners and had asked me to attend the meeting to listen to their concerns. This is an industry comprising people who are genuine operators of small businesses. They are often owner-operators, they are a very diverse business sector and they do not have a strong industry body speaking up for them, as some other sectors do.

These people run hairdressing salons and beauty treatment centres. Every Australian uses them. We all get our hair cut. We all have an association with these small businesses. We know the sorts of pressures they are under. These people represent everything that is good about small business: they work hard and they put in their own personal assets to start their business. They put their own assets on the line so that they can make a contribution and hopefully go on to employ more people, create jobs and grow their business. With a bit of luck they will turn a small business into a medium-sized business or into a larger business. These are the people who take on apprentices, who provide career paths and, of course, who support their local communities. We should not underestimate their contribution. They show the best of the Australian spirit—that entrepreneurial spirit to go out there and have a go.

At the meeting there were well over 150 small business owners from the hair and beauty sector. I thought that was an incredibly large number for a sector that clearly does not have the organisation that is associated with some of the larger sectors. If you need any further evidence about the concerns of small business then look no further than the modern award that is going to be imposed on them. These people took the time to come to this meeting, to speak amongst themselves and to speak to me so that I could hear about their worries and about what they see as the impending disaster of the modern award that is being imposed on them. They told me that, if the award goes ahead, they will not be able to take on new staff. They told me that, instead of taking on two apprentices next year, they might be able to afford to take on one. They told me that they will have to cut back on the hours that their business opens. Some said that they were already sailing so close to the wind and that their business environment was already so difficult that they will just close their doors if this award goes ahead. As people who own their business, who are prepared to invest their assets and have a go, who often work weekends—in fact, most people in these types of businesses work weekends—who employ people and who do all the right things, they expressed dismay that their government would make it so much harder for them to keep their doors open, grow their businesses and employ other Australians.

I am sure that, if the minister had been at this meeting, she would have tried to reassure these people. She would have talked about a five-year phase-in period to increase wages—and I am sure that we will hear that sort of rhetoric when the minister responds at the closure of this debate. But the truth of the matter is that, as the hairdressers and the beauticians explained to me, it does not really matter what it costs them tomorrow, next year or in five years time, this award modernisation will still come at a significant cost to their businesses. It is still a cost that they will have to cover—an additional cost which comes directly and solely from the minister's own bungled approach to modern awards. This additional cost will come most grievously at the expense of jobs—jobs for young people, jobs for school leavers, jobs for mums who want to return to the workforce, jobs for people who work casually and jobs for people, such as students, who work on weekends. This is the reality of

Labor's modern awards program all around the country. This story has been repeated to me not just in Western Australia but all over the country, as I have moved around and talked to people in different sectors. About half of the hairdressers whom I spoke to recently were unincorporated businesses. They are mum and dad operators, sole traders—people who currently sit outside the scope of the national industrial relations system by virtue of being unincorporated. They are exactly the type of small business that will be roped into the government's Fair Work laws and related system of bungled modern awards if this bill goes through.

With all of this said, it begs the question: why would the opposition, the party of small business, the party that always defends the interests of small business in this House, support a bill that exposes thousands of these small businesses to the sort of system that is going to challenge their livelihoods? We are not going to subject small workplaces in many important sectors of the economy, such as horticulture—as I know you are very well aware, Mr Deputy Speaker Schultz—to the bungled and botched outcomes that have been delivered by Julia Gillard through this award modernisation process. We are not prepared to throw these small businesses to the mercy of this new national system that just is not working properly and just is not fulfilling the promises about how it was going to operate that were made by the government when it was introduced.

We continue to want a national system, but we need to make sure that we get the national system right before we start roping in the states and exposing these small businesses to the failings of Fair Work. We need to get the system right. We need to get the modern award system right. We need the Fair Work system to deliver outcomes that are consistent with the sorts of goals that the government said it was trying to achieve. This bill will destroy jobs if it goes through and it will retard job growth in Australia. We need to get our national house in order and fix the cracks that are associated with Fair Work, and then we should talk about creating a national system and roping in these unincorporated bodies.

Our second concern relates to the extent to which this bill delivers control over the federal system into the hands of state governments. We believe that this approach is very dangerous. No doubt the minister will make noises about the benefits of cooperative federalism and how this bill and the intergovernmental agreement are an example of this in action. But again—as we always see with this minister—the rhetoric is very different from the reality. The reality is that a state government can opt out of the federal system if it does not like any future amendment to the Fair Work laws. Despite this fact being hidden behind the development of so-called 'fundamental workplace relations principles', these principles are so vast and so broad as to be interpreted to mean that any referring state government can pull out of the system at a whim—and I might say that these were the concerns that the business community brought to the Senate committee when it had its inquiry into this bill. A state government does not even need to be reasonably satisfied that a future change will offend these principles; it has complete discretion to withdraw from the system if it believes that these fundamental workplace relations principles have somehow been breached. This means that a state that terminates its reference will still remain within the ambit of the Commonwealth system, but it will just not be subject to the particular amendment that it finds offensive. So the Commonwealth would still have to pick up the tab for the system, and it means that the states can pick and choose what they like and what they do not like about any future national changes. They will still get the protection of the Commonwealth funding, and they can still have a say about the future of the national system, but they do not have to accept its consequences.

In reality, this means that state references become a political tool to be dragged out and used inappropriately, by way of threats, and it means that industrial relations will continue to be an issue at every state and federal election from this point on. It might be different if a referring state that withdrew was actually forced to take responsibility for the cost and administration of its own system, but, sadly, this bill does not provide for that. It will not do that under the arrangements that are detailed in this bill. Hence, these provisions are nothing more than the creation of a political tool where Australian workplaces become a football to be kicked around every time an election is called.

This is not good enough. It is not good policy. It is not the way forward for a national system. States that want to leave the national system, as is their right—if they want to take that decision—need to take responsibility for that decision by taking responsibility for their state system. I take this opportunity to foreshadow that in the Senate my colleagues will be moving some amendments to this bill to that effect. The effect of those amendments will be to ensure that, if a state does seek to opt out of the federal system, it can, as is its right, but it will need to assume responsibility for administering and funding that system. States will have to show courage, and this will stop state references becoming the political football that they will become under this bill as it is proposed.

We will be opposing this bill. Before it can gain our support—we do support the structure of a national system but we support the right national system; we do not just support any national system, and we do not support a

national system that is going to disadvantage the Australian small business community—the government needs to get its house in order. This minister must stop dismissing valid concerns of stakeholders, particularly about the award modernisation process, and we must return to some rational and sane public policy.

We want a national system that provides consistency. Indeed, we started the process towards a national system. But we will not have a system where an individual state would have the power to continue to remain within the Commonwealth laws while riding roughshod over any future changes within those laws. We do not want thousands of small businesses, the backbone of the Australian economy, the hardworking mums and dads in the industries that I have outlined, such as the beauty and hairdressing industries, subject to this botched and mangled award modernisation process. We require a national system that actually gets it right, and it is simply too soon for the remaining states to be dragged on board.

A national system is a very important public policy goal, but we will only support the right national system and we will not support a national system where, as always with this minister when she is faced with two choices, the high road of policy or the low road of politics, her response is always the same: the low road of politics. Australian public policy is worse for that as she bungles all the major areas within her responsibility. We oppose this bill.