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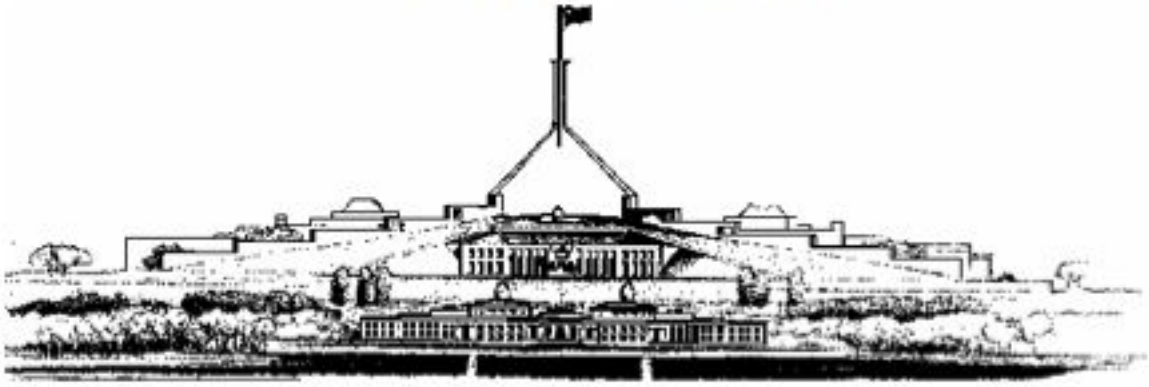

HOUSE OF REPRESENTATIVES

BILLS

Fair Work Amendment Bill 2014

Second Reading

SPEECH

Tuesday, 26 August 2014

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner		**Responder**	
Speaker	Neumann, Shayne, MP	**Question No.**	

Mr NEUMANN (Blair) (17:32): I speak on the Fair Work Amendment Bill 2014. As other speakers have referred to, this particular piece of legislation deals with union workplace access, right of entry issues, greenfields agreements, what some people call the 'strike first talk later loophole', individual flexible arrangements and other Fair Work Act recommendations, and interest on money held for unpaid workers.

This particular bill deals with some of the recommendations of the Fair Work Act Review Panel established by Labor when Labor was in government, which had a report back in March 2013. The coalition, in opposition and in government, have promised a couple of things in relation to this particular bill and in relation to their industrial relations policies. They promised that, as to this particular bill, they would not go any further than they promised during the election campaign and that they would be implementing the recommendations of the Fair Work Act Review Panel report of March 2013. It appears, on the face of it, that the coalition, as they have done with so much when in government, have said one thing before the election and done just the opposite after it. This particular bill is more evidence that the coalition will do one thing before an election—will promise anything to get into office—and then do exactly the opposite upon coming to the Treasury benches.

This is, once again, evidence of their twisted priorities and their obsession—their right wing, ideological obsession—as to industrial relations. I have said a number of times in speeches over the years that, in some countries, geography, religion, socioeconomic backgrounds, culture, even race and ethnicity divide political parties in those countries. But, in Australia, if you want to look at the division between the major political parties, it is about industrial relations. Every time the coalition gets into government they cannot help themselves—they simply have to attack workers and make it more difficult for those organisations which represent workers to do their jobs. We do not believe that what the coalition is doing with this legislation implements what they said they would do before the election, and it certainly does not implement the recommendations of that panel I referred to.

The government is using weasel words—almost Orwellian words; tricky language—to overstep its mandate in relation to individual flexibility arrangements, greenfields agreements, and right of entry and other matters. They simply are.

This bill is all about taking away conditions and making it worse for Australian workers. We do not believe at all that this particular bill 'restores the balance to the sensible centre'. It is not about that. The 'sensible centre' for the coalition is way out to the right.

Workers ought to be wary of this government, as previous coalition governments have undertaken right-wing, hard agendas with respect to industrial relations. I think Australian workers have not forgotten Work Choices, and they have neither forgiven nor forgotten the coalition. That is why this government when in opposition ran away from any major changes before the election. But we know that the workforce of this country and the workplaces of this country were transformed by individual statutory agreements. Under the infamous Australian workplace agreements, wages were driven down. And, like other speakers in this debate, I will speak about the circumstances behind which we are seeing an ideology foisted on the Australian public, and the historicity of this particular debate. I will be looking at what the coalition did in the past and what they are planning to do and looking at how this legislation goes down that way during my speech.

It is worth remembering the industrial relations landscape when Labor came into power in 2007 after 11 years of coalition government. We saw the AWAs come in, we saw Work Choices, we saw the ditching of the no-disadvantage test for the five minimum conditions known as the Australian Fair Pay and Conditions Standards. We saw every other award entitlement apart from those conditions, such as penalty rates, overtime rates, allowances and consultation rights left unprotected in law and vulnerable to AWAs taking away those rights that workers in this country had expected and enjoyed for decades. We saw Work Choices tear away the unfair dismissal protection for workers for all businesses with fewer than 100 employees and further exempt all

businesses from unfair dismissal laws where dismissal was for a bona fides operational reason—and bona fides operational reason was the excuse given again and again.

In practice, we saw this happening. The consequences were devastating in Australian workplaces. The average AWA employee worked a 13 per cent longer work week than their peers who were employed under collective agreements. For example, in New South Wales, female AWA employees worked 4.4 per cent longer hours than their counterparts engaged in collective agreements but earned 11.2 per cent less. It was also common practice for there to be no wage increases during the life of an AWA. Twenty-two per cent of AWAs in April 2006 contained no provision for wage increases during the life of the agreement, and this figure rose to 34 per cent in April to September 2006. In 2006 the median AWA worker earned 16.3 per cent less per hour than a comparable worker in a collective agreement. In the hospitality industry average AWA earnings in 2004 and 2006 were 1.8 per cent and 1.6 per cent below average earnings of workers reliant on award minimum respectively. So they were below the award minimum.

Employees most negatively affected by AWAs included women, low-skilled workers, employees in small firms and workers with less bargaining power than others. Women on AWAs earned less than women in collective agreements in every single state and territory by margins raging between eight to 30 per cent. Female casual workers on AWAs received average earnings of some 7.5 per cent below average award earnings.

So Australians hated this. That is one of the major reasons why Labor came to power in 2007. And we are seeing the start of it with legislation like this coming back. We stood up for workers. We abolished Work Choices and returned real fairness and flexibility to workplaces through the Fair Work legislation. Make no mistake: Work Choices haunts the coalition in relation to this. That is why they kept talking about it being 'dead, buried and cremated'. They promised that again and again. But we see in this particular legislation before the House, once again, the coalition overreaching in its commitment to workers and to the detriment of workers. That is what we are seeing.

Labor introduced individual flexibility arrangements in the Fair Work Act to enable the negotiation of fair and genuine flexibility in the workplace, while protecting workers rights and making certain that no worker could be worse off. Individual flexibility arrangements already provide an enormous flexibility without statutory arrangements being put in place. The government now claims that out of the goodness of its heart it is going to provide employees with clarity and certainty around the use of IFAs. Unsurprisingly, there is some chicanery here. The Fair Work Amendment Bill mandates that flexibility terms of an award or agreement require that an IFA, if entered into, must include a genuine needs statement.

Now, what is a genuine needs statement'? Do not bother asking an Australian worker—most of them would not have heard the phrase, I am sure. It was not promised by anyone in the coalition before the election. And do not bother checking *The coalition's policy to improve fair work laws*, which was their policy from May 2013. You may have been mistaken in relation to this, but the phrase 'genuine needs statement' is not there. It turns out that a 'genuine needs statement' is essentially a testimonial provided by an employee at the time they enter into an individual flexibility agreement. The bill says that such a statement sets out why the employee believes at the time of entering into the IFA:

(i) meets the genuine needs of the employee; and

(ii) results in the employee being better off overall than the 11 employee would have been if no individual flexibility 12 arrangement were agreed to …

So do not worry about that then in the circumstances. The employee completes a genuine needs statement and has an IFA and that is the end of it. And you wonder what the purpose of that statement is.

Labor is concerned that this particular statement which, remember, is essentially nothing more than a testimonial from the employee, is likely to work in conjunction with legal defence provisions included in the Fair Work Amendment Bill in relation to individual flexibility arrangements. Under the current act, a defective individual flexibility arrangement is deemed to have been contravened when it remains on foot until withdrawn. Employers may face prosecution for breaches of a flexibility clause where the individual flexibility agreement did not result in the worker being better off overall.

Now, if found guilty, penalties may be awarded against the employer and compensation paid to the worker. Under the defence proposed in this bill:

An employer does not contravene a flexibility term of a modern award in relation to a particular individual flexibility arrangement if, at the time when the arrangement is made, the employer reasonably believes that the requirements of the term were complied with, …

And what would prove that an employer had reason to believe they were being complied with in terms of the flexibility condition? Why? Of course, the genuine needs statement could be provided by the employee. What a lucky coincidence for the employer!

The employer may then offer this statement as evidence of a reasonable belief and escape penalty or the requirement when they may have underpaid the employee. So it is about helping the employer. It is about providing evidence to assist the employer. It is not about helping the employee at all; it is about helping the employer. It is a provision that makes it more difficult in terms of fairness in the workplace.

Although the coalition policy identified 'reasonable leave defences' with respect to recommendation 11 from the Fair Work Act Review panel, the recommendation itself was that the defence only be available to employers who had notified the Fair Work Ombudsman of the IFA. As you may have guessed, Mr Acting Deputy Speaker, the Fair Work Amendment Bill before the chamber today contains no requirement that the employer notify the Fair Work Ombudsman in writing of the IFA, the name of the employee or the award or agreement under which the IFA was made. All this was suggested by the review panel in recommendation 10. It was all ignored in the legislation before the chamber.

Then there is the curious case of the 'better off overall' test. For the purpose of this test, the Fair Work Amendment Bill proposes inserting a note providing that 'benefits other than an entitlement to a payment of money may be taken into account'. That is all well and good. Recommendation 9 from the Fair Work Act Review panel details changes to the 'better off overall' test with respect to non-monetary benefits. Reassuringly, although the coalition's policy to improve fair work law was silent on the 'genuine needs' statement, it does mention recommendation 9 in a section that lists the kinds of recommendations that a future coalition government would implement. Let's have look at the text of recommendation 9. It says:

The Panel recommends that the better off overall test in s.144 (4) (c) and s.204 (4) be amended to expressly permit an individual flexibility arrangement to confer a non-monetary benefit on an employee in exchange for a monetary benefit, provided that the value of the monetary benefit foregone is specified in writing and is relatively insignificant, and the value of the non-monetary benefit is proportionate …

However, despite promising to implement recommendation 9 the note purporting to do exactly that fails to implement the safeguards recommended by the review panel.

You have to be a bit suspicious of a government that sees no need for the monetary entitlement that an employee foregoes when entering into independent flexibility agreement to be written down, or that it is at least proportionate to the non-monetary benefit that it is being exchanged for. And Australian workers can quite reasonably ask what this government is trying to hide from them in this circumstance.

And we should consider the workers most likely to be impacted by this bill—those workers that I referred to earlier in my speech who are worse off under AWAs. The AMWU submission to the Senate Education and Employment Legislation Committee inquiry on this bill identified that those workers who are reward reliant are 'predominantly casual, 55 per cent; and part-time, 65 per cent, with 75 per cent earning less than $18.60 per hour, meaning that their bargaining position when it comes to employer initiated flexibility arrangements is already at a disadvantage'.

The government's suggestion that this bill provides greater protection and certainty for workers in relation to individual flexibility agreements is pure bunkum. It is complete and utter nonsense. We have heard about it time and again from those speakers opposite. I suspect that many Australians will see this bill for what it is: the first step back towards WorkChoices and the government's dark and relentless right-wing agenda desiring to erode wages and conditions of Australia's most vulnerable workers.