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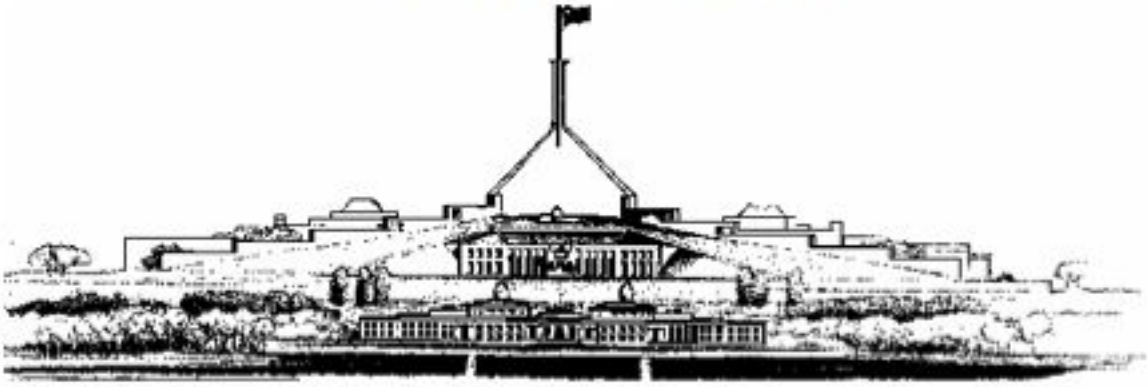

# THE SENATE

# WORKPLACE RELATIONS AMENDMENT (FAIR TERMINATION) BILL 2002

## In Committee

## SPEECH

**Thursday, 12 December 2002**

BY AUTHORITY OF THE SENATE

# SPEECH

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**Senator JACINTA COLLINS** (Victoria) (11.15 pm)—I would like to go back in my brief remarks to what I think the fundamental issue is here. I think Senator Harris, to give credit where it is due, highlighted it in his comments. We were talking about employees' rights to fair termination and whether casuals—and Senator Murray raised whether it was reasonable that there be a differential standard for casuals as opposed to full-time employees; I am not sure that I adopt that perspective—should need to wait for 12 months before they attracted any right to a fair termination. Senator Harris clearly highlighted that one of the principal issues here is whether the parliament should maintain an increase in security of employment for casual employees. The issues he raised about ability to attract credit or purchasing power or regularity of employment all relate to insecurity of employment—a significantly growing problem in the Australian work force, as was also highlighted by Senator Ludwig, and I think Senator Murray would also accept this. What this bill represents is reinforcing an increase in that insecurity.

As Senator Harris highlighted, we have had an inconsistency between the judiciary and the parliament on this matter, but courtesy of Senator Ludwig's comments—and I thank him for reminding me of some of these issues—I would like to revisit the nature of that inconsistency. Senator Murray and I have devoted time over many, many years to issues related to termination of employment, the rights of casuals and first wave, second wave and third wave industrial relations reform. Senator Murray, what wave are we up to at the moment, according to your theory? I think it is the fourth, isn't it? But through many of these waves, Senator Murray would accept that I have consistently pursued these issues related to casual employment.

Senator Ludwig kindly reminded me that when I sought the disallowance of the regulations in this matter the Democrats maintained that those regulations should not be disallowed but indicated that they thought it was appropriate that those provisions be reviewed. Senator Ludwig quite rightly highlights that the product of any such review would not really come before the parliament, except in a number of senses which I would like to address. Firstly, we have evidence of the growing incidence of casual employment, a trend that we have not been able to stem. We also have, as Senator Murray referred to, the Hamzy case. In my interjection earlier I highlighted to Senator Murray that I thought that was actually an indicator of the level of consistent and determined aggravation by some sectors of the industrial relations community in relation to this issue regarding casuals.

While I have addressed this, Senator Murray said that perhaps his perspective came from a more independent stance, and I would concede that issue. I am quite happy to concede to the chamber that my history and involvement in casual employment commenced when I was a 16-year-old casual working in the retail industry. Developing from that employment in the retail industry and then getting involved in organised labour in the retail industry, I have had ingrained in me the problems that casual retail workers face. This is why the retail union took this case right up to the Federal Court. We know that fair termination issues are often a significant and considerable issue for many retail workers.

Senator Murray also referred to some data he had on federal jurisdiction issues in relation to casual employment. I can perhaps enlighten Senator Murray that the federal jurisdiction is extremely significant for casual workers right across the retail sector. It is probably the principle jurisdiction for those workers. This is one of the reasons why the Hamzy case proceeded. Extending to 12 months the period where these workers will not have access to fair termination means that a considerable portion of these workers will never have access to fair termination rights. Senator Murray has said that one of his concerns is what the federal government's harmonisation agenda might be. With respect, I would say to Senator Murray that what the federal government's harmonisation agenda might be is no justification for abandoning appropriate casual standards. My association with the retail sector and the retail union has been quite consistent on this point.

Australian workers in the retail sector attract standards of employment that are perhaps the envy of the world. The reason for that is that a well-unionised and organised sector have been able to maintain those entitlements. They have principally done that within the institutional organisations that exist in Australia and those institutional

organisations are the bodies that have played umpire and played independent party. So when Senator Murray says to me that perhaps the Democrats stance here is a tad more independent than my perspective might be, I concede that. But I would encourage the Australian Democrats to look at what the commission has said during this period of review about issues relating to casual employment. The Hamzy case is one example where the commission indicated that a short period of employment could not really be regarded as something more than a six-month period. I would also refer to the metals case in relation to casual employment, which indicated that casuals should have access, where possible, to full-time employment after they have been engaged for a period of more than six months. Again, it was a six-month benchmark.

I would be happy to concede that there are various considerations in how far you can extend that position or even about whether that position was relevant to this particular debate. But when we look at what is regarded by our independent umpire as a reasonable benchmark in relation to casual employment, we have had an indication twice— since the Hamzy case in the Federal Court— that six months is the appropriate benchmark. That would reinforce to you, Senator Murray, that perhaps your original caution in supporting the government, when the Labor Party moved the disallowance of the regulations in relation to that six-month period, was right. The review the Democrats sought has not been taken seriously by the government, and we have had no result of any such review. But we do have two decisions by the independent umpire on what is an appropriate benchmark in relation to casual employment. We have the Hamzy case decision and the metals case decision. I can only encourage the Democrats to regard those decisions, not contradicted by any other decision of either the court or the commission, as perhaps the more appropriate benchmark at this point in time.

The government might indicate that 12 months might be a more appropriate position in the future. It might argue that, in a harmonisation agenda, that is a more appropriate benchmark. It might argue—as you, Senator Murray, indicated back as far as 1996—that it is appropriate to have a differential benchmark between full-time and casual employees, which is something I am far from convinced about. Perhaps I should briefly revisit that issue of whether there should be such a distinction between full-time and casual employees. In labour terms, people often regard it as a very clear distinction between a full-time worker, a part-time worker and a casual worker. In an industry where there is a very high proportion of regular casual workers that distinction is a bit less clear than people might often think. The retail industry is full of thousands upon thousands of workers regarded as regular casuals. These workers attract entitlements such as annual leave and sick leave in some states. A move towards reinforcing a 12-month exclusion in this matter for casuals would mean that such workers, even though they are entitled to holiday pay, annual leave and sick leave, have no entitlement in relation to fair termination.

This is a considerable concern for me. Given the caution that the Australian Democrats applied when they were not prepared to support the disallowance on the last occasion, I can only reinforce that the High Court and the commission have since reinforced that six-month benchmark. There are many good reasons for many casuals to deserve access to fair termination before a 12-month period, particularly those regular casuals who attract entitlements to a myriad of other conditions that most people do not realise, such as holiday pay, annual leave and sick leave. It is a bit difficult to see why they should wait for 12 months before they can attract an entitlement for fair termination.