

STATE-BASED LABOUR RELATIONS REGULATORY FRAMEWORK

Motion

Resumed from 31 March on the following motion moved by **Hon Louise Pratt** -

That this house calls on the federal government to acknowledge the right of the state of Western Australia to maintain our state-based labour relations regulatory framework, including -

- (a) the right of Western Australia to enact and enforce its own statutes dealing with industrial relations for the betterment of Western Australian workers, employers and the general community;
- (b) the historical role and scope of the Western Australian Industrial Relations Commission; and
- (c) labour relations policies which offer an alternative from commonwealth regimes.

HON RAY HALLIGAN (North Metropolitan) [4.11 pm]: When I spoke on this motion last week, I suggested that I was a little concerned about what the government was asking members in this chamber to agree to. I spoke about some of the words within the motion, including -

... the state of Western Australia to maintain our state-based labour relations regulatory framework ...

I explained that, according to my reading of those words, the government was saying that it believes this state should have the current regulatory framework, no doubt in perpetuity; it believes that labour relations framework should be above all else. If that is the case, I have grave concerns, because in my judgment it is not the best framework to have. I believe that the best framework is the one that was put in place by the previous coalition government. Admittedly, the motion states -

... including -

- (a) the right of Western Australia to enact and enforce its own statutes dealing with industrial relations for the betterment of Western Australian workers, employers and the general community;

Hon Ken Travers: Are you saying that you don't support states' rights?

Hon RAY HALLIGAN: It has nothing to do with states' rights. Paragraph (a) reads correctly, as far as I am concerned. It means any government that brings in, is able to bring in, and has enacted its own legislation. That sits comfortably with me. My concern is with the word "our" in the phrase "our state-based labour relations regulatory framework".

Hon Ken Travers: It is our state's framework. We have a right to have our own state's framework.

Hon RAY HALLIGAN: No, it should be "its", not "our". The word "government" is used also. I do not believe it is being pedantic. It will come down to interpretation. My interpretation is one that suggests that it will make it a little more difficult to accept. The motion also includes the words "the historical role and scope of the Western Australian Industrial Relations Commission". However, before I deal with that, I should go back. Unfortunately, I was distracted by an unruly interjection. I will go back to the words "our" and "its" in the motion. I refer to the second reading speech of Hon Nick Griffiths on 9 April 2002 when the Labour Relations Reform Bill 2002 was introduced. Page 1968 of *Hansard* states -

The Bill sets the scene for a new era in labour relations in this State.

This is the important part -

This Government believes that its choice of industrial relations system is a defining statement about the type of society it wants.

This is not social engineering, is it, Leader of the House? It says "the type of society it" - the Labor government - "wants", not the type of legislation that it believes is in the best interests of the state. The government was trying to create something. It was trying to change the type of society we have.

Hon Kim Chance: Yes, and hopefully all governments are elected for that purpose.

Hon RAY HALLIGAN: No. I believe that society of itself should tell government what it wants, not necessarily what it needs. I have repeatedly been down the path about the difference between wants and needs. The general community - the voting public - should be in a position to tell government what it wants, and the government should take heed of that. It should not be the other way around. I read that as meaning that the government will create the type of society it wants. They are the words. The Leader of the House should read the words. If that is not what was meant, I suggest the words should have been somewhat different. However,

that is not the way I read those words. To me, it means that the government is trying to create the type of society that it wants. The government is not saying that it is listening to the people. I could certainly digress and go down the path about consultation and accountability, and take up four or five hours. However, that is not my intent. Again, the point is that a reading of those words is such that I believe it can be interpreted in the manner in which I have explained it.

The speech continues, and I will paraphrase rather than read all the speech of Hon Nick Griffiths. It states -

Although this economic focus is important, it must be combined with a fair and efficient industrial relations system that can make a major contribution to our vision of a cohesive and just society.

Again, it is the government and social engineering. That is the way I read it. It is the government's vision; it is not the vision of the people. It is not what the people want; it is what the government wants. Because the government is in power -

Hon Kim Chance: "Our vision" could mean the whole of society.

Hon RAY HALLIGAN: It may not. I have referred to just two areas, which are within half an A4 page, in which the minister mentioned "the type of society it" - meaning the government - "wants", and "our vision of a cohesive and just society", meaning the government's vision; yet I am supposed to read that completely differently from the way in which I am reading it. I am sorry, Leader of the House, I do not read it that way.

Hon Kim Chance: What term would you suggest? What all-encompassing term other than "our" would you prefer? It is a pretty broad term.

Hon RAY HALLIGAN: It should be one that the community wants. I know it is broad, and that is the difficulty. Often it can be ambiguous, and that is most unfortunate in any legislation. It is most unfortunate when motions come before this place for debate and we are expected to understand exactly what the government is proposing. All I am saying to the Leader of the House is that just one word in the motion caused me to check something else, and when I checked that something else, I found that - hang on - my interpretation may well have been correct. If that was not the intent - we have a gap of nearly three years from 9 April 2002 until today - why does the government appear to be going down the same path? I hope the Leader of the House intends to speak on the motion, not only to explain what the government intends, but also to outline the future, because I am very concerned about the future under this government.

We are considering the quality of the labour relations regulatory framework. The government was scathing, of course, of the previous coalition government's policy and the legislation that it was able to put through Parliament. Again, I do not think the government has put forward a particularly good argument to support its views. I quote Hon Nick Griffiths from page 9169 of *Hansard* of 2002 as follows -

The aggressive push for the dominance -

That is the important word -

of individual employment arrangements over the collective became an end in itself for the former Government . . .

Hon Nick Griffiths used "dominance", which means to me that both alternatives were in place; that is, agreements could be organised by the individuals or organised collectively. There appears to be an acceptance that that was the case. Hon Nick Griffiths continued -

This Government is not opposed to making provision for individual agreements within the labour relations system. I will reflect that the golden rule of the Greek philosophers was "all things in moderation"; that also guides our endeavours.

Is there an admission in those words that this government would reverse this dominance? There appears to be an acceptance that agreements could be either individual or collective. The accusation was made that the previous coalition government had a dominance of individual employment arrangements. Is the current government now saying that it wants the dominance to be collective arrangements? Of course, members know that unions have a considerable say within collective arrangements. Is that why the government is going down that path? The government appears to accept that the coalition government allowed for both individual and collective agreements. The government is stating that it is not opposed to that concept, but it was most definitely opposed to the coalition's legislation.

The house is asked to accept this motion, the words of which I believe are flawed. It does not tell us unambiguously what the government wants. Paragraph (b) of the motion refers to -

the historical role and scope of the Western Australian Industrial Relations Commission;

Why are we worried about the historical role? If a better model and a better way of doing things exist, should we not consider them and apply them? Why are we worried about the historical role? I am not sure what the government has in mind. Hon Kate Doust appears to be shaking her head. If something has been in place for 100 years, should it stay in place for another 100 years?

Hon Kate Doust: If it works.

Hon RAY HALLIGAN: The motion is not worded that way. It refers to the historical role, not the fact that it is working. Again, assumptions must be made. I do not know what the government means; I have no idea. The motion makes reference to the historical role and scope of the Western Australian commission. Paragraph (c) refers to -

labour relations policies which offer an alternative from commonwealth regimes.

What if they both happen to be the same? What if we have a Labor federal government in about 50 years? If the state had a Labor government, would the state government want an alternative? Would members opposite want to change what was available in the state to differ from the commonwealth scheme just to make it an alternative? Again, I am not sure that the government has thought through the wording of this motion. One can guess what the government is getting at, but I do not think the motion has been worded in the manner intended. It does not achieve the result the government is after. That makes it difficult for me to accept these words as I interpret them until I am told they mean otherwise. Therefore, I ask the Leader of the House to explain exactly what was meant, and not necessarily what was written.

Mention has been made of states' rights in speeches on this motion. I can say here and now that I am very much a federalist. I believe in states' rights, which are particularly important. Hon Ljiljana Ravlich has already said that it is beholden on each and every state to defend its position and its constitutional rights. I take note of the comments of the Minister for Education and Training. I look forward in future to her very strong arguments to the federal government on education matters should the commonwealth try to take control of what we are trying to do in Western Australia. I would like the government to feel exactly the same way on health matters. I hope, irrespective of what government is in power in Canberra, that the government here in Western Australia, whether coalition or Labor, would have exactly the same views about defending its position and constitutional rights.

I must ask one question: what has happened regarding censorship? The Labor government appeared to be happy to hand over censorship laws to the federal government, and to wash its hands of that responsibility. Whether it was too hard, I know not. Whether the minister in question did not have the same feelings as the Minister for Education and Training, I know not. Whether the government has changed its policy on these matters, I know not. Again, the Leader of the house may well be in a position to enlighten me so that I will be placed in a far better position when a vote on this motion is taken. However, it concerns me that there may have been all these differences of opinion over a number of years without the preparedness of the government to say that it is selective in its thinking and that in this instance for these reasons it has gone down this path. I might not agree with the government, but at least it could be open and accountable and say that it did it for these reasons. In this instance it could say that it is not going down the same path and using the same principles for these reasons. This government continually tells everyone in this house and the community at large that it is an open and accountable government. It is important that it show that accountability by explaining to this house exactly what is meant. Our difficulty on this side of the house, and certainly my difficulty, is accepting the word of the government. I never know what to expect next, because there is never any acknowledgement, recognition or admission that this government is selective in its thinking, although when one reads some of the legislation that the government has tried to put through this place over a number of years, I do not think it requires a Rhodes scholar to work out that the government is in fact selective in its thinking but it tries to hide it. I think that is most unfortunate. It says nothing for openness or accountability.

Last week I was debating this motion and speaking about the National Competition Council. I am sure that Hon Dee Margetts will speak at some stage on this motion and may well mention that particular organisation. The NCC, as most members would know, was established on 6 November 1995 after agreement between the commonwealth, state and territory governments. The web site of the NCC states that the NCC's aim is -

“To improve the well being of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest”.

That sounds great, innocuous and simple. However, the problems arise when someone tries to interpret it or add some rules and regulations based on what they believe should happen. Of course, penalties are imposed if these directions are not met. Admittedly, the NCC makes recommendations to the government and the Treasurer in particular. If they are accepted and not adhered to by states or territories, penalties can be imposed. One may very well ask what is the lesser of those two evils - the public interest as the state, but not necessarily the NCC, sees it or the penalty itself. I believe it is something that needs to be revisited.

There was also talk of productivity by Hon Ljiljanna Ravlich, who spoke of the fact that over the past three years Western Australia has had high productivity. It is a pity that the minister was not able to provide us with some information that would support that statement. She may well have been talking about the extractive industries, which create the majority of wealth of Western Australia.

Hon Ljiljanna Ravlich: I was talking about the growth rate of this state. Surely a growth rate of 7.5 per cent would indicate an increase in productivity.

Hon Simon O'Brien: In spite of the Gallop government!

Hon RAY HALLIGAN: This is the whole point. It is exactly what I am alluding to. Can the government show how it has increased productivity and how it has nurtured small, medium and large businesses to enable them to go down the path of creating greater productivity? I would doubt very much that the government can do so. Those types of statements have been around for some considerable time. I will quote again from Hon Nick Griffiths. At page 9169 of *Hansard* he stated -

This government was elected with a clear mandate -

That is an argument and a debate for another day, which I am sure will arise fairly quickly. He continued -

to establish a more balanced, flexible and fairer labour relations system that not only provides for greater productivity and business profitability, but also provides fairness and justice for all employees.

Those are wonderful statements but not something that this government can prove. Many things have happened in this state over the past few years in spite of this government. This government has not been prepared to admit that a great deal of what has happened has nothing to do with its intervention; in fact, I would suggest that things could have been a lot better had it not been for this government.

Amendment to Motion

Hon RAY HALLIGAN: I move -

To insert after the last line of the motion -

Even though the content of the federal legislation is excellent and contains measures that it would be advisable for the Western Australian Parliament to enact. However, in view of the disastrous approach by the Gallop government to workplace relations, the house is thankful for the existence of the commonwealth industrial relations system for without it the Western Australian economy, especially the resources area would be in a disastrous situation.

On that point I conclude.

HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition) [4.39 pm]: I indicate my strong support for the amendment and, therefore, if the amendment were to be successful, my strong support for the motion. It is not often that I find myself agreeing with a motion moved by the Labor Party in this house, but on this occasion I do. However, it is for clearly different reasons from those put forward by the mover of the motion in the first place, Hon Louise Pratt. I believe that this motion reflects one of the difficulties that people like I have when it comes to the issue of federalism. As I said in this place a week or so ago, I am confronted with a party of my own persuasion at a federal level engaging in serious centralist tendencies. On a previous occasion I mentioned a number of areas on which these centralist tendencies were becoming obvious. I mentioned industrial relations, which is what this particular motion is all about.

The motion reads -

That this house calls on the federal government to acknowledge the right of the state of Western Australia to maintain our state-based labour relations regulatory framework, including -

I agree with that. I believe that industrial relations are in fact a state responsibility. It goes on to say -

- (a) the right of Western Australia to enact and enforce its own statutes dealing with industrial relations for the betterment of Western Australian workers, employers and the general community;

I agree with that. It goes on to say -

- (b) the historical role and scope of the Western Australian Industrial Relations Commission; and

I agree with that to a certain extent, because the Western Australian Industrial Relations Commission does not necessarily have a brilliant record in sorting out the industrial relations problems in Western Australia. However, in my view this state is entitled to have its own legislation for the management of industrial relations, and if this state wants to have a Western Australian Industrial Relations Commission of the sort that it has, that is its decision to make.

It goes on to say -

- (c) labour relations policies which offer an alternative from commonwealth regimes.

I support that absolutely. The reason I support that absolutely is that, just as night follows day, there will be a Labor government in Canberra at some time in the future. Heaven help us if it is in the near future, but there will be one at some time in the future, because that is the nature of politics. If it transpired that a federal Labor government came to office, we know absolutely that it would legislate for the management of industrial relations, as it is entitled to do. We know also that if the states did not have the capacity at the state level to legislate for their own industrial relations systems, that federal legislation would apply to all the states of Australia. That is why I have a strong view about the fact that the current federal government is seeking to take control of industrial relations legislation across Australia. Under the existing arrangements, both the commonwealth and the states can legislate on industrial relations law. That has resulted in significant differences between the commonwealth industrial relations legislation and the state industrial relations legislation and has enabled those states that have enlightened industrial relations policies to do very well when it comes to productivity and peace in the workplace.

When the Liberal Party came into government in 1993, Western Australia had industrial relations legislation that was the product of a previous state Labor government. At the same time, we had a federal Labor government, and its industrial relations legislation was in place at the same time as the state's industrial relations legislation. Therefore, we had in place bad industrial relations practices at both the state and federal level. The Court government, through the work of the then Minister for Labour Relations, Hon Graham Kierath, brought in significant amendments to the state industrial relations legislation. The most fundamental of those changes was the introduction of individual workplace agreements. Individual workplace agreements were grabbed with open arms by resource companies and resource company employees across the state. I mentioned the other day that Hamersley Iron Ltd used to be heavily unionised. However, in 1993, when individual workplace agreements became available, virtually every employee of that company was engaged under a workplace agreement, and the unions virtually disappeared from Hamersley Iron. The same applied to a number of other resource companies. The reason that happened is that the companies recognised that it was in their best interests to negotiate with their employees a package that would benefit both the employees and the company, and the employees recognised that they had some bargaining power. That resulted in significant improvements in the pay and conditions of workers and in significant benefits for the companies in terms of both productivity and profitability. That created an environment that enabled the resources sector to progress very rapidly during the 1990s.

It also enabled Western Australia to survive the Asian economic downturn that occurred during that time in a way that many other countries in the world could not manage to achieve. It is for that reason that I support the amendment moved by Hon Ray Halligan. The amendment refers to the need for an industrial relations regime in Western Australia that is supportive of the resources sector. During the second term of the Court government, one of the things that the public of Western Australia did not understand very well was the need for that government to respond to the problems brought about by the Asian economic crisis. That had a significant impact on the export potential of Western Australia and on a range of economic activities within Australia. However, because both Western Australia and Australia had in place industrial relations regimes that allowed for flexibility in the workplace, we were able to largely get through that crisis without too much damage to the economy or government revenue. It was at that time that the Court government made the decision to increase its capital works spending. That was actually one of the years in which we had a deficit budget. The reason for that deficit budget was that we took the view that in order to overcome the negative consequences of the Asian economic crisis, we should increase the capital works budget at the state level and also pick up some of the downturn that was occurring in the manufacturing sector. We did not get any credit from the Labor Party for doing that, obviously. One of the reasons that governments sometimes have deficit budgets is that a particular set of circumstances demands it. The problem now is that although the government has boom times on its hands because of the massive growth in China and is enjoying massive revenues, it is spending every darn cent of that revenue. My view is probably very conservative, and perhaps a little old-fashioned, but it is my fundamental belief that in good times we should be saving for the bad times. The good economic times that we are experiencing now will not be this good again for a long time. The massive increases in revenue that the government is enjoying should be used to either reduce debt - this government is not doing that - or invest in major infrastructure facilities that will benefit the community well into the future. Another alternative is to just save the money. Regrettably, this government is spending every last cent. It is operating on the basis that it will have windfall gains in revenue each year. The other day when I asked a question about the budget revenue outlook and oil prices, I was told that the government was assuming an oil price of \$US45 a barrel, falling to \$US35 in 2005-06. It is now \$US55 and heading north. I estimate that this year the government will get additional revenue of between \$150 million and \$250 million simply because the price of oil is in that range. The government will spend that revenue as well. The Treasurer has told us that there is no capacity for tax cuts.

If ever there were a time in the history of this State when there was an opportunity for tax cuts, it is now. I would not be unhappy if the government did not have tax cuts, provided it invested the money in massive infrastructure development in this State. I mean by that things such as major roads, major rail systems - not just ones that will deliver passengers from Mandurah to Perth at great expense - and ports. All of the infrastructure facilities that are important for the future of our economy need to be developed now, not by way of borrowings, but by using the revenues that are being generated at this time. However, I am digressing from the motion.

I will demonstrate that the resource sector, which is providing most of the wealth that is pouring into the government's coffers, is productive only because the employees in most resource companies are now employed under federal Australian workplace agreements. When the Gallop government came to office and repealed the legislation introduced by the Court government and abolished individual workplace agreements, the vast majority of employees who were on state individual workplace agreements headed to the Australian workplace agreement regime. They did so for very good reasons. They knew that their working conditions and remuneration were better and that they were able to get more desirable jobs.

Hon Paddy Embry: They could choose also how they spent their money rather than have someone else spend it for them.

Hon NORMAN MOORE: The member is right. People employed in the resource sector have moved to Australian workplace agreements in droves. That is why it is important for people to have a choice and to make that choice available to them. Two different forms of industrial relations systems operate under the federal and state governments. Workers in certain occupations are entitled to choose whichever system they think is more appropriate to their circumstances. The resource sector, which generates the wealth, is the sector that is most keen on individual workplace agreements. Many people do not understand that the resource sector employs many people in regional Western Australia and remote parts of WA in particular. The working conditions and circumstances of employment in remote Western Australia are quite different from those that apply in the city. City-based working conditions cannot be applied appropriately in many of the remote resource projects around the state.

Over time the resource sector has developed continuous 12-hour shifts. In some cases unions, and in other cases employees, have accepted those working conditions. Those working conditions must be assessed from time to time to ensure that they remain appropriate. The resource sector, which is fundamentally very capital intensive, requires that capital to be used on an ongoing 24-hour-a-day, seven-day-a-week basis for 52 weeks of the year to achieve maximum productivity from the huge amount of capital that is invested. Therefore, the workers are required to work for many hours and, in many cases, for very high wages. Also, they are given a reasonable amount of time for recreational leave. Fly in, fly out operations or similar conditions apply in many towns in which the resource sector operates.

If those employees were unable to access Australian workplace agreements and were constrained to operate under the legislation passed by the Gallop government, the resource sector would be in serious trouble. I say that because although the state is doing very well at the moment, the resource sector is a very competitive business. For example, Brazil's iron ore operations compete with Australia's iron ore operations. As an aside, I noticed in today's paper that the Chinese government is concerned about the prices BHP Billiton is expecting the Chinese to pay for its iron ore. The Chinese government has asked the Australian government to intervene in the price-setting arrangements for iron ore. For all sorts of reasons I do not think governments should get involved in negotiations for the prices of commodities anywhere. However, it is an indication that some companies might be taking more than they need right now without thinking beyond the immediate future.

Resource companies are currently doing very well. However, the chilly winds of competition exist. If the cost of production in Australia increased as a result of industrial relations changes, it would not take long for those companies to lose their market share. As I said, it is a very marginal business because of the amount of competition. Although the benefits are significant, the variation between the capacity of Australia to deliver iron ore compared with Brazil, for instance, is not great. A very small reduction in the productivity of Australian companies would see them suffer at the hands of other competitors around the world. It is because employees can be employed under a federal industrial relations regime that is different from the state regime provided by this Parliament that the industry has been able to survive and prosper. That is why I am very anxious for workers to have the ability to shift between either the state-based regime or the federal regime, depending on their circumstances. One can only hope that Labor governments, including this government, will understand that their industrial relations legislation would be seriously disadvantageous to the industry that provides most of the wealth in this state.

This motion refers to the states having rights to do certain things, and I agree they should have rights to do certain things. However, the states will retain the right to legislate for these areas only if they deliver. The commonwealth is interested in taking over industrial relations only because it believes that the state regimes do

not work. The amendment we have moved describes the content of the federal legislation as excellent - and we believe it is. Although it contains measures that would be advisable for the Western Australian Parliament to enact, we do not think that the federal Parliament should enact industrial relations legislation that overrides Western Australian legislation. As I said the other day - and I will keep repeating it in the hope that somebody will listen to me one of these days - the federal government will legislate in a centralist way only if it believes that the states are not delivering. For example, I mentioned Brendan Nelson who wants to implement national legislation for education and run every school in Australia. He argues that that should be done because he believes that the states are not delivering the appropriate services. He wants also to build TAFE colleges because he does not believe that the states are delivering appropriate TAFE systems. Similarly, the federal Minister for Health and Ageing wants to take over the state hospitals because he believes the state governments are not delivering appropriate health services. The federal government wants to legislate for industrial relations also because it believes the states are not delivering. I would argue against the federal government carrying out a number of those measures because I believe that the states are delivering in those areas. They are not delivering the services as well as they could be, but they are being delivered as well as, if not better than, the federal government could deliver them. I do not believe that good government will be produced if Canberra dominates Western Australia. However, on the matter of the federal government's industrial relations legislation, I believe it is right. If it cannot encourage the state government to enact decent industrial relations legislation, it feels that it must do something.

Members on this side of the house are in a quandary over this motion and motions of this type because they ask us to support the rights of the state to do things even though we know that when the state does them, it has done them incorrectly. Fundamental to my belief as a federalist is that it is our right to make our own mistakes at the state level. In those areas that are the responsibility of the states, it is our right to do as well as or as bad as we want. It is our business, it is not the business of the commonwealth. We acknowledge that the commonwealth government has significant grounds for concern. We acknowledge that the ability of federal legislation to apply in some parts of the state is enabling our resource sector to be competitive. However, at the end of the day, we would much rather the state government recognise that its union-controlled and union-dominated industrial relations legislation is old fashioned, old hat, out of date and yesterday's business. It is no longer relevant to the modern workplace. It is simply yesterday's way of doing business, and times have changed.

Debate interrupted, pursuant to standing orders.

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