STATE-BASED LABOUR RELATIONS REGULATORY FRAMEWORK

Motion

Resumed from 26 May 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 -
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> (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;
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> (b) the historical role and scope of the Western Australian Industrial Relations Commission; and
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> (c) labour relations policies which offer an alternative from commonwealth regimes.

HON ADELE FARINA (South West - Parliamentary Secretary) [4.26 pm]: When I was last on my feet raising concerns about the Howard government's push on states' rights in the industrial relations system and on workers' rights on 26 May, John Howard was unveiling details of the proposed reforms to the industrial relations system in this country. The reform package was worse than I imagined it would be. Not only did it include wide-ranging changes to the industrial relations system that will result in a fundamental shift in the balance of bargaining power to favour employers at the expense of workers, but also it proposed the establishment of national occupational health and safety standards and a national approach to workers' compensation; two things that I did not believe the federal government would be interested in taking on. As yet we do not know the details of the legislative changes proposed. We hope only that there is not more devil in the detail when we do know them.

On 26 May I was drawing the house's attention to the inconsistencies and falsehoods in the arguments advanced by John Howard in his push for a national industrial relations system and the lack of justification for the Howard government's push and attack on state industrial relations rights. I was explaining to the house that John Howard has been arguing that a national industrial relations system based on the power under corporations law would result in 85 per cent of all employees being covered under a single national system, and that 800 000 employees currently not covered under an award or a workplace agreement would be covered for the first time. John Howard has not told the Australian community that although the new national system may pick up 800 000 workers who have slipped through the cracks of the present dual federal and state system, at least 15 per cent of workers - that is, one million to 1.5 million workers - will drop out of the proposed national system and, therefore, be left uncovered and unprotected. Workers employed by partnerships, sole traders and state governments would not be covered by a unitary system based on the corporations power. These workers would not necessarily become subject to state awards, as in many instances there would simply be no applicable instrument under which to cover them. The cost of and effort in maintaining a state system for around 15 per cent of the work force would be too onerous in many cases. One group that would easily fall through the crack of the new national system is independent contractors, owner-drivers and outworkers. The truth is that the proposed new unitary national system fails to provide the purported single national industrial relations system; it fails to cover all workers. This means that there will be gaps, as a result of which there will be complexities in the system; of course, John Howard knows this. He knows that a federal government does not have the constitutional power to take over the rightful jurisdiction of the states and that the powers under the commonwealth's corporations law cannot give workers 100 per cent coverage. He is working on the basis that the new laws will cover 85 per cent of the work force and that state governments will no longer continue to provide a state industrial relations system for unincorporated workplaces, simply because it would be too expensive and not in the public's interest. As a result, the states would prefer to hand over the residual coverage to the commonwealth for referral of state powers. John Howard is proposing that what he cannot take lawfully, he will coerce the states to deliver in any event.

John Howard argues that the maintenance of the dual federal-state system involves additional costs and inefficiencies associated with maintaining multiple tribunals, registries and enforcement arrangements. These alleged savings would not be realised if the states provided coverage for the remaining 15 per cent of the work force that is not covered under the Howard unitary national system. The Howard government's push to introduce a unitary national system has little to do with wanting to do away with the duplication, cost and complexity of the current dual system. If we have a close look at it, we will find that the costs, inefficiencies and complexities referred to actually lie within the current federal system, not the state system.

The Howard government's push to take over state industrial relations jurisdiction is about grabbing, by whatever means, the power to directly legislate on employment conditions to bring about a fundamental shift in the bargaining power in favour of employers and at the expense of workers. It is about pushing through the intent of the 12 workplace relations amendment bills blocked by the Senate in the last term of the government.

The proposed new national system is not a true single national industrial relations system, because it fails to provide coverage for all workers. In doing so, this reform, which is designed to get rid of one inefficiency, will inevitably give rise to other inefficiencies.

The only way for the commonwealth to achieve coverage of all employees under a single national workplace relations system is for all the states to agree to refer their workplace relations powers to the commonwealth or by the states passing complementary legislation that mirrors the operation of the federal Workplace Relations Act. This would mean having to reach agreement with the states on the form of the national system. John Howard is not about compromise or fairness; he is about stripping back the rights of Australian workers - rights they have had for 100 years. More importantly, in his push to achieve this, John Howard has failed to advance any justification for the destruction of the state industrial relations system. The current dual state-federal system provides employers and workers with choice. The proposed unitary national system will remove that choice and will create uncertainty for many workers and employers because of the restricted application of the corporations power.

Currently, 60 per cent of the Western Australian work force is covered by the state system and 40 per cent is covered by the federal system. Clearly, many employers see merit in the state system compared to the complex, expensive, dispute-prone federal system. While the federal system covered just 40 per cent of Western Australian workers, it was responsible for almost 70 per cent of industrial disputes in this state last year. It is not surprising then that the Westpoll reported in *The West Australian* on 4 June 2005, indicated that 50 per cent of voters are against taking power away from the Western Australian Industrial Relations Commission and 58 per cent of voters are against the proposal to relax unfair dismissal laws.

I now turn to two specific aspects of the proposed reforms. The first is the award safety net. Under the Howard government's proposed unitary industrial relations system, the award safety net will effectively be abolished. Currently, there are 20 award entitlements, known as allowable matters. These allowable matters underpin the very basis of Australian employees' working conditions, whether they are in awards, workplace agreements or enterprise bargaining agreements.

Under the proposed national system, the Howard government will introduce legislation setting key minimum conditions of employment - annual leave, personal carers' leave, parental leave, including maternity leave, and the maximum ordinary hours of work. Four existing allowable matters will be removed from awards - jury service, notice of termination, long service leave and superannuation. The justification for this is, simply, that they are already covered by legislation. It is interesting that, on the one hand, John Howard argues that we must have a unitary national system, because working out what is happening in six state jurisdictions and the federal jurisdiction is too confusing and it is much easier to have all the information in one place; however, on the other hand, he is quite happy for employers to look through four, five or six pieces of legislation to determine the conditions of employment for their employees. For some reason, that does not seem to be complex.

A further 11 of the allowable matters are subject to review by a task force. These include the classification of employees and skill-based career paths, incentive-based payments, piece rates and bonuses, public holidays, allowances, loadings for working overtime or for casual or shift work, penalty rates, redundancy pay, stand down provisions, dispute settling procedures, type of employment, and pay and conditions for out-workers. The task force will also review existing award wages and classification structures. Again, John Howard refuses to guarantee that the level of these matters currently in awards will not be reduced. Many workers in certain industries are currently entitled to safety equipment that includes protective clothing or an allowance to purchase their own safety equipment and protective clothing. This basic employment right is protected by the state's awards system and this very basic right is now under threat by the Howard government's national system.

The undermining of the award safety net and the no-disadvantage test will undermine the conditions of Australian workers. By not directly banning unions and the ability to collectively bargain, the proposed changes will make it harder for employees to be represented by unions in negotiations. Therefore, it will be easier for conditions to be undercut. Effectively employers will have the right to decide whether employees can be represented by a union and they will be able to make conditional offers of employment - no workplace agreement, no job; it is that simple.

The protection of employment conditions currently enjoyed under the state awards will be lost, leaving workers worse off. Interestingly, a comparison of employment conditions in individual workplace agreements and awards in a Western Australian report, which was published in February 2002, found that 56 per cent of all workplace agreements were below the award rate of pay. The figure was even higher for casuals, at 77 per cent. The workplace agreement minimum rate of pay was $50 less than the lowest award minimum rate of pay and 67 per cent of workplace agreements did not have overtime rates. We have also found that six times more casual jobs have been created compared to permanent full-time jobs and the proposed changes to the award safety net are a real concern in light of those statistics.

Changes stripping the powers of the Industrial Relations Commission will result in there being no independent umpire to intervene in disputes or where a collective or individual agreement fails the no-disadvantage test. There will be no-one to check this. The Howard government argues that the adversarial nature of the Australian Industrial Relations Commission is out of date, yet it is the very basis of our system of justice.

I now turn to the unfair dismissal laws. The Howard government proposes to legislate to exempt businesses with up to 100 employees from unfair dismissal laws. Approximately 3.8 million employees work in small to medium-sized businesses and they will lose protection from unfair dismissal under the proposal. They will be vulnerable to dismissal, even if the sacking is unfair or unreasonable. Ninety-nine per cent of private sector employers have less than 100 workers. Therefore, all those workers will not be covered by the new laws. The extreme changes to the unfair dismissal laws are proposed even though less than 0.3 per cent of small businesses experience federal unfair dismissal claims annually and 90 cases are settled out of court annually. In the last federal government survey, only 0.9 cent of small businesses cited unfair dismissal laws as a reason for not hiring staff, yet it is the very justification that John Howard announces when arguing that the unfair dismissal laws should be abolished. He argues that the unfair dismissal laws are preventing the creation of jobs. However, in 2001 the Full Bench of the Federal Court in Hamzy v Tricon International Restaurants trading as KFC examined this very question: whether exempting small businesses from unfair dismissal laws would lead to the creation of jobs. The court concluded that no such link exists between unfair dismissal laws and employment. Clearly, in the application of unfair dismissal laws there is absolutely no justification for making a distinction on the basis of the size of a business. John Howard proposes that unfair dismissal laws will continue to apply to businesses with more than 100 employees. However, to balance that, the government will extend the probation period for new employees from three to six months. There will also be some streamlining of the current system, although we do not have the detail of what that will be. In all these changes it will be interesting to see exactly what sort of impact the unfair dismissal laws will have on workers, particularly unskilled, low-income workers who are trying to secure mortgages.

On the question of occupational health and safety matters, the unfair dismissal laws raise serious concerns for workers speaking out against unsafe workplace practices. Who will raise a safety issue at work if he knows the result could be that he loses his job? There is real concern that this sort of reform will lead to greater injuries, and possibly deaths, in workplaces. The proposed changes will result in employers having unprecedented workplace power over employees. The main message in all this is that the Howard government has failed to discredit the state industrial relations system that serves Western Australian workers very well. It has failed to justify the need for, and the benefits of, the proposed changes. The Howard government's extreme changes to the industrial relations system are not in the best interests of workers, employers or the Australian economy.

HON SALLY TALBOT (South West) [4.43 pm]: It is an honour to follow my colleague Hon Adele Farina who has given the house a very cogent and thorough analysis of the issues that we are canvassing in this motion. One gets an interesting perspective as a new member in this place. When I saw this motion on the books I took the opportunity of looking at the history of the debate. Members on this side of the chamber have made very cogent remarks about fairness and the need for a level playing field in the workplace that almost look like motherhood statements. It is a mark of the tragedy of this type of move on the part of the federal Liberal government that we are forced to defend such basic rights that people, in other contexts, might be tempted to take for granted.

It is disconcerting to find such a high degree of consensus between the other side of the house and this side of the house. However, some of the interjections during this debate show that some honourable members opposite are far more interested in playing the man or woman rather than the ball! It was enlightening to see the Leader of the Opposition agreeing with the three clauses of the original motion.

I note one of the most devious things that the Prime Minister has done in establishing the debate is to express his position in such broad terms that we can only express our opposition in equally broad terms. However, it is very heartening to note that that has not impaired the quality of the debate on this side of the house at all. Indeed, it is fair to draw people's attention to the fact that the debate so far has provided a very full and colourful history of the union movement in Australia -

Hon Simon O'Brien: You and your colleagues have given us very entertaining preselection speeches.

Several members interjected.

The PRESIDENT: Order, members! One at a time, please.

Hon SALLY TALBOT: That shows the most enormous ignorance of the processes of the party that we represent on this side. As a former party official, I am happy to take my colleagues on the other side of the house aside at some stage and explain in some detail how the rules of the Labor Party work.

Fortunately, the fact that John Howard has not been able to articulate the precise detail of what he has in mind has not impaired the quality of the debate from this side of the house. I have been a member of Parliament for only four weeks, and during that time I have discovered that some people in my electorate of the South West Region read *Hansard*. I thought it might be useful to give my electors a Cook's tour of the debate so far. The original motion was moved by my colleague Hon Louise Pratt, who gave the house a very thorough account of how the Howard government has centralist tendencies in a number of different agendas and how those centralist tendencies were operating against the best interests of the state. Areas she mentioned, which have been referred to a few times, include the moves in taxation. We are being held to ransom in a way that is grossly unfair and misleading to the taxpayers of Western Australia. Other areas include education, health and law reform. The latest stunt Howard has tried to pull on us involves the national water strategy.

Hon Ljiljanna Ravlich stated, "If it ain't broke, don't fix it". How much more cogently could we put our position? Western Australia has a fair industrial relations system that is good and sound. All the economic indicators show how well our system is working.

Debate interrupted, pursuant to standing orders.