INDUSTRIAL AND RELATED LEGISLATION AMENDMENT BILL 2007

Second Reading

Resumed from 14 November 2007.

HON RAY HALLIGAN (North Metropolitan) [7.54 pm]: We are being asked to consider the Industrial and Related Legislation Amendment Bill 2007, which is a bill for an act to amend the Industrial Relations Act 1979, the Magistrates Court (Civil Proceedings) Act 2004, the Children and Community Services Act 2004, the Occupational Safety and Health Act 1984, the Workers' Compensation and Injury Management Act 1981, the Minimum Conditions of Employment Act 1993 and the Public Sector Management Act 1994.

Whenever we see legislation relating to industrial relations coming through this place from this government, I am sure that members on this side of the chamber, as do I, look at it with some trepidation, knowing full well what this government tries to do more often than not. This bill is a 2007 bill. It was introduced in the other place in September or October last year, prior to the last federal election. It would appear that the government was trying to make some changes at a state level to counter some of the elements of the federal WorkChoices legislation. One wonders why it took so long for this bill to progress to this chamber. One may very well ask whether it is because we now have a federal Labor government in place. I wonder whether this government has the commitment to this area that is being suggested.

I will go through some of these individual acts and see what some of the changes are; it may enlighten members as to what the government is trying to do. The first act that this bill amends is the Industrial Relations Act 1979. It is said that the bill before us will mainly expand the jurisdiction of the Western Australian Industrial Relations Commission to deal with denied contractual benefits and to hold joint proceedings with other state industrial relations tribunals. That of itself does not appear to be something that should cause a great deal of concern, although, as I said before, one never knows with this government. Clause 3 of the bill relates to amendments to the act. As the explanatory memorandum states, the objectives of the amendments are to —

(a) expand the scope of denied contractual benefits claims that the WAIRC may deal with, beyond industrial matters to any express or implied condition of the employment contract, including implied minimum conditions of employment in some circumstances;

(b) enable the WAIRC to participate in joint proceedings with other tribunals in relation to General Order matters, including State Wage order matters;

(c) remove the salary cap for unfair dismissal and denied contractual benefits claims;

(d) amend publication requirements relating to area and scope provisions in section 29A of the IR Act;

(e) ensure the validity of appointments under the IR Act, including appointments of industrial inspectors, the clerk of the Western Australian Industrial Appeal Court, the Registrar and deputy registrars of the WAIRC.

The amendments are quite embracing. Although in most areas it is not something that would concern members on this side of the chamber because we are always looking for a fair and reasonable situation as far as employer/employee relations are concerned, I will be asking the minister responsible to advise the chamber of the so-called benefits of some of these amendments.

The next act that the bill amends is the Magistrates Court (Civil Proceedings) Act 2004. The primary objective of the amendments in part 3 of the bill is to improve employees' access to the Magistrates Court for an alleged breach of their contract of employment by their employer; that is, an employment-related claim. Employment-related claims will be subject to the Magistrates Court's jurisdictional limit of $50 000, which will increase to $75 000 on 1 January 2009. Members of the opposition do not have any grave concerns about these amendments. Again, they are fair and reasonable. If workers have a legitimate claim, they should be provided with every opportunity to put forward that claim and have it heard and dealt with in an equitable manner.

The amendments to the Children and Community Services Act 2004 relate to young people who, according to this government, are quite frequently caught up in employment situations that lack equity. The amendments to the act will reinstate protections for children employed by constitutional corporations removed by the WorkChoices act, protect children who are engaged as independent contractors, and limit unpaid trial work involving children. Each of those areas is independent of one another, but the government will have to explain a little more the issues of age and the limit of unpaid trial work involving children. I believe it has been said that one day is sufficient. During the second reading debate in the other chamber, Murray Cowper said that there would also be a prohibition on unpaid trial work by a child employee for more than one day in a year, which is acceptable and is aimed at employers who abuse the trial work period. I understand that it was explained to the

opposition in the other chamber, but I would like the minister to explain to me the reason that one day was chosen and the circumstances under which one day will be sufficient. I do not believe there is enough information available for me to identify all the circumstances that would make this limit of one day in a year acceptable in all situations. As is usual, this is one-size-fits-all legislation. I would like the minister to explain a little more the reasoning behind this policy matter that has caused the minister to limit unpaid trial work to only one day in a year. Members on this side of the chamber are fully aware that some people in the community who employ others may not do the right thing. We do not live in utopia. That is the reason that we have laws, but sometimes there is a situation where we tend to jump at shadows; where we believe that what is going wrong is far more prevalent than in fact it is. It also works the other way and I will get to that in just a moment. Members of this government believe that there is only one ogre in this world and that is the employer—that anybody who is an employee is a saint and certainly any union member is more of a saint.

Hon Kate Doust: Absolutely!

Hon RAY HALLIGAN: They sit on God's right hand.

Hon Robyn McSweeney: I did not think we would have anything to do with them!

Hon Kate Doust: Hon Peter Collier loves the teachers' union. He is fully supportive of all their actions and demands. I look forward to him leading the march up to Parliament when they next have a rally up here!

Hon RAY HALLIGAN: I am sure Hon Kate Doust would, if she had the opportunity, put her hand on her heart and say those same things, that the unions do nothing wrong; in fact, everything they do is right —

Hon Kate Doust: In the capacity of looking after their members, yes.

Hon RAY HALLIGAN: That could be said of Robert Mugabe looking after himself, but I do not think that is much of a comparison. It is all very well and good to say yes, I will look after myself, to the exclusion of so many other people. In fact, that appears to be exactly what is happening within the union movement, but that is another issue for later on.

One of the other acts that this bill proposes to amend is the Occupational Safety and Health Act 1984, where it is stated that it will —

> (a) enhance current protections for workers who are discriminated against for reasons relating to something they have done in the interests of occupational safety and health. These protections will be consistent with current protections for safety and health representatives under the OSH Act;
>
> (b) provide a process for conciliation and resolution of claims of workplace bullying that creates a risk to safety or health.

The word "bullying" is an interesting word. I wonder who is being accused of bullying in this instance. Of course, we have just heard from members of the government side of the chamber that the finger could not be pointed at any union member as far as bullying is concerned.

Hon Kate Doust: I never said that; Hon Ray Halligan is saying that.

Hon RAY HALLIGAN: I know I am saying it and I will continue to say it, and I will say it a little more, Hon Kate Doust. I said only a short while ago that union members sat on the right hand of God and Hon Kate Doust agreed with me. They apparently do nothing wrong because anyone who sits in that position, of course, would do nothing wrong. Again, it would appear that the government is looking to employers alone as people that carry on with bullying. Within the explanatory memorandum, it makes mention of clause 43 of the bill, which relates to bullying —

> Bullying will be defined as unreasonable or inappropriate behaviour at a workplace that:
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> (a) is repeatedly directed towards an employee or contractor (or a group of employees or contractors); and
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> (b) creates a risk to safety or health.

Bullying applies only towards employees and contractors; so again it is from employers. No mention of unionists; no mention of the likes of Joe McDonald, who walks onto work sites and intimidates and bullies —

Hon Shelley Archer: Just like the employers!

Hon RAY HALLIGAN: I do not think Hon Shelley Archer was listening. She must be intently reading something there. I said before that there is an element out there in the community that does do this, but at least we acknowledge it.

Hon Shelley Archer: No, you don't!

Hon RAY HALLIGAN: I just did. I said that the member is definitely not listening —

Hon Shelley Archer interjected.

Hon RAY HALLIGAN: Her mind is totally blocked to reality. She can stand up and have her say in a moment, but the whole point is—and this is borne out by the words that the government brings into this place—that the government is continually pointing the finger at employers. It says that the only people subjected to bullying are employees and contractors. However, what happens to contractors when they go onto a worksite that happens to have a sign up which reads "No ticket, no start"? Is there no bullying there? No, that is not considered by the government to be bullying; it is something else. Will members of the government tell me what that word might be if it is not bullying? They can do it by way of interjection, or they can stand up and have their say on this matter and explain why this bill, and especially clause 43, is directed only at employees and contractors, which obviously means that employers have to be the bullies. That is what we are up against.

The next act proposed to be amended is the Workers' Compensation and Injury Management Act 1981, an act that has had problems since time immemorial. I do not deny that it is an extremely difficult act to get right, and that it is extremely difficult to ensure that the net—and the Minister for Fisheries is in charge of this bill as well, so he will understand this analogy—has holes in it that are large enough to allow the good cases through, but small enough to catch those that need to be caught. In the workers' compensation area, that is not a bad analogy. As we have seen over many years, whilst probably 99.9 per cent of claims are genuine, have been accepted as such and have been paid out within a reasonable time, there will always be that 0.1 per cent that are not genuine and will not receive payment. It is amazing how frequently those 0.1 per cent of claims end up with all the publicity and tend to create the majority of problems. Probably those 0.1 per cent of claims are the ones on which a great deal of energy is expended trying to get the claimants some money, rather than recognising that they are what they are and telling them that no money is available for them.

The last two acts proposed to be amended are the Minimum Conditions of Employment Act 1993 and the Public Sector Management Act 1994. The Minimum Conditions of Employment Act 1993 provides for the enforcement of a minimum condition implied into a contract of employment by section 5(1)(c) of the Minimum Conditions of Employment Act 1993 in the Industrial Magistrates Court, under section 83 of the Industrial Relations Act. Proposed section 7(c) will allow for implied conditions to be enforced in the Industrial Magistrates Court, as applies under existing section 7(c), but also under part II of the IR act, subject to the provisions of section 28A of the IR act relating to denied contractual benefit claims.

The last act proposed to be amended is the Public Sector Management Act 1994, which the bill states must be amended as a consequence of the expansion of the Industrial Relations Commission's denied contractual benefits jurisdiction to non-industrial matters.

That is just a brief expose of what I believe this bill proposes to do. The opposition moved some amendments in the other place without success, and I do not propose to move those same amendments in this chamber. There appears to be no purpose at all. The government needs to recognise that the opposition and employers—whom the government would suggest the opposition represents—are not the ogres that the government makes them out to be. They have a genuine desire to see employees treated fairly. The opposition acknowledges that there are some unscrupulous employers out there, and they need to be subject to the law. However, I would suggest that that same subjection to the law applies to each and every one of us, irrespective of our station in life and whether we are employers or employees. We are all subject to the same laws, and that is exactly as it should be. I do not propose to spend any more time on my second reading contribution, but the opposition will be asking a number of questions of the minister during the committee stage, seeking additional information that would be beneficial to have on the public record, about why the government has gone down this path.

HON GIZ WATSON (North Metropolitan) [8.16 pm]: The Industrial and Related Legislation Amendment Bill 2007 is an omnibus bill, amending seven acts. The minister said in her second reading speech that the primary objective of the bill is to strengthen protection for vulnerable workers. The Greens (WA) wholeheartedly support the amendments proposed in this bill. We believe that workplace law should be fair, protect all workers from unjust treatment, promote industrial harmony and enable people to organise collectively to negotiate fair pay and conditions. I will begin my contribution by referring to the Clare Burton Memorial Lecture for 2006, given by Professor Barbara Pocock, who is the director of the Centre for Work and Life at the University of South Australia. She said in the lecture —

> I want to argue that work regimes should meet fundamental tests of justice: that, from the perspective of a just society, work regimes should enlarge and assure particular human capacities that can be seen as universally essential for those who labour in a civilized society. Because of significant changes in our social fabric, these are not the basic rights or capacities that our forebears thought necessary a century ago. They are different — but not *so* different that some of our forebears would not recognise them. I

describe ten basic capabilities as essential if workers are to work in a just regime and if Australia is to sustain its labour market.

Further on in her lecture, Professor Pocock sets out these 10 basic capabilities —

1. Being able to work (to have a job)
2. Being able to combine work *and care* over the life cycle (being able to rest, recover, regenerate, recreate, and to personally and socially reproduce, and to maintain a household and contribute to society) — including being able to *not work* when care demands it
3. Being able to affect working time (including total hours of work, their configuration, predictability and time off work)
4. Being able to live — in a civilised way — on one's earnings, over the life cycle
5. Being able to work with security
6. Being able to exercise and accumulate skill and experience
7. Being treated and paid fairly, and being free of discrimination
8. Being able to work in physical safety and remain healthy
9. Being able to combine with other workers to bargain over wages and conditions, including the capacity to withdraw from work in the process of bargaining
10. Being able to have a voice at work

I am pleased that the bill addresses some of the capabilities she has identified for a fair labour market, which include being able to work in security, being treated fairly, being free from discrimination, being able to work in physical safety, to remain healthy and to have a voice at work.

I will now comment on the international human rights aspect of employment law. Australia has ratified a wide range of international instruments that include protections of workers' human rights. These include the International Covenants on Civil and Political Rights; its first optional protocol, the International Covenant on Economic, Social and Cultural Rights; and 54 International Labour Organization conventions, of which Australia has denounced seven. Australia has ratified six of the core ILO conventions, but it has not ratified convention 138, which deals with the minimum age for employment, or convention 182, which has to do with the worst forms of child labour. Australia has ratified the Convention on the Rights of the Child. Article 32 of the convention states —

> 1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
>
> 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment;
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> (b) Provide for appropriate regulation of the hours and conditions of employment;
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> (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

However, as we all know, international human rights instruments do not have any direct effect on Australian workers, so it is necessary for domestic legislation to create binding obligations under Australian law with regard to particular international obligations. The recent public debate on the need for a bill of rights in Western Australia further demonstrates that these issues are alive in Western Australia.

Section 16(1) of the commonwealth Workplace Relations Act 1996 excludes inter alia state industrial laws, with the exception of prevention of discrimination, workers' compensation, occupational health and safety and child labour. In addition to these limitations, the commonwealth Constitution provides a hierarchical legislative order between the states and the commonwealth. Section 109 provides that when state law is inconsistent with federal law, federal law will prevail, and that state law is invalid to the extent of the inconsistency with federal law.

I understand that bills similar to the bill we are debating have already been passed in Queensland and New South Wales. Although these state laws have not yet been tested in courts—I wrote these notes a while ago—I am confident that they will hold up to a challenge and I am satisfied that the constitutional implications have already been considered. I acknowledge the government's comprehensive briefing and the additional information that was provided to my office, in a very timely fashion, to help us understand the bill. I will comment on three

important aspects of the bill—the better protection of children in employment; changes to the Occupational Safety and Health Act 1984 to address workplace bullying, among other issues; and improvements in workers' compensation.

Part 4 will reinstate the protections for children employed by constitutional corporations, which were removed under the WorkChoices legislation. It will also protect children who are engaged as independent contractors, and limit unpaid trial work involving children. We need to ask ourselves whether child labour is a problem in Australia. We hear fairly regularly about international examples of sweatshops and child labour, but what about Western Australia? Western Australia's protection of children in the workplace is, by and large, good. The website of the labour relations division of the Department of Consumer and Employment Protection gives us an overview of current legislation covering the employment of children. The current law contains restrictions on the kind of work that children of certain ages can do. Many factors must be taken into consideration in determining whether a child can work, including whether the work is in addition to full-time schoolwork—that is, part-time, casual or holiday work; whether the work is an alternative to full-time school; the particular industry of the work; certain conditions, such as parental supervision or approval; and the hours of work. I remind members that this year the compulsory age for children to attend school was raised to 17 years. The Department of Consumer and Employment Protection website states —

> A child is considered to be employed when they are engaged to carry out work in a business, trade or occupation carried on for profit, whether or not they are paid or receive any other kind of reward. Employment for the purposes of the CCS Act includes traditional employment arrangements, contracting and piece meal engagements.
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> . . .
>
> Generally children need to be at least 15 years of age to be employed. It is unlawful for children under 15 to be employed in work in industries other than the exemptions set out below.

The exemption for children aged 10 years to less than 13 years is as follows —

> A child may be employed to deliver newspapers, pamphlets or advertising material, as long as —
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> - it is between the hours of 6.00 am and 7.00 pm,
> - it is outside school hours; and
> - while carrying out the delivery work the child is accompanied by a parent or adult whom the child's parent has given written permission to accompany the child.

The exemptions for children aged 13 years to less than 15 years are as follows —

> A child may, after providing a parent's written permission, be employed in the following work —
>
> - Delivering newspapers, pamphlets or advertising material;
> - Working in a shop, retail outlet or restaurant, or
> - Collecting shopping trolleys from a shop or retail outlet, including adjacent areas.
>
> The work must be carried out between the hours of 6.00am and 10.00pm and the work must occur outside school hours.
>
> An employer that employs a child to work outside these hours breaches the CCS Act.

With regard to no age restrictions, the website states —

> There are no age restrictions for children working in —
>
> - a family business;
> - a dramatic or musical performance, or any other form of entertainment; or
> - the making of an advertisement.
>
> . . .
>
> Employment of children under these exemptions is still subject to the School Education Act and accordingly children under 17 years should not be employed in these activities during normal school hours.

There is a prohibition on employment of children to perform in an indecent manner. There are provisions that make that an offence, and a person who does so is liable to imprisonment for 10 years.

In terms of penalties, the website goes on to state —

> A person who employs a child, or a parent who permits their child to undertake work that is in breach of the CCS Act, could be prosecuted and fined up to $24,000. An incorporated employer could be prosecuted and fined up to $120,000. It is a defense if an employer can prove they believed, on reasonable grounds, that the child had reached 15 years of age.

This legislation already provides protection for children regarding their age and work hours, but children can still be exploited in Western Australia. The bill before us addresses the award conditions and the pay rates a child can receive. If this bill passes, children will have the right to receive the level of pay for which they are eligible under a comparable state award. Children who work after hours and children who work on the weekends will get the overtime pay rate to which they are entitled. I understand that this may impact on businesses that may already be having difficulties finding staff, but it might also bring more young people into employment, as their weekend rates will most likely increase when this bill becomes law.

The Greens (WA) welcome the initiative of the state government to end the capacity to discriminate against children. These strengthened provisions are welcomed to ensure that children will get a fair go and that working children will receive fair pay and conditions. Underpaying young staff has been discussed quite widely in private, but perhaps there has not been much public debate on this matter. An online discussion group has picked up on this issue. I will quote from a ninemsm news online forum that discussed underpaying young staff. It states —

> **Its eeverywhere in the hospitality industry—the question is how do you stop it?**

That posting was made on 26 September 2007 by a gentleman who stated —

> My Son has just completed 4 years of being an Apprentice Chef. He worked 64 hrs a week and has been paid for 48—across 4 different restaurants. He could not say anything or he wold have been sacked and there were plenty of kids lining up to take his spot. The kids can't do it, but they'd love a Govt body with teeth to come through the industry and clean it up. If he stays in the game long enough and ends up with his own restaurant, he does not want to be part of the ugly system that uses slave labour in the kitchens.

The hospitality industry is particularly notorious in this regard. Within our house, one of my partner's kids had the same experience of being taken on as a trainee for a very long time, and she was paid for only a fraction of the work that she did. The posting of that experience led to a lot of similar stories from other parents about young people who were training in the hospitality industry. I am aware that the Department for Consumer and Employment Protection recently prosecuted five fast food company employers for illegally employing children under the age of 15. I hope these new provisions will be implemented equally diligently once they become law.

The second part of the bill that I want to discuss is the proposed improvements to the Occupational Safety and Health Act 1984. The provisions in part 5 of the bill will enhance the current protections for workers who are discriminated against for taking an action in the interests of occupational safety and health. These protections will be consistent with the protections that are provided for safety and health representatives under the Occupational Safety and Health Act. Secondly, they will provide a process for conciliation and resolution of claims of workplace bullying that create a risk to safety or health. The Occupational Safety and Health Tribunal will be able to order the employer to reinstate the employee if the employee has been dismissed from employment; and/or pay the employee compensation for loss of employment, loss of earnings and/or any other detriment. Compensation would potentially be payable for one or more of these things. In this bill, workplace bullying will be addressed as an occupational safety and health issue. I understand that workplace bullying is already covered to some extent under the Equal Opportunity Act. I am pleased that this legislation will open up another avenue of redress for people who are affected by this all too prevalent behaviour in the workplace.

The federal Human Rights and Equal Opportunity Commission has published on its website a fact sheet about workplace bullying. It states under the heading "The costs of bullying in the workplace" —

> Using international research, The **Beyond Bullying Association** estimates that between 400,000 and two million Australians will be harassed at work . . . —

This was in 2001. It continues —

> while 2.5 to 5 million will experience workplace harassment at some time during their career.
>
> Workplace bullying has serious economic effects on Australian organisations. A recent impact and cost assessment calculated that workplace bullying costs Australian employers between $6—$36 billion dollars every year when hidden and lost opportunity costs are considered.

That is a pretty phenomenal figure. It continues —

> The effects on a workplace can include decreased productivity, increased staff absenteeism, staff turnover and poor morale. Financial costs can include legal and workers' compensation and management time in addressing cases of workplace bullying.

The best way to deal with workplace bullying is through awareness raising, public education campaigns and ensuring that the processes to deal with workplace bullying are fair and accessible. I would be interested to hear from the minister, if there is a comparable figure for Western Australia, the estimated annual cost of workplace bullying in this state. Any additional avenues that could be used to deal with this matter would be most welcome. I hope that the Western Australian Industrial Relations Commission will be able to create a memorandum of understanding with the Equal Opportunity Commission to ensure that people who are bullied in the workplace are able to find the most suitable avenue to address their particular case. Perhaps the minister might indicate also whether that is part of what is intended in this bill.

The third part of the bill that I want to address is the proposed amendments to the Workers' Compensation and Injury Management Act 1981. Part 6 of the bill provides that workers' injuries must be dealt with in a manner that is intended to enable injured workers to return to work. A remedy for workers who are dismissed within a specific period after they have become injured is provided through reinstatement orders, compensation orders and other declarations that may be made by a Magistrate Court and will be available to workers when the conciliation process has been exhausted.

The proposed changes to workers' compensation are long overdue. This is an area in which I have had some involvement through my office. I understand that these changes were proposed some seven years ago in 2001 in a report to the then Minister for Consumer and Employment Protection on the implementation of a Labor Party directions statement on workers' compensation. The author of that report was Dr Rob Guthrie, who was then a research fellow at the Curtin University Institute for Research into International Competitiveness. Members will be interested to know that he is still working at Curtin University but is now a professor of workers' compensation and employment laws. It seems strange to me that it has taken so long for this change to be brought before the Parliament. I notice that the Minister for Employment Protection has not referred to Dr Guthrie's contribution to the development of Western Australia's workers' compensation laws and I take this opportunity tonight to specifically acknowledge his contribution.

In summary, we support this bill enthusiastically and we applaud the state government for introducing these initiatives to improve workers' conditions, and particularly for the attention paid in the legislation to bullying and the pay and conditions of young workers. It has taken a very long time for this legislation to come before Parliament. We had hoped that it would have been introduced sooner. Nevertheless, it is here now and we are happy to support it.

HON JON FORD (Mining and Pastoral — Minister for Employment Protection) [8.37 pm] — in reply: I thank members for their contributions and comments. Members have talked about the main objectives of the Industrial and Related Legislation Amendment Bill 2007, which will protect children from exploitation, allow children to claim for unfair dismissal or contractual benefits that have been denied by their employers, protect workers who have raised safety issues from being sacked or disadvantaged, and provide remedies for employees who are unlawfully sacked while they are receiving workers' compensation. A number of government amendments are consequential to the new industrial relations laws that have recently been introduced by the new federal Rudd government.

There have been some extended delays in presenting the legislation during my short time as the Minister for Employment Protection. That is partly because of the change from WorkChoices to the new fairness laws and partly because I have taken up this new position and have had to ensure that I am aware of what is in the bill and have asked the appropriate questions about it.

Hon Ray Halligan talked about a number of things. We will get to the detail of the bill when we go into committee but he made some general comments that I will respond to regarding the Labor government's attitude to employers. Some members would like to think that our views and the views of the Liberal Party regarding employers and employees are black and white. Hon Ray Halligan's arguments are probably a bit over the top. I have never thought of an employer as the devil incarnate and I have never thought that unionists were perfect or that they sit on the right-hand side of any god.

Hon Ray Halligan: Talk to your colleagues!

Hon JON FORD: It is part of the robust debate. I suspect that our attitudes on employers and employees do not differ very much. The debate we continue to have is about the balance. We all agree that there are good employers and bad employers and good employees and bad employees. The Labor Party believes that collectivism provides balance. I will not pretend to understand the Liberal Party's philosophy but its position is that people should have the right to negotiate work agreements as individuals. The Labor Party argues that, although that is okay, there is an imbalance in the power structure between employees and employers.

History shows us that there will always be a tweaking backwards and forwards with industrial relations legislation. Previous governments have passed various industrial relations laws, and that reflects the nature of the two different parties. For almost 100 years we all basically relied on the Industrial Relations Commission to arbitrate, but the Howard government's approach brought about a massive change. Although the Rudd government has made changes to the federal legislation, they have not meant a huge wind back to the commission-style era. Here we are again arguing the toss between where the balance lies, and who should be more empowered and who should be less empowered.

Hon Bruce Donaldson: Are you not rushing the teachers' union to the commission?

Hon JON FORD: This government supports the Industrial Relations Commission acting as an umpire at the end of the process. Historically, very few issues have reached the Western Australia Industrial Relations Commission umpire. Certain triggers within the laws discourage both employees and employers from going to the commission. The various acts contain provisions to induce the two parties to resolve their differences before they take them to the commission. We have always supported that. As time goes by, people develop different perspectives and we find ourselves in different positions. We have no problem with all that. I just had to comment that the government is not about describing anyone as the devil or saying that anyone has an undisputed right to act.

Hon Ray Halligan made a number of comments, among which he referred to bullying. He seemed to believe that the bullying legislation was about empowering employees to bring charges against bullying employers. In fact, the provisions apply across the board in either direction. The legislation will allow employers to take a claim of bullying by an employee to the tribunal. After leaving the Air Force, which I felt embodied bullying because there is no right of say on anything one does, and getting out into the free world, my first experience of bullying was between employees. Often, my early days as an activist in the union movement were spent resolving bullying matters between workers.

I thank Hon Giz Watson for her very comprehensive contribution and I thank Hon Ray Halligan. As a result of his contribution I do not need to explain the amendments because he did such a good job of that—as good a job as Hon Peter Collier does when he responds to other bills in which we have a common interest. Hon Giz Watson asked about the cost of workplace bullying in Western Australia. I am advised that a costing of the impact of bullying has not been undertaken. Should this bill be passed, a database will be established that will, in the future, allow us to look at many issues, including to what extent bullying impacts on the workplace. Those members who have had any experience of bullying in the workplace would know that it has a significant impact on productivity.

Hon Giz Watson asked another question—which escapes me! Perhaps we can cover it in committee.

Hon Giz Watson: I will find a spot in the committee stage to ask that question.

Hon JON FORD: I thank the member for that. I will conclude my comments. I look forward to the committee stage. I repeat that I will move a number of amendments that are, in the main, a consequence of the new commonwealth legislation. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon George Cash) in the chair; Hon Jon Ford (Minister for Employment Protection) in charge of the bill.

Clause 1: Short title —

Hon SHELLEY ARCHER: I understand that the Industrial and Related Legislation Amendment Bill 2007 broadens the powers of the Western Australian Industrial Relations Commission to deal with denied contractual benefits under a contract of employment. I support this bill. I understand, and perhaps the minister will confirm whether I am correct, that this bill empowers WAIRC to hold joint sittings with other state industrial commissions, such as to hold combined hearings on minimum award wages.

Hon JON FORD: Yes.

Hon RAY HALLIGAN: I missed something in my contribution to the second reading debate. It is important that what the Minister for Child Protection, who was representing the then Minister for Employment Protection, said at the conclusion of her second reading speech in November last year, which was some time ago, should again be included in *Hansard*. She said —

> Not everyone is enjoying the fruits of Western Australia's economic boom.

It is a statement that has repeatedly been made for some considerable time. To continue —

> WorkChoices has disadvantaged many workers through the removal of core award conditions and job security.

That is a matter of opinion and it is exactly what the minister has been talking about. It is a matter on which Labor and Liberal are divided in their opinions; that is, what provides job security and the opportunity to remunerate oneself in the best possible way. I suggest that award conditions are not necessarily in the best interests of many individual workers, but, of course, the government believes it to be the case. The second reading speech goes on to state —

> It is simply not possible to have a productive workplace without safety and fairness.

I certainly agree with safety but, again, as for fairness, when we talk about awards, Australian workplace agreements or WorkChoices, we will always have disagreement. It also states —

> The bill demonstrates the government's commitment to safer, fairer and more productive workplaces.

As far as we are concerned, that is rhetoric. The government obviously believes it, but I was happy to hear the way in which the minister responded to my second reading contribution. There were many positives associated with that. There is no doubt that in many instances we will agree to disagree. As long as we are prepared to express our reasons for wanting to go down a particular path, it will always come down to the numbers. Of course, we knew that the Greens (WA) would be supporting the government, as well as the Independent Hon Shelley Archer, so there was absolutely no purpose in our moving some amendments. However, I will be asking some questions of the minister as we progress through the committee stage of this bill, purely to have the government place on record its reasoning for going down a particular path. It also helps people on this side of the chamber, because quite often I know I cannot understand the thinking behind some decisions of government. I will be more than happy for the government to educate me in that respect and provide me with that additional detail.

Hon SHELLEY ARCHER: I hope that the committee stage will clarify another matter on the objectives of this bill. The bill is to strengthen and protect vulnerable workers in this state, which everybody in this chamber knows is very close to my heart. A particular issue for me is children. I have worked very closely with young kids who work in shops in my electorate. They are a particularly vulnerable group in the workplace. I have quite often seen that they are subject to very unscrupulous employers who have very little or no regard for their rights as workers. Those employers have no care for their obligations to young people. I am sure that the minister will let me know that in his view children must be provided with conditions of employment, especially in relation to unfair dismissal and contractual benefits that they might claim, and that they must be able to take their claims to the Western Australian Industrial Relations Commission.

Hon JON FORD: Yes.

The CHAIRMAN: Clause 38 will give Hon Shelley Archer a greater opportunity to talk about child employment.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Section 8 amended —

Hon RAY HALLIGAN: The clause states —

> Section 8(2)(d) is amended by inserting after "this Act" —
>
> "
>
> and any other Act under which the Commission exercises jurisdiction
>
> ".

A question was asked in the other place about whether the words "Act" should be removed and the words "written law" included. I know this is a legal technicality, but I would appreciate the minister providing some information on whether "Act" in this clause will be restrictive and "other written law" might in fact expand what is intended, but I will leave it to the minister to explain.

Hon JON FORD: The words "written law" have a restriction. Parliamentary counsel believes—this also came out of the debate in the other place—that the amendment would not achieve its desired intent. That is because "written law" means a Western Australian act and does not include federal legislation, which I am advised is set out under section 5 of the Interpretation Act 1984. I think that answers the question. An act would not restrict the clause but written law would restrict it to Western Australian law.

Hon RAY HALLIGAN: As we have said, seven acts are being amended by this bill. I ask the minister to forgive me if I cannot get my head around all seven and where they fit. I am fully aware that we are dealing with the Industrial Relations Act first. Could the minister explain a little more the reasons for it having to be broad enough to include federal legislation.

Hon JON FORD: It could be that one of the commissioners was a dual appointee; that is, somebody who could exercise federal jurisdiction under one job and then be the chief of the WAIRC part-time.

Hon Ray Halligan: Not moonlighting but having two separate official positions?

Hon JON FORD: That is right.

Clause put and passed.

Clause 7: Section 14 amended —

Hon RAY HALLIGAN: There was talk in the other place of the possibility of frivolous or vexatious claims under this clause. I have not had the opportunity to convince myself why that was mentioned but I thought the minister may be able to explain whether there is any possibility of frivolous or vexatious claims being made under this clause, which proposes to amend section 14, and whether the clause is written in such a manner that might stop any frivolous or vexatious claims.

Hon JON FORD: The section of the act to be amended by this clause does not deal with frivolous or vexatious claims; it deals specifically with the powers of the commission. I am advised that section 27 of the Industrial Relations Act deals with costs. However, it is a no-cost jurisdiction. I do not know whether that answers the member's question.

Hon RAY HALLIGAN: It may well be that I have the clause and section out of order. Hopefully, I will find it a little later.

Clause put and passed.

Clause 8: Section 16 amended —

Hon GIZ WATSON: Proposed section 16(1ab) states —

> Subject to this Act, the Chief Commissioner may —
>
> . . .
>
> (b) assign or appoint commissioners for the purposes of constituting the Commission, . . .

What is the difference between the words "assign" and "appoint", and how will it be decided whether to assign or appoint commissioners? The words seem quite similar to me and I just wonder what the legal difference is.

Hon JON FORD: My advice is that there is probably little difference. However, I would have to take some legal advice to explain it in depth. I know that is not very helpful, but that is the advice that I have.

Hon GIZ WATSON: I will not hold up the bill to get a legal opinion on that matter, but it is interesting that there has been a choice in drafting to insert two words that seem to have a similar meaning. Perhaps the minister might at some point let me know the answer to that question.

Hon JON FORD: I am advised that in this instance it matches the wording in the existing statute. However, I take the point and I will find out the answer for the member.

Clause put and passed.

Clause 9: Section 25 amended —

Hon JON FORD: I move —

> Page 6, lines 16 and 17 — To delete ", with the consent of the President".

The amendment removes the requirement for the consent of the president before the chief commissioner can allocate such matters to the full bench and it will administratively streamline the process of reallocating these matters to the full bench and ensure that the discretion to allocate such matters to the full bench rests with the chief commissioner.

The proposed amendment is to clause 9(3) of the bill and will amend proposed section 25(3) of the Industrial Relations Act 1979 as originally drafted. Proposed section 25(3) presently requires the consent of the president of the commission before the chief commissioner can allocate or reallocate a denied contractual benefits claim that involves an important principle of law or complex facts or issues to the full bench.

Hon GIZ WATSON: The Greens (WA) support the amendment.

Hon RAY HALLIGAN: The opposition certainly does not oppose the bill, and it sees no reason to oppose this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 10: Sections 28A and 28B inserted —

Hon RAY HALLIGAN: Clause 10 inserts sections 28A and 28B and relates to claims for denied contractual benefits. One of the next bills that we will be dealing with is the Contractual Benefits Bill. Can the minister please explain why clause 10 is in this bill and how it might relate to the Contractual Benefits Bill, which will be dealt with later?

Hon JON FORD: This bill deals with employees under the state system and the Contractual Benefits Bill that we will deal with later deals with the federal system.

Hon GIZ WATSON: I have a question for the minister regarding proposed section 28A(1)(b). The definition of "contractual benefit" reads —

> . . . means a benefit to which an employee is entitled under a contract of employment whether . . .
>
> (b) as an implied condition of employment under the MCE Act or as otherwise implied in the contract.

Will the minister explain what an implied condition is and provide some examples.

Hon JON FORD: I am advised that the most used example is notification of termination, whether it be a month or two weeks; or it could be superannuation, as far as implied benefits go.

Hon GIZ WATSON: I refer again to proposed section 28A(2)(b), which allows a union or other representative body to refer a case. Will it be necessary to have the compliance of the employee for that referral to occur?

Hon JON FORD: The member was asking if the union could take that action without the consent of the employee.

Hon Giz Watson: Yes.

Hon JON FORD: Generally speaking, it would need the concurrence of the employee to take the action.

Hon Giz Watson: Generally speaking?

Hon JON FORD: We cannot think of an example whereby that could occur. I suppose I am making a qualified statement that it could not occur without the consent of the employee, because the employee would need to be a witness, for instance.

Hon RAY HALLIGAN: As a point of clarification: Hon Giz Watson asked about the implied benefit. Under proposed section 28A(3) it states —

> . . . under the MCE Act (a **"denied MCE benefit"**) . . .

Is there some linkage between that denied benefit and an implied benefit?

Hon JON FORD: Under the Minimum Conditions of Employment Act 1993, a denied benefit would be something like annual leave, for instance, which is not covered under the act, versus the implied, which is, as I have said, a notice of termination. I remember walking into pretty rudimentary workshops when I first started in the mining game and the boss would say, "You have to give me two weeks' notice and we'll give you two weeks' notice", although, under the award, I had specified conditions of employment. Even though there was a minimum base for termination, that was implied as to termination time. If a person is denied an employment condition and the employer says, "No, you can't take three weeks' annual leave, you can take only one", that is an actual benefit, but the base can be argued on, "I'm going to give you two days' or a week's termination", and then the employee is terminated on the day, the employee can say, "Hang on a second, you told me that you would give me two weeks' notice", and of course there is remuneration tied up with that. That could be an implied benefit, depending on the arrangement.

Hon RAY HALLIGAN: I do not want to take this too far, but it is a very interesting area, this "by implication". The minister mentioned the circumstance with an award and also an implied benefit as to leave. I was under the impression that if a person had an award, that would be the one under which the employer would have to abide; that is a legal contract. Something by way of implication is not written, but it is understood—this is my understanding of it anyway—that it is generally there, such as leave, most definitely. If it is not written into the contract, an employee knows that within a 12-month period it is implied that leave will be granted. Exactly what that period of leave might be, might be subject to negotiation. I do not know. However, there is that implication.

It is interesting to read here of the implied conditions of employment. I am wondering whether there is a list of them. There may well be, and they may be taken from an award. If there is such a list, is it written anywhere? Is it contained in regulations? To simply say that something is implied could mean absolutely anything, and therefore it is subject to argument about whether it should be there. In the main, we have tried to make sure that legislation is unambiguous. Subject to the minister's explanation, my first reading of the reference to implied conditions is somewhat ambiguous.

Hon JON FORD: I feel I have confused the matter by talking about awards, because that has been my experience. The Minimum Conditions of Employment Act 1993 defines minimum conditions. It might be that a person applies for a job and, although the MCE act calls for four weeks' annual leave, the boss says that at that establishment employees have six weeks. The six weeks is implied, because the boss is saying that he will grant two weeks over the minimum. That is implied, but the MCE act says that the minimum is four weeks. Anything over that, if it is not listed in an awards—if it is just between the employee and the employer—is implied.

Hon RAY HALLIGAN: I hear what the minister is saying, but my understanding of "implied" would be that, when a contract of employment, presumably a verbal contract, is provided to an employee, and no mention is made of leave, the implied aspect would be a minimum of four weeks, as required by the MCE act. That would be the implication, because it was not in the verbal or written contract. If a provision for six weeks was there, that would be a contract in itself, and there would be no implication because it is known.

Hon JON FORD: That is also true.

Clause put and passed.

Clauses 11 to 13 put and passed.

Clause 14: Section 29A amended —

Hon GIZ WATSON: This clause deals with publication of certain matters. I note that the existing act allowed exemption from the duty to publish the area and scope of proposed industrial agreements in specific cases. This bill proposes to make this option to not publish a more general application and to make it totally at the discretion of the chief commissioner. What is the need for this change? Surely it is a move towards less transparency; I am concerned about that.

Hon JON FORD: It is really a streamlining provision. The example given to me was of a minimum wage case in which everyone is given an increase in his or her base rate of pay, and the representatives of employers and employees are notified. There is a need to publish the notification in the *Western Australian Industrial Gazette*, and the process can consequently be delayed by up to four weeks before the hearings can be ratified. It is a process; it is not about transparency. It might hinder transparency for people outside the negotiations, but both parties appearing before the Western Australian Industrial Relations Commission will be notified about what is going on.

Hon RAY HALLIGAN: Hon Giz Watson raises a particular point. I note that existing section 29A(2a) is to be repealed. However, part of it is being retained, and that is the part of which Hon Giz Watson speaks. It concerns the opportunity for the chief commissioner to make a decision about whether something should or should not be published at all, or not published in the *Western Australian Industrial Gazette*. My concern is whether there will be an audit trail for anyone who wishes to find out about a particular matter—presuming such a person has every right to know about a matter—if it is not to be published in the *Western Australian Industrial Gazette*. One expects that records will not be readily available, but this raises the question of what is made publicly available in such circumstances, and what is normally or quite frequently kept hidden, retained, kept aside or not published, and is therefore unavailable to the general public. Such information would be available were it to be published in the *Western Australian Industrial Gazette*. If there were to be an audit trail, would there be any possibility of the trail going cold?

Hon JON FORD: No, because all the records of proceedings of the commission are made available to the public.

Hon Ray Halligan: In what form? If they are not published, is this purely a timing thing?

Hon JON FORD: No. It is the same as it is for any commission or for this chamber. All the records are kept and made available to people once the corrected copies come out. My last experience in looking at this was that there was about a four-week or maybe a five-week delay in getting the records of the court. All the records of proceedings are still made available. The *Western Australian Industrial Gazette* takes out an extract and puts it in the gazette. The commission's records contain the full scope.

Clause put and passed.

Clauses 15 to 17 put and passed.

Clause 18: Section 80ZGA inserted —

Hon GIZ WATSON: Clause 18 makes provision for joint proceedings with other industrial authorities. Is there a history of such arrangements in other areas? Is there, for example, a Council of Australian Governments agreement regarding joint proceedings? It seems to me that it is quite novel, but perhaps I am just not aware of other examples.

Hon JON FORD: As Hon Giz Watson pointed out, this clause allows a number of jurisdictions to sit and consider matters jointly. As the member might be aware, the national industrial relations commission has been abolished. This provision gives the option to have consistency in, say, a base award across all jurisdictions. Queensland, New South Wales, Western Australia and South Australia could sit down and say, "This is the base award for this matter." Therefore, it provides that opportunity. Another example could be when unique employment issues go across jurisdictions and those jurisdictions want consistency. The one I talked about when I was discussing this earlier with my advisers was in the pearling industry, which is restricted to the Northern Territory and Western Australia. It gives the opportunity for the Northern Territory and Western Australia to have a joint sitting to work out what the base award could be for pearl sorters, for instance.

Hon GIZ WATSON: I thank the minister for that response. In the same clause, proposed section 80ZGA(7), which is on page 14 of the bill, seems to take away the right of a party to be heard. This seems to conflict potentially with natural justice and also with the explicit principles set out in section 26(3) of the act. The reason that has been given for this change is to ensure that the process is not prolonged unnecessarily. I am concerned that this may conflict with the principle of natural justice. Would it not be possible to prescribe a timetable for response—because that would achieve the same result of not causing unnecessary delay—rather than simply provide that a party to the proceedings does not necessarily have a right to be heard?

Hon JON FORD: The commission deals with matters across jurisdictions. All the parties are given the opportunity to be heard in the first instance. The joint sitting then comes together and makes a decision. This will give the joint sitting the option to say there is no requirement to give the other parties another opportunity to be heard—that is to say, there is no need to go back to Western Australia, or the Northern Territory, to use the example I gave earlier—and to just deal with the matter, if the commission is satisfied that that is in the best interests of the parties. That is an option. However, the commission can seek further clarification and input from the parties if it so wishes.

Clause put and passed.

Clauses 19 to 32 put and passed.

Clause 33: Part 4A inserted —

Hon GIZ WATSON: Proposed new section 33D deals with the assignment of a mediator. It seems to me that mediation is a particular skill. What professional qualifications will the commissioners be required to have to conduct mediation sessions? Also, what specific knowledge will the commissioners be required to have of the act that they administer, and how will that be monitored and maintained?

Hon JON FORD: The specific role of the commissioners is conciliation. However, all the commissioners are required to undergo mediation training.

Clause put and passed.

Clauses 34 to 37 put and passed.

Clause 38: Part 8 inserted —

Hon JON FORD: I move —

> Page 32, lines 28 to 31 — To delete the lines.

The proposed amendment is to proposed section 198(1) of the Children and Community Services Act 2004. The amendment will delete the definition of "workplace agreement", which is derived from the federal Workplace Relations Act 1996. The federal government has recently amended the definition of "workplace agreement" in the Workplace Relations Act, which was amended by the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008. It is therefore necessary to delete the definition of "workplace agreement" in proposed section 198(1) of the Children and Community Services Act.

Hon RAY HALLIGAN: The definition of "workplace agreement" was in the legislation in the first place, and now it is to be deleted and there is nothing to replace it. What is the reason for that?

Hon JON FORD: I move —

> Page 33, line 7 — To delete the line.

As a consequence of the new federal legislation, there are no workplace agreements. However, there will be agreements and arrangements that are prescribed by regulations.

Hon RAY HALLIGAN: Might I be so bold as to ask you, Mr Deputy Chairman, whether we can go through clause 38 by each proposed section? There are a number of them and some members might wish to speak on some of the proposed sections.

The DEPUTY CHAIRMAN (Hon Ken Travers): If that is the desire of the chamber, I am more than happy for members to consider the individual proposed sections in clause 38.

Amendments put and passed.

Hon RAY HALLIGAN: Proposed section 228 is under "Division 4 — Unpaid work on a trial basis". A number of members have spoken about this. The minister might be able to supply me with additional information about why one day in the calendar year was chosen. Proposed subsection 2 reads —

> (2) A person who engages a child to carry out unpaid work on a trial basis must ensure that the child carries out that work —
>
> (a) on not more than one day in any calendar year; and
>
> (b) for a period, excluding any break of not less than 30 minutes, of not more than 7 hours; and
>
> (c) for a period of not more than 5 hours without a break of not less than 30 minutes.

I am very interested to hear the circumstances that have led the government to the conclusion that it should be not more than one day in any calendar year and what it is hoped might be achieved from that. I have no doubt that the minister will be able to advise me what the government is trying to stop happening.

Hon JON FORD: The government considers it is necessary because one day of unpaid work was considered sufficient given that the Department of Consumer and Employment Protection had received many complaints from parents about children being engaged for lengthy periods in unpaid work trials. Given children are typically engaged in low-skilled work such as retail work, floor sweeping at hair salons, peeling vegetables etc, one day is considered to be more than sufficient to assess a child. The government fears that if the period is allowed to be longer than one day, some employers might be tempted to engage children for the maximum period allowed for unpaid trial work.

Progress reported and leave granted to sit again, on motion by Hon Jon Ford (Minister for Employment Protection).