## LABOUR RELATIONS REFORM BILL 2002

*Standing Orders Suspension*

**MR KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [4.58 pm]: I move, without notice -

> That so much of the standing orders be suspended as is necessary to allow the Labour Relations Reform Bill 2002 to be introduced without notice and proceed up to and including the motion for the second reading at this sitting.

It is no surprise to anyone that the introduction of the Government's Labour Relations Reform Bill will take place this week. Much comment has been made by the Opposition and in the media by various interest groups. Unfortunately, much of that comment is ill-informed and quite misleading. It is therefore appropriate and proper that the Bill be before the Chamber. It will not progress any further, but it should be before the Chamber so that people making public comment have the opportunity to do so based on the facts, not on a range of guesswork.

The Bill was released in draft form and made available on the Internet some three to four weeks ago. Much comment was made about what was in the draft Bill. The Bill I wish to introduce has been changed in only minor ways from that draft Bill.

This step is not unknown. The previous Government, on a rare number of occasions, introduced the first and second reading of a Bill without giving notice. If we do not do that, we will simply give notice today and members will have to wait until tomorrow before they have copies of the Bill and the second reading speech. During that time, the misunderstanding and misinformation will only continue. There are very good reasons that we should take this step, which is not the usual method, to ensure that the Bill is second read and available to all members. Members will then be able to become conversant with the matters contained in the Bill and be able to comment from a position of knowing what they are talking about, rather than spread misinformation. I seek support from the House for the suspension motion so that I may put the Labour Relations Reform Bill 2002 before the House.

**MR JOHNSON** (Hillarys) [5.01 pm]: The Opposition does not agree with the suspension of standing orders for this purpose, for a number of reasons. One is that the Leader of the House is taking advantage of his position and trying to abuse the processes of this House. He is certainly abusing the Opposition. I was informed only 10 minutes ago by the Leader of the House that he intended to move to suspend standing orders. He did not even have the courtesy to ask whether the Opposition would agree to it. I was told what he intended to do. Why? He had every opportunity, at the appropriate time, to give a notice of motion. The normal procedure is for him to stand up and give notice that at the next sitting of the House he will introduce the industrial relations Bill. If this House is to perform in a proper and cohesive way, there must be cooperation between the Government and the Opposition. I rarely disagree with assisting the Government to progress important legislation and matters.

Ms MacTiernan: What is the substance of your argument? What mischief are you up to?

Mr JOHNSON: Wait a moment. I have not spoken for even two minutes and the member for Armadale is attacking me.

Ms MacTiernan: I am trying to help you get on with things.

Mr JOHNSON: I do not need the help of the member. I am perfectly capable of getting on with things under my own steam. As Leader of the House for opposition business, I will always cooperate with the Government. I will always endeavour to get urgent Bills through the House. This is hardly an urgent Bill. The unions may want it backdated to last year, but it is not an urgent Bill as is normally considered by the House. There is no monetary crisis. Normally Treasury Bills and suchlike are treated as a matter of urgency, and likewise things that have to be implemented by a set date. Normally, the Opposition would agree to the suspension of standing orders to allow certain Bills to go through all their stages. This side of the House does not agree on this occasion with the Leader of the House. The Opposition sees this as a retrograde Bill; it will create unemployment and do all sorts of dreadful things in the State of Western Australia. This is the unions' Bill. It is not the people's Bill. It is not even the Government's Bill. If the Government expects this side of the House to simply roll over and show its tummy, it has got it wrong.

Mr Ripper: Don't do that!

Mr JOHNSON: I promise that we will never do it! Why did the Leader of the House not introduce this Bill in the normal way? Why did he not give notice today that it would be introduced tomorrow?

Mr Kobelke: I explained that in my speech.

Mrs Edwardes: He told us at quarter to two what he intended to do!

Mr JOHNSON: This is the Government that runs by media. It does not respect this House or the way in which legislation should be progressed. This is spin-doctor stuff. The Premier has been to London to see his friend and mentor, Tony Blair. Every announcement is made by the spin doctors. Tony Blair is travelling around the world; he is not in London where all the problems are and where the hospitals are in crisis. Britain has other problems. Unemployment is going up. I am sure that the Government has its spin doctors working overtime at the moment as that is the only way it can get credibility. They have to spin everything in a positive way. However, it is not a positive way but is a very retrograde way. I ask the Leader of the House, by way of interjection, to give an honest and genuine reason why this has to be considered an urgent Bill. The suspension of standing orders is warranted only in the case of an urgent Bill. The Government has got its media stuff lined up and it has to comply with its union bosses to rush the legislation through the House as quickly as possible. The Government could have given notice today. The Government already has one big story today: the finance broking royal commission report. I thought the Government would have run on that. It obviously wants to score every media slot there is today on television and radio. I am sorry, we will not just comply with the Government's wish to spin doctor all these stories. This House has a proper way of functioning and the Government is abusing the procedures of the House by trying to crash the legislation through in this manner. The Opposition will not agree to it. That is the position of the Liberal Party and other parties. Most members on this side of the House do not see the Government's industrial relations legislation as being of benefit to the State. Quite the opposite, we see it as being retrograde to the State. The Government's union bosses want this rushed through to give them back power and move us back to the 1970s - the bad old days when the union bosses bullied their way through everything. We will not stand by and see that happen without putting up a fight. We will fight every inch of the way to ensure that this Bill gets proper scrutiny. We want to start the process by having the Bill introduced properly into this Parliament. Members on the government back bench are laughing, but they are seeing parliamentary practice abused.

Several members interjected.

The SPEAKER: Order, members!

Mr JOHNSON: Proper procedures exist for the introduction of Bills in this House to provide for proper scrutiny and allow all members to examine Bills. Things must be done in a proper and cohesive way. That has been the way of this House for many years. The Leader of the House wants to circumvent that normal convention and the standing orders that control the introduction of Bills. We know that the Leader of the House is a great advocate for unions. That is part of the reason that he wants to circumvent the proper practice of the House in scrutinising this Bill. I am sure all government members are happy to go along with this - they are just bottoms on seats and do exactly what they are told. Whatever their executive tells them to do, they go along with. They go along with every word. Not one of them has the guts to come over to this side of the House and show a bit of spirit and integrity or principle to stand up for what is right and correct.

Mr Marlborough: The member is not serious?

Mr JOHNSON: Absolutely! The member for Peel should know that I am the Leader of the House for opposition business and I have been around a fair while. The member for Peel feels I should lift my game and do a better job. I remind him and all members opposite of some of the things done by members who were in this place before the last election and the fun and games they had from this side of the House. They were very cooperative on many occasions. The Leader of the House would previously never have agreed to something like this, particularly if it was something he felt strongly about. He would never have agreed on behalf of the Labor Party to the suspension of standing orders. The only difference is that the reasons I am presenting today are genuine, ethical reasons related to the good running of this House. Members opposite want to bypass those reasons, which have been pertinent for many years. They will not get the cooperation of this side of the House in doing that.

Members on this side will not agree to the suspension of standing orders to allow the introduction of this Bill today. We would prefer to see it go through the normal channels. The Leader of the House had every opportunity to give notice that it would be introduced tomorrow. When the leader told me what Bills would be dealt with this week, why did he not tell me about this?

Mr Barnett: It is a secret.

Mr JOHNSON: Yes, it is a big secret. The unions are obviously keen to see what is going on. Why was the leader not open and honest with me? Why did he not tell me that was what he intended to do? Why did he not ask whether the Opposition would agree? He simply said that the Government intended to suspend the standing

orders. That is not only rude, it is also arrogant. We will not tolerate it. If the leader wants members on this side to cooperate, he will have to take notice of what we say. Provided we are being reasonable and putting forward a legitimate argument - which is what I am doing - he should listen. If that were to happen, we would cooperate. We will not agree to the suspension of the standing orders on this occasion.

**MRS EDWARDES** (Kingsley) [5.11 pm]: I will reiterate some of the comments made by the member for Hillarys. There is no urgency to suspend the standing orders to allow for the introduction of this legislation. The minister said that some ill-informed comments had been made, that a draft had been released and that only minor changes were being made in the document presented to the Parliament. That does not give rise to a sense of urgency. The only urgency that might exist has been created by the Government. It intended to introduce this legislation before June last year, then by September or October and then before Christmas. The Premier said that the Government would do its best to introduce it before Christmas. The unions then said that the Government was not following the agreed agenda. They wanted industrial relations reform legislation and the Labor Party promised to deliver it last year. We saw headlines about a union boss aiming his anger at Gallop and unions withholding party dues. Now we know what the monetary crisis is all about. That is the reason for the urgency. The Labor Party is broke; it needs the money. Representatives of UnionsWA are in the gallery to witness the introduction of the legislation before they sign the cheque. That is what it is all about. There must be a media agenda for the leader to hold a press conference at 1.45 pm in the car park but not to have the courtesy to let the leader of opposition business know what he plans to do. Were Channel 10 journalists at that media conference? The leader has a problem. It is now 5.15 pm and the Channel 10 news bulletin has been under way for 15 minutes. Has it stated that the Government is planning to introduce this legislation today?

The leader is pre-empting the House because he has the numbers. It does not matter what members on this side say.

Several members interjected.

Mrs EDWARDES: It does not matter what Parliament says. Obviously, members opposite will use their numbers. Is this the start of things to come? Is this what the Government intends to do? Will it rush through legislation? The unions cannot wait two days to see the legislation. The truth is that they have already seen it. They helped the Government to draft it; they were part of the cohort that pulled it together. It does not matter what members on this side want.

Members opposite are prepared to suspend parliamentary rules and standards on a supposed matter of urgency. There is no urgency. If there is a monetary crisis, it is obviously because the unions are withholding funds from the Labor Party, which they threatened to do last year. Does the party need the cheque in the mail? UnionsWA representatives can hand it to the Leader of the House as soon as he has finished his second reading speech. The Government is running the State according to its media agenda. The leader decided he wanted to introduce the legislation today, and he is determined it will happen. We saw that happen when the Premier wanted to suspend standing orders to introduce the bikie gang legislation. At least in that case there was a sense of urgency, because we had a major bombing resulting in two fatalities. The unions want to see this legislation introduced today, and the Labor Party - obviously because of its strong links with the union movement - also wants to see that because it wants the cheque in its coffers. However, the business community and the people of Western Australia can wait until Thursday. They are not in any rush to see this legislation introduced; they are certainly not in any rush to see it enacted. There is no urgency; this is designed to satisfy the Labor Party's agenda. It has nothing to do with good government or good parliamentary process.

**MR BARNETT** (Cottesloe - Leader of the Opposition) [5.15 pm]: About half an hour ago the Premier accused the Opposition of being lazy and ill prepared. That is ironic. Throughout the summer the Government has been boasting about its industrial relations legislation. Now, without any discussion with the Opposition or explanation of the importance or urgency, it is abusing the processes of this Parliament by suspending standing orders. Suspending standing orders to give priority to legislation is often agreed across this Chamber, usually when there is a genuine sense of urgency, if not emergency. Sometimes it can relate to a loss of state funds if something is not dealt with immediately. That is relatively common and the process is generally agreed to by both sides. Sometimes it might be a situation affecting an individual or family in hardship.

Several members interjected.

Mr BARNETT: The Minister for Health should control himself and concentrate on his job. He does not understand.

Several members interjected.

Mr BARNETT: The Labor Party is putting you, Mr Speaker, in a terrible position. You are the custodian of the standing orders. Members on this side will, if good reason is given, agree to the suspension of standing orders to expedite the introduction of legislation. There is no justification for departing from the standing orders on this occasion. The minister can give notice of the introduction of the Bill today and second read it during the week. He can even do it tomorrow. That is the normal procedure. Where is the urgency? There is none. This is an attempt by the Leader of the House to steamroll the standing orders and procedures of this Parliament. For what reason - for publicity, conceit, arrogance or a dutiful bounding around to answer to the union bosses?

Several members interjected.

Mr BARNETT: It is not the right thing to do. This Parliament has a set of standing orders that have evolved over hundreds of years through the Westminster parliamentary system. All members in this Chamber have a responsibility to respect those standing orders. I acknowledge that on occasion we err, and I admit that I have done so on occasion. However, this is a premeditated attempt by the Leader of the House to override the standing orders without any justification. What makes it worse, and what may well irk members on this side of the House, is that he did not even have the honesty or the integrity to approach the leader of opposition business and say that he wanted to do this. He just tried to roll in here and use the numbers to do it. That really says something about the personal and ethical standards of this minister.

Mr Johnson: We are very disappointed in you.

Mr BARNETT: He sits there with a conceited look on his face because he has the numbers. He will use the numbers and try to bulldoze this legislation through.

Again, I refer to the Premier. The Premier commented on a ministerial statement made earlier in the day. The rules and conventions of this House are that ministerial statements are made available to opposition members two hours in advance.

Mr Kobelke: It was.

Mr BARNETT: No, it was not. It was given at one o'clock.

Mr Kobelke: We did not debate it until quarter past three.

Mr BARNETT: The ministerial statement was given to the Opposition. The report of the Temby royal commission - I can understand the legal reasons, because it requires parliamentary privilege - was not given to the Opposition on any basis.

Mrs Roberts: That is exactly what you did for eight years.

Mr BARNETT: Yes; it is true. However, the difference is that the report was tabled, and the Premier tried to goad the Opposition for failing to debate a report it had not even read. Opposition members want to do the responsible thing and actually read the report before they comment on it. Do members think that is a responsible parliamentary approach? Mr Speaker, I have some sympathy for you, because you have the role of protecting the standing orders and standards of this Parliament. On the first day of the 2002 sitting, the Leader of the House and the Premier have tried to circumvent standing orders and the conventions of this House, and we have been sitting for only three and a quarter hours! What a start to the year! It tells us something about what this Parliament can expect from this very ordinary Labor Government over the course of the year.

**MR BOARD** (Murdoch) [5.21 pm]: My colleagues have talked about propriety in the running of this House, but what about the absolute total hypocrisy of the Leader of the House in moving the suspension of standing orders today? Maybe we should deliver to the Leader of the House the numerous speeches he made as a member of the Opposition when an attempt was made to suspend standing orders for an urgent legitimate reason and he did not see fit to support it; neither did the Treasurer when he was the leader of opposition business, nor the police minister. In fact, the Leader of the House argued time after time about the role of the Opposition and the propriety of this Parliament. I used to sit in this Chamber and listen to him, and sometimes I would think to myself, maybe the parliamentary system is far more important than the urgency of this particular Bill. However, in this case there is absolutely no urgency. Is the minister on a string? Who is pulling the string? That string might bind him up and get him into some strife. There is no urgency. Can he give us one valid reason for the urgency, abuse and hypocrisy of what he is doing today?

We heard from the Premier today about accountability. We have heard from the Treasurer about transparency. Where is the transparency? This is the people's place. People want notice of legislation. People want to sit in the gallery and listen to what is going on. People have a vested interest in this legislation. People want to know what is happening in this Parliament; yet the minister is seeking to deny them that. It is not a legitimate stance

that he is adopting. I do not think he should be very proud of what he has attempted today. We will do everything we can to stop this motion proceeding.

**MR TRENORDEN** (Avon - Leader of the National Party) [5.24 pm]: It has just occurred to me that the Leader of the House is the greatest exponent of that great Australian institution of foreplay: he loves to jump up in this place and say, "How about it?" There is no sweetness in this process whatsoever.

Mr Hyde: That is the debate in the other Chamber.

Mr TRENORDEN: This is the first time that I, as Leader of the National Party, have heard that this process is in place. I will not speak for a long time on this issue. However, the point is that during the last Parliament, when many current members were not here, we reformed the processes of this House. It was one of the better processes that I have been involved in, because there was consensus from all members of this House about how it should operate.

Mr Johnson: The Leader of the House was a member of the Standing Committee on Procedure and Privileges, which formulated the new changes; yet today he is abusing the very changes that he supported while on that committee.

Mr D'Orazio interjected.

Mr TRENORDEN: The standing orders are fresh; they are brand new. Also, they set out the conventions under which the House operates. It has been said several times but, because members want to interject, I will go through the process again. It is necessary for the House to be able to suspend standing orders, because we compress the activities of the House towards the end of every session. At the end of every session, there are suspensions of standing orders. In my 15 years I cannot remember one occasion on which standing orders have been suspended on the first sitting day of a session. What does that say about the respect for the procedures of the House? I am not particularly worried whether this Bill proceeds to the second reading stage today. However, in the earlier part of the process, I was one of the committee members who debated those issues and formulated the early recommendations that were put to the House. I was not part of the standing committee that formulated the standing orders, but I had input. It is important that we all agree on how this place operates. It is fundamentally correct.

Mr Hyde: Why didn't you change the standing orders to stop this? This is allowed under the standing orders.

Mr TRENORDEN: I will repeat it. It is absolutely critical that we allow standing orders to be suspended when the occasion demands it. However, what is the occasion today? It is the first day of the 2002 sitting. The minister wants dispensation to go through the whole process, but has provided no reason for that. The minister has the numbers; he can do it. I will not go home and lose sleep about it. However, the minister is a decent person and he should think about the procedures of this House. It is important that the procedures in the House be considered. I have asked the members sitting next to me what their views are. They are ambivalent about the issue, other than the need to abide by the procedures of the House; therefore, the National Party will vote against the motion.

**MR AINSWORTH** (Roe) [5.27 pm]: The suggestion to suspend standing orders on day one of any sitting of the Parliament is totally unprecedented; certainly, to my knowledge it is unprecedented in this State. The content of the legislation that the minister wants to introduce is not important. The issue before the House is not whether we support or reject the content of the Bill. The issue we are debating is the propriety of acting in this way on day one of the Parliament when there is absolutely no indication of any urgency in the matter, given that the minister can read the Bill for the first time today and for the second time tomorrow. That will then put to rest any uncertainty about the content of the legislation, which the minister claims is currently abounding in the community.

Late last year comments were made by members on both sides of the House about the behaviour in the Chamber, and the disregard for the protocols of this place was quite evident. There was a disintegration of the standards of this House. That is not a reflection on you, Mr Speaker; it was just a reflection on some of the members and their anxiety and desire to get out of the place for Christmas. Things got a bit heated and out of hand. It has also been suggested by members on both sides of the House that we need to look more closely at the running of the House, and to respect the standing orders and the position held by you, Mr Speaker, and your deputies, so that the protocols and traditions are upheld to a greater degree for the good running of this House.

The proposed suspension of standing orders is a case in point. It is unnecessary and it breaches the goodwill that is inherent in circumstances in which standing orders can be suspended, when the Opposition and all members on this side of the House agree there is urgency in the issue. However, it is an abuse of that goodwill and the

standing orders to introduce that issue on day one. Some members on the government side have indicated that they have the numbers. No-one would argue that any Government with a majority can, in a sense, do what it likes; however, it should still be morally, if not legally, bound to adhere to the standing orders. If that is not the case, regardless of who is in power, the good governance in this place will disintegrate.

I do not oppose the proposition put forward by the Leader of the House to score a point against the Government, but I do so in support of the integrity of the parliamentary process. If on day one we start to diminish the validity of the standing orders, we diminish the standing in which every member of Parliament is held by the community, and that would be detrimental to all of us whether we are in government or in opposition and it would bring us into greater disrepute as parliamentarians. The community already has a low view of us as parliamentarians, and this would do a disservice to not only us, but also the community as a whole.

**MR GRAHAM** (Pilbara) [5.31 pm]: I am amazed at the contributions by my conservative friends, for want of a better word, who seem to be suffering from memory lapse. We are dealing with the industrial relations legislation. If the Gallop Government has a mandate for anything - that is debateable - it has a mandate to change this legislation. It campaigned for years about the industrial relations legislation and the repeal of the Opposition's terrible industrial relations Acts. Three attempts were made to bring in that legislation. The first attempt was the so-called Kierath first wave that was guillotined through both Houses of Parliament. No open and fair debate was allowed on that legislation; it was guillotined through both Houses of Parliament.

Mr Barnett: There were days and nights of debate.

Mr GRAHAM: No, that was on the second wave. There was long and exhaustive debate on that legislation. The then Speaker cleared the gallery as did the President of the Legislative Council. A rally of 35 000 people took place at the front of Parliament House to tell the Government to shove its legislation, and Parliament was shut down and the Government went away. That was the biggest rally that has ever taken place in front of Parliament House. By the time the rally and the speeches at Parliament House had finished, the remainder of the participants had not left the Esplanade. That rally about the then Government's legislation was the biggest rally that I have seen in Western Australia in 51 years.

As a result of that legislation the then Government introduced those shocking sessional orders of which we are aware. The current Leader of the Opposition was personally responsible for that. Members used to sit in here on Thursday afternoons and guillotine through this Parliament pieces of legislation that nobody had even seen, because the current Leader of the Opposition had a sessional order in place which said that at 5.45 pm the order of the House was that business of the House would stop. His business was guillotined through the Parliament. On the list of all the political parties and individuals in this place who carry on about impropriety, good conduct and the capable handling of legislation, the Leader of the Opposition is second from the bottom. Graham Kierath sits firmly at the bottom of that list, and he has gone.

Mr Barnett: Read the *Hansard*.

Mr GRAHAM: I was here. I might have the sequence out of order, but the fundamental facts of life are that the first wave of legislation was guillotined through both Houses of Parliament.

Mr Barnett: Look at the hours of debate.

Mr GRAHAM: So what? It was crucially important legislation. The Leader of the Opposition is now saying that the legislation should be debated properly. That is exactly what we said about three major pieces of legislation and we were ignored. He did not even have the balls to implement the final bit of legislation. He got it through, but he did not bring it in. I give the current Government great credit for not introducing that sessional order. Prior to the election, members of this Government said they would never bring in that kind of sessional order, and they have not.

Mr Barnett: They guillotined the payroll tax legislation through.

Mr GRAHAM: Guillotines are cool. They are part and parcel of the parliamentary process. The difference between using the guillotine and what was done by the Leader of the Opposition is that he can stand up and say that the Government guillotined the legislation through. We could never do that to the Leader of the Opposition, because he would say that at 5.45 pm it did not matter what the legislation was, the Parliament would stop and the legislation would automatically be passed. This Government does not use that type of hypocrisy; it is absolute nonsense. No-one in the history of this State has ever done what the Opposition did. Legislation was put through this Parliament that nobody in this Parliament had read, and the Leader of the Opposition was single-handedly responsible for that. We did not have a second Chamber, as does the federal Parliament, in the form of

a committee system that examines legislation; the Leader of the Opposition got Cabinet to make decisions on legislation and this place rubber-stamped them.

Mr Barnett: What has this to do with suspending standing orders?

Mr GRAHAM: It has everything to do with it, because the basis of the member's argument is the Parliament's right to legislate and debate legislation. That is the entire argument put up by the Leader of the Opposition, and he has no historic record on which to claim any credibility.

I will be voting to support the suspension of standing orders for two reasons: first, I do not see anything wrong with it. If it were at the other end of the debate, I might have something different to say, but I do not see a problem in getting legislation in here so that we can look at it. The second reason I support the suspension of standing orders is that I want to see what is in the legislation. I have a very healthy view about industrial relations; it has been a large part of my life. I want to see the legislation in this Chamber and I want to see what it does. I want to take it away and talk to people and introduce some amendments that will improve the legislation.

**MR McNEE** (Moore) [5.38 pm]: It is with concern that I make some comments on this motion. The Government is interfering with the traditions of the House. I well remember when the Leader of the House was on this side how righteous he was at these times. I can hardly believe he is the same man sitting over there. Here is a Government in real trouble. No-one in the community is telling me that he will re-elect this Government. In fact, people say to me, "How long will they be around?" Not for long. I have told members before, they should not make too big a mess in their offices; I would start clearing up if I were them, because they will not be there for long. The Government is in trouble. It has not even had the traditional honeymoon period during which it thinks it can make a few blues and get away with it. That is not the case. Why would this Government want to rush this legislation through? What is the need to push on?

Mr Barnett: Their mates are in the gallery.

Mr McNEE: Are these the same mates who said no ticket, no start two days after the Government won the election? Are they the same bullies? They are good at it. I do not know any employers who want this legislation. In fact, I do not know what this legislation will do for the Government's mates, for whom it is supposed to be providing jobs. It will not help them. In fact, I think a few of them will end up on the dole queue.

Several members interjected.

The SPEAKER: Members!

Mr McNEE: That may be a wish, but it will not be a desire.

It is significant that, on the first day back, the Government must push, shove and bully. We remember its indecent haste in its first year in office. It should be called the "rushin" Government, because it is always "rushin" to do something. It is not very effective. I cannot believe that a Government that claims to have such fortitude and morals would event attempt to do this, even if its mates are watching. The Opposition is trying to achieve a balance between those who, because of their strength, will demand rights to which they are not really entitled and the poor people at the other end, who need some help. That could have been done in a different way. All the Government has done is terrify the employers, and now it wants to rush this measure through to make nothing more than trouble for itself.

Mr Johnson: Obviously, the unions were aware that the Government intended to move this motion to suspend standing orders at this time of the day, because they have all turned up. There is really clear communication between the Leader of the House and his bosses, the unions. It is to the detriment of this House, and it is disgraceful.

Mr McNEE: That is absolutely right. Where else would the line of communication run? The unions are the Government's bosses.

The Government stands condemned. I cannot believe this is the same Leader of the House who sat over here with such righteousness, and even convinced me on some occasions that he did have some points. Here he is, doing it in a fine style, which no-one could surpass.

**MR KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [5.43 pm]: I sincerely thank all those members who have not spoken to the urgency motion. They have shown forbearance in the light of the

baseless personal reflections and the inane and quite stupid comments made by some speakers. The restraint exercised by members on both sides who have not spoken should be noted, and I thank them for that.

The Leader of the Opposition, when he was Leader of the House, did exactly this, and sought to have a Bill read a first and second time on the same day by means of the suspension of standing orders. It is therefore not a new practice. In his comments, the Leader of the Opposition reflected on proceedings relating to ministerial statements, but he overlooked what the Opposition did with the Marks royal commission when it was in government. Two hours notice was not given in that case. The Government marched in with it. There was no report - which would not have been expected in any case - and no statement. The then Government wanted the matter brought on straight away, and when the Opposition asked for some notice, the Government suspended standing orders and went straight to it. That is the track record of the Leader of the Opposition when he was Leader of the House.

The Government is trying to give all members of Parliament, and the public, a copy of the Bill and the second reading speech, properly tabled. The suspension of standing orders will not speed up the passage of the Bill through this Chamber or the Parliament. It will give people, at the earliest possible opportunity, a copy of the Bill, the second reading speech and the explanatory memorandum. This Opposition is frightened of that. It is fearful that it will not be able to run the scare campaigns because the legislation, in its full form, will be there for people to see.

The suggestion that, somehow, the special relationship the Government has with the unions - which is acknowledged - means that union representatives are here in the Chamber is denied by the fact that it was the Chamber of Commerce and Industry of Western Australia, not the unions, that had enough inside knowledge to place an advertisement in this morning's paper. That shows up the absolute baselessness of the claims made by those who wish to oppose the suspension of standing orders.

The Government looks forward to having full and robust debate on these matters in three weeks. Very difficult philosophical positions are involved on both sides of this Chamber. The Government is saying now that, because the debate has already started in the public arena, members of Parliament and the public should have this Bill so that the debate can be proper and informed, and not marred by the misinformation members opposite wish to spread.

Question put and a division taken with the following result -

Ayes (32)

| | | | |
|---|---|---|---|
| Mr Andrews | Mr Graham | Mr McGinty | Mr Quigley |
| Mr Bowler | Ms Guise | Mr McGowan | Ms Radisich |
| Mr Brown | Mr Hill | Ms McHale | Mr Ripper |
| Mr Carpenter | Mr Hyde | Mr McRae | Mrs Roberts |
| Mr Dean | Mr Kobelke | Mr Marlborough | Mr Templeman |
| Mr D'Orazio | Mr Kucera | Mrs Martin | Mr Watson |
| Dr Edwards | Mr Logan | Mr Murray | Mr Whitely |
| Dr Gallop | Ms MacTiernan | Mr O'Gorman | Ms Quirk *(Teller)* |

Noes (22)

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|---|---|---|---|
| Mr Ainsworth | Mr Edwards | Mr Marshall | Mr Waldron |
| Mr Barnett | Mr Grylls | Mr Masters | Ms Sue Walker |
| Mr Barron-Sullivan | Ms Hodson-Thomas | Mr Omodei | Dr Woollard |
| Mr Birney | Mr House | Mr Pendal | Mr Bradshaw *(Teller)* |
| Mr Day | Mr Johnson | Mr Sweetman | |
| Mrs Edwardes | Mr McNee | Mr Trenorden | |

Independent Pair

Dr Constable

Question thus passed with an absolute majority.

*Introduction and First Reading*

Bill introduced, on motion by Mr Kobelke (Minister for Consumer and Employment Protection), and read a first time.

*Second Reading*

**MR KOBELKE** (Nollamara - Minister for Consumer and Employment Protection) [5.50 pm]: I move -

That the Bill be now read a second time.

The Bill sets the scene for a new era in labour relations in this State. This Government believes that its choice of industrial relations system is a defining statement about the type of society it wants. For nigh on a decade this State has endured the painful consequences of the previous Government's experiment with a deregulated labour relations environment. In this blinkered approach to economic rationalism, thousands of workers have been condemned to inadequate and exploitative pay and conditions of employment.

This Government is determined to re-establish a more just and balanced system and to provide a fairer go for all parties involved in the workplaces of Western Australia. Although the majority of employers abide by the law and recognise their rights and obligations, some employers do not. This second group of employers represents a problem for their employees, who are denied their proper entitlements, and for their competitors whose position is undermined by the race to the bottom of reducing pay and conditions. Employees are entitled to uphold their rights and employers are entitled to the protection of fair employment standards if they are effectively enforced. The package of reforms incorporated in the provisions of this Bill deals with these issues in a substantial, relevant and focused way.

These reforms were developed prior to the last election with the involvement of key industry groups, and were publicised in detail in the Labor Party's directions policy statement that it took to the election. It is clear that we have a mandate to implement these reforms, and this Bill is the first stage in that process. The coalition Government's labour relations system was clearly ideologically driven, with the aim of reducing third-party involvement, whether it be the Western Australian Industrial Relations Commission as the independent umpire or the unions. The intention was to place control of the employment relationship firmly and directly in the hands of the employer. It was based on a view that the health of the State is measured primarily by its economic capital, and that only by increasing production and productivity shall we become a successful, and thereby healthy, State. 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.

The focus under the workplace agreements regime shifted from the collective to the individual. The aggressive push for the dominance of individual employment arrangements over the collective became an end in itself for the former Government, despite the increasingly damning evidence of the damage being inflicted on the work force by this system. 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. The labour relations system under the coalition Government went through a reversion to the law of the jungle. The strong, those with economic or industrial power or skills in high demand, did well at the expense of the less powerful, lower paid workers, the young, and women. Research by Preston and Crockett has shown that women in Western Australia suffered the greatest gender pay gap in the country under the Court Government's labour relations regime. Furthermore, fair-minded employers also were caught up in an industrial nightmare that forced them to choose to either go out of business or compete with their industry counterparts by paying wages at the lowest possible rates. The coalition Government set out to undermine the union movement and to prevent unions from effectively representing workers' interests. Hand in hand with this was a clear intention to exclude the Western Australian Industrial Relations Commission from taking an effective role in the bargaining process.

These strategies were a consistent theme in all of the last Government's major labour relations legislation during its term, in what is referred to in common parlance as the first, second and third waves of labour relations legislation. Significant parts of the legislation the previous Government promoted, particularly those in the third wave, have never been used. The provisions in the legislation relating to pre-strike ballots and federal award coverage served no useful role in the real world of industrial relations.

It is significant that in 1997, the committee of experts of the International Labour Organisation, which is a body made up of equal representation of employers, unions and government, should take the unprecedented step of condemning the third wave legislation for its conflict with the principles underpinning the international conventions dealing with the rights of organisations of workers. This Government was elected with a clear mandate 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.

OBJECTS OF THE INDUSTRIAL RELATIONS ACT

The objects of the Industrial Relations Act are to be amended and improved, consistent with the new framework for industrial relations in this State. The amendments are designed to support fundamental tenets of the Industrial Relations Act, including freedom of association and the long overdue need for recognition of the importance of equal remuneration for men and women for work of equal value. A new object will be inserted to emphasise that the commission is responsible for providing a system of fair wages and conditions of employment, whether that be through awards, agreements or orders. The Government recognises that employees and their representatives should be free to negotiate on a more equal footing with their employer. To this end, a new objective of the Act will recognise the primacy of collective bargaining over individual agreements. Equally, the Government recognises that it is important for the interests of enterprises to be taken into account and for those interests to be balanced with fairness for employees.

WORKPLACE AGREEMENTS REPEAL AND TRANSITION

In the time workplace agreements have operated, they have significantly and fundamentally damaged the working condition of thousands of Western Australian workers. Individual employees, without the ability to bargain collectively, have seen their wages and conditions driven down below the acceptable community standards in the award system to an artificial low, which was created by the Court Government. These agreements caused enormous difficulties in industries in which the employees were already among the lowest paid, including the security and cleaning industries.

There is a paucity of precise data on the outcomes of the workplace agreements system. However, from the two surveys published by the Commissioner of Workplace Agreements during the term of the previous Government, even from the limited material made available in them, an aggregate picture of wage and conditions erosion clearly emerges.

The Court Government promoted its workplace agreement system as providing flexibility and choice, but effectively it denied many employees any choice. This Government is committed to providing employees with a genuine choice in the type of employment arrangements under which they work. This Government was elected on the principle of implementing a fair, efficient and productive industrial relations policy. It was also elected on a policy that promotes fairness for all employees, not only those with skills that are in short supply. Part of this policy of fairness and justice includes the abolition of the Workplace Agreements Act. Part 3 of this Bill achieves that pre-election commitment. Workplace agreements that were registered prior to 22 March 2001 will remain in operation for up to 12 months after the commencement of this part. This period will give ample opportunity for employers to review their current employment arrangements and put in place new agreements. Workplace agreements that took effect after 21 March 2001 will remain in operation for only six months after the commencement of this part.

In one of its more Machiavellian provisions, section 19(4) of the Workplace Agreements Act allowed a workplace agreement to continue in effect beyond its nominal expiry date. Agreements that are continuing in operation by effect of this section will remain in operation for only six months after the commencement of this part. Although the workplace agreements remain, the agreements will need to comply with the enhanced provisions contained in the Minimum Conditions of Employment Act. Any agreement that has been lodged for registration with the office of the Commissioner of Workplace Agreements but not formally registered, will not come into effect. On expiry of a workplace agreement, or its prior cancellation by the parties, new arrangements will come into effect for both the employer and the employee. The provisions will ensure that no employee, other than by agreement, will be worse off following the expiry of his or her workplace agreement. Every employee will retain a contract of employment comprising their workplace agreement and common law contract of employment. An employee's employment will also be subject to the relevant award when one exists. An employer will be required to comply with all the terms and conditions contained in the provisions of the relevant award, including penalty rates, allowances and rates of pay.

*Sitting suspended from 6.00 to 7.00 pm*

Mr KOBELKE: The provisions of the Workplace Agreements Act relating to unfair dismissal have been amended. All employees working under a workplace agreement will have their claim heard, not in the Industrial Magistrates Court, but by the commission, which is a right that should never have been withdrawn. The provisions relating to enforcement of rights and obligations under the Act are retained. Accordingly, employees and employers will be able to bring an action after the expiry of the Act in relation to conduct that occurred during its existence.

EMPLOYER-EMPLOYEE AGREEMENTS

Employer-employee agreements - EEAs - will be individual agreements between employers and employees that may deal with any industrial matter. While in operation, EEAs will operate to the exclusion of any award or industrial agreement, unless the parties provide otherwise in the EEA. EEAs will be required to state the nature of the employment relationship between the parties and will contain dispute resolution provisions. EEAs will be public documents, with the exception of an employee's name and address in the private sector. The secrecy of workplace agreements has further contributed to their exploitative nature. It is recognised that some young people signed workplace agreements without understanding fully the implications of those documents. People under the age of 18 will be able to sign EEAs but they will have to be countersigned by their parent or guardian or an independent adult. The Government has made special provision in the Bill to enable people with decision-making disabilities to make EEAs.

Preference to Collective Bargaining

Consistent with the Government's preference for collective bargaining, EEAs will be unable to be made during the term of an industrial agreement. There is a limited exception with respect to people with disabilities. In general, however, industrial agreements will have primacy in the workplace.

The Process for making an EEA

Employers must provide both prospective and existing employees with detailed information before making an EEA, including an information statement prepared by the registrar of the commission. The provision of information is crucial to ensuring employees exercise genuine and informed choice. It also provides employees with a cooling-off period in which to consider their options.

Bargaining Agents

Also consistent with genuine and informed choice, parties may appoint a bargaining agent to assist them in connection with the making and operation of EEAs, and in any dispute resolution under the EEA.

Commencement and Expiry of EEAs

For existing employees, EEAs will commence on registration or some later date specified in the EEA. For new employees, EEAs will commence on employment or some later date specified in the EEA. This recognises that employers often have immediate hiring needs. There will be no ability for parties to vary the EEA during its term. However, the parties can agree to cancel the EEA at any time.

EEAs will be able to run for a maximum of three years. The EEA will cease to have effect at the end of its specified term. This contrasts starkly with workplace agreements, which can continue indefinitely beyond their nominal expiry date. This has weakened the bargaining power of employees, and has resulted in many of them being locked out of collective representation indefinitely. EEAs will not deny employees the benefits of collective representation once the EEA has ended.

Role of the Registrar

The registrar of the commission will oversee the registration of EEAs and will do so with independence. EEAs must be lodged with the registrar within 21 days of signing by the parties, to help expedite the registration process and to protect employees' entitlements. EEAs that are not lodged within the 21-day period will be refused. EEAs made with new employees will cease immediately at the end of this period. The registrar is prevented from registering EEAs for a period of 14 days after lodgment. This provides another cooling-off period, during which time the registrar must be satisfied that the EEA is in order for registration. The registrar will have broad information-gathering powers to assist in this function.

Appeal Rights when EEA refused Registration

Parties will have appeal rights to the commission when an EEA is refused registration.

No-disadvantage Test

A key feature of the EEA system will be the requirement that EEAs meet an award-based, no-disadvantage test. This will mean that EEAs cannot overall disadvantage employees in comparison with a relevant state award or, when no such award applies, a comparable state or commonwealth award. The no-disadvantage test will safeguard against the shortcomings of the workplace agreement system, which has exploited many employees through the erosion of award conditions. Employers may seek the registrar's assistance in determining the relevant or comparable award for the purposes of assessing the no-disadvantage test. The no-disadvantage test will require the registrar to take account of both monetary and non-monetary benefits that an employee would obtain under an EEA as compared with the relevant or comparable award.

As previously mentioned, EEAs may help to facilitate employment opportunities for people with disabilities. With this in mind, EEAs will not fail the no-disadvantage test by reason only of reduced wages being payable to employees eligible for the Commonwealth's supported wage system. Although employers will not be obliged to use the supported wage system to determine wage rates, it will provide the registrar with a nationally accepted benchmark against which wage rates will be measured. Finally on the no-disadvantage test, it is important to highlight that the commission will establish and review the principles and guidelines to be applied by the registrar in determining the no-disadvantage test.

Dispute Settlement Procedures

The dispute provisions required under EEAs will be considerably broader than those under workplace agreements. This will ensure that employers and employees have an accessible avenue for the resolution of disputes. In some instances parties will be unable to reach resolution on their own. The parties will have the ability to appoint an arbitrator, who may be the commissioner, to finally determine the matter at hand.

Prohibited Conduct

The Bill prohibits certain conduct in connection with the offering and making of EEAs. It will be unlawful for employers to advertise or to offer employment conditional on the making of EEAs. This will give employees a real choice about whether they sign an EEA. EEAs will not be used to deny employees genuine choice and will not be used to coerce employees or restrict employment opportunities. EEAs will not be used to lock employees out of collective representation rights.

The Bill establishes civil penalty provisions to deal with unlawful conduct that may affect employees, prospective employees and employers. The civil penalty provisions cover a wide range of scenarios, including employees being dismissed or disadvantaged in employment because they choose not to make an EEA. Employees unlawfully treated under the workplace agreements system genuinely struggle to obtain any redress. The workplace agreements system was not designed to deter rogue behaviour or to compensate employees who suffer at the hands of such behaviour. Under the workplace agreements system, employees do not have the automatic support of the inspectorate from the Department of Consumer and Employment Protection - DOCEP - in taking action. Any alleged unlawful conduct must be proven beyond reasonable doubt. In contrast, with EEAs, industrial inspectors from DOCEP will be empowered as a matter of right to investigate alleged contravention of civil penalty provisions and commence proceedings in the Industrial Magistrates Court.

The Bill provides meaningful remedies when unlawful conduct is proven. The Bill does not focus solely on punishing the party found guilty of unlawful conduct. Importantly, it seeks to undo the wrong so that the innocent party is meaningfully redressed. Contravention of civil penalty provisions may attract pecuniary penalties, which may in turn be payable to the aggrieved party. The court will be additionally empowered to make orders to prevent the continuation of any unlawful conduct.

Enforcement

EEAs will be enforceable in the same way as awards and industrial agreements are under section 83 of the Industrial Relations Act 1979. Among other things, this means industrial inspectors will be empowered to investigate and commence proceedings for alleged breach of EEAs. It also means that entitlements accrued under EEAs will be enforceable after the EEA has come to an end, or after the relevant employment has been terminated. The Bill will provide employees under EEAs the right to access the commission for unfair dismissal, which is the same fundamental right that any other employee in the State has.

The Government believes awards and enterprise bargaining agreements are the fairest and most balanced form of industrial regulation. The Government's reforms will reinstate the primacy of collective bargaining and, in the process, restore fairness to many workplaces harmed by workplace agreements. However, in a complex and diverse labour market, the Government recognises that some employers and employees may benefit from individual bargaining. The Government is committed to delivering a balanced industrial relations system that promotes employment and business growth, while providing both employers and employees with a choice of employment arrangements.

EEAs will ensure genuine choice for employees, and meaningful remedies where choice is denied. EEAs may not be popular with unions, for obvious ideological reasons. However, unions are encouraged to participate in the EEA system and provide services to members who choose to make EEAs. Employers are encouraged to consider EEAs as a form of statutory individual contract that is a viable alternative to workplace agreements. Employers need to understand that EEAs are not workplace agreements, and will deliver positive benefits to the workplace through harmonious industrial relations. Employers who believe in fairness and equity will not flinch

at the long-overdue demise of workplace agreements, but will applaud the flexibility combined with fair standards that are the joint basis of EEAs.

The Government is committed to EEAs, and to making sure the system operates effectively in practice. The Government will take on board constructive feedback and endeavour to improve the system where improvements are needed.

In conclusion, the EEA system will deliver flexibility and productivity through positive employee relations. The Government is confident that employers who embrace the underlying principles of EEAs - fairness and equity - will reap the benefits of a harmonious workplace.

GOOD FAITH BARGAINING

As I have said before, this Government is rightfully returning the focus of industrial relations to a collective one, a move that will provide greater protection for employees and more productivity for employers. The Government also remains committed to the proposition that parties should be encouraged to reach their own agreements. The system for negotiating industrial agreements has therefore been improved by implementing a system of good faith bargaining that will encourage parties to negotiate openly and honestly.

Parties will be able to access the obligation to bargain in good faith by initiating bargaining with another party. Unions will be able to commence bargaining with several employers who are proposed to be bound by a similar industrial agreement, and employers will be able to initiate bargaining with several unions to make a similar agreement to cover their entire work force. When a party receives a notice proposing to initiate bargaining, it will have 21 days in which to respond. If the party responds with a yes, bargaining will commence and the obligations pertaining to good faith bargaining will apply.

Under the current legislation, parties are permitted to stonewall attempts by other parties to negotiate industrial agreements. Some employers have used their refusal to grant a collective pay rise as an inducement to employees to enter into individual workplace agreements.

Good faith bargaining includes such obligations as stating and explaining the parties' position, meeting at reasonable times and places, disclosing relevant and necessary information, acting honestly and bargaining genuinely. Bargaining genuinely will require a party to not hold on steadfastly to an inflexible and unreasonable bargaining position. The fact that a party may take industrial action during bargaining will not necessarily mean that it is not bargaining in good faith. However, the commission will be able to examine the conduct of the parties and may determine that the act of taking industrial action is in breach of the duty to bargain in good faith.

The commission in court session will be provided with the power to provide guidance on good faith bargaining by way of a code of good faith bargaining. It is important to note that good faith bargaining will not require parties to reach an agreement or to agree on particular terms of an agreement. The commission will be empowered to compel parties to comply with the requirement to bargain in good faith. However, it will not have the power to require a party to make an agreement or agree to any particular term of a proposed agreement.

The obligations associated with good faith bargaining will continue until either an industrial agreement is made or the commission terminates bargaining. Although the Government supports parties reaching agreement without third party-imposed outcomes, the commission will be empowered to arbitrate an outcome by consent for parties that are ultimately incapable of finalising an agreement.

When negotiations between the parties fail, either party may apply to the commission to terminate the bargaining. The commission may do this only if it considers that there is no reasonable prospect of an agreement being reached. However, if a party making an application to terminate the bargaining period has not been bargaining in good faith, the commission will not terminate the bargaining period. A party should generally be considered to have failed to bargain in good faith if it has failed to comply with orders made by the commission during the process of good faith bargaining.

When a party has refused to bargain, or when the commission has terminated bargaining, parties may apply to the commission to make an enterprise order. An enterprise order will be able to include all matters that were the subject of negotiation or that would normally appear in an industrial agreement, subject to the usual constraints on the commission's jurisdiction. It will be limited to a maximum nominal term of two years.

During the term of an enterprise order the employer will be able to offer EEAs to employees covered by the order. An enterprise order may be varied during its term only by agreement between the parties. After the nominal expiry of an enterprise order, the order will continue in effect until it is replaced by an industrial agreement, award or another enterprise order. Industrial agreements, which will be restricted to a maximum

nominal term of three years, will be repealed by a later industrial instrument to the extent that they are not specifically saved by the latter instrument. This will aid employers and unions by removing the confusion associated with multiple instruments applying simultaneously to an employer.

MINIMUM CONDITIONS OF EMPLOYMENT ACT

Labor made a commitment that the Minimum Conditions of Employment Act 1993 would be retained and improved, and that the matters for which there are minimum conditions would be expanded. Last year, the Government consulted with key industry parties on seven proposed changes to the Minimum Conditions of Employment Act, and after taking into account the feedback from that consultation, it is proposing to make four changes. This amending legislation will upgrade the standards of the Minimum Conditions of Employment Act in two ways. Firstly, it will improve the minimum weekly rates of pay and how those rates will be set in the future; and, secondly, it will improve and expand the minimum employment conditions for all employees in this State. I am proud to announce to the lowest paid workers of Western Australia that this Bill will benefit them in achieving both of those ends.

The Minimum Wage Setting Process - General

The current Minimum Conditions of Employment Act provides that the minister determines the minimum weekly rates of pay. Under the Court Government this led to minimum rates being determined as part of a political process, which ultimately resulted in employees on the minimum wage being over $50 a week worse off than those on the minimum wage in the rest of Australia. This Bill will de-politicise the minimum wage by totally removing the power of minimum wage determination from the minister and providing that the independent umpire - the commission - must set what is an appropriate minimum weekly rate of pay underpinning all wages in Western Australia.

The commission is the expert body in setting wages in this State, and in fairly balancing the interests of employees, employers, and the economy in general. The commission will review the minimum weekly rates of pay annually at the time of the state wage case. It will give the commission necessary discretion in determining the appropriate level of the minimum weekly rates of pay. Industrial parties will be able to make submissions on the appropriate level of the minimum weekly rates of pay. There is also a separately prescribed ability for the key industry parties to make an application for review of the level of the minimum rates of pay if 12 months has elapsed since the previous increase.

Categories Of Minimum Wage

The commission will be required to determine and issue a minimum wage for employees 21 years of age and over. Junior minimum rates of pay will be a percentage of the adult minimum wage rate, as prescribed by the Act. The commission will also be required to determine and issue a separate set of minimum wage provisions for trainees and apprentices. This will be the first time that the special needs of these employees have been recognised in terms of minimum wage protection. The commission will also be empowered to determine the appropriate minimum wage for trainees and apprentices over the age of 21. The challenge for the commission is to reconcile the need for a fair and appropriate set of minimum wage rates for these vulnerable employees, without endangering their employment and training prospects.

Hourly Divisor

As part of the Government's commitment to removing the inequities between award-covered employees and those on the statutory minimum wage, the hourly divisor for the purposes of the Minimum Conditions of Employment Act will be reduced from 40 hours a week to 38 hours a week. This is in line with the vast majority of state and federal awards. The reduction in the hourly divisor is crucial to these reforms. The divisor will create a minimum hourly rate of pay for part-time and casual employees, as well as the rate of pay for hours worked beyond 38 hours in any week. The previous divisor of 40 hours further exacerbated the disparity between award and non-award employees. The reduction to 38 hours will not be a free wage increase for the low paid, but rather a recognition that the 40-hour divisor introduced by the previous Government was a lowering of community standards.

Transitional Minimum Wages

To account for the gap between commencement of these provisions and the first minimum wage determination of the commission, a transitional minimum wage has been set that is identical to the award minimum wage determined by the commission in the 2001 state wage case.

Increasing the Casual Loading to 20 per cent

As part of the Government's commitment to fairer statutory minimum wages, the casual loading under the Minimum Conditions of Employment Act will increase from 15 per cent to 20 per cent. Casual employees in this State will therefore receive, as an hourly minimum, the statutory minimum wage divided by 38 hours, plus 20 per cent of the standard hourly rate. Across Australia, a 20 per cent casual loading is the minimum community standard expected in any workplace; not the Court Government's miserly 15 per cent. The commission will be able, on an ongoing basis, to increase the loading to ensure that it remains consistent with community standards.

Minimum Employment Conditions

Carer's leave: a new entitlement provided by this Government will be carer's leave. Employees will be entitled to use up to five days of their sick leave entitlement each year as carer's leave when they are the primary caregiver for a member of their family or household who is ill or injured. This is in recognition of the vital role of carers in our families and the Government's commitment to assisting carers to balance work and carer responsibilities. Currently, this entitlement is available only to the lucky few who have access to it through a negotiated agreement.

Contracting out of annual leave: the Court Government's legislation has resulted in some employees giving up all four weeks of their annual leave each year. The contracting out of annual leave for an equivalent benefit will now be limited to 50 per cent of the employee's four-week entitlement under the Minimum Conditions of Employment Act. This will ensure employees have access to some annual leave for rest and recreation each year.

General orders regarding minimum conditions of employment: to clarify the role that the commission will play under the Industrial Relations Act, the commission will be able to make a general order in relation to a matter that is the subject of a minimum condition of employment in the Minimum Conditions of Employment Act if the general order is more favourable to employees than that contained in the Minimum Conditions of Employment Act. This will provide the commission with the continuing ability to hear arguments for and against the expansion of any statutory minimum condition of employment, and determine an appropriate outcome that will provide fair employment standards and conditions of employment for employees not only for now, but also for the future.

STATE WAGE CASES - SECTION 51 REFORMS

The commission will be provided with greater flexibility in the flowing on of national wage decision increases to the state award system. Section 51 as currently constituted is too inflexible in that it arguably provides only two options; that is, the national wage case decision is either flowed on in its entirety or completely rejected. The commission therefore cannot fully account for particular Western Australian circumstances when granting the safety net increase. This issue was recognised in the 1995 Review of Western Australian Labour Relations Legislation conducted by former Senior Commissioner Fielding. The Gallop Government therefore has implemented recommendation 103 of the Fielding review, which provides the commission with the full discretion to either apply or not apply the national wage principles as it sees fit. Also consistent with Fielding's recognition that the national and state economies are inseparable, the actual dollar amount determined in the national decision will not be modified by the commission should it determine to flow on the decision.

A new provision has been created that requires the commission to give effect to the national wage decision increase in state awards no later than 30 days after the effective date of the national decision. This is to ensure that the increase is granted in a timely manner. Section 51 will also explicitly require the commission to ensure there is consistency and equity in the variation of awards. This is to ensure that no employee to whom the decision truly relates misses out on the increase because of some technicality.

AMENDMENTS TO THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

The regulation of industrial matters in Western Australia requires a strong, independent and specialist industrial relations tribunal to act as the umpire in industrial relations matters. This Bill includes amendments designed to strengthen the power and effectiveness of the commission. The legislation affirms that proceedings before the commission cannot be removed from the commission or challenged in any other court. Among improved procedural provisions, the commission is given express power to use both its conciliation and arbitration functions, in whatever combination is appropriate, to administer justice in a timely and efficient manner.

The determination of the salaries of commissioners of the Western Australian Industrial Relations Commission will be transferred to the Salaries and Allowances Tribunal.

AMENDMENTS TO THE INDUSTRIAL APPEAL COURT

Under the new legislation, the Industrial Appeal Court's role will be limited to important legal and jurisdictional matters. Further, the court will be required to dismiss an appeal that is technically correct, but where the court finds that the appellant has not suffered an injustice. These reforms are intended to ensure that the discretionary exercise of power by the commission is not overturned by the court unless there is some significant specified error. This will reduce the increasing tendency to legal technicality that detracts from the proper role of the commission in conciliating and arbitrating industrial matters in a practical everyday manner that is intelligible to ordinary people.

PUBLICATION OF INFORMATION

The legislation will enable the registrar of the commission to publish information in electronic format in recognition that we live in a modern-day society in which electronic methods of communication will better disseminate important information to the community at large.

AMENDMENTS ABOUT AWARDS

This Government made a commitment to establish fair employment standards for the workers of this State. Under this revised industrial system, awards will play an important safety-net role for bargaining, both for collective and individual agreements. With the repeal of workplace agreements, employees will revert to award conditions if a new agreement is not negotiated. However, the former Government was happy to let the award system wither on the vine as it aggressively pursued its preference for individual agreements. As a result, many awards have not kept pace with the progressive changes in working conditions and minimum wage rates, are outdated or are discriminatory. Accordingly, we need to update existing awards to support fair bargaining.

New Awards

Making a new award for employees with no award coverage will be easier. The new provisions place the onus on any party opposing the making of a new award to show that it would not be in the public interest to make such an award. The commission will also be given the ability to make an interim award when no award currently exists to protect the existing wages and conditions of employees, or for any other appropriate reason.

Extending Award Coverage

An existing award will be able to be extended to cover an industry not previously covered by that award, provided there is no other existing award coverage for the employees.

Award Modernisation

The commission will be given the power to review and vary awards to ensure all awards are consistent with current legislative requirements. The commission will be required to ensure that awards provide at least the award minimum wage as determined by the commission in court session each year and meet the standards established by the Minimum Conditions of Employment Act. The commission will also be required to ensure that awards do not contain obsolete or outdated provisions, or any provisions that discriminate against any employee on any ground upon which discrimination in work and employment is unlawful under the Equal Opportunity Act 1984.

The commission will need to balance the needs of industry and enterprises with fairness for employees. The Bill will also allow parties to an industrial agreement, where there is consent, to incorporate the more modern and relevant conditions of employment that have been negotiated for the industrial agreement into the relevant award. However, these provisions will apply only to the employer and employees bound by that agreement. The intention of the award modernisation process is not to strip back or simplify awards - to use Peter Reith's euphemism - to a mere skeleton of allowable matters, but to ensure that work practices reflect the current needs of employees and employers.

RIGHT OF ENTRY, RECORD KEEPING AND INSPECTION OF RECORDS

All employees should have access to the services of their organisation or to an organisation that they are eligible to join. Through fair and balanced right-of-entry laws, such rights can be protected. The former Government's third wave legislation unfairly restricted the rights of unions to represent employees in their workplaces. The Government made a firm commitment to the people of Western Australia that it would repeal that legislation. Accordingly, the Industrial Relations Act will be amended to repeal existing sections 49AB, Power of entry, and 49B, Inspection of records. New right-of-entry provisions will enable authorised representatives to enter, during working hours, premises where relevant employees work for the purposes of holding discussions with relevant employees or to investigate breaches of industrial instruments and laws. Such representatives will be authorised only if they hold an authority issued by the registrar of the commission.

As evidence of this Government's commitment to balance in its industrial reforms, the commission will be empowered to revoke or suspend such permits if authorised representatives have acted improperly in the exercise of the powers conferred on them by the Act. In order to enter or remain on premises, authorised representatives will be required to show their authority if requested to do so by the occupier of those premises.

The new provisions provide greater balance and consistency in the state system. By creating a scheme of right of entry within the Act that is broadly consistent with the commonwealth and other state schemes, the Government has introduced a far simpler system that avoids some of the complexities of the existing array of award provisions. Except for the period of notice required to exercise right of entry, the provisions of awards will be of no effect to the extent that they are inconsistent with or additional to the Act provisions.

The Act will also prescribe minimum record-keeping and inspection requirements for employers and employees bound by industrial instruments. This will create greater consistency with respect to such requirements and ensure compliance with relevant industrial instruments is more easily determined. Employers and employees bound by awards, orders, industrial agreements and EEAs will be subject to the new provisions. The remainder will be subject to the provisions of the Minimum Conditions of Employment Act. Individual employees will now have the right to access their own employment records.

THIRD WAVE REPEALS

Pre-strike Ballots

Part VIB has never been used and is to be repealed. It was introduced by the former Government purely as an exercise in political ideology. Despite the pain and controversy of their introduction, former Minister Kierath's pre-strike ballot laws remain unused, and are by any measure a failed experiment.

Financial Obligations of Employees of Organisations

Part II, division 5 of the Act will be amended to remove the financial obligation duties as they apply to employees of organisations registered under that Act. This will result in only the office bearers of such organisations being the subject of these requirements, rather than office bearers and employees who are entitled to participate in the financial management of organisations in a representative or advisory capacity. The reform will ensure that paid employees of industrial organisations are subject to similar protections and obligations as are comparable employees of companies and other community organisations. Statutory responsibility for financial accountability rests with the officials of the organisation. The amendments will facilitate this.

Political Expenditure by Organisations

Part VIC of the Industrial Relations Act was introduced by the previous Government and restricts donations to political parties by industrial organisations and represents another example of political ideology rather than best practice driving policy. These provisions create undue interference in the internal affairs of organisations and are to be repealed. The Act provides extensive and effective accounting and reporting requirements for organisations that ensure their financial affairs are open and accountable. Part VIC was an unnecessary and inappropriate add-on.

Federal Award Coverage

Part IIIA of the Act will be repealed. This reform will ensure that a union cannot be removed as a party to a state award simply because it is seeking federal award coverage. The insertion of part IIIA was another example of the previous Government's deliberate strategy to prevent unions from effectively representing the interests of their members. Although part IIIA of the Industrial Relations Act has had little practical effect, its retention would provide the potential for employees to be denied the protection of union coverage through no fault of their own and regardless of their wishes.

UNFAIR DISMISSAL

The unfair dismissal system in Western Australia is long overdue for reform. The system fails to meet the needs of employees on one hand and is a burden for business on the other. This Government believes that an efficient and effective unfair dismissal system should provide an appropriate balance between the interests, rights and obligations of both employers and employees. The system should reflect the following key features -

> a simple process, which provides as much scope as possible for agreed outcomes without resort to arbitration;
>
> appropriate mechanisms to discourage unmeritorious claims;
>
> expeditious processing and resolution of claims; and

appropriate remedies which reflect the intent and purpose of unfair dismissal protection.

The unfair dismissal system has become an increasingly compensation-focused jurisdiction. The Government believes that reinstatement should be the primary remedy with compensation considered only when reinstatement is impracticable.

There is also a need to correct a legislative anomaly, highlighted in the case of City of Geraldton v Cooling (2000) WASCA 346 - the Cooling decision - whereby the Western Australian Industrial Relations Commission is unable, when making an order for reinstatement, to award the employee the wages lost between the date of dismissal and the date of reinstatement.

The following key changes will be made to the unfair dismissal and associated enforcement provisions of the Act: reinstatement will be the primary remedy regardless of whether an employer agrees to pay compensation and the commission will in certain circumstances be able to make interim orders under section 44, Compulsory conference, as to reinstatement or re-employment pending the resolution of the claim. The commission will be required to take into account a properly constituted probationary period of up to three months when determining the merits of an unfair dismissal claim. It is anticipated that only in unusual circumstances will the commission hear an unfair dismissal application of someone dismissed within a three month probationary period. Such a case might be when an employee has gone to considerable expense and effort to move from a previous job to a new job and then finds himself or herself unfairly dismissed within the three month probationary period. The commission will also have the ability to issue orders against third parties to the employment relationship in certain cases when it considers a third party may be acting so as to prevent or hinder an employee's employment, transfer to a particular site, reinstatement or re-employment.

Enhanced powers for the enforcement of an unfair dismissal order in the Industrial Magistrate's Court will be introduced. The filing fee for an unfair dismissal claim will be increased to $50 from $5 to bring it into line with other jurisdictions. The present 28-day time limit for lodging claims is considered too inflexible and has denied just outcomes in cases of genuine need in the past. Accordingly, the commission will have the ability to hear claims lodged out of time if it considers it would be unfair not to do so.

The Bill will ensure that claims in the WAIRC also lodged with the Australian Industrial Relations Commission cannot be determined by the WAIRC unless they have been withdrawn from the Australian commission or have failed in that forum for lack of jurisdiction. Enhanced powers for enforcement will ensure employers cannot simply choose to "buy out" a reinstatement order by refusing to comply with it. In the current Act employees must apply for a separate order for compensation when their desire, and their legal right, is to be reinstated. To this end, new provisions at section 83B of the Act will provide the Industrial Magistrate's Court with new powers to order either specific performance of a reinstatement order or enhanced compensation in lieu. Provisions relating to probationers will avoid the unfairness of the blanket exclusion adopted by other jurisdictions, while ensuring that the commission properly takes into account genuine probationary arrangements.

Preliminary matters will be handled by the registrar to reduce the time taken for applications to be heard and enhance the scope for agreed outcomes. The existing process of referral for investigation by individual commissioners under section 93(8) is ad hoc and the new provisions will create a more transparent and accountable process under the supervision of the chief commissioner. Upon proclamation of the Act, employees whose basic wage is in excess of $90 000 per annum will be excluded from lodging a claim for denied contractual benefits or unfair dismissal unless their employment is covered by an award, enterprise agreement, enterprise order or employee-employer agreement. The prescribed amount of $90 000 will be indexed annually by regulation.

AMENDMENTS ABOUT PROCEDURE AND ENFORCEMENT

The enforcement regime of the Act needs strengthening to ensure the proposed industrial relations reforms can achieve their aim of providing fairness and justice to employees and employers alike. The current system does not deal adequately with parties who breach industrial instruments, engage in inappropriate conduct or disobey orders of the commission.

Civil Penalty Provisions

Specifically, the reforms introduce a new enforcement regime in the form of civil penalty provisions. Rather than rely on the limited ability of the full bench of the commission to impose penalties for a breach of the Act and because of the complexity of proving offences in the Industrial Magistrate's Court, the civil penalty provisions provide a workable alternative. Provisions attracting civil penalties include time and wages record

keeping and access requirements, obstruction of industrial inspectors and authorised representatives carrying out duties prescribed by the Act, and prohibited conduct in relation to EEAs.

Civil penalty provisions attract a fine of up to $5 000 in the case of an employer, organisation or association; alternatively, a compliance order may be made. For example, an employer may incur a fine when prosecuted for failure to maintain time and wages records. Under the proposed reforms, the Industrial Magistrate's Court may also issue a compliance order compelling the employer to commence the keeping of time and wages records. Civil penalty provisions require the burden of proof to be the civil standard of "a balance of probabilities", which will provide greater opportunity for matters to be successfully prosecuted.

Unfair Dismissal Orders

The enforcement of an unfair dismissal order has been enhanced with additional sanctions available through the Industrial Magistrate's Court. The reforms provide for specific performance of the original orders made by the commission. The purpose of these orders is to allow employees to enforce the rights bestowed on them by the commission. In addition to an order for specific performance, a penalty of up to $5 000 may be imposed on employers who fail to comply with an order of the commission. In the event an employer refuses to obey an order of the Industrial Magistrate's Court, such conduct will constitute an offence.

Penalties

When penalties are imposed, they may be made payable to the affected party. The Government believes this will ensure greater fairness as those affected can be compensated. The improved enforcement regime will provide the mechanism necessary to ensure the rights of all parties in the system are adequately protected. The proposed enforcement provisions aim to provide an increased deterrent to non-compliance and significant penalties for those parties who consistently contravene industrial laws.

DELEGATION OF CERTAIN POWERS TO THE REGISTRAR AND CERTAIN REGULATIONS UNDER SECTION 113

As part of the Government's commitment to improve the operation of the commission, the Bill provides for the delegation of certain functions of the commission to the registrar. The process for such delegation will be developed through regulations made by the chief commissioner. The matters that will be subject to delegation include claims made under section 29(1)(b) for unfair dismissal and denied contractual benefits, the review of awards for the purpose of section 40B, as well as applications for the waiving of notice for the production of employment records under section 49I(7).

The amendments will enable the registrar to mediate unfair dismissal and denied contractual benefits claims within an accountable and transparent framework, overseen by the chief commissioner and codified in regulations. Similarly, the review of awards to modernise them for the purpose of section 40B and the waiving of notice for production of employment records are matters that can be dealt with effectively by the registrar. However, the power to issue orders will remain the responsibility of the commission. This will expedite such matters to the benefit of all parties and free up the resources of the commission to deal with more significant matters.

Amendments are also made to section 113 which place the general regulation-making power of the commission with the chief commissioner in consultation with commission members. This will streamline the regulation-making process. The regulation-making power for the setting of fees for matters before the commission shall be made by the Governor as opposed to the current practice of fee setting by the commission itself. This is more appropriate given that the public funds the operation of the commission and is entitled to ensure the appropriate level of fees is paid by parties using the commission. The penalty for breaching a regulation made under this section is also increased from its current level of up to $40 to a level not exceeding $1 000. This penalty has not been amended for a number of years and is inadequate at its present level.

The definition of what constitutes an "industrial matter" for the purposes of the Industrial Relations Act is also integral to the jurisdiction of the commission. Concerns have been expressed for some time that the current definition of "industrial matter" unduly restrains the commission in resolving disputes in the workplace. The amended definition of "industrial matter" contained in this Bill properly provides the commission with the ability to deal with any matter "affecting or relating or pertaining" to a number of issues relating to employment and the relationship between employers and employees. It now also explicitly includes the collection of union subscriptions, any matter the subject of an industrial dispute and occupational safety and health issues not before the safety magistrate.

The definition of what constitutes an "employer" for the purposes of the Industrial Relations Act is integral to the jurisdiction of the commission. There has been a growing concern that the labour hire industry has not been adequately regulated by awards, and by the industrial relations system in general. To ensure that the commission has the power it properly requires, the Bill makes it explicit that an employer also includes labour hire and group training organisations.

The Government has also acted upon a concern that musicians and entertainers have no accessible remedy in the event they have not been paid moneys owed for performances. Therefore, the definitions of "employer" and "employee" have been appropriately amended to ensure that musicians, entertainers and those who hire them are within the jurisdiction of the commission.

This Government is committed to promoting a productive, collective and cooperative approach to industrial relations, unlike the individualistic and antagonistic approach of the previous Government. In order to achieve this, we need to ensure that employees have the opportunity to organise and, through their unions, negotiate their pay and conditions within a collective bargaining framework that balances the rights and obligations of employers and employees. We are also committed to ensuring that the Western Australian Industrial Relations Commission has the powers necessary to act as independent umpire when needed. I believe that this Government has provided more opportunity for consultation on this industrial relations legislation than any other Government in the past decade.

[Interruption from gallery.]

*Points of Order*

Mr BARRON-SULLIVAN: Mr Acting Speaker, I draw your attention to the disruption from the public gallery.

The ACTING SPEAKER (Mr McRae): The interjection seems to have stopped.

Mr DAY: Mr Acting Speaker, you have a responsibility in the Chair to inform members of the public gallery that they do not have a right to interject, whomever they may be. Whatever your background might be, you need to do your job properly.

*Withdrawal of Remark*

The ACTING SPEAKER: I will take the point of order from the member for Darling Range, but I note also that he reflected on me in the Chair as a person, and I ask him to withdraw that.

Mr DAY: I withdraw.

*Points of Order Resumed*

Mr MASTERS: On the point of order, the member for Darling Range is absolutely correct in what he said.

Mr Marlborough interjected.

Mr MASTERS: The point of order relates to the fact that there is a need for the Chair to point out to those in the public gallery that there are certain standards that we are seeking to maintain in this House. Prior to dinner we had a debate in which people on this side said that there was a definite lack of respect for the processes of Parliament. I believe it is important for the people in the public gallery, who are humming even as I am talking, to show an appropriate level of respect for the processes of Parliament and everything it stands for.

The ACTING SPEAKER: Those in the public gallery are very welcome to be here to observe the proceedings of this Parliament. The members who have raised objections and made points of order are absolutely correct. The role of members of the public is neither to interrupt the proceedings of the Parliament, nor to interfere with any of the points being made by members during the course of debate. I ask members of the public not to do that.

*Debate Resumed*

Mr KOBELKE: I am grateful to those stakeholders, including unions, employers, organisations and practitioners, who have taken the time to work with us during the consultation process to finetune this legislation. I am confident that the Labour Relations Reform Bill 2002 will provide a fairer, more efficient and effective industrial relations system that balances the interests, rights and obligations of both employers and employees. This reformed system will be the basis for a better economic and social future for all Western Australians. I commend the Bill to the House.

Debate adjourned, on motion by Mr Bradshaw.