

Mr Matt Birney; Acting Speaker; Mr John Kobelke; Dr Kim Hames; Mr Troy Buswell; Mr Bob Kucera; Mr Paul Omodei; Mr Fran Logan

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**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION, BLUE FLU**

*Matter of Public Interest*

**THE ACTING SPEAKER (Mr A.P. O’Gorman):** Members, today I received within the prescribed time a letter from the Leader of the Opposition in the following terms -

Mr Speaker

I propose that the following Matter of Public Interest be submitted in the Legislative Assembly today for discussion -

That this House unanimously opposes the CFMEU’s use of disruptive “blue flu” tactics

Yours sincerely

MATT BIRNEY MLA  
Leader of the Opposition

The matter appears to me to be in order. If at least five members will stand in support of the matter being discussed, the matter can proceed.

[At least five members rose in their places.]

**MR M.J. BIRNEY (Kalgoorlie - Leader of the Opposition)** [3.12 pm]: I move -

That this house unanimously opposes the CFMEU’s use of disruptive “blue flu” tactics.

Western Australia is in a remarkably unique position for a couple of reasons: firstly, because the opportunities that are being presented to us by the once-in-a-generation industrialisation of China are abundant; and, secondly, because the possibility of our flushing that opportunity down the toilet is also very real. I will explain further for members present. The industrialisation of China has created an insatiable demand on the part of the Chinese for natural resources that we have here in Western Australia. Of course, this industrialisation in China has contributed to a mammoth boom in the Western Australian economy. I know the Labor Party would like people to believe that it has created this boom, but in fact it has merely swung off the coat-tails of the economic impetus coming out of China. We can embrace this once-in-a-generation opportunity and we can bring about a set of public policies that are designed to embrace this opportunity, or we can simply flush that opportunity away by handing over our work sites to the union movement.

Never before has the union movement thought that it has so much power in this state. The reason it thinks it has so much power in this state is that it owns the Labor Party. It owns the Labor Party chapter and verse. It owns every member who sits on that side of the house. The union movement certainly owns the Minister for Consumer and Employment Protection, who is responsible for industrial relations, and it knows it. The union movement has been flexing its muscles like never before, safe in the knowledge that it owns the Minister for Consumer and Employment Protection, and safe in the knowledge that it owns the Premier of Western Australia. Quite outrageous tactics have been displayed over a long period by particularly, but not exclusively, the Construction, Forestry, Mining and Energy Union.

I believe the use of the blue flu tactic is considered to be quite abhorrent by most people in Western Australia, but, more importantly, it has the capacity to bring the building industry in Western Australia to its knees at a time when it should be rejoicing the fact that the Chinese economic boom has spilt over into our borders and is creating some real economic opportunities for us, the likes of which we will see only once in our lifetime. Instead of embracing those opportunities, Labor Party members are hell-bent on ceding power to their union mates, who own them chapter and verse, as I said earlier.

This blue flu tactic is really quite ridiculous. The union movement would have us believe that 200 people on these work sites have fallen sick all at the same time. If that was true, why has the Minister for Health not stepped in and declared a state of emergency? Why has he not put the quarantine nets around those work sites? Two hundred people have gotten sick all at the same time. It is obviously an epidemic. The reason he has not done that is that the Minister for Health, the public of Western Australia and the Liberal opposition are fully aware that this is just an industrial tactic designed to bully people into either accepting a union heavyweight on site as the so-called safety rep or forcing employers to sign the latest enterprise bargaining agreement.

What a wonderful little document the latest union enterprise bargaining agreement is. If for nothing else but its humour value, I will go through a few of the clauses in the latest enterprise bargaining agreement that the union is demanding employers sign, particularly building industry people. For instance, people get their 10 sickies a year, but they do not have to be sick. Therefore, if a person wakes up one day and decides he wants to go to the cricket, he will just go to the cricket. Interestingly, it also says in that agreement that there is no obligation on

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the employee to justify his or her whereabouts when taking sick leave. Importantly, it says that a person does not actually have to be sick to take the sick leave. Therefore, it is just another 10 bludge days. Interestingly, the union EBA also demands 26 paid rostered days off a year. That is equivalent to one every second week. It is the equivalent of having every second Friday off. We would all like to have every second Friday off, but we are all realistic enough to understand that that is not a sustainable demand; yet the unions are forcing employers to sign this document, and, if they do not, all of a sudden everybody gets the blue flu - an industrial tactic that is really quite disgraceful.

The union is also demanding that the 38-hour working week be reduced to 36 hours. In the next breath it is asking for a 12.5 per cent pay rise. The union wants people to work fewer hours and get more money, and it does not want them to show up for work if they do not want to. These are the sorts of demands contained in the latest union EBA. The union is also demanding that all shift work now be paid at double time, which is a demand that employers can ill afford.

Interestingly, the union has a very socialistic, trendy view of alcohol and drugs in the workplace. The latest union EBA states very clearly that if, for instance, people show up for work affected by drugs every single day of the week for a month, and they simply tell their employer that they are getting some counselling, they cannot be dismissed from that work site. I have been an employer for a considerable number of years. My work site is not anywhere near as dangerous as a construction industry work site. However, if an employee fronted up to my work site on a daily basis when he was affected by drugs, I would tell him to leave and go somewhere else. The union movement is seeking, by way of this EBA, to remove the right of an employer to dismiss an employee even if he continually shows up at work affected by drugs, provided he tells the employer that he is getting some counselling for his problem.

**Mr M.P. Whitely:** Will he continue to be paid?

**The ACTING SPEAKER (Mr A.P. O’Gorman):** Order! I call the member for Bassendean to order; he is not in his seat.

**Mr M.J. BIRNEY:** I will answer the question, just to humour the poor soul opposite. He will get a sick day for it, and he will be paid for that sick day!

**Mr M.P. Whitely:** You made the same mistake on the Paul Murray program the other day.

**Mr M.J. BIRNEY:** No, I did not. The member has no idea. Has the member read the EBA? The employee can get sick leave with pay, or he can get leave without pay. All the employee needs to do is say he is getting some counselling.

**Dr G.I. Gallop:** Do you take sick leave?

**Mr M.J. BIRNEY:** I take sick leave when I am sick, my friend.

**Dr G.I. Gallop:** Do you get paid?

**Mr M.J. BIRNEY:** I have never demanded that an employer give me sick leave when I am not sick.

**Dr G.I. Gallop** interjected.

**Mr M.J. BIRNEY:** We will get to what the Premier should be doing about that very soon.

**The ACTING SPEAKER:** Order! I am not going to allow a free-for-all across the chamber. The Leader of the Opposition has the floor, and he was accepting the Premier’s interjections, but it is not going to be a free-for-all.

**Mr M.J. BIRNEY:** It is no wonder that Labor members, particularly the Premier, are jumping to the defence of their union mates. Labor members are owned by the union movement in this state. The union movement ploughs money into the Labor Party. The union movement pre-selects the Labor Party members. All the members on the opposite side of this house owe their seats in the Parliament to the union movement. The great tragedy of this situation is that because of the connection between the Labor Party and the trade union movement, this state does not have good public policy. That is the reality in Western Australia. Under the union EBA drug and alcohol policy, an employee who turns up at work when he is affected by drugs cannot be automatically sent home. He must be given the opportunity to prove that notwithstanding the fact that he is affected by drugs, he is still able to operate the crane in a safe manner. The employee may be able to operate the crane in a safe manner for the 10 minutes in which he is trying to prove that he can do it. However, we do not know what will happen in the next hour or the next two hours while he continues to be affected by drugs. This is a disgraceful clause, and one in which the Minister for Consumer and Employment Protection, WorkSafe and the Department of Consumer and Employment Protection should be very interested.

The union is also demanding a \$1.20 an hour productivity allowance. I admit that a productivity allowance sounds pretty good. If employees are productive, they will be paid an extra \$1.20 an hour. I have read this

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agreement forwards, backwards and upside down. The problem is that I cannot see any corresponding way in which to measure productivity. Therefore, even if the employees on a work site are the most unproductive in Western Australia, they will still be paid the \$1.20 an hour productivity allowance. Therefore, these are just flowery words.

Members will love the next one. Under the EBA, union members are to be paid \$23.80 a day in fares and travel allowances. Even if an employee lives next door to the work site, he will still be paid \$23.80 a day in fares and travel allowances just to walk across the road and go to work! It does not stop there. Even if a worker happens to be on a rostered day off and does not travel to work, he will still be paid the travel allowance! That is what the union movement is seeking to thrust upon the people of Western Australia. The EBA provides also that if an employee finishes work after 11.00 pm, he must wait for the employer to put on his apron and cook him a hot meal - even though the employee may be tired and has had enough and just wants to go home to bed! Also, the meal had better be hot, because, if it is not, all the workers will get the blue flu the next day!

Interestingly, the union EBA provides also that every subcontractor on site - that is, the bricklayer, the glazier, the tiler or the carpenter - must provide a fully kitted-out office for a union heavyweight. Under the terms of the previous EBA, that had to be provided just by the head employer. Therefore, if it was a Multiplex site, only Multiplex, the employer, would have to provide a fully kitted-out office. However, under the terms of the new agreement, every subbie on site must provide a fully kitted-out office for a union heavyweight. I do not know how they will be able to fit anyone else on the site to do any building work, because there will be a row of union heavyweights sitting on their big leather chairs, smoking cigars and talking to big Kev on the phone! There will not be any room for the workers to actually do any work because of that little beauty in the agreement!

The union EBA is also demanding that employers pay \$19 a week per employee into a union slush fund known as the Construction Skills Training Centre. To be fair, some training does occur at the Construction Skills Training Centre. However, I am told that that organisation owns a host of resources that are used by the union movement. Therefore, by definition, the unions are demanding that employers channel \$19 a week per employee into what is essentially a unionised training fund. I am told that means that the unions will pick between \$1 million and \$1.5 million a year from the employers in this state.

The unions are also very keen that non-union members be given the benefit of the union EBA. My first thought was why would the unions want to be so generous as to say that even if an employee has not paid \$640 to join the Construction, Forestry, Mining and Energy Union, he will still be subject to these provisions. Then it struck me! If the employer had a really good operator - someone who came to work half an hour early and left half an hour late and was a super-productive individual - the employer might want to pay him a bit more to recognise his worth to the company. However, under the terms of the union EBA, the employer cannot do that. It is one in all in, regardless of whether the person is a particularly productive operator.

Under the union EBA, employers must also pay \$72 a week into an employee redundancy fund. That money is payable to an employee even if he has worked for the employer for only one week. The EBA provides also that employees be given additional paid leave to attend union training, with no limit on the number of days for which they can be paid. Redundancy pay will apply also if an employee is sacked. Therefore, even if an employee has played up on the site and the employer decides to sack him, the employer must still give him redundancy pay.

The EBA provides also for a structural frame allowance of \$1.20 an hour if an employee is required to work on a building that is more than two storeys high. A two-storey building is a very frightening building on which to work! However, I am sure big Kev will not be frightened when he is in his new \$1 million apartment on the fourteenth-storey of the Raffles building! Was that not a wonderful article in the paper the other day about the haves and the have-nots! Well, big Kev is not one of the have-nots. He is one of the haves. In fact, if what is stated in that article is correct, he is one of the have-a-lots.

The EBA provides also that each employee must be paid a \$2.40 site allowance if the project is worth more than \$570 000. It provides also that a qualified nurse must be employed on a full-time basis if there are more than 50 employees on the site.

**Dr G.I. Gallop** interjected.

**Mr M.J. BIRNEY:** I could go on all day. This may sound funny, but it is a very serious matter. If we allow what is essentially a very small organisation - namely, the union movement - to hold this state to ransom at a time when we are undergoing the biggest economic boom in our lifetime, generated mainly by China, then we will look back in 20 or 30 years and we will shake our heads and say why on earth did we allow a small band of individuals who were acting unlawfully to hold this state and our building companies to ransom. The answer will be simple: because they owned the Labor Party of the day. The Labor Party of the day owes its very existence to the union movement. I call on the minister to exercise his formal powers of intervention under

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section 30 of the Industrial Relations Act to formally oppose the sick leave and drug and alcohol provisions in the latest EBA in the public interest. If the minister knows that an EBA that is to be registered is not in the public interest, section 30 gives him a formal right of intervention. In fact, it is called crown intervention. Will the minister be intervening by using section 30 of the IR act to oppose these provisions?

**Mr J.C. Kobelke:** If they are in the federal EBA, I can't.

**Mr M.J. BIRNEY:** It is a state EBA for the CFMEU.

**Mr J.C. Kobelke:** We will certainly look at it.

**Mr M.J. BIRNEY:** You will oppose the provisions?

**Mr J.C. Kobelke:** I said we will have a look at it.

**Mr M.J. BIRNEY:** When will the minister give us an answer?

**Mr J.C. Kobelke:** When we are advised whether there is a basis on which we can do something that is worthwhile.

**Mr M.J. BIRNEY:** From whom will the minister get the advice?

**Mr J.C. Kobelke:** The labour relations division of the Department of Consumer and Employment Protection.

**Mr M.J. BIRNEY:** The minister can just read the EBA - he has been reading legislation for years - to arrive at the same conclusion; that is, that the sick leave provisions promote blue flu. It says an employee can have 10 sickies a year without having to be sick. If everyone gets sick on the same day, we have blue flu.

**Mr J.C. Kobelke:** Your statement is absolutely wrong.

**Mr M.J. BIRNEY:** What is wrong with it?

**Mr J.C. Kobelke:** You said the sick leave provisions promote blue flu, and that is absolute nonsense.

**Mr M.J. BIRNEY:** Is the minister joking?

**Mr J.C. Kobelke:** When I get up, I will explain it to you. The Leader of the Opposition does not know what he is talking about.

**Mr M.J. BIRNEY:** It means that they can all get sick on the same day - 200 of them - and it is legal unless somebody has instigated that action.

**Mr J.C. Kobelke:** It is not legal.

**Mr M.J. BIRNEY:** In that case, that person has committed a breach of the law. If it cannot be proved that somebody instigated that action, all those people have taken a legal blue flu day. The minister has an obligation on the part of the state and the government to intervene and stop these provisions from being registered.

**Mr J.C. Kobelke:** Your assumption is wrong. You have no idea of the award provisions or the EBA conditions. You make it up as you go along.

**Mr M.J. BIRNEY:** The minister did not even know about his formal right of intervention at the state Industrial Relations Commission.

**Mr J.C. Kobelke:** Of course I did.

**Mr M.J. BIRNEY:** The minister was banging on in the newspaper about federal agreements. This is a state agreement. The minister should stand up to the union movement and let it know he will not be its lap-dog. The minister should get down there, get his hands dirty and act in the best interests of Western Australia.

**MR J.C. KOBELKE (Balcatta - Minister for Consumer and Employment Protection)** [3.33 pm]: The motion before the house is -

That this house unanimously opposes the CFMEU's use of disruptive blue flu tactics.

The government has no problem in fully supporting this motion.

What the Gallop government is about is very different from what the Liberal opposition is about. The Gallop government is about following proper process and not making it up as one goes along; that is, it is about seeking legal advice and respecting the interests of the various parties in reaching an effective outcome. The opposition would rather fly off on a tangent, have its facts wrong and make all sorts of false accusations. It deals with matters based on its total misunderstanding of the situation.

Several members interjected.

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**The ACTING SPEAKER (Mr A.P. O’Gorman):** It is not acceptable to interject. It is obvious that the minister is not accepting interjections. Members should let him speak to get his point across. I remind the member for Vasse that already he has had two calls to order.

**Mr J.C. KOBELKE:** I will quote part of the transcript of what the Leader of the Opposition said today on 720 ABC radio -

We intend to formally advise the public of the links between the Labor Party and union movement.

That is a fascinating statement. Obviously, having discovered that the Pope does not have a partner, the Leader of the Opposition has now discovered a link between the Labor Party and the union movement. He is absolutely brilliant and he wants to give a history lesson about the connections between the Labor Party and the union movement. When it comes to history and connections between various parties, the Leader of the Opposition does not have a very good track record. Members might remember that at 11.18 am on 1 March this year on another ABC program with Liam Bartlett, Mr Birney said that he had not -

... actually seen Noel -

That is Noel Crichton-Browne.

for two and a half years, nor have I had occasion to ring him ...

Several members interjected.

**The ACTING SPEAKER:** I call the members for Roe and Vasse to order.

**Mr J.C. KOBELKE:** He went on to say that -

... I haven’t had any good reason to ring. If I had a good reason I certainly would.

With reference to the history of connections between political players, in March the Leader of the Opposition said that he had not been in contact with Noel Crichton-Browne for two and a half years. However, I think it was only about a week later that he had to acknowledge that he actually had had dinner with him. He could not even recall the history of his connections in the power play within the Liberal Party. We know that on his Bali trip he was conniving about leadership matters and that he said he had been on a bender for four days. This is the Leader of the Opposition’s track record when it comes to the history of relationships between various political players.

Unlike the actions of the member for Kalgoorlie, the Labor Party does not seek to conceal its connection to the union movement. It is proud of it. It is not always a smooth ride. It often has fights and disagreements with the union movement. However, it is proud to have a linkage with the union movement. It is a proud history that the Leader of the Opposition somehow thinks that he has to expose, even though there have been many books written about it. The Labor Party’s connection to the union movement can be traced back to the 1800s and the “Tree of Knowledge” at Balcaldine in Queensland. It is a very long history of how the relationship has been close at times and at other times fractured. Among the range of groups the Labor Party looks to, clearly it has a special connection with the union movement. For the member for Kalgoorlie to suggest that he will reveal that connection is very wrong. The next thing he will want to reveal is that the Pope is a Catholic.

Several members interjected.

**Mr J.C. KOBELKE:** What we have from the Leader of the Opposition is an absolute nonsense.

I started my speech by saying that the opposition has totally misrepresented the situation. It comes in with only half the facts and misuses them. That is not the basis for sorting out what is a real issue. The government will support this motion because it does not support the abuse of sick leave and it wants to make that very clear. Therefore, the government is happy to support this motion and it does so on the basis of dealing with the issue factually. That is contrary to the opposition, which is flying kites and making ridiculous statements.

I come to the media statement released on 3 August by the shadow Minister for Small Business and Industrial Relations. His opening statement reads as follows -

John Kobelke should revoke the right of entry permits of Joe McDonald and all other CFMEU organisers who are identified co-ordinating the “blue flu” epidemic on the Perth-Mandurah rail project.

Certainly, the intention is one that people would like, but it totally disregards the fact that the minister responsible for the Industrial Relations Act has to work through that act. He does not have powers to revoke entry permits. There is a process by which a complaint can be made and then an application made. On the basis of that application, the right of entry can be withdrawn. It has been done on a number of occasions since I have been the minister. I do not interfere with it. It is a matter of getting the facts and for the various parties who

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want to take up a case to do so. The government follows proper process. It is not a matter of the minister of the day trying to finger people whom he may or may not like; it is about letting the proper process unfold.

Sick leave is an extremely important benefit available to workers and it is of benefit to their families. If people have a genuine sickness they should not have the extra burden and worry of knowing that because they are off work they will not receive their pay and, therefore, will be unable to meet the debts and costs faced by themselves and their families. Sick leave entitlements are an important part of the fabric of support for Australian workers and they have been built up over many years.

**Dr K.D. Hames** interjected.

**The ACTING SPEAKER (Mr A.P. O’Gorman):** Order, member for Dawesville! Although you were not in the chamber when I made it quite clear that I was not accepting interjections, I call you to order for the second time.

*Point of Order*

**Dr K.D. HAMES:** I heard you say, Mr Acting Speaker, that you were calling me to order for the second time. I was not aware that I had been called to order for a first time.

**The ACTING SPEAKER:** The member for Dawesville was called to order during question time and has now been called to order for a second time.

*Debate Resumed*

**Mr J.C. KOBELKE:** Sick leave entitlements are an important benefit. They are part of the system in Western Australia and Australia and, therefore, should not be jeopardised or put at risk. Abusing them places them at risk. I will talk more about that later. However, one of the important elements of entitlements for sick leave is the trust between an employer and an employee. Abuse of sick leave entitlements through the so-called blue flu clearly destroys the basis of trust between an employer and an employee. In addition to the potential of losing those entitlements through what the Howard government is seeking to do - there is a real fear that the Howard government will erode sick leave entitlements and make them something that can be traded off or lost, a measure that I totally oppose - there is also the potential that the way they function will be jeopardised if the trust between the employer and an employee is destroyed. If that trust is destroyed, further regulations might have to be put in place and those regulations may make the system far more constrained and less beneficial to workers who need to rely on sick leave entitlements. The blue flu is an extreme response to the Howard government’s extreme industrial relations agenda. The Western Australian government does not support extremism in the workplace, no matter what side it comes from. We do not support the Howard government’s extremism in trying to remove sick leave entitlements through the system it is putting in place; nor do we support a union’s misuse of sick leave entitlements as a reaction against the extremism of the Howard government. This government rejects extremism on both sides. The blue flu is an unacceptable extremist tactic.

**Mr M.J. Birney:** Only when Alston drew that cartoon did you start saying that.

**Mr J.C. KOBELKE:** That is not true. I will provide the Leader of the Opposition with a quote in a moment.

The opposition does not have a policy. Rather, the editor of *The West Australian* rings opposition members or they see an article in *The West Australian* and suddenly realise that there is an issue. That is so radically different from what happened when we were in opposition, because we would do the research and provide the media with stories. The current opposition is lazy and does not make the running on these issues; rather, it follows the trail made by the media when it runs a particular story. Unfortunately, the media often gets stories only half right and is quite misleading.

**Mr M.J. Birney:** This story was made public by me after I made public the provisions of the latest EBA - nobody else.

**Mr J.C. KOBELKE:** That is a bit like the Leader of the Opposition’s statement that he would like to meet the Pope’s partner - no-one believes him. The Leader of the Opposition can make that statement; however, we know that the Pope does not have a partner. The Leader of the Opposition thought that he did. The Leader of the Opposition continually makes statements that are factually wrong. People are not going to accept his statements on face value.

This issue has highlighted the fact that the Howard government is embarking on an extreme policy of radically changing the industrial relations system in Australia through a hostile takeover of states’ industrial jurisdictions. The states’ industrial relations systems have functioned for 100 years and have served the states well. They can always be improved. They have moved from good to bad at various times. However, they have been a basis for decent employment standards across Australia and have worked with the federal system. The Howard

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government is seeking to throw that out and establish a new extreme industrial relations system that will attack the pay and conditions of the working men and women of Australia. Our concern particularly relates to workers in Western Australia. The opposition has run a campaign of misrepresenting what is a serious issue; it has blown it up and provided false solutions that do not work because it has been caught out. It does not like the Howard government's takeover of the state's industrial relations system, but at the same time it wants to back what he is doing. The opposition is keen to provide a smokescreen by raising an issue of an industrial relations nature that will take the heat off the fact that Howard's changes to industrial relations are totally unpopular. People know what they mean; they know what impact they will have on the lives and working conditions of ordinary Western Australians. They know what the impact will be because during the eight years of a Liberal-National Party coalition we had a similar system in Western Australia. We know what that system did to the wages and conditions of workers in Western Australia. We do not want that system reimposed through Howard's industrial relations agenda. In part, the issue of the blue flu has been misrepresented to create a smokescreen to cover the Liberal Party's position because it is not sure where it stands on the industrial relations issue.

The abuse of sick leave, as I said, is simply not acceptable. I return to the Leader of the Opposition's false statement that I said nothing until a cartoon appeared in the paper. On Tuesday, 2 August, I was interviewed by Liam Bartlett on 720 ABC. He asked me -

Do you think the action of the CFMEU in having these mass sickies is deplorable?

In part, I answered -

... I think it is deplorable.

I then went on to say -

... where people are calling in sick as part of an industrial action, I think that is totally unacceptable.

That is one of many statements that I have made to the media - the media has been selective in its presentation of those statements - indicating that I did not believe that people should abuse their sick leave entitlements for industrial reasons. To do so jeopardises sick leave entitlements and is quite improper. Such action may be unlawful; it depends on the circumstances and whether the facts can be put together.

I will turn to some facts as opposed to the misrepresentations given by the Leader of the Opposition. In the building industry, quite a few people are caught by the Building Trades (Construction) Award 1987. I will use that award as an example. Clause 23(2) reads -

In the case of an employee who claims to be allowed paid sick leave in accordance with this clause for an absence of one day only such employee if in the year he/she has already been allowed paid sick leave on more than one occasion for one day only, shall not be entitled to payment for the day claimed unless he/she produces to the employer a certificate of a duly qualified medical practitioner that in his/her, the medical practitioner's, opinion, the employee was unable to attend for a duty on account of personal illness or injury. Provided that an employer may agree to accept from the employee a statutory declaration, stating that the employee was unable to attend for duty on account of personal illness or injury in lieu of a medical certificate. Nothing in this subclause shall limit the employer's right under paragraph (b) of subclause (1) of this clause.

The opposition has read from similar clauses and stated that workers do not need a certificate. However, the matter is subject to paragraph 1(b), which reads -

He/she shall prove to the satisfaction of his/her employer (or in the event of dispute a Board of Reference) that he/she was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed.

This issue is well beyond the Leader of the Opposition. He wants to fly kites and speak nonsense, which is what he does all the time.

**Mr M.J. Birney:** Tell me one thing I said -

**Mr J.C. KOBELKE:** The Leader of the Opposition should listen. He speaks nonsense all the time. How many times do I have to point out to him that the Pope does not have a partner? The Leader of the Opposition says that over and over again - it is absolute nonsense. The point is that, under paragraph 1(b), an employee is required to prove that he was sick to the satisfaction of the employer. Although issues arise because a worker does not need a medical certificate for only one day, if the employer believes that the employee is pulling a rort and going to the cricket or football or doing it as part of industrial action, it is open to the employer to say to the employee that he or she must show to the employer's satisfaction that he or she was entitled to claim sick leave. That is in

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a standard clause, and I gave an example. There are similar issues with the various enterprise bargaining agreements. The opposition took one little bit out of context and said that it was ridiculous and extreme. Members opposite have not pointed out that employers also have rights, as they clearly should in these situations. That is not to say that these matters are not abused in some circumstances; however, let us deal with the facts and not misrepresentations, like the ones we have heard from the Leader of the Opposition.

**Mr M.J. Birney:** The sick leave provisions in the union EBA state that sick leave accrued by an employee may be used at the employee's sole discretion for any personal reason. When sick leave is used for any personal reason, there is no obligation on the employee to account for the employee's absence.

**Mr J.C. KOBELKE:** The Leader of the Opposition has tied in personal leave.

**Mr M.J. Birney:** No, I didn't; it is sick leave.

**Mr J.C. KOBELKE:** No, it says "sick or personal leave".

**Mr M.J. Birney:** No, it says "sick leave".

**Mr J.C. KOBELKE:** The Leader of the Opposition said "sick or personal leave".

**Mr M.J. Birney:** No, it says "sick leave".

**Mr J.C. KOBELKE:** The passage the Leader of the Opposition read out included personal leave.

**Mr M.J. Birney:** It didn't. The minister might have misheard me. I will say it again. It says that sick leave accrued by an employee may be used at the employee's sole discretion for any personal reason. When sick leave is used for any personal reason, there is no obligation on the employee to account for the employee's absence.

**Mr J.C. KOBELKE:** In a range of awards, sick leave, personal leave, rostered days off and special leave for maternity or parental leave are bundled together.

**Mr M.J. Birney:** Just admit that you got it wrong.

**Mr J.C. KOBELKE:** This is hard for the Leader of the Opposition to understand, because he has a particular line that he wants to run, regardless of the facts. The facts are irrelevant to the Leader of the Opposition's statement. The fact is that, sometimes, particular agreements will allow the bundling up of those various forms of leave. Whether that is a good thing or a bad thing is not the matter we are debating. The issue is that under certain agreements, people are allowed to bundle up those forms of leave. Conditions go with them. We could argue about whether that is a good or a bad thing, but we are dealing with the abuse of sick leave, which we reject. The Leader of the Opposition is trying to make a case by misrepresenting the facts.

**Mr M.J. Birney:** I didn't; I just proved that I was right and you were wrong. Do you want me to read it out again?

**Mr J.C. KOBELKE:** The Leader of the Opposition, by means of one little assertion, says that he is right and I am wrong.

**Mr M.J. Birney:** I just proved it to you.

**Mr J.C. KOBELKE:** Not only that, the Leader of the Opposition has proved it! The difficulty for the Leader of the Opposition is that, for him, the burden of proof is the same as what amounts to him thinking that the Pope has a partner. That is his level of burden of proof. He has no idea of what burden of proof means. Members on this side of the house want the system to work. Therefore, we must follow proper processes and use the mechanisms that are available to us, rather than base our arguments on misrepresentations.

One misrepresentation that has been made many times, and was repeated in a recent newspaper article, is the suggestion that the Building Industry and Special Projects Inspectorate is a toothless tiger; that it is not doing anything. That is far from the truth. Its record stacks up. It is as good as or better than the federal Building Industry Taskforce, which has been trumpeting what it will do. The federal task force has huge resources behind it from the federal government, but its strike rate in getting convictions and taking action does not match BISPI's results. BISPI and the Police Service have been working together. They have used available evidence to undertake successful prosecutions, although the Police Service has not always been successful in the prosecutions that it has undertaken. Since the Gallop government came to power, BISPI has taken action six times against the Construction, Forestry, Mining and Energy Union and one builder. The six prosecutions have all been successful. The claim that I am somehow in the pocket of the union movement does not stack up. The union movement has attacked me because I have ensured that the Building Industry and Special Projects Inspectorate has been resourced. The unions know that it has my backing. I do not interfere with its work; I let it get on with it. When it has evidence, it proceeds with a case. It has been successful. Four actions are current against members of the CFMEU. There is a protocol in place to hand criminal industrial matters to the police.



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Reports of such criminal matters are also made directly to the police. The police have undertaken seven prosecutions since we came to government. Some have been successful, but a number have not. The police have also followed up on those issues. The federal Building Industry Taskforce has completed four successful prosecutions, compared with the six that BISPI has performed. A further two have been lodged. That indicates that our government is concerned with upholding the law and is making sure that resources are used to take up complaints and to uphold the law.

It is a matter of great regret to me that the federal Liberal government does not believe in upholding the law in industrial matters. That is totally unacceptable. I took up that issue with Minister Abbott when he was Minister for Employment and Workplace Relations and I take it up with Minister Kevin Andrews on every occasion that I meet him, and I will continue to do so. The Employment Advocate is applying the no-disadvantage test to Australian workplace agreements in a way that is totally outside the Workplace Relations Act. We have not only legal advice, but also the case law that is before the commission on that matter that shows that the no-disadvantage test under the Workplace Relations Act cannot be used to allow people to simply opt out of being paid minimum entitlements. An employee cannot say that he wants to work on Sundays and then choose not to be paid a penalty rate in an industry in which a penalty rate is paid for that work. That would clearly be in breach of the Workplace Relations Act. However, neither the current or previous federal Minister for Employment and Workplace Relations has wanted to uphold the rule of law. They have not wanted to uphold the law for which they are responsible. That is very different from the situation in Western Australia, where the Gallop government has a very clear commitment to uphold the law. I have shown that by detailing the investigations and prosecutions that have been undertaken by BISPI.

When the blue flu occurred, I immediately asked whether BISPI was aware of it and whether it was following it up. I do not have the details of its investigation; that information does not come to me. However, I have been advised that BISPI has been looking into this matter since 25 July. I have been informed that three types of breaches of legislation could potentially flow from the blue flu. Those breaches do not relate to any evidence but to the area of law. Firstly, if union officials exercised their right of entry in connection with the organisation of an outbreak of blue flu, that might be a breach of section 49J of the Industrial Relations Act 1979. Secondly, it is possible that dispute procedures in the relevant EBA or award have been breached, in which case action could be taken for breach of those required procedures. Thirdly, it is possible that criminal offences, such as intimidation, may have occurred. BISPI is open to receiving advice. If it receives evidence of the type that would allow effective action to be taken, it would certainly pursue action. BISPI is continuing with its investigations. We certainly welcome anyone with relevant information taking it to BISPI.

Of course, if an issue relates to a federal law or a federal agreement, I assume that the federal task force will look into it. However, the federal task force does not provide reports to me. State government agencies have certainly worked cooperatively with the federal task force. I met the leader of the task force when it was first set up a couple of years ago. We gave the task force a few pointers about how the system worked. Those people were new to the position and did not have a clue about industrial relations and how the system worked. We have sought to cooperate with them. We have pursued matters within the state jurisdiction; we leave the federal task force to pursue matters within the federal jurisdiction.

Sick leave is a fundamental entitlement that has been earned by workers through their unions over decades and decades. It is something that people deserve. It should be part of the system. We do not want that entitlement to be threatened by the changes proposed by the Howard government. We do not want that entitlement to be threatened by any abuse of it that could lead to its removal. Abuse of that entitlement could also lead to the undermining of trust between employers and employees, leading to a tightening of provisions, which would make it more difficult for people to access that entitlement. The government is happy to support this motion to give a very clear message that it is not only the government but also the house that is opposed to any abuse of sick leave for industrial purposes.

**MR T.R. BUSWELL (Vasse)** [3.59 pm]: Before discussing blue flu I will draw the attention of the house to a picture that was taken at the recent day of action rally late in July, which I had the privilege of attending. While this picture was taken I happened to be standing with a number of hefty construction workers. One of them commented that it looked a bit like Daryl Somers and Dickie Knee. I thought about Dickie Knee and asked what role he performed on *Hey Hey It's Saturday*. In case members cannot remember, he is the one who would jump up occasionally and make ridiculous statements. Having listened to the minister for the past 25 minutes, I am afraid he has confirmed what I suspected that day.

Let us have a look at blue flu. Let us be under no misapprehension that blue flu, as the opposition and the people of Western Australia are aware, is condoned by the Construction, Forestry, Mining and Energy Union, is condoned by this government through its inaction, and is condoned by UnionsWA. This blue flu episode is a sad addition to Western Australia's terrible industrial relations performance; it adds to the fact that, under the present

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government, Western Australia is the worst performing state in Australia in industrial relations and the loss of days through industrial action. I know that the Premier would not have mentioned it when he was beating the drum for Western Australia earlier, but the state is leading Australia in levels of industrial disputation and he should be ashamed.

**Dr G.I. Gallop:** Negative, negative, negative! Always talking down the state!

**Mr T.R. BUSWELL:** Would the Premier like to talk up the fact that 46 per cent of days lost in Australia are lost in Western Australia?

Let us consider the Building Industry and Special Projects Inspectorate. I am intrigued about this toothless tiger, which, in nearly five years of incredibly militant union activity here in Western Australia, has brought only six successful actions. My goodness, what is it doing? Let us have a look at what Mr Cole, in the Royal Commission into the Building and Construction Industry report, said about BISPI -

In the building industry in Perth there is a strong perception that BISPI, in contrast to the previous WA BITF, is ineffective. Part of this perception arises from a view that BISPI is reactive rather than proactive and that it has achieved little.

When professional, external people come into this state to examine the Minister for Consumer and Employment Protection's department and organisations like the industrial inspectorate, they say it is ineffectual, but the minister stands here, bumps his gums and would have us believe it is a wonderful institution that is maintaining the rule of law in the Western Australian industrial relations system.

Blue flu is three things. As the government has at long last acknowledged, it is firstly a complete and absolute abuse of the sick leave provisions of our industrial relations system. However, it is more than that. It was a series of industrial actions that added to the delays on what is already a much-delayed major construction project. Despite the minister's constant insistence that industrial delays do not add to costs on the Mandurah rail project, we all know that industrial disputes have added to costs and the government's inaction on matters like blue flu have assisted on that front. Finally, it is an ongoing example of the pattern of bullying and intimidatory behaviour engaged in by the CFMEU in the building industry.

I strongly urge members of the public who have not done so to read the report of the Cole royal commission. As it travelled Australia, the Cole royal commission uncovered 390 cases of unlawful or improper activity in the building and construction industry. Western Australia accounted for 230 of those 390 cases. I will give members a quick example of a kind of behaviour people like Joe McDonald and the minister's supporters in the CFMEU engage in. It was called the Dependable Roofing scissor lift incident. It refers to a time when Mr McDonald and others stranded workers from a company who were not members of the union 6.1 metres off the ground on a scissor lift. Joe McDonald was found to have conspired to injure those workers by unlawful means. Those unlawful means were threats of actual violence, intimidation and obstruction. These are the sorts of people that the minister and the Premier support through their inaction, and the activities that they condone here in Western Australia. Are members aware of what the minister had to say about the Cole royal commission? I subscribe to *Construction Worker*, a magazine that is the mouthpiece of the CFMEU.

**Mr R.C. Kucera** interjected.

**Mr T.R. BUSWELL:** The Minister for Disability Services might see this magazine lying around some other places he visits. According to the magazine, the minister said that the Howard government's industrial relations changes are based on the recommendations of the flawed Cole royal commission.

*Point of Order*

**Mr R.C. KUCERA:** My ministry deals with a very large number of people who suffer from disabilities resulting from accidents on building sites. I do not like to hear those people disparaged in this house. If the member wishes to cast aspersions -

Several members interjected.

**The ACTING SPEAKER (Mr P.B. Watson):** Order! Members of the opposition, I will make the ruling; you will not make the ruling on this objection.

**Mr R.C. KUCERA:** If the member wishes to cast aspersions against people who suffer disabilities resulting from accidents on building sites, there is a proper forum for him to do so. I take objection to that.

**The ACTING SPEAKER:** There is no point of order.

*Debate Resumed*

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**Mr T.R. BUSWELL:** Incisive comment as usual, from the minister. Perhaps if he reads the names of some of the contributors to this magazine, he will understand the point I am trying to make.

I will go back a little and look at some of the comments made by the Minister for Consumer and Employment Protection when confronted with blue flu. He attacked this with a vigour rarely seen in the industrial relations environment in Western Australia. He said that in workplaces covered by federal agreements the state government had no jurisdiction to intervene. He said that what was really needed was not action by the government but a cultural change in the building industry. I heard him say that on the Liam Bartlett program, and I had to pull my car over because I was so disgusted with his answers and his complete failure to deal with this issue that I thought I might run off the road. When asked about the issue, the Premier said that unions in Western Australia need to make themselves more accountable, and that he was keen for all the parties involved to tackle the issues. Over the 15 to 20 days of the blue flu epidemic, the people of Western Australia started to ask themselves why the minister was sitting on his hands. Why was he accurately portrayed in the media as being the lap-dog of Kevin Reynolds and Joe McDonald, and why did it appear that the CFMEU and the state's unions were running the government in Western Australia? The answer is \$1.1 million, which is the financial contribution made by the union movement over the past four years to the Labor Party in this state. That contribution is made to help prop up the Labor Party and secure its electoral success. That is 1.1 million reasons why the Premier would refuse to take action.

However, last week the Premier had one of these conversions - a change of heart - and came out saying that blue flu is wrong. He said that the government would monitor all these developments, and should action be required by the government, it would consider that action. However, he did not specify any actions he would take. All he did was expose the government's inaction in dealing with this problem, and expose the minister. He has changed our opinion of the minister. The Premier has turned the minister from a lap-dog into a lame duck. That is all the minister is. We know it; sadly, the union movement of Western Australia knows it; and the people of Western Australia quite clearly acknowledge that. The minister needs to have a good hard look at his performance in the handling of this issue and his portfolio in general.

*Amendment to Motion*

**MR P.D. OMODEI (Warren-Blackwood - Deputy Leader of the Opposition)** [4.08 pm]: Given that the government agrees with this motion, but the Minister for Consumer and Employment Protection has not made up his mind about whether he will intervene in the matter through the Western Australian Industrial Relations Commission, I move -

To add the following words to the motion-

and calls upon the Minister for Consumer and Employment Protection to intervene in the Industrial Relations Commission proceedings to oppose the union's claim.

We know who is running the state of Western Australia - the two fat boys with the braces - and we know that the minister and the Premier had to be dragged into this debate by the Minister for Health when he came back from holidays and realised that this blue flu epidemic was just not acceptable in Western Australia. The whole of the state of Western Australia knows that the claims by this union are outrageous. The people know that the plans by this union to disrupt the work force are just another way of telling the Labor Party in Western Australia who really runs the show. Mr Reynolds and Mr McDonald are telling the minister and the public of Western Australia to butt out and let them do what they want to do. Given that it appears members opposite will support this motion, my amendment would strengthen the minister's arm a little. During question time he did not seem comfortable talking about whether he would intervene in matters before the Western Australian Industrial Relations Commission. By inserting the words in my amendment to the motion, we would be putting the minister to the test. Is he really opposed to the blue flu epidemic in Western Australia or is he not? If he and the government vote against this amendment, it will show that the government is kowtowing to the union movement and allowing it to run the show in Western Australia. It is about time that the state government of Western Australia, including the Premier, the Minister for Consumer and Employment Protection and other ministers, make it very clear to the union movement that the blue flu tactics that stop workers from going about their duty in Western Australia are unacceptable.

**MR F.M. LOGAN (Cockburn - Minister for Housing and Works)** [4.11 pm]: I oppose and reject the amendment because it is poorly worded. As a proud member of the Australian Manufacturing Workers' Union, I put on the record that I too oppose the blue flu. It is a bad use of sick leave. The AMWU has made it clear to UnionsWA and others that sick leave is to be used only when a worker is sick, and for no other reason. Any action that undermines that plays into the hands of not only employers, but also the Howard government, which is doing everything it possibly can to take sick leave entitlements off workers. That is what it is all about. The Leader of the Opposition has made much of that clause of the enterprise bargaining agreement that talks about

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the unfettered use of sick leave. He has referred to it quite a number of times. The Leader of the Opposition is obviously a naive and inexperienced leader.

Several members interjected.

**The ACTING SPEAKER (Mr P.B. Watson):** Order! If members want to continue their conversations, they should do so outside the chamber. We want to hear what the member is saying.

**Mr F.M. LOGAN:** The member for Vasse is also inexperienced, particularly on industrial relations issues. For their education, I will explain a bit about the clause that the Leader of the Opposition has quoted. Some time ago, the Australian Council of Trade Unions put to the Full Bench of the Australian Industrial Relations Commission a claim that workers should be entitled to personal leave for the purposes of looking after their children when they were sick, going to sports days, taking their children to the dentist, and various other reasons. A number of years ago, that ACTU claim was rejected.

Several members interjected.

**The ACTING SPEAKER:** If members want to conduct meetings or hold conversations, they can go outside the chamber. I am having trouble hearing the minister.

**Mr F.M. LOGAN:** In its place, the provision handed down by the Full Bench of the AIRC was that a certain amount of sick leave could be used for personal reasons. That is the reason it is in a number of EBAs. I appreciate that no members on the other side understand anything about award provisions, because when they were in business they probably did not even acknowledge or read the award. I can understand why they are so naive about award conditions and act so stupidly about the issue. It is because they have never read award conditions. However, if they are read in the way that the Minister for Consumer and Employment Protection read them to the Parliament, members will see that in most cases people are entitled to between five and 10 days sick leave under any award provision. People can take up to three days sick leave without providing the employer with a doctor's certificate. There has always been contention between employers and unions about whether that means three days at a time or one day at a time for up to three days. Under the award conditions of sick leave, people have always been able to take up to three days off without providing a reason or a doctor's certificate to the employer. After three days, a worker must provide a doctor's certificate for the rest of the seven days' sick leave provided for in the agreement, if that is what the employer requires of the worker.

Under the EBA to which the Leader of the Opposition continues to refer, I take him back to the original full bench decision, which is that a person can use some sick leave for personal reasons. That is what the Leader of the Opposition is quoting from. It is a standard provision in most EBAs across Australia. The problem is that I am sure that the Leader of the Opposition never read the award conditions when he was running a company in Kalgoorlie. I am sure he did not have an EBA in his workplace to allow his employees to have some type of representation. I am sure also that the member for Vasse is in exactly the same position. I bet he does not have an EBA in place in his business in Busselton. I bet he did not apply the award conditions either. Members opposite quote chapter and verse from particular clauses of EBAs, but they do not have a clue what they are talking about. They are a disgrace to themselves and to the Liberal Party because they do not do any research and are lazy.

Amendment put and a division taken with the following result -

**Extract from *Hansard***  
[ASSEMBLY - Tuesday, 16 August 2005]  
p3964c-3975a

Mr Matt Birney; Acting Speaker; Mr John Kobelke; Dr Kim Hames; Mr Troy Buswell; Mr Bob Kucera; Mr Paul Omodei; Mr Fran Logan

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Ayes (22)

Mr C.J. Barnett  
Mr D.F. Barron-Sullivan  
Mr M.J. Birney  
Mr T.R. Buswell  
Mr G.M. Castrilli  
Dr E. Constable

Mr M.J. Cowper  
Mr J.H.D. Day  
Mr B.J. Grylls  
Dr K.D. Hames  
Ms K. Hodson-Thomas  
Mr J.E. McGrath

Mr P.D. Omodei  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr G. Snook  
Mr T.R. Sprigg  
Dr S.C. Thomas

Mr T.K. Waldron  
Mr G.A. Woodhams  
Dr J.M. Woollard  
Dr G.G. Jacobs (*Teller*)

Noes (26)

Mr P.W. Andrews  
Mr J.J.M. Bowler  
Mr A.J. Carpenter  
Mr J.B. D'Orazio  
Dr G.I. Gallop  
Mr S.R. Hill  
Mrs J. Hughes

Mr J.N. Hyde  
Mr J.C. Kobelke  
Mr R.C. Kucera  
Mr F.M. Logan  
Ms A.J.G MacTiernan  
Mr J.A. McGinty  
Mr M. McGowan

Ms S.M. McHale  
Mr A.D. McRae  
Mr N.R. Marlborough  
Mr A.P. O'Gorman  
Mr J.R. Quigley  
Ms J.A. Radisich  
Mr E.S. Ripper

Mrs M.H. Roberts  
Mr T.G. Stephens  
Mr P.B. Watson  
Mr M.P. Whitely  
Mr D.A. Templeman (*Teller*)

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Pairs

Mr R.F. Johnson  
Ms S.E. Walker  
Mr M.W. Trenorden

Mrs C.A. Martin  
Dr J.M. Edwards  
Mrs D.J. Guise

Amendment thus negatived.

*Motion Resumed*

Question put and passed.