LABOUR RELATIONS REFORM BILL 2002

Consideration in Detail

Resumed from 20 March.

[Quorum formed.]

Debate was adjourned after clause 28 had been agreed to.

Clause 29: Long title replaced -

Mrs EDWARDES: Part 3 of the Bill will amend the Workplace Agreements Act by providing for the repeal of many clauses to take effect when various parts of the Bill are proclaimed, and leaving in existence other provisions until such time as the Act expires. We will go through those transition provisions shortly.

In this debate I will put on record a comparison between an employer-employee agreement and a workplace agreement, which are both individual agreements. I will deal with some of the myths that have been perpetuated about workplace agreements - wrongly in some instances. I will highlight the differences between employer-employee agreements and workplace agreements. The first relates to information that is provided by the parties. Under an EEA the employer must provide to the employee a copy of the proposed EEA plus an information statement and any summary of the award or relevant order etc. Under a workplace agreement, a copy of the agreement is provided to each employee as soon as possible after it is entered into and before it is lodged for registration. No information statement, award or other order needs to be provided, essentially because a no-disadvantage test does not exist in the Workplace Agreements Act and is therefore irrelevant. In some cases, employers whom the Commissioner of Workplace Agreements has identified as having poor work practices have been required to provide that information to employees under section 94 of the Workplace Agreements Act. One of the problems the Opposition has identified with an EEA is that many employers will not know which award applies to their employees. As such, the determination by the registrar will be an important element in the EEA process.

The Bill proposes that under an EEA, employers must provide prescribed information in the future, which will create uncertainty. Although it is probably a "what if" clause and therefore good administration, it provides a further element of uncertainty. EEAs must be lodged within 21 days of signing otherwise they cannot be registered, and variations exist according to whether the agreement covers a new or an existing employee. Workplace agreements take effect immediately but have to be lodged for registration within 21 days after signing.

I will not go into the appeal rights under an EEA in detail. Under an EEA, an appeal can be made to the Western Australian Industrial Relations Commission when registration is refused. Under a workplace agreement, the right to appeal to the commissioner comes into play when a delegate has refused to approve registration. The parties have the right to appeal that decision in the Supreme Court. No appeals have been made to the Supreme Court about the decisions of the commissioner in the history of workplace agreements.

Under an EEA signatures in the agreement must be witnessed. That is not a requirement under a workplace agreement, although some employers did that in any event. The provisions in an EEA prevail if registration is refused. Under a workplace agreement, if registration is refused, parties are required to recover underpayments or overpayments according to the relevant award for any period of employment. However, the statute contemplates no further obligations on the parties. Employer-employee agreements will be part of the public record.

Mr MASTERS: I am interested in hearing more from the member for Kingsley.

Mrs EDWARDES: We have gone through the concern that names and addresses on EEAs will be part of a public register. The minister has undertaken to review that. Under the Workplace Agreements Act the parties to the agreement are not bound by confidentiality. However, the register is not open to members of the public. That was one of the furphies about workplace agreements.

Mr Marlborough: It was not a furphy at all.

Mrs EDWARDES: The member for Peel is incorrect. The parties can show and discuss the agreement with anyone. They can display the agreement on a public noticeboard if they wish. However, an agreement is not available to the public unless the parties wish it to be a public document. The form and content of employer-employee and workplace agreements are much the same. One difference is that workplace agreements do not need to identify whether the employment is full-time, part-time or casual. The requirement for signatures to be witnessed is pretty much the same. The provisions covering a body corporate are similar. In an EEA the signatures of representatives of body corporates and of employees who are under 18 years of age must be

witnessed. I thank the minister for accepting the Opposition's amendment that the independent person's signature does not need to be witnessed.

EEAs make no provision for non-union collective agreements, whereas workplace agreements do. The Bill provides that unions cannot be parties to EEAs, whereas the Workplace Agreements Act allows unions to be a party to collective workplace agreement negotiations, given certain undertakings. The Bill provides that EEAs cannot disadvantage employees in any comparison with the relevant state award, or, if no state award exists, the commonwealth award is applied. Under the Workplace Agreements Act the commissioner must be satisfied that the parties understand their rights and obligations and that no party has been persuaded by threat and intimidation. I acknowledge that the provision in EEAs concerning threat and intimidation is far stronger than that provided under the Workplace Agreements Act. A workplace agreement cannot offer less than the minimum conditions of employment. Under EEAs, the registrar is required to take into account monetary and non-monetary benefits that an employee would obtain under an EEA compared with the relevant and comparable award. The only test for registration of workplace agreements is the section 30 test. In deciding when parties to an agreement genuinely wanted an agreement to be registered, the commissioner and delegates would often discuss previous monetary and non-monetary benefits and the genuineness of the reasons for wanting that agreement.

The principles and guidelines of EEAs are to be determined by the commission in court when conducting the no-disadvantage test. They can be amended, revoked or replaced as time goes by. In the case of workplace agreements, the commissioner has the authority to apply the statutory registration scheme in a manner that he felt appropriate. Workplace agreements also have dispute settlement procedures. We have discussed in detail the provisions in the EEAs. Workplace agreements must include a provision for dealing with a question or dispute about the meaning and the effect of the agreement. That is far less than is provided in an EEA. However, the orders from the arbitrator are non-enforceable and there is limited right of appeal. I again thank the minister for agreeing to reconsider that the appeal provision, particularly with regard to the concerns I raised.

Some of the other myths bandied around concerned coercion. The Opposition indicated during the election campaign that it would strengthen those provisions because there were a couple of cases that were clearly borderline and about which the commissioner was not happy.

Mr Marlborough: Only a couple?

Mrs EDWARDES: I have already said that there were a few cases. The minister acknowledged that there were a few employers, but only a few. Those employers were in business and were treating employees like that long before workplace agreements were introduced. They will still be treating employees like that under this legislation in 10, 20 and 30 years time.

Mr Kobelke: I do not accept that.

Mrs EDWARDES: I would not make a promise I could not keep. It is an impossibility. Under the Workplace Agreements Act -

Mr Marlborough interjected.

The ACTING SPEAKER (Ms Hodson-Thomas): Order, member for Peel.

Mrs EDWARDES: Under the Act employees cannot be coerced into signing workplace agreements. When employees experience coercion they are able to seek the assistance of what was the Department of Productivity and Labour Relations. The department successfully prosecuted a number of employers for coercion. It continues to investigate breaches of the Workplace Agreements Act.

I want to talk about the recent survey that the minister conducted on workplace agreements. The new research was an attempt to update the 1999 research conducted by the Commissioner of Workplace Agreements. It was a more narrow survey in that it did not cut across all industries and employees that had registered workplace agreements. It looked only at the industries identified as being at the lower end of the scale for pay and conditions. Section 39(4) of the Workplace Agreements Act allows for the disclosure of statistical information, provided addresses and identification of parties is protected.

Mr Marlborough interjected.

The ACTING SPEAKER: Order!

Mrs EDWARDES: The minister is precluded from giving the commissioner directions with respect to the publication of statistical and other information about agreements. That the report was prepared and released in a timely fashion when the legislation was about to be debated is coincidental, to say the least. Section 86.2 of the survey states that the reason for conducting the research was to examine the claims that workplace agreements had been used to minimise labour costs. I would have thought that was not necessarily the statutory role of the

Commissioner of Workplace Agreements. The survey refers to surveys by the previous commissioner. Those surveys covered a much broader cross-section of workplace agreements. It was done to provide statistical information, not to prove or disprove a particular assertion. In addition, the industries chosen for the research are at the bottom end of the pay and conditions scale. Other industries using workplace agreements and paying high wages and providing good conditions are ignored in the research. Making a very broad and bold statement that workers receive far less under workplace agreements is misrepresentation. The survey was not conducted on a broad cross-section of industries, unlike previous surveys.

The researchers and those who commissioned the research appear to imply that minimising labour costs is improper. Most employers seek to reduce labour costs in some way. They must pay wages on Fridays. That does not go hand in hand with exploitation. The research is based on a comparison with relevant awards. Given that for the past eight years employers and employees have been able to make agreements without reference to awards, it seems that a number of awards are obsolete. The survey does not compare apples with apples. I will give one example. People living and working in 2002 no longer worry about the 17.5 per cent leave loading. It has been largely annualised. There has been an increasing trend towards that.

The research focuses on the absence in many agreements of a provision for wage increases during the life of an agreement. Although that is a feature of agreements, the industries chosen for the research are typified by a high turnover of casual staff. Many agreements were unlikely to run full term. Much was made about agreements allowing for standard hours between Monday and Sunday or having no provision about hours at all. That demonstrates an obsession with the award prescription. The fact that agreements were open-ended did not mean that employees were working those hours. It merely provided the opportunity to work any hours, presumably without a penalty rate. That will create an issue with transitional arrangements that will impact on those agreements. The minister will recognise that it is a serious issue. The research was narrow and taken out of context. As such, it was coincidental and clearly aimed at a particular political agenda. I am not saying that the minister directed the acting commissioner to undertake the research or that he carried it out with a view to the political agenda. However, it would be quite clear, as I have pointed out in the past, that public servants are very responsive to their paymasters, and, as such, there would be recognition that this would be a useful document for the minister to bring in to prove a point. However, I do not think that was within the parameters of the Acting Commissioner of Workplace Agreements.

One of the issues that we have raised consistently is that workplace agreements have been well recognised as providing youth with high levels of employment opportunities. The *Business Review Weekly* and *The Economist* have recognised the fact that workplace agreements have provided enormous productivity benefits, particularly in the mining industry in terms of the number of employees required, the power that is consumed to run a plant, the down time incurred, the quality of the product and the extent of the output. A survey that was conducted in 2000 by Hon Mark Nevill, an Independent member of the Legislative Council, identified from the workers in the Pilbara-based mining industry a strong support for workplace agreements, particularly with regard to their wages and conditions. I will raise that issue again when we get to those transitional provisions.

Mr Marlborough interjected.

The ACTING SPEAKER: Order, member for Peel!

Mr KOBELKE: Although the contribution by the member for Kingsley throughout this debate has been longwinded and sometimes verbose, it has been erudite in places and has contributed to the process of the debate. However, I draw the Acting Speaker's attention to Standing Order No 179, which relates to consideration in detail of legislation and states that no general debate will take place on any clause. We have had a general debate for 20 minutes. It is appropriate under clause 29 to countenance some of the more general issues because it relates to changing the long title of the Workplace Agreements Act to reflect the repeal of workplace agreements. Some comment on the overall operation of this clause may be considered appropriate. However, to try to make a case for 20 minutes on a range of technical issues is clearly outside the standing orders. I would be outside the standing orders if I were to put on record where the member is absolutely wrong and where, in other cases, I hold a different opinion from that of the member. I hope we get back to debating the Bill and do not use the sorts of approaches or initiatives that I contend are outside the standing orders and do not progress the proper consideration of the Bill.

Mr BOARD: The proposed new long title in clause 29 reads -

> **An Act to make provision after the commencement of section 31 of the *Labour Relations Reform Act 2002* -**
>
> - **for employers and employees to be no longer empowered to make the employment agreements that were authorised -**

That is quite straightforward. However, it goes on to state -

by this Act as in force before that commencement;

The following three dot points deal adequately with that issue, and I find the additional words in that provision confusing. I have sought advice on exactly what they mean but cannot come up with an answer. Perhaps the minister can explain what the provision means.

Mr KOBELKE: I am not sure why the member is confused. If the question relates to whether we are dealing with the Workplace Agreements Act 1993 or the Labour Relations Reform Act 2002, then we are dealing with the latter, as is stated in the proposed new long title. Therefore, the additional wording relates to the commencement of the Labour Relations Reform Act.

Mrs Edwardes: Essentially this provision stops employers and employees from making agreements following the proclamation of this legislation.

Mr KOBELKE: This provision does not do that; we will come to that provision later. This provision indicates that those powers are contained within what will be covered by the proposed new long title.

Clause put and passed.

Clause 30: Section 3 amended -

Mrs EDWARDES: Clause 30 seeks to insert four new definitions to pick up the new direction that is being taken. In particular, it refers to a "designated day", which means the day on which section 31 of the Labour Relations Reform Act comes into operation. That relates to proposed section 4H in clause 31, which is the key provision dealing with the transitional provisions, which have been carefully drafted in recognition of all the problems that employers and employees are likely to face upon the expiry of their agreement on whatever date that may be. I have major concerns about the problems that still exist within this provision.

Clause put and passed.

Clause 31: Part 1A inserted -

Mrs EDWARDES: Proposed section 4A of clause 31 deals with the expiry of the Workplace Agreements Act and states -

> This Act expires at the end of one year commencing with the designated day.

Last year we had a number of different time frames in which the minister was planning to bring in this legislation, as well as different dates by which the respective agreements would expire, irrespective of the date that was contained in them. However, prior to the election, the policy was that existing workplace agreements would have an expiration date of three years. That provided some level of certainty for businesses to continue to plan, budget and operate, and for employers and employees to legitimately rely upon their contract. However, the minister has changed all that. Why did the minister, knowing that the business community had some major concerns about the operation and certainty of employer-employee agreements, change that policy and add a greater level of uncertainty by bringing the date forward?

The ACTING SPEAKER (Ms Hodson-Thomas): A number of conversations are going on in the Chamber, particularly to my right, and I ask those members to leave the Chamber if they wish to continue those conversations.

Mrs EDWARDES: Essentially, the community had some understanding that it would have three years from the proclamation of the legislation to when those agreements would expire. However, even if we were to commence that three-year period from the date of the election, under this legislation many EEAs are likely to expire in advance of that date. Therefore, there is major concern that contracts that have been entered into between parties will be interfered with due to the time frame set by the Government. If the minister had stuck to the expiry date of three years from the date of proclamation, it would have provided a level of certainty for businesses. I know the minister was concerned that some of the agreements were open-ended, but a time frame would have met that need. Those parties entered into those contracts legitimately under the law that existed, and on the basis of the policy on which the Government went to the election. They now feel rather miffed, to say the least.

Mr KOBELKE: Quite rightly, the member has alluded to the fact that the expiry date for existing workplace agreements is the one small technical area that varies from our policy. Other than that, we are fulfilling the commitment set out in our policy document prior to the election. The member correctly asked me to explain the reason for that variation. In its policy document, the Australian Labor Party committed to achieve three things with the transitional arrangement on the expiry of workplace agreements. First, workplace agreements would be allowed to run for a maximum of three years following proclamation of the legislation. Obviously some will run for a shorter period than that because they will have been in existence for three years. Second, we said that one month after proclamation, people who were clearly disadvantaged could seek to upgrade their conditions to the

new standards. Third, we said we would seek to ensure that the process worked as simply and efficiently as possible. That was included in the first draft of the Bill, and it occupied approximately an extra 50 pages of legislation. It was difficult to detail the upgrade provisions for people who will remain on low wages, some of whom, although not many, clearly were being exploited. Not only the mechanisms but also a range of administrative processes were complex. We decided to compromise by omitting the upgrade aspect. However, we could not allow people to continue to be exploited for up to three years, so we reduced the period to 12 months. A six-month limit will apply to workplace agreements that were rushed into after the election despite the fact that we said we would abolish workplace agreements. The six months begins on 22 March as shown in proposed section 4C. The other contracts that might have run for three years will expire in 12 months on the basis that the process involved in achieving that will be much simpler. I am concerned that this Bill does not provide for disadvantaged employees to upgrade their conditions. However, it seemed a reasonable compromise to achieve a workable package.

Mr BOARD: I thank the minister for that explanation. It seems that the minister is seeking to cancel everybody's agreement to protect only a certain percentage of people. I do not know what that percentage is. The minister said a percentage of people in the system are being exploited by being paid well below the award. Would it not therefore be appropriate, in the light of agreements people have signed in good faith, to allow people the choice of opting out of an agreement, thereby offering protection to the people who felt disadvantaged? That would allow people who wanted to continue with their agreement to do so until its expiry.

Mr Kobelke: Are you suggesting that one party should be able to opt out of the agreement?

Mr BOARD: I am suggesting that employees should be given the option of renegotiating their contracts. All employees should have the option to stay with their current agreement or opt out of it after a certain period. People could then consider their options and see what they could achieve through a different mechanism. That would legitimately protect people who were happy to continue with their agreement and allow people to opt out if they wished.

Mr Kobelke: I understand that the member for Murdoch is seeking to achieve some improvements. That is fair enough. However, the core of his suggestion is that one party would have an ability to renege on an agreement. That could have worse consequences in some respects than a mandatory expiry date. Although the member's suggestion might offer some benefits, and the specified date might be sooner than people would like, the difficulty is that an employer would be uncertain - more so than this provision offers - about when an agreement could be terminated, because the other party could simply renege on the agreement. We have not countenanced that. Once an agreement has been signed by both parties it can be terminated only with the agreement of both parties. A key principle is involved, which I want to uphold, although I appreciate the member's genuine effort to find a better provision.

Mr BOARD: I understand the minister's point. However, he must weigh up the fact that, to protect people who have been in some way disadvantaged by the system, agreements will expire even though probably the majority of people are happy with them and have made them in good faith. He would be throwing out the baby with the bathwater. Surely with the expertise the minister has at his disposal a way can be found to protect people who are happy with their agreements and at the same time consider improving the situation for people who are being exploited. A simple way would be to amend the Minimum Conditions of Employment Act to make that Act relevant by increasing the standards required in agreements. That would provide protection for those people and some certainty for people who are happy to work under their present agreement.

Mr DAY: Although the minister might have already been through this issue to some extent, I would like it on record. An operator of a service station business in my electorate contacted me yesterday. He and his staff work within a clear and amicably agreed workplace agreement. However, I understand that once this legislation takes effect their agreements will be void and new agreements must be drawn up that will require the service station operator to pay no less than the award rate. I understand that the service station staff are paid $12 an hour for working normal hours, $14 an hour on weekends and $16 an hour on public holidays. Under the award they will be required to be paid up to $27 an hour because of the penalty rates that apply on Sundays and at other times of the week. It will cost that operator an extra $56 000 a year to pay his staff. We are all aware that service stations are operating within tight margins at the moment. Those businesses will not be able to find an extra $56 000 a year to continue operating. The only alternatives are for the business to close or for it to reduce the number of people it employs. Many of those people are students. They are relatively happy to work for what some might consider a relatively low rate of remuneration. It is part-time, after-hours work in many cases. It complements their studies and they are happy about the arrangements under which they are working. In the example I gave of a business that employs eight people, it would be necessary for that business to put off at least three of those people. People employed under the current arrangements would no longer be employed once this legislation went through. I seek clarification from the minister about whether the situation I outlined will occur; that is, that

people will lose their jobs as a result of this legislation being passed. If that is the case, I seek the minister's response to that situation.

Mr KOBELKE: The issue the member raises is bigger than the specific proposed section, but I am happy to answer it because it is a real question for many small businesses, particularly petrol retailers. Retailers have raised that question with me. Proposed section 4H gives part of the answer, in terms of the structure of the arrangements. When a workplace agreement comes to an end as a result of this legislation, proposed subsection (6) provides - it is picked up in other provisions - that the employer and employee are bound by any award that extends to them or to a relevant employer-employee agreement. It is open to the employer to allow the matter to default to the award and to pay award rates. That may be a legal way to operate but it may not be commercially viable, as in the case the member mentioned.

Another option for employers is industrial agreements, which must be negotiated with the employees through the relevant union. That might not be attractive to an employer for a range of reasons. An employer might seek to establish an industrial agreement through the Motor Trade Association or another industry body. That is a potential choice. It is up to businesses to decide whether it is a commercially viable choice and whether it is in their interest to pursue it. It is open to them. Some industries - not petrol retailers - are already embarking on that course. Those organisations did not previously wish to deal with unions. They made the decision to seriously consider this option as a way to maintain the flexibility and cost structures that they want.

I have already covered the third option, which is to seek to register an employer-employee agreement. An EEA must meet the no-disadvantage test, which we discussed yesterday. I will use the example given by the member for Darling Range about employees being paid $12, $14 or $16 an hour. I am not sure of the minimum rate set in that award - it may be below or slightly above those figures. The no-disadvantage test would have to look at the total income or remuneration a group of employees receives. That would have to go through the whole process, but it might come up with a wage rate of $15 an hour. I am guessing, because I do not know the figures that the member for Darling Range is working with.

Mr Day: Is it the case that they cannot receive anything less than the award provides?

Mr KOBELKE: No. If an EEA is negotiated and registered, the award is put aside. If the award provided for a double rate of $25 an hour on Sundays, under an EEA the employer could pay $15 or $20 an hour. I do not know the figure, because it must go through the no-disadvantage test.

Mr Day: Would it be possible, through agreement between the employer and the employee, to maintain the current rates of remuneration?

Mr KOBELKE: Not if it does not meet the no-disadvantage test. I suspect that the hourly rates the member gave would not meet that test. The average income must not lower the total wage below the award rate. Some service stations currently pay rates below the award. I am not talking about the hourly rates. In some extreme cases, wages have gone down $100 a week because workplace agreements were used to lower wages. That was disastrous for many thousands of Western Australians.

Mr Day: Maybe it is a choice between that and simply not employing staff. That is the alternative.

Mr KOBELKE: That may be presented as the case for individual businesses. An interesting case study in the United States a few years ago compared the situations in various States. It found that States that had a higher minimum wage had a higher employment rate. That does not prove that raising wages increases employment, but simply that there is no solid argument that lowering wages creates employment. Major increases across a system can cost jobs if the cost gets out of kilter with what the market can carry. The point is that there has been huge disruption to people through the lowering of wages. The Government believes it can pull that back into a fair and balanced system with minimum disruption.

Mr DAY: I thank the minister for his response. Notwithstanding the study in the United States to which the minister referred, it appears clear that employers in the situation I described would be required to pay a higher rate of remuneration to their staff. It also appears clear that it would result either in a business closing altogether or reducing its opening hours and the number of staff it employed. That would have two effects. First, it would lower the employment rate and opportunities for people in the community. University students are happy to work under these arrangements so that they can earn some income while they are studying. Once they complete their studies, they can become productive members of the work force in a full-time and higher paid position. Second, if service stations are forced to reduce their hours of opening, it will impact on the public by reducing the convenience available through the deregulation of petrol station opening hours. In many cases, petrol stations are open 24 hours a day. All members would agree that the public now has much better access around the clock to petrol and other items sold through service stations. That appears to be the inevitable consequence of the legislation we are considering.

I appreciate the explanation the minister gave about the three options available to employers in this situation, but it does not get away from the fact that there will be a reduction in the number of people employed and the services available to the community.

Mrs EDWARDES: I direct the minister's attention to proposed section 4C, which deals with the limit on the duration of agreements entered into after 22 March 2001. The minister announced on 21 March last year that workplace agreements entered into after that date would expire within six months of the legislation being proclaimed. To some extent, it was legislation by way of media statement. The proposed section is now before us. Again, the transitional provisions provide that those agreements that were entered into after 22 March 2001 will expire six months after proclamation, and those that were in existence prior to that date will expire 12 months after proclamation. There are concerns about the time frames. Even with the knowledge that the agreement will expire six months after proclamation - the Department of Consumer and Employment Protection provided that information on its web site; therefore that information should have been readily available - businesses believe that the period proposed is far too short, particularly in terms of budgeting and administration. Some businesspeople still say to me, "This legislation won't really happen, will it?" They do not understand the parliamentary process. They do not understand the way that this could interfere with the rights of an employer and an employee to enter into an agreement. Some people would not have fully realised and some did not fully realise that the 22 March date would be in place. Six months for some employers will be a bit of a shock, and the minister can say that others who were aware of the date should have taken it into account. It is probably a misunderstanding of small businesses and their human resources experience, knowledge and understanding. As such, it will severely impact on people.

Another issue is that some workplace agreements will expire six months after proclamation and some will expire 12 months after proclamation. Some industries that are highly competitive - the cleaning industry is one - believe that those who are currently on the award will be severely disadvantaged by having a two-tiered system. They have suggested that the same date be used for both, particularly if the date for expiration has been brought forward from three years to 12 months after proclamation. I appreciate the response that the minister gave on the reasoning for that.

Mr Kobelke: Some employers are also very much against having the one date, because they are fearful of pattern bargaining. For us to handle it administratively, it is much better to spread it out in two hits.

Mrs EDWARDES: There is no agreement among employers on the transitional dates. That recognises that there is a problem with a hard and fixed rule on when the agreements will expire. Some want the one date; some would like the dates to be extended because they regard the period as far too short; and others would like the expiration date that is currently in their agreements, unless they were open-ended. That highlights the problems that the minister will face with those transitional dates.

Mr BOARD: The opposition spokesperson for labour relations has raised issues about the dates that were set by a press release and ministerial statement on 21 March last year. I believe that amounts to retrospective legislation in the sense that people who entered into agreements with some certainty at that time have found by way of a press release and a ministerial statement that the date that they may have been negotiating will become irrelevant. By way of this statement, and the retrospective nature of the legislation being proposed, people who have entered into those agreements have found that they will be outside of their agreements. I would like the opposition spokesperson to explore this area a bit more, and the minister to explain in greater detail why he has dealt with it in this retrospective way rather than create a greater sense of certainty in the workplace.

Mrs EDWARDES: I bring the minister's attention to proposed section 4C(2), which states -

> The agreement ceases to have effect -
>
> (a) at the end of 6 months beginning with the designated day;

That is the day we have just referred to.

> (b) on the day on which the parties have agreed that it is to cease to have effect, being a day provided for -
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> (i) by the agreement; or
>
> (ii) by agreement between the parties under section 24(1);
>
> or
>
> (c) on a day on which section . . . 43(4) becomes applicable to the agreement,
>
> whichever happens first.

It could also be on a day of cancellation and/or public service termination. There is some uncertainty surrounding the fact that the six-month period is the date that comes first. People can terminate or cancel their agreements or they can leave their employment before that date, in which case the agreements expire. Can the minister clarify that of all those dates, it is whichever comes first, but will not be after the six-month period?

Mr Kobelke: That is absolutely correct.

Mr BOARD: The second paragraph of the minister's media statement made on 21 March states -

> Labour Relations Minister John Kobelke said the time limit was to prevent a rush on employers trying to register workplace agreements prior to new legislation being passed.

What does that signal about the desire of employers and employees to have workplace agreements? Does that signal that the minister was concerned that those who had been negotiating for a long period wanted to register their workplace agreements -

Mr Kobelke: The rush was that people already on workplace agreements were trying to get around what they knew would be the provisions by registering new workplace agreements, mainly with exactly the same terms and conditions, just to extend the date of expiration.

Mr BOARD: The minister may have intended that, but that is not what he said. He said that the time limit was to prevent a rush on employers trying to register workplace agreements, not existing ones, prior to new legislation being passed. The figures indicate that workplace agreements were successful, were growing in number in the workplace and were being embraced by a large number of people every month. It seems to me that the minister was going to do everything he could to prevent an increase in workplace agreements before he drafted this legislation. By that mere statement, the minister indicated to the community of Western Australia that workplace agreements were successful. It shows the shallowness of what the minister is trying to achieve today.

Mrs EDWARDES: Proposed section 4H refers to proposed sections 4C, which the House has just dealt with; 4D, which deals with the limit on the duration of arrangements under the repealed section 19(4)(b); 4E, which deals with termination of unregistered individual workplace agreements; 4F, which deals with limits on the duration of agreements not covered by proposed sections 4C or 4E; and 4G, which deals with the termination of the effects of agreements under repealed section 23(1). The title of proposed section 4H indicates that it is attempting to ensure that when a workplace agreement or arrangement is terminated or an employee ceases to be a party, the person is not disadvantaged. I do not think it has achieved that aim. Two serious issues arise from the interpretation of proposed section 4H. Firstly, there is the loss of conditions. Although pay or salary is protected, conditions are not. I will go through that shortly. Secondly, as raised by the member for Darling Range, when a workplace agreement expires and the company is faced with a choice between an industrial agreement, EEA or award, the company may realise that it cannot afford those agreements. This particularly applies to those workplace agreements I identified earlier, which were for full-time work and open-ended hours. That will cause a serious problem if an employer wishes to dismiss those employees.

I will take the minister, in a logical way, through the first problem - the loss of conditions. The Bill guarantees that wages provided by workplace agreements will not fall. The transitional arrangement fails to secure the employee conditions when they conflict with an award provision. The Bill provides that an employee's current workplace agreement and employment contract will form a new contract of employment but, at the same time, the award applies. The problem is that many terms of the new contract of employment will be inconsistent with the award. What is the provision for people on workplace agreements who have a condition of employment that is inconsistent with the award?

Mr KOBELKE: A number of matters have been raised here, and the member for Kingsley has correctly put her finger on some of the issues. The issue of timeliness, which the House was discussing earlier, is important, because the potential exists for some discontinuity. For the employees, they are minor. For employers who have very specialised rostering or work arrangements, they may be more significant. In those cases, there is clearly an imperative for employers to ensure that they have the arrangements in place that they want, whether they be industrial agreements or EEAs. That is the best way to address any real issue that may arise.

Mrs Edwardes: What is the best way?

Mr KOBELKE: To put in place the new arrangements before the workplace agreement expires to avoid reverting to the default. The member is alluding to the fact that there will be some risks when that default position is reached. She has correctly identified some issues. The best way to deal with them is to put in place the alternative industrial agreement or EEA before the workplace agreement expires. There will then be no problem at all; it will be a smooth transition.

If an employer neglects to do that, or something gets in the way, proposed section 4H(6) provides for the award to extend to those employees. That is a matter that will have to be worked out, and I am not in a position to tie down exactly how it will work out. The award will be the standard, but a contract of employment also exists from the workplace agreement. Proposed section 4H(7) and 4H(8) attempt to make sure that a couple of matters are very clearly laid out. These proposed sections were added after the public consultation. I appreciate the opportunity to put on the record, for the purposes of later interpretation, exactly what the Government intends to achieve with these proposed sections.

First of all, in the calculation of the award entitlement, the problem was raised that, particularly in the mining industry, the whole system may originally have started with the award, but has now moved to annualised salaries because of fly in, fly out arrangements. Holiday pay then becomes an issue. An annualised salary is seen to be the standard, but it has bundled up a range of efficiencies, including rostering arrangements, penalty rates and site allowances. These are all now included in the hourly rate or the annual salary. The concern was that that might be equated to the ordinary hours for the award, so the employer would be stuck with the same base payment, as well as all the extra costs because of rostering constraints or requirement for loadings. That was never the intention. The calculation of an employee's award entitlement must be done solely on the contents of the award, and it is to be carried out independently of the contract of employment. All awards contain an ordinary or base rate of pay, which is used for paying employees for their ordinary working hours. This rate of pay must be used for calculating all entitlements under the award, including overtime, penalty rates, loading, and any allowances or other entitlements tied to the rate of pay rather than a flat dollar amount. The worker will be paid whichever is the better rate between the contract of employment as it stood under the workplace agreement, and the award. I am trying to make it clear that when calculating the two to see which is the best, conditions cannot be dragged out of the existing agreement, be said to be part of the award and thus push the payment even higher.

Proposed section 4H(8) continues from there, and deals with the exclusion of set-off principles. Workplace agreements frequently provide for higher ordinary rates of pay, having abolished entitlements to overtime, penalty rates and sometimes allowances.

Mrs EDWARDES: I would like the minister to continue his explanation.

Mr KOBELKE: I thank the member for the opportunity to clarify proposed section 4H(8).

Industrial magistrate's courts, as part of a principle called set-off, have frequently held that, when a contract provides a higher base rate of pay, as a trade-off for other entitlements, the employee is nonetheless entitled to use that higher rate of pay for the purpose of calculating unpaid award entitlements. The legislation will prevent this. An employer cannot be required to pay an employee more than he was entitled to, either under the contract of employment or the award on its own terms.

Mrs Edwardes: Does that relate to annual leave as well, when it has been incorporated in the annual salary? Does that mean the employee cannot then get that annual leave and the increased benefit, through salary?

Mr KOBELKE: On expiry of the workplace agreement, the person will be entitled to whatever is the greater; that is, the remuneration and conditions laid down in the workplace agreement or the award. We will not be able to transpose conditions established under a workplace agreement to the award calculations. If in establishing the rate of pay for the workplace agreement, matters going to annual leave or long service leave were included in the total payment, we would not be able to benchmark them across to the award calculation.

Mrs Edwardes: What does that mean?

Mr KOBELKE: The calculation will stand on the basis of the award as it is.

Mrs Edwardes: Will they still get whatever is the greater salary, which will be incorporated into the trade-off of annual leave, in addition to the annual leave?

Mr KOBELKE: Yes.

Mrs Edwardes: That will be double dipping.

Mr KOBELKE: No.

Mrs Edwardes: It will, because they will be able to get the annual leave in addition to the increased salary, which will be a benefit because they have traded off the annual leave.

Mr KOBELKE: They will have traded that off under the workplace agreement. They will not be able to transpose the benefits in the workplace agreement achieved by trading off into the award calculation.

Mrs Edwardes: But they will not be able to lose salary either. They will get the higher amount.

Mr KOBELKE: The Minimum Conditions of Employment Act will still apply. The terms of contract will be largely those which were laid down in the workplace agreement and which involved a leave trade-off. They will still get that total package. However, they will also be entitled to the minimum conditions of employment.

Mrs Edwardes: Which is two weeks annual leave.

Mr KOBELKE: Yes.

Mrs Edwardes: Will that be paid?

Mr KOBELKE: Yes.

Mrs Edwardes: It will be double dipping if they have traded off the four weeks annual leave.

Mr KOBELKE: There will be the potential for that to happen. They will still be entitled to the annual leave in addition to the package they have agreed to. To that extent, there will be some double counting. If they put in place an EEA, they will not have those problems. We are talking about the default situation in which they have not entered into an arrangement that obviates those issues.

Mrs Edwardes: If they trade off the four weeks annual leave and receive the corresponding amount in annual salary, they will default to the award. Even though the leave will be annualised in salary, it will be only two weeks, not the four weeks as prescribed under the award. The legislation clearly states that the award will apply.

Mr KOBELKE: The award conditions will apply along with the minimum conditions.

Mrs Edwardes: That will be four weeks. If they trade off that four weeks and take it as annual salary, as a default, they will receive that annual salary and the four weeks leave. That will be huge double dipping.

Mr KOBELKE: Clearly, it is a problem. It will be in their interests to put in place an EEA.

Mrs EDWARDES: That may not be possible. There is no guarantee that an EEA or industrial agreement will be put in place. We have established one of the concerns about this legislation. There is the real potential that employees will receive not only their annual leave but also the salary that they have traded off. Clearly, that will be double dipping. What else will be incorporated? What if they have traded off the 17.5 per cent loading or other amounts and those amounts have been annualised and included in the award?

Mr Kobelke: If they are standard award conditions, they will apply.

Mrs EDWARDES: There will be double dipping on a range of standard award conditions.

Mr Kobelke: There will be potential for double dipping to occur.

Mrs EDWARDES: That is amazing. Clearly, the minister should amend that provision. Surely no Government would support that.

One of the examples the minister raised was fly in, fly out arrangements. The award makes no provision for fly in, fly out or commute arrangements such as two weeks on and one week off, two weeks on and two weeks off and so on. If the award were to apply as described in proposed section 4H, at the end of the workplace agreement those arrangements would become a new contract of employment that would be inconsistent with the award and would amount to contracting out. As such, they would have to be discontinued - employees cannot contract out of those award conditions. That would affect employees' entitlements, because those arrangements would no longer be available. Is that a correct interpretation?

Mr KOBELKE: I accept what the member has said; she is on the money about how it will work. I pointed out in respect of proposed section 4H(6)(b) that the transition to an EEA will prevent those problems. It is imperative that the transition be smooth and that adequate time be allowed for people to make those arrangements. An EEA will be able to pick up those conditions and the transition will be smooth. The member is alluding to the scenario in which those arrangements are not in place. In that case, double dipping and a range of other problems will flow from that.

Mrs EDWARDES: Many people will not want an EEA for all the reasons I have stated. Those people will not be worried about the no-disadvantage test because they will be paid well and truly above the award in salary and benefits. The minister is talking about a decision that may take some time to implement. Those employees will have to go onto the award where it applies.

Many innovative shift systems have been established under workplace agreements. The mining industry has raised concerns about the extent of those shifts and related issues. The former Government issued a code dealing with hours of work. Often shift systems were designed to meet the needs of both employers and employees. They are not provided for in the award. Again, it would constitute contracting out of the award if those shift systems were used. As I indicated earlier, section 114 of the Industrial Relations Act provides that it is not possible to contract out of an award. The only choice will be to revert to the award. That will mean the shift

payments and benefits provided by that work arrangement will no longer be applicable. Employees' entitlements will no longer be guaranteed. Is that another example of the problems that will arise with employee conditions?

Mr KOBELKE: As the member has quite rightly indicated, those people who do not seek to take up an employer-employee agreement will run into those sorts of difficulties. Those difficulties can be addressed through a range of management issues if people decide not to use an EEA or there is some impediment to their using it or getting it in place in time.

Mrs Edwardes: What else can they do? What is the range of other management issues?

Mr KOBELKE: Management could look to an industrial agreement and how it is currently structuring the work force. I do not think that is the best way to go. The best way is to settle it all before they get into that position.

Mrs Edwardes: If there is an inconsistency, the award will apply. Section 114 of the Industrial Relations Act provides that people cannot contract out.

Mr KOBELKE: I accept that. However, the other issue which we will certainly drive but which does not have to wait until the legislation goes through, is award modernisation. When rostering arrangements and such are extremely restrictive under the award and simply cannot be used, we need to consider award modernisation to provide flexibility in the awards covering those industries that have found they can operate effectively with a totally different rostering arrangement.

Mrs EDWARDES: The clear issue is that the employee has no guarantee that those entitlements will continue.

Mr Kobelke: The employee entitlements will continue. The risk is the higher cost structure for the employer.

Mrs EDWARDES: In the circumstances I have outlined there is no guarantee of employee entitlement to the conditions that they have been receiving and enjoying, because the reversion must be to the award. When there is a clear inconsistency between the contract of employment and the award, people cannot contract out under section 114 of the Industrial Relations Act, so there is no guarantee for those employees of those entitlements.

Mr KOBELKE: It depends what is covered by entitlements.

Mrs Edwardes: I am talking about two.

Mr KOBELKE: The level of remuneration will remain. If the member is referring to entitlements such as rostering arrangements, they will be at the award level.

Mrs EDWARDES: I accept that wage and salary provisions have been well drafted in the Bill. The conditions of the employee have not been protected.

Mr Kobelke: The practicalities are that most employees have traded off those conditions against the higher remuneration they received under a workplace agreement. If the conditions of the award are applied to them, that would most probably be advantageous to them although not in every case. The problem is for the employer who, in order to get the productivity for shift arrangements, has a higher cost structure.

Mrs EDWARDES: He will not be able to do it.

Mr Kobelke: The imperative is to get in place the EEA or an alternative arrangement before the expiry of the workplace agreement.

Mrs EDWARDES: For some that will quite clearly not be a reality.

Mr Kobelke: For whom will it not be a reality?

Mrs EDWARDES: It will be for employers and employees who wish to have an agreement. I think the minister will find that EEAs will not be popular. I will point out the problems for employers associated with negotiating an industrial agreement. A reversion to an award will be all that an employer will be faced with until such time as an agreement applies. There could be quite a considerable gap between the two.

Mr Kobelke: I do not agree with that. They will be able to convert quite easily, and many of them will.

Mrs EDWARDES: The issue is that this legislation does not protect the employees' current conditions under workplace agreements. If the reversion is to the award when workplace agreements expire at the end of 12 months, there is no protection for employees.

Mr KOBELKE: The advice I have, which I think helps clarify an important point that the member has raised, is that people must comply with the contract of employment. If the contract of employment is for 12-hour shifts and fly in, fly out arrangements, employers cannot say that employees must comply with an award condition of a 40-hour week, for example.

Mrs Edwardes: I am sorry, but that is wrong. If there is any inconsistency between the award and the contract of employment, the award applies. In the two examples I have given there are quite clearly inconsistencies so the award will apply.

Mr KOBELKE: The member is correct, as was I. It looks as though we are in conflict, but the fact is that the contract must be complied with. The member is saying that the award would lead to a breach of that.

Mrs Edwardes: That would happen when the contract is inconsistent with the award.

Mr KOBELKE: Yes. If there are clear, positive benefits to employees in retaining the conditions of working under the contract, they would continue to do so.

Mrs Edwardes: In which proposed section does that apply in the event of an inconsistency?

Mr KOBELKE: It applies in the practicalities of how the system will work.

Mrs Edwardes: Tell me where in this legislation that applies, because I say it does not apply.

Mr KOBELKE: I agree. I am saying that in the practicalities of how it will work, according to the member some people will have missed the boat and not done what would be expected of them in order to manage the difficulties. Therefore, they would be in a position of some jeopardy, which is taken account of in the legislation. The member is asking how they would handle it. When a contract is still in effect, it would be overridden by conditions in the award. Therefore, people would have to sort that out. They would look to how employer-employee relationships are normally conducted. If it is to the benefit of both parties, they will get on with business. That is how it always works.

Mrs EDWARDES: That quite clearly highlights the level of uncertainty for both employers and employees about what will apply on the expiration of a workplace agreement. Although wages and salaries will be maintained at the higher level, and there is the real potential for double dipping, when there is an inconsistency with other conditions that have been very satisfactory for both parties, the award will apply. In the two examples I have given - there will be others - there will be a severe detriment to both employer and employee. The employees who are currently on very good conditions under workplace agreements have no guarantee that they will continue after the expiration of workplace agreements. As a result of that, a level of uncertainty will arise.

Another serious problem arises with this proposed section. Transitional provisions in proposed section 4H provide for employment conditions that are to apply once the workplace agreement is terminated. The provisions provide that the employment of an employee becomes subject to a contract of employment. We have already covered that. Under proposed section 4H(3) the contract of employment is said to have the same provisions as the workplace agreement - that includes any extra benefits - and any existing contract of employment relating to the workplace agreement. In combination those provisions create, through statute, a contract of employment. We have discussed that before regarding EEAs. I am dealing with the transitional provisions of workplace agreements. Under proposed subsection (5) the statutory contract of employment "may be varied or terminated, as if it were a contract entered into between the employer and the employee". Proposed subsection (6) then comes into play. Notwithstanding the creation of such a contract of employment, the employer and the employee are bound by any award that applies. The transitional arrangements built by statute will be what neither the employer nor the employee really wanted when they entered into a workplace agreement. The provisions create a new contract of employment with elements drawn from the workplace agreement and any previous contract of employment and makes them subject to the award that applies.

While that is recognised as causing a bit of a problem, an example has been brought to my attention that many workplace agreements provide for flat hourly rates, regardless of when work is performed. I earlier identified the workplace agreements that were "loose" regarding hours worked. In other words, they did not provide for overtime or weekend penalty rates and only provided an hourly rate that was usually higher than the ordinary hourly rate in the award to compensate for the absence of penalties. The problem arises when the hourly rate in a new contract is subject to the award. The new hourly rate of pay is the basis for the calculation of weekend and penalty rates. In other words, it would be a penalty in the rate of pay for the employee. The outcome is something that neither would have intended. In order to lessen the effect of that the draftsman has tried to resolve the dilemma with the provisions of proposed subsections (7) and (8). In combination, the provisions provide, for the purposes of the award, that the award ordinary rate of pay applies and not the rate in the new contract of employment. Rates of pay are protected. It provides that nothing requires the employer to pay more than that arising from the new contract of employment or from the award, whichever is the greater. Employee rates of pay are protected. The flat hourly rate derived from the former workplace agreement cannot be used for the purposes of calculation. As the minister explained, the award is used for the calculation of penalties. If the agreed hours in the new contract of employment were primarily worked at times when penalty rates applied, the requirement to pay rates as provided by the award would lead to significant additional wage payments. Proposed

subsections (4), (7) and (8) have avoided a massive blow-out in wage costs in some cases but they have not cured the problem when unreasonable or irregular hours are worked.

The security, retail and hospitality industries are key examples when peak periods of work occur over Fridays, Saturdays and Sundays. The issue relates to when they become full-time jobs and not casual or part-time jobs. It will certainly increase the wage costs for employers. The award will require overtime and weekend penalties to be paid. In some cases it will require the 38-hour ordinary wage. Even though people may be working full-time, employers will be required to pay the 38-hour ordinary wage plus overtime and penalty rates. We have talked broadly about the restrictions in most awards that do not deal with unconventional hours. There will be a huge cost burden for employers. The crux of the issue is, what do they do? It is a serious issue. One option is to seek to vary the contract of employment with the employee. An employee is hardly likely to be compliant with that if he understands the extra wages he could achieve. It will not be a successful outcome for either party. Employers could raise costs to try to cover the additional wages. In some areas, however, that is not possible. An employer could dismiss an employee. While that looks like an easy way out, it will not be possible. This has not been highlighted in any way. The freedom of association provisions in the federal Workplace Relations Act do not permit employees to be dismissed or injured in their employment when they are entitled to the benefit of an award. The provisions state that an employer must not, for a prohibitive reason, dismiss or injure an employee or alter the position of an employee to his prejudice. The prohibitive reasons are set out in section 290(L)(1). One of the prohibitive reasons is that an employee is entitled to the benefit of an industrial instrument. Even though it is a federal Act, an industrial instrument also includes a state award. If an employer wishes to dismiss an employee because he cannot afford extra costs, it would be a breach of the provisions of the federal Act to do so. If the employer dismissed the employee, the employer can be fined $10 000 and ordered to reinstate the employee and pay compensation. It is clearly flawed and I am sure that it was not what was intended when the Government drafted the provision. It will clearly cost jobs. If an employer cannot afford increased costs and he cannot sack an employee the only option is to close his business. There will be a greater impact on job losses through this provision. Employers will not be able to respond to additional costs by terminating employment because of the federal Act. It is a consequence of the transitional provisions. I wonder whether the minister has looked at it and what his views are. How does he see it being overcome for employers who find themselves in that situation and who may be subject to a penalty? I do not think the minister intended them to be put in that situation.

Mr KOBELKE: The member has correctly alluded to an area of difficulty in the transition from one system to another. I repeat that when the 1993 system was introduced, there were huge problems and high costs. Any difficulties with this transition will be managed, and I am confident that the impact will be less than that in 1993 and subsequent years. It is a matter of ensuring that we put in place measures that allow time for people to be educated about what is expected of them. They can then make the transition prior to being caught by the repeal provision in the workplace agreements. That means they must avail themselves of the employer-employee agreements and, on that basis, the transition will be smooth. The member quite rightly pointed out, and I suspect it is the case, that one or two people will be caught if they do not get those provisions in place in time. They will then have to revert to the award or deal with areas of conflict between the award and the contract established under this statute, based on the existing contract of employment. We have been explaining the issues involved in the transition, rather than just scaring people. Therefore, those people who are aware of change and have an interest in the matter will address the issues and be able to handle them.

There are two problems. First, there are the people who will not address the issue because they procrastinate or fail to pick up our education program - we will do our best to make sure they are aware of the issues. Secondly, some specific industries have cost structures that will change somewhat. In those cases there will be issues about how to structure their hours or mode of operation, because their labour cost, through the use of workplace agreements, may be lower than the general community standard. However, in most of these areas, there are people running viable businesses who are strongly supportive of the Government's proposals. Those businesses have found it difficult to survive because they have offered fair and reasonable conditions under the award and, in some cases, worked under the penalties and restrictions contained within the award, while competing against others who have paid lower wages. In the areas about which members are concerned, the majority of employers are using the award. Therefore, it is not beyond imagination that those people using workplace agreements who have a issue with the transition and how they will restructure, will simply compete on the same basis as a huge number of companies that are already using the award.

Mrs EDWARDES: The minister will find that the uncertainty surrounding the establishment of EEAs and the transitional provisions will be one of the reasons that large companies will move to the federal system, particularly mining companies that have been paying considerably higher wages and providing greater benefits to the employees. Those companies will have a greater level of certainty, once the Government gets the legislation up and running and irons out all the bugs, if they return to the state system.

Mr Kobelke: I accept that a lot of companies will sit back for a while and see how the legislation is working before they make a decision.

Mrs EDWARDES: I think the minister will find that a lot of companies are making the decision now to go to the federal system. There are significant reasons, as we have outlined, for both employers and employees to do so. I suggest that the concerns raised about proposed section 4H are not to be dismissed. The draftsperson has attempted to resolve the issues flowing from the transitional arrangements, but it is clear that in the two areas I have highlighted the employer is put in the position of potentially breaching federal laws and not being able to guarantee the employee's conditions. They are two serious problems that will result from proposed section 4H, and the minister ought to review that section. I know he has probably endeavoured to deal with the problems a thousand and one times, but those are two serious issues that have been brought to my attention.

Is Rio Tinto Ltd about to undertake a vote next week?

Mr Kobelke: I think it starts today.

Mrs EDWARDES: That is a serious issue. I am aware of a letter the minister wrote to Stephanie Mayman that is being sent out by UnionsWA to the employees affected by that voting process. A letter from Hon Jon Ford also guarantees that those employees will not lose their conditions if the result is a "no" vote. That is clearly not the interpretation discussed under proposed section 4H, and it could be said to be misleading to those employees who are voting at the moment. We dealt with the misinformation section previously, and I suggest that both letters are clearly intended to discourage people from entering into a federal agreement, which is a serious issue.

Mr KOBELKE: I will give the member the opportunity to continue and hopefully we will quickly move to the end of this proposed section.

Mrs EDWARDES: I indicated to the minister the seriousness of proposed section 4H, and I have been able to demonstrate that in two areas.

Mr Kobelke: I acknowledge that and it has been very constructive on the member's part to get that put on the record.

Mrs EDWARDES: Proposed sections 4J and 4I continue to deal with transitional arrangements so I have nothing further to add on clause 31.

Clause put and a division taken with the following result -

Ayes (23)

Mr Bowler	Mr Kucera	Mr McRae	Mrs Roberts
Mr Carpenter	Mr Logan	Mr Marlborough	Mr Templeman
Mr D'Orazio	Ms MacTiernan	Mrs Martin	Mr Watson
Dr Edwards	Mr McGinty	Mr O'Gorman	Mr Whitely
Mr Hill	Mr McGowan	Mr Quigley	Mr Murray *(Teller)*
Mr Kobelke	Ms McHale	Ms Radisich	

Noes (19)

Mr Ainsworth	Mrs Edwardes	Mr McNee	Mr Trenorden
Mr Birney	Mr Edwards	Mr Marshall	Mr Waldron
Mr Board	Ms Hodson-Thomas	Mr Masters	Dr Woollard
Dr Constable	Mr House	Mr Pendal	Mr Bradshaw *(Teller)*
Mr Day	Mr Johnson	Mr Barron-Sullivan	

Pairs

Mr Andrews	Mr Sweetman
Mr Ripper	Mr Barnett
Dr Gallop	Ms Sue Walker
Mr Brown	Mr Grylls

Clause thus passed.

Clause 32: Section 8 replaced -

Mrs EDWARDES: The Workplace Agreements Act allows employees to enter into non-union collective agreements, although unions can play a part, and I will deal with that shortly. I ask the minister to confirm that the effect of this amendment is to reassure people that if a party is added to an agreement so that it becomes a

collective agreement, the no-disadvantage test will not apply; that is, no existing or future award will apply to that contract of employment during the transitional period.

Mr KOBELKE: As the Workplace Agreements Act is to be repealed, this substituted section will recognise that such a contract of employment may continue. It will recognise those people who are caught under a collective workplace agreement, even though the collective agreements section will be repealed. As we discussed earlier, the ongoing nature of the employment will not disappear. The substituted section will give coverage to people who might be added to a collective agreement.

Mrs Edwardes: Does the provision apply if the workplace agreement is still in force? In other words, will the contract not be subject to the award?

Mr KOBELKE: Yes.

Clause put and passed.

Clause 33: Section 9 replaced -

Mrs EDWARDES: Proposed section 9 will allow collective workplace agreements to be made before the designated day. If that were to occur, the workplace agreement would be in existence for only six months from the proclamation date.

Mr Kobelke: Correct.

Clause put and passed.

Clause 34: Section 10 amended -

Mrs EDWARDES: Why is the Government changing this section? I understand that it will allow an agreement to be entered into before the designated day. It seems to be overkill. I did not think that this section needed to be changed to meet the Government's objectives.

Mr KOBELKE: This is another clause that is required for the transition. The existing section in the Workplace Agreements Act allows workplace agreements to be made. The amendment will indicate that a workplace agreement can be entered into before the designated day.

Mrs Edwardes: The preceding expiration clauses make it superfluous.

Mr KOBELKE: It could be seen as precautionary.

Clause put and passed.

Clause 35: Section 11 repealed -

Mrs EDWARDES: Section 11 provides for unions to join in collective workplace agreements. I indicated earlier when making a comparison that a couple of conditions applied to this. Those conditions are that the employee organisation will -

> . . . conduct its affairs -
>
> (a) in a way that is consistent with the observance of the agreement; and
>
> (b) so as not to incite or encourage any breach of the agreement,

The union could be regarded as a party to a collective workplace agreement if it complied with those conditions. Amendments to previous sections will still allow parties to enter into a collective workplace agreement before the designated day. Why will this section be removed?

Mr KOBELKE: These clauses relate to the repeal of the Workplace Agreements Act, and this clause simply indicates that the section will be repealed. A workplace agreement could continue for between six and 12 months before the designated day. Therefore, we need a basis of law to handle ongoing contracts in the interim. That is why the transitional arrangements are needed. This clause simply repeals the section.

Mrs Edwardes: Why are you taking the unions out of the collective agreement?

Mr KOBELKE: We do not see any need to retain this section. The entire Act will be repealed. The intent of these clauses is to retain certain provisions to underpin the arrangements during the transition. An employer and employee cannot enter into a new agreement after the designated day. Once the parties are involved in an agreement, it becomes effective for the transitional period. Unions are not involved after the establishment of agreements.

No new workplace agreement will be established after the designated day. We need to provide transitional arrangements for the existing agreements to ensure that they have standing at law and that significant matters

that may arise can be handled. These clauses simply look at that or repeal any aspect that does not need to be included to handle the continuing contract of employment on a workplace agreement for up to 12 months.

Mrs EDWARDES: Proposed new section 9 allows for collective workplace agreements to be entered into before the designated day. Clearly, between now and when the section is proclaimed - and it would apply six months after that - a collective workplace agreement can be considered. At the expiry of the Workplace Agreements Act, section 11 would also expire. The Act will expire, except for certain provisions that provide for ongoing rights and obligations. Therefore, section 11 did not need to be deleted at this point. It is not essential to the transitional provisions. Why have unions been taken out of any collective workplace agreement that can be legitimately entered into, by virtue of proposed new section 9, between now and the designated day?

Mr KOBELKE: The repeal will occur on the designated day. Unions will still have that power up until the designated day. After that designated day, it will not be possible to enter into a new collective workplace agreement. Therefore, the unions will not need to play a role, because they will not be able to do so anyway.

Mrs Edwardes: That was a perfect answer minister. Thank you.

Clause put and passed.

Clauses 36 and 37 put and passed.

Clause 38: Section 16 repealed -

Mrs EDWARDES: Clause 38 deals with the repeal of section 16. Section 16 of the Act deals with the content of workplace agreements. According to the minister's previous answer, these clauses will come into effect on the designated day. That one would, because they are not involved. I will quickly reflect on the issue of union involvement. Does that mean that for the six months after proclamation, unions will have no role in collective workplace agreements?

Mr Kobelke: They will have no role in signing workplace agreements because none will be signed or entered into.

Mrs EDWARDES: However, a union still may be a party to an agreement. Those who are a party to an agreement retain a role, irrespective of the designated day or the following six months.

Mr Kobelke: A later section provides coverage for that. It indicates that the rights of parties are preserved for the period during which the workplace agreement exists.

Clause put and passed.

Clause 39: Section 18 amended -

Mrs EDWARDES: Clause 39 deals with the repeal of section 18(2), which relates to unfair dismissal. Subsection (1) states -

> There is implied in every workplace agreement . . . that the employer must not unfairly, harshly or oppressively dismiss from employment any employee who is a party to the agreement.

That links up with the unfair dismissal provisions contained in this Bill. We will deal with those later. The subsection that is being repealed states -

> The provision described in subsection (1) is enforceable under section 51 of this Act or under section 7G of the *Industrial Relations Act 1979*, as the case may be, and not otherwise.

I understand that section 51 will be replaced in an attempt to standardise the processes and procedures in the event of unfair dismissal. However, why has the reference to the Industrial Relations Act been taken out?

Mr KOBELKE: Under the new arrangements people will have, as a general right, the ability to make application for unfair dismissal, so there is no need for this section to remain. Coverage is available.

Mrs Edwardes: Under the proposed sections?

Mr KOBELKE: Under the provisions that have been put in so that the availability of an application for unfair dismissal applies to continuing workplace agreements. Clause 58 takes up these matters.

Mrs Edwardes: Section 7G of the Industrial Relations Act deals with the referral for unfair dismissal. There will be no gap for people who find themselves in that situation to still put forward an application for unfair dismissal.

Mr KOBELKE: They will not be able to.

Mrs Edwardes: Can you look at that when you consider the proclamation dates, to make sure that those that take place before the designated day do not have the potential to fall through?

Mr KOBELKE: I will direct the officers to look at that.

Clause put and passed.

Clause 40: Sections 19 and 20 repealed -

Mrs EDWARDES: Clause 40 repeals section 19 of the Workplace Agreements Act, which deals with the commencement and duration of that Act, and section 20, which deals with requirements for writing and other formalities. However, section 19(4), which is being repealed, provides -

> On the expiry of a workplace agreement this Act no longer applies to any contract of employment that it governed and that contract then becomes subject to relevant award provisions (if any) unless it becomes subject to -
>
> (a) another workplace agreement; or
>
> (b) some other arrangement -

We have gone through a number of transitional provisions that relate to when the award and contracts of employment will exist. Under this section, a contract of employment did not necessarily underpin a workplace agreement unless it was specifically linked to the agreement - some incorporated it and some annexed it, as I indicated. The Government has changed that situation. Is the Government underpinning a workplace agreement with a contract of employment that will survive the expiration of the workplace agreement?

Mr KOBELKE: That was covered by proposed section 4H, which we debated earlier. That establishes what the contract of employment is, based on what was there prior to the repeal.

Mrs Edwardes: So the Government is not underpinning this section, which indicated that there was no contract of employment unless it was subject to a relevant award, but is replacing it with proposed section 4H. What employers understood to be the case when they signed workplace agreements is now being changed. Workplace agreements will be underpinned with a contract of employment that might not have been regarded as being present when the agreements were signed.

Mr KOBELKE: The intent is that the new contract of employment will be identical to what existed before. It simply establishes that.

Mrs Edwardes: I thought this provision said that there would be no contract of employment on expiration. The Act no longer applied to it.

Mr KOBELKE: Section 19 was the old provision that applied when a workplace agreement expired. That is now totally irrelevant, because a range of provisions have been put in the Bill. The expiry is created by the Act. The provisions were included to handle that. We do not need to go back to how it was handled under the Workplace Agreements Act when an agreement expired.

Clause put and passed.

Clauses 41 and 42 put and passed.

Clause 43: Section 24 amended -

Mrs EDWARDES: This section amends section 24(2) of the Workplace Agreements Act, which states -

> The parties to a workplace agreement may while it is in force agree to change the agreement, but can only do so by a new workplace agreement containing the change.

The minister is concerned that that could be in force for 12 months or three years, or whatever, and would not change. Proposed new subsection (2) provides that a workplace agreement cannot be amended. Therefore, if the employer and employee wanted to amend the workplace agreement before its expiration, by virtue of this amendment they would be prevented from doing that.

Mr Kobelke: All workplace agreements are about to die and there will be an interim period. We are not going back through variations of workplace agreements at the twelfth hour when they are about to expire.

Mrs EDWARDES: Why is the minister proposing to change that section of the Act?

Mr Kobelke: It deals with the interim period when the agreements are about to expire. There is no point going back through the process to make variations to those workplace agreements.

Mrs EDWARDES: In the next 18 months, if an employer and employee wanted to make variations to the agreement for increased salary and other things -

Mr Kobelke: There would no longer be a commissioner's office to handle it. It is more appropriate for people to focus on putting in place the arrangements that will apply after the expiration of their agreements.

Mrs EDWARDES: This amendment will ensure that employees do not get an increase in their salary, or whatever, because the workplace agreement cannot be varied or amended.

Mr Kobelke: They could get a salary increase by putting in place an EEA or an ongoing form of contract rather than fiddling with an agreement that is about to terminate.

Mrs EDWARDES: Workplace agreements are still in place and people may want to keep the terms and conditions that they have agreed to and that have been budgeted for in workplace operations. However, if an employer and an employee wish to make a change between now and the expiration of the workplace agreement, the Government is stopping them from doing so by virtue of this amendment.

Mr Kobelke: No. We are preventing them from amending an agreement but we are not stopping them from making a variation, because they can do that by using an EEA or making an agreement in another form. We will not allow the Workplace Agreements Act, which will become defunct, to be used. We will deal with the problems raised by the member for Kingsley half an hour or so ago. Let us not try to patch up a workplace agreement for a short time; there is no point.

Mrs EDWARDES: Some people do not want to go onto an EEA or an industrial agreement; they already have a contract in place.

Mr Kobelke: That is about to be terminated.

Mrs EDWARDES: Although it is about to be terminated, 18 months may elapse before the legislation passes through Parliament and all the regulations are put in place.

Mr Kobelke: This section concerns a termination date; therefore, there is a maximum 12-month period.

Mrs EDWARDES: From today, will the minister have everything in place in six months time?

Mr Kobelke: Between now and the commencement of this provision, employers and employees can make alternative arrangements. When this provision takes effect, they will be in the short straight to the total termination of workplace agreements. There is no point trying to patch up a workplace agreement that is about to die.

Mrs EDWARDES: The Government is using a big-stick approach. The Government wants people to do what it wants them to do, not what the people want to do, even if they agree to do it.

Clause put and passed.

Clauses 44 and 45 put and passed.

Clause 46: Sections 26 and 27 repealed -

Mrs EDWARDES: Clause 46 repeals sections 26 and 27 of the Workplace Agreements Act, which deal with the requirements for the registration of workplace agreements and the position of workplace agreements that are not lodged for registration. Those sections would appropriately expire on the expiration of the Act.

Clause put and passed.

Clause 47: Section 28 amended -

Mrs EDWARDES: Clause 47 is very important because it makes an amendment to the register. There is a significant difference between the register of EEAs and the register of workplace agreements. People who entered into workplace agreements did so knowing that the register would not be open to public access. They could make their agreement public if they wanted, but there was no open access by third parties without the consent of the parties to that agreement. This clause also amends section 28 by providing in proposed new section 28(1) that because there will no longer be a commissioner for workplace agreements -

> The Registrar is to keep a register of workplace agreements . . . that were registered under this Division as in force immediately before the commencement of section 47 of the *Labour Relations Reform Act 2002*.

Section 47 provides for the cancellation of defunct awards and the deletion of employers from awards in certain cases. Is that correct? What are we talking about?

Mr Kobelke: We are talking about proposed section 47 of the Labour Relations Reform Bill, not the Workplace Agreements Act.

Mrs EDWARDES: That highlights some of the complexity of the drafting of this legislation.

Mr Kobelke: It might be due to tiredness.

Mrs EDWARDES: I acknowledge that. What are the terms and conditions under which the registrar will keep the register of workplace agreements? Will the registrar still maintain the confidentiality of the register that people who signed workplace agreements expected?

Mr Kobelke: Confidentiality is still in effect. It is not like the register of EEAs, which is open and available. Information on workplace agreements will be held in confidence. Section 39 of the Workplace Agreements Act is preserved for that purpose.

Mrs EDWARDES: For how long?

Mr Kobelke: Indefinitely.

Mrs EDWARDES: Has a period been set for when the records can be destroyed?

Mr Kobelke: The Bill does not specify any time limit on that confidentiality. It will be dealt with like custody records and things of that nature.

Clause put and passed.

Clause 48: Sections 29 to 38 repealed -

Mrs EDWARDES: This clause repeals many sections of the Workplace Agreements Act.

Clause put and passed.

Clause 49: Section 39 amended -

Mrs EDWARDES: Clause 49 deals with the provision of confidentiality under section 39 of the Act, which states -

> An agreement . . . is not open for inspection by any person except a party to it or person authorized in writing by such a party.

This section applies to an agreement that, immediately before the designated day, had been lodged or registered under that part of the Bill. Therefore, the non-disclosure provisions, and the restrictions on making use of the information, stay exactly the same. The change in section 39(2) deletes the words "other than the Western Australian Industrial Relations Commission". Has it become necessary to delete that now that it has been brought under the registrar of the Industrial Relations Commission? The section reads, in part -

> A person to whom this subsection applies must not, directly or indirectly, record, disclose or make use of information obtained in the course of performing functions under this Act except -

The Western Australian Industrial Relations Commission was previously excluded, in section 39(2)(c), from the exceptions that follow, but clause 49 deletes the reference to it.

Debate interrupted, pursuant to standing orders.

[Continued on page 8793.]