LABOUR RELATIONS REFORM BILL 2002

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 4: Part VID inserted -

Division 2: The making of an EEA -

Debate was interrupted after Mr Ainsworth had moved the following amendment -

Page 8, lines 1 to 21 - To delete the lines.

Mrs EDWARDES: Before the suspension, we were discussing proposed section 97UF and the amendment to delete that proposed section. I had indicated our support for the amendment and had highlighted some of the reasons we support the deletion of this proposed section. One of the points I raised was the interpretation of section 41(6). The minister provided a response; he said that section 41(7) of the Act allows an employer, as one of the parties, to apply to have the agreement expire, and that will occur 30 days after that time. The real issue with this proposed section is choice. It is about a handful of people dictating the terms and conditions for the whole work force. If employees wish to enter into an industrial agreement, an employer-employee agreement cannot be offered during the life of that industrial agreement. If choice is one of the so-called key principles underpinning this legislation, where is the choice in that situation? Why can there not be a mix? Earlier the Premier indicated that the first choice that is always available is that of the employer. At that time we were talking about the removal of the choice of workplace agreements for public servants. The minister indicated that the Government, as the employer, decided that its first choice was that only industrial agreements would be made available to public servants.

There is some inconsistency with the legislation. The key principle underpinning the legislation is that of the employer. If the employer wants to offer EEAs and the majority of employees would like to enter into EEAs, why should a handful of employees who want to enter into an industrial agreement stop the others from entering into an agreement of their choice? We have suggested that flexibility will not be available under this legislation, and the lack of it is clearly highlighted in this proposed section, because an EEA cannot be offered to any one employee once an industrial agreement is in place. It highlights some of the inconsistencies in the minister's argument.

Mr KOBELKE: Before the lunch break, we were dealing with the amendment moved by the member for Roe, which stands in the name of the member for Avon. The member for Kingsley asked a question about the restriction on the use of EEAs and offered the point of view that it was far more restrictive than we were saying. I answered her question on that aspect, but I did not reply to the original point made by the member for Roe. That is why we need this restriction. I accept that it is a restriction. It is one of the protections we have included in the Bill. It means that some employers who might otherwise have entered into workplace agreements will not enter into an EEA. A key part of our policy was that we would not allow the registration of EEAs while an industrial agreement was in operation, and we have stuck to that. The reason for that relates to our commitment to the collective approach, which is reflected in a large part of this legislation. If a group of employees goes through the process of negotiation with the employer and the two conclude an enterprise bargaining agreement - colloquially called EBAs - the offer of an EEA as an individual employment contract would undermine that agreement. It would undermine the collective approach. There are difficulties in our legislation because of that conflict between the individual and the collective approach.

I have already commented that this legislation is drastically different from anything else in Australia, because we see that conflict as being a dynamic and competitive conflict that will produce benefits for both. We are not trying to shut down one or the other, which would generally be the case. It will provide a genuine, competitive element between the two. However, whenever that element is in place, there must be mechanisms to resolve any conflict. I am not saying that our mechanism is the best that we could come up with. We looked at a range of other aspects that go beyond this one to resolve that competition. Key elements are involved with good faith bargaining and some provisions also relate to conflict and how to resolve it. Our policy document indicates - we are fulfilling it - that the collective approach should be the primary mechanism to govern industrial relations and therefore an industrial agreement should not be undermined during its normal term by allowing individual contracts to be offered.

I understand that some people, including the member, see the negative side to this issue and are opposed to it. However, I put to the member that it is an important part of our whole package because of our clear preference for the collective agreement. That preference is underpinned by providing this exclusion so that an EEA cannot be offered while an industrial agreement is in place.

Mr GRYLLS: I support the member's amendment but I seek a quick clarification. As a person from a small country town I would like to use the example of a worker in a small sheet metal factory in my home town of Corrigin. Obviously, such a person would like to strike an EEA with his employer. Will he be covered by an industrial agreement that is struck in Perth by larger sheet metal factories and unions? I understand that the sheet metal industry will have an agreement in place. Will a one-man operation in a country town be subject to the same agreement as is in place in Perth?

Mr KOBELKE: He may be. The coverage of the industrial agreement comes into this matter. Many people are employed on awards, although that number is reducing because the awards have not been maintained. Under federal and State Governments, mostly Labor, there has been a push to put in place industrial agreements - EBAs. Those industrial agreements tend to give greater flexibility and provide a trade-off with higher wages in return for greater productivity. If an EBA is agreed, it will have a life of three years. That applies to the parties to the industrial agreement. If an industry were party to and covered by an industrial agreement, there could not be an EEA; however, if award wages were being paid, there could be. When we get to the part that deals with good faith bargaining, the member will see that we are introducing a new instrument that can be used by the commission if a negotiation through the commission cannot be resolved by agreement. Although I am oversimplifying this, that new provision will be similar to an industrial agreement, but it will not preclude EEAs. An industrial agreement currently precludes the registration of an EEA.

Mrs EDWARDES: I want to get something on the record from the minister. We have had a few conversations about this over the past few days. If a union gives a notice to an employer and asks whether he wants to enter into good faith bargaining, is that the beginning of the negotiating period for an industrial agreement? In an earlier draft it was suggested that even at that point an EEA could not be offered. That is not in this proposed section; it is only once the industrial agreement is registered and in place. Will the minister please confirm and put on the record that clarification for the benefit of business and industry.

Mr KOBELKE: As the member rightly points out, it is not in this proposed section. When we come to the other division I will be happy to go through it. It is not in the Bill and it is not our intention that the initiation of negotiation for an industrial agreement should preclude the registration of an EEA. We are really delving into complexities that we will come to later. The restriction is not there. It is a bit akin to the BHP Billiton dispute that we have witnessed over the past year or so. The industrial agreement expired and BHP Billiton decided to move its staff onto individual workplace agreements. The company was able to do that with some limited success. A big part of its work force did not want to do that. In this legislation we are not trying to determine that form of disputation. If that situation were to arise again the course of events is likely to be somewhat similar to what happened with BHP Billiton. Our legislation is generally not trying to unknot that type of difficult situation in which there is conflict between the individual approach and the collective approach. Although the rules around it will generally change, we have not made changes that will explicitly prohibit that from happening, which was the point of the member's question.

Mrs EDWARDES: Therefore, that is while the negotiating process is under way. However, once an industrial agreement has been registered, no further EEAs or individual agreements can be offered. That is the point of this provision. The minister made a point earlier about employers having the first choice. Again, that does not apply. The Government has clearly said that it has a preference for collective agreements, even though during the debate about public servants the minister indicated clearly that the first choice - which underpins the legislation - is that of the employer. That is clearly not the case in this instance, because if a union manages to negotiate an industrial agreement for a small handful of employees who want that industrial agreement, it will prevent all other employers and employees in the industry from entering into an EEA.

Mr KOBELKE: Most of what the member said is correct. I think she is wrong in her implication that a minority may have this forced onto them. That is not the way it will work. An industrial agreement has to be negotiated. It will generally go to a vote, and if the majority vote for it, they will be covered by it. It will be in place by their agreement. Only a minority who may not have wanted it will be excluded. The process is that majority rule will determine whether an industrial agreement is wanted. Once people have spoken about what they want, it will preclude the choice of the minority.

Mrs EDWARDES: In speaking of majorities, will it be the majority of union members or the majority of employees in the workplace when voting on an industrial agreement?

Mr KOBELKE: I will clarify that. The ones in which I have been involved have generally gone to a vote, but they do not necessarily have to go to a vote. An industrial agreement cannot be forced on an employer. An employer has to agree to an industrial agreement. In the cases I have had they have gone to a vote for acceptance. There may be cases in which the union moves to establish an industrial agreement, but an employer cannot be forced in any legal sense. It may be that in terms of potential industrial action or commercial issues,

the employer feels he is being forced into an industrial agreement. However, we have made it absolutely clear that the employer has the right to say that he does not want an industrial agreement and cannot legally be forced into one.

Mrs Edwardes: That may be a debate for another day, because I am not sure it actually says that.

Amendment put and negatived.

Mr KOBELKE: I move -

Page 8, after line 21 - To insert -

(4) In this section -

"industrial agreement" includes any agreement that comes within section 12(4) or 17(1) of the *Coal Industry Tribunal of Western Australia Act 1992*.

The new version B document of 14 March includes an amendment in my name. This was a drafting oversight to ensure that the industrial agreement also related to the Coal Industry Tribunal of Western Australia Act 1992; it is one of the many little technicalities that needed to be taken into account. I apologise for that oversight and for the late notice of that amendment.

[Quorum formed.]

Mrs EDWARDES: I do not have my copy of the coal industry Act with me today. On a previous occasion when the minister made reference to significant changes, and to ensure those changes linked up with other sections because of tribunal arrangements and the like, he also included the Public Sector Management Act with the Coal Industry Tribunal of Western Australia Act. Why is that not the case in this instance? What is specific about this proposed section that it needs to pick up only the Coal Industry Tribunal?

Mr KOBELKE: We are dealing with the making of EEAs and we need to relate that to places in which there are industrial agreements. The Coal Industry Tribunal of Western Australia Act contains the power to make industrial agreements; therefore, they need to be referenced.

Amendment put and passed.

Mrs EDWARDES: I now move to proposed section 97UG. This is one of the first steps in setting up an EEA with an employee. The employer needs to provide a certain level of information and documentation to the employee. Businesses are much happier about the proposed changes, which mean they do not have to supply a copy of the whole award to each employee. The amendment the minister has proposed by way of a summary of the award, which will be approved by the registrar, is preferable. This proposed section provides for a great deal of information to be provided to every single employee. Is that the minister's intention? Does every single employee have to receive the package, or can the package be made available to the employee at a set location?

Mr KOBELKE: EEAs are individual contracts. Each person must sign them. Therefore, the requirements would apply to each person. Each person is supposedly making his or her own decision and would need to be provided with all the information. I am keen to ensure that the provision of that information and the gazetting of the various forms is done in such a way that it will be an easy process once the first few are established. If we are benchmarking from a particular award - maybe a metals award - a no-disadvantage test and information forms would be available outlining the key issues in that award. The package could easily be put together. I am sure organisations such as the Chamber of Commerce and Industry of Western Australia, together with employers, will look at developing standard EEAs. It will become a fairly simple process of putting a package together, informing the employee of his rights in accepting the EEA as the conditions of employment and having the matter registered.

Mrs EDWARDES: Proposed subsection (4) provides that documents must be given to a new employee not less than five days before the EEA is signed, and in the case of an existing employee not less than 14 days before the EEA is signed. How did the minister determine those figures and what is their impact when a position needs to be filled immediately? Why the difference between a new employee and an existing employee?

Mr KOBELKE: These issues are always subject to judgment. Proposed subsection (4)(b) states that an existing employee must be given the documents 14 days before the EEA is signed. That is on the basis that they have most probably been employed at that workplace for one, two or three years. They discuss the issues and work out the best arrangement. Given that there is a no-disadvantage test and we want this to be a genuine choice, we must give them time to consider it, particularly if they are working long hours or doing heavy work. They cannot be given one day to race home that afternoon and see Uncle Tom or talk to a friend who is a lawyer; they need a couple of days. If employers want to employ people quickly they must give them five days in which to

consider the information, which really means a week. They have the best part of a week to obtain that advice; in all probability a weekend would be thrown in.

In answer to the second part of the member's question, the offer of employment cannot be conditional on the EEA. If there were a rush, it would be possible to bring the person on using some other instrument. The first option, of course, is the award. If a person is starting work straightaway, he has a choice between the award or the EEA. The EEA would probably be slightly better in terms of total remuneration. It might be only two cents an hour or something in that order, but in the bundling up it might have a slightly higher rate. The employer would therefore make the decision to pay a certain amount for the first couple of weeks while one or other of the arrangements was registered. If it was accepted and registered, the EEA would be the condition of employment. The provision would not inhibit an employer from starting someone straightaway; there is a way around that. We are providing choice to the employee, and the job will not be offered to him on condition that he sign the EEA.

Mr GRYLLS: On behalf of the member for Avon, I move -

Page 8, lines 28 and 29 - To delete the lines.

This clause requires the employer to give to employees documents and information before an EEA is signed. We wish to delete paragraph (b), which provides for the documents to be given to representatives of the employees, thereby providing that the employer is required to give the documents only to the employees. The employees may pass this information to whomever they wish. We believe this will prevent any breaches of privacy, and documents being given to parties who should not have access to confidential information. We also want to address the issues relating to country people. It will often be more difficult for country people to get this information to the employees' representatives. The National Party also wants to address the impost that this will place on country employers. It will not lead to any benefits for country people. A further impost will only cause more problems in a tough business environment. There is already much talk in the regions about compliance issues, which is the reason employers are not employing any more people. More imposts will lead to ongoing problems. I ask the minister to address these concerns.

Mr KOBELKE: I think the member has misconstrued the meaning of proposed section 97UG(1)(b), which deals with a requirement to provide documents. That is obviously essential if there is to be informed choice. This amendment seeks to knock out the requirement to provide documents. I gather from what the member for Merredin said -

Mr Ainsworth: It is only for representatives who are public officers.

Mr KOBELKE: I gather that the National Party is concerned that the documents may go to a union representative instead of the employee. That is not what is picked up by this amendment. Proposed paragraph (b) refers to a represented person. The definition of that term is provided later in the Bill. A represented person is a person who has a mental disability.

Mr Grylls: Do lines 28 and 29 just incorporate proposed paragraph (b)?

Mr KOBELKE: The member for Merredin is saying that the National Party objects to documents and information being given to a representative of the employee, because it infers from that that the representative could be a union official.

Mr Grylls: It could be anyone.

Mr KOBELKE: Is that the concern?

Mr Grylls: Not specifically.

Mr KOBELKE: That is not what proposed paragraph (b) provides. A represented person has a particular meaning in the Bill. It relates to a person with a mental disability. If an employer wanted to enter into an employer-employee agreement with a person who has a mental disability and is not capable of making a decision, he would have to go to that person's representative. It has nothing to do with union representatives.

Mr Grylls: Thank you.

Mrs Edwardes: Although it can be.

Mr JOHNSON: I want to pick up on that point. The minister said that the representative represents a person who has a disability. My concern, and it is perhaps also the concern of the member for Merredin, is that this could be a union official. I initially interpreted proposed paragraph (b) to mean that the representative could represent not only a person with a disability, but also other people. In other words, if a young person of 18

attended an interview for a job but preferred his father or uncle, who might be more worldly-wise, to receive those documents -

Mr McRae: Or mother or aunt.

Mr JOHNSON: Yes, or his mother, aunty, grandmother's aunty or great grandfather's great uncle. It could be anybody. Does this proposed paragraph refer specifically and solely to a representative of a person who unfortunately has a disability, or can it be a representative of a person who is healthy in other ways?

Mr KOBELKE: A union representative is called a bargaining agent in this legislation. We are talking about a represented person. Page 50 of the Bill is the start of a range of proposed sections that deal with mental disability. The matter we are dealing with relates only to mental disability. The representative of a person with a mental disability is normally the guardian or an adult who has some responsibility for that person. If the father or mother of a person with a mental disability was a union official, the representative could be a union official. However, that person could act only in his or her capacity as carer or significant other of the person with the mental disability. That is what is meant by represented person.

Mr Grylls: Can a represented person only be a person with a disability?

Mr KOBELKE: It relates to a person who has a mental, not physical, disability and is unable to make an informed decision and sign the agreement. The representative signs it on that person's behalf. Therefore, the documents must be given to the representative, rather than to the person with the mental disability. The person with the disability may not be able to read, so the documents are not given to him.

Mr Waldron: Would the representative have to be a union person?

Mr KOBELKE: In 99.9 per cent of cases the representative would not be a union person. It would be the adult carer or friend of the person with the mental disability. The only time a representative is likely to be a union official is when that person is also the mother, father or close relative of the disabled person.

Mrs EDWARDES: I might be able to assist the minister. Proposed section 97WY outlines who may be approved as a representative. Proposed subsection (1) states that a person may be approved as a representative only if he or she is the spouse of the person with a mental disability, or is closely associated with that person - usually somebody with whom that person has a close, day-to-day domestic relationship. Proposed section 97WS states that a representative cannot be approved if a guardianship order is in place. If a guardianship order is in place, the representative is obviously the guardian of that person. However, if a guardianship order is not in place, the representative may be the spouse, a person who is closely associated with the disabled person, or someone who belongs to a class of persons that is prescribed by the regulations. The question that may need to be asked now, or when we deal with proposed section 97WY, is: who is anticipated as being among the class of persons to be prescribed by the regulations? Will unions be specifically excluded? That contribution might assist the minister.

Mr JOHNSON: When he was last on his feet the minister used the term "significant other". I ask him to elucidate what he meant by that term.

Mr Kobelke: I don't think I need to.

Mr JOHNSON: I am interested to know what it means, because I cannot find a definition of that term in the Bill. It is not among the definitions from which the member for Kingsley just read.

Mr Kobelke: I was trying to provide an explanation. It was perhaps not the best term to use.

Mr JOHNSON: I have heard that term used only once before, and that was in a program called *Only Fools and Horses*, which was one of the most popular United Kingdom comedies ever produced.

Mr O'Gorman: It is a very common term.

Mr JOHNSON: In Ireland or here?

Mr O'Gorman: Here.

Mr JOHNSON: I had never heard it used in Australia before the minister used it today.

The ACTING SPEAKER (Mr Dean): Order, members! I remind members that their comments must be relevant.

Mr Kobelke: That term is used in the Guardianship and Administration Act.

Mr JOHNSON: It is used in the Guardianship and Administration Act, but what does it mean?

Mr Kobelke: We don't have to go through that. It is someone who has care or responsibility for a person with a mental disability.

Mr JOHNSON: So that is what "significant other" means. I thank the minister for providing that answer. I was happy to take that answer by way of interjection.

Mr GRYLLS: The National Party is happy with that explanation. With the permission of the House, I am happy to withdraw the amendment.

Amendment, by leave, withdrawn.

Mrs EDWARDES: I return to proposed section 97UG(3)(a), which talks about the summary of the award that has been approved. That provision is supported. Given the number of awards and the time frame necessary to put them in place, the updating of those records will be absolutely crucial. That relates to the question I asked on Tuesday and the point the minister raised in this House. What will the Government do to ensure that the information is updated in a timely manner? That information needs to be provided to people and be readily available.

Mr Kobelke: Of awards?

Mrs EDWARDES: Proposed section 97UG(3)(a) states -

> containing a summary of the award approved by the Registrar for the purposes of this section;

Obviously, in terms of the no-disadvantage test, the requirement to provide that information to the employee will place a huge burden on the department to ensure that the information is updated. That has not been done in a timely fashion to date. Those records will need to be updated in order to meet the requirements of this legislation.

Mr KOBELKE: Clearly, I cannot give any details about when and how at this stage. The Government is very aware of the scope of the task. The awards are already being reviewed. The member pointed out that consultants have been invited to tender for computer upgrade contracts. A large amount of work will have to be completed before certain parts of the Bill can be proclaimed. The Government wants to move as quickly as possible. If the work takes too long, proclamation of certain parts will have to be delayed.

Mrs Edwardes: Proclamation allows for that time frame. I am referring to the period after that.

Mr KOBELKE: Proclamation will be a complex arrangement of steps, and some of those steps will require information to be prepared. The review of the awards and the establishment of the benchmarks for the no-disadvantage test will have to be completed before certain parts can be proclaimed. It is a big task. I cannot quantify it, but it will be managed well because we have the ability to adjust the time arrangements.

Mrs EDWARDES: My question relates to the timely updating of the awards once all that is in place and EEAs are up and running. That will be long after proclamation. What will the Government do to ensure that the award information is kept up to date? That has not always been the case.

Mr KOBELKE: We already have systems that attempt to do that. The member is suggesting they are not adequate, and I accept that.

Mrs Edwardes: You have raised that point previously.

Mr KOBELKE: The member is confused. My point related to the former Department of Productivity and Labour Relations Wageline. I did not mention my concern, but I knew there were problems with the updating of awards. The member is confusing this with my concern that the department was tardy in providing information about Wageline. That is a different matter and I hope it is no longer an issue. If the member has concerns, I will be happy to hear from her.

Mr AINSWORTH: I refer the minister to the five-day gap between the information being provided to a new employee and the signing of the EEA. Can the employee commence work prior to the signing?

Mr Kobelke: I answered that question earlier.

Mr AINSWORTH: I did not hear what the minister said. The National Party believes that appointments would be expedited if the gap were only two days. Delays would be avoided if an employee could commence work before the end of that five-day period.

Mr KOBELKE: Because of the element of real choice for the employee, he or she is awarded the job but still has the choice between employment under the award or an EEA. The EEA does not need to be registered before an employee commences work.

Mr AINSWORTH: I understand the point. Proposed subsection (5) provides -

> An employer must also comply with any regulations prescribing requirements for the giving of information or documents to an employee before an EEA is made.

What is intended by that provision?

Mr KOBELKE: It has been included to provide flexibility to deal with other issues that might arise. The Government is trying to provide genuine choice, and it wants to ensure that the EEAs are as flexible as possible and that there is flexibility in the registration process. It will allow the Government to use regulations to ensure a smooth functioning and fast flowing registration process. If someone comes forward with a good suggestion, that head of power will help the Government to make the appropriate changes.

Mr AINSWORTH: On behalf of the member for Avon, I move -

> Page 10, line 3 - To delete the line.

This amendment deletes the specific reference to an industrial agreement. This clause relates to the relevant information employers need to provide to employees. It is appropriate for employees to have information about an award or a comparable award, but it is not appropriate for industrial agreements to become public documents. They may not be relevant to another employee.

Mrs EDWARDES: I wholeheartedly support the removal of industrial agreements from the definition of an award, which relates back to the documents that need to be provided to the employee. If an industrial agreement is in place, no EEA can be provided. It does not make sense to include it. We referred to an industrial agreement that might have applied to a number of employers within an industry but that had not extended to a particular employer. As such, it was seen to be a potential encouragement for employees to seek an industrial agreement instead of an EEA. I support the amendment.

Mr KOBELKE: The Government cannot accept the amendment. I will move to delete the words "an industrial agreement" and substitute "enterprise order". An enterprise order can be arrived at through the good-faith bargaining process, which includes arbitration. In certain circumstances, the award might be replaced by an enterprise order. In some cases, which may be a very small minority, it may be necessary to refer to the enterprise order. The main import of what the member for Roe wishes is to remove the reference to industrial agreement. That is an error in the drafting of the Bill, so the Government is happy to accept that amendment, but believes that the words should be replaced with "enterprise order". This whole division is about EEAs. An enterprise order does not preclude an EEA from being registered, but an industrial agreement does. The Government will oppose the amendment of the member for Roe, and then move its own amendment, which will remove the reference to an industrial agreement, which is what the member wants, but replace those words with enterprise order.

Amendment put and negatived.

Mr KOBELKE: I move -

> Page 10, line 3 - To delete "industrial agreement" and substitute "enterprise order".

Mrs EDWARDES: While I understand the minister's comment about an enterprise order being able to exist at the same time that an EEA can be offered, I wonder why the enterprise order is being handed out to the employee. I think the minister made a slip. I do not think he meant what he said, and I give him the opportunity of correcting it. He said that the enterprise order replaces the award. It does not do that. The award will always be there. Some of the terms and conditions may end up being varied as a result of certain provision in the Bill before the House, but it does not replace the award.

Amendment put and passed.

Mrs EDWARDES: The House is now considering proposed section 97UH, which is the application of the previous clause, in the event that a draft EEA is amended. Can the minister give the circumstances under which a proposed EEA is later amended?

Mr KOBELKE: I think I am right, but I must answer from the top of my head, as I am not across all the technical details. It relates to the interim procedures, after application and before registration. The matter may be knocked back for registration, discussion may take place, or circumstances may change the original document. This proposed section applies if an employer has provided an employee with the required information under section 97UG before making an EEA. If the EEA is amended after the information has been provided, but before the employee has signed the EEA, the employer is not automatically required to once again comply with section 97UG, which involves the giving of information. This provides flexibility and administrative simplicity while also protecting employees' informed choice.

Mrs EDWARDES: Therefore, it has nothing to do with registration, varying of the agreement or any of those other things. This will apply if the document has not yet been signed and the EEA has changed since the information was provided to the employee. Therefore, the new information shall be provided to the employee, but only once the employee has requested it in writing. How will the new employee know whether the EEA has changed in order to be able to request it in writing?

Mr KOBELKE: The Government has gone to great lengths to provide a real level of protection for employees. Employers, in some instances, think it has gone too far and become cumbersome. I do not think so. The Government could have gone further and required the whole process to be repeated, but it thought that would be too cumbersome for the instrument and would impose an extra burden on the employer. The Government is saying that the employer does not need to do it all again. Presumably, because of the total effect of what the Government is putting in place, I hope that in the overwhelming majority of cases there will be a good relationship between the employer and the employee. There is no need to over-regulate and ensure that every t is crossed and every i is dotted. This provision says that the employer is not automatically required to go through the process again.

Mrs EDWARDES: If the information has not been requested and has not been provided, will it have an impact on registration?

Mr KOBELKE: When the document goes for registration, there is still a requirement for the registrar, or the person so deputised, to ensure that it is understood and people are happy with it. If it had reached that stage and the document had been altered substantially without the employee being informed, it could be caught at that stage. However, the Government is making a statutory requirement for the employer to go back through the process and to trip up on the technicality of not having fulfilled that requirement. Other checks and balances exist, such as the requirement for the registrar to ensure that the employee understands the agreement. If it was picked up at that stage that a major change had been made without the employee being informed, it could have an impact.

I move -

> Page 10, lines 5 to 7 - To delete ", including any agreement that comes within section 12(4) or 17(1) of that Act".

This is part of the tidying up process to which I alluded earlier.

Amendment put and passed.

Mrs EDWARDES: Proposed section 97UI provides the detail that is needed for the information statement that has just been referred to under proposed section 97UG. The registrar will publish in the *Government Gazette* a form of information statement that shall be given to employees. The content of that information statement is the effect of proposed section 97UE. Proposed section 97UE, on the effect of an employer-employee agreement, is a complicated version of an existing contract of employment, whether or not it has been varied. Therefore, any existing conditions in a contract of employment will continue to apply to an EEA. Employers' rights under proposed section 97UJ relate to the ability to appoint a bargaining agent. There are other requirements under proposed sections 97XZ and 97Y. I am not sure why the minister did not write a new Bill; this Bill is getting to be like the tax Act. Proposed section 97XZ is headed "Making employment, transfer or promotion conditional on EEA being entered into" and proposed section 97Y deals with advertising and a number of other issues, particularly a link with the commencement and expiry of an EEA.

Under the federal system, an information sheet has proved to be readily understood and able to be used by employees and employers. The community and I suggest to the minister that the information sheet to be developed could be modelled on the federal system. I have asked the minister when that information sheet will be available because people are concerned that their current workplace agreements are about to expire. I received a phone call from a person whose workplace agreement expires at the end of March. The EEAs are not in place and people want individual flexible working arrangements; however, their employers have said that they are not sure what to do. What do those employees and employers do in the interim between the development of the information sheet and the proclamation of the Bill?

Mr KOBELKE: They have a choice, as they do now. If they find that an award or an industrial agreement is not the best form of employment contract, they can simply enter into another workplace agreement. That should be a simple process if they are already on one. They will have six months from the time the Act comes into place, and possibly 12 months before the new system is up and running. They can then choose whether to use an EEA or go to another form of contract of employment.

Mrs Edwardes: What about public servants? The only choice they have is the industrial agreement that applies to them.

Mr KOBELKE: Yes.

Mr AINSWORTH: On behalf of the Leader of the National Party, I move -

Page 11, line 18 - To delete "or may arise".

This part of the Bill allows an employee to appoint a bargaining agent and it specifies the role of that person. An agent can be appointed to act for an employee or employer in any question, dispute or difficulty that arises "or may arise", as the legislation currently states. We want to delete those words "or may arise". There is ample scope for an appointed agent to adequately represent an employee in any matter that arises by way of dispute. Obviously, bargaining agents would be involved in the initial negotiations for an EEA and, as the Bill states, in the registration of an EEA. They might also be involved in the negotiation and making of a cancellation agreement. I do not have a problem with paragraph (d), which refers to a bargaining agent acting in connection with any question, dispute or difficulty that has arisen. However, that raises the question: could a bargaining agent raise hypothetical issues with an employer that might be aligned more closely to the issues that a trade union might want to raise with a group of people by way of negotiating changes to an award? If an agent could do that, it would not relate to any problem with an individual's existing EEA. If a problem relating to the Industrial Relations Act were to arise later that would clearly give a bargaining agent an opportunity to represent an employee, that agent could raise that problem. However, I have a problem with an agent being able to deal with issues that may arise and issues that have already arisen. That is a hypothetical provision and provides an opportunity for negotiations to take place on the basis that other issues that were not causing a problem could be debated with the employer. I may be boxing at shadows but I suspect that there may be a situation in which an overenthusiastic bargaining agent may try to put another impost on an employer that has nothing to do with problems that are real or perceived by the individual employee. For that reason, I believe the words "or may arise" are unnecessary.

Mr KOBELKE: The member is boxing at shadows. However, that occurs on both sides because some unions want to tie down employees in all sorts of ways simply because they have made decisions based on one bad employer. We cannot do that to the vast majority of very good employers. Similarly, we cannot make a law on the basis that once in a while a union official will go too far and seek to gain an advantage or cause disruption in an unreasonable way. That would not work in the average situation in which problems arise. Employers must have good grievance procedures, which may be conducted in-house without requiring outside interference. Allowance must be made for the fact that a person may need support, perhaps because of initial bullying, and that person cannot front up to the issue. In that case a person may need someone to speak on his or her behalf.

Mr Ainsworth: Surely that relates to an issue that has arisen, not an issue that may arise.

Mr KOBELKE: I am coming to that matter. I am saying that we must have good dispute resolution procedures, which must be open so that people can have support in those resolution procedures. We cannot wait until a problem arises and then ask an employer or employee to find a bargaining agent, because we would run into another set of problems. If there were a proper dispute resolution process at the earliest possible stage of problems, which might result in people receiving assistance, problems would tend to be nipped in the bud. Although I acknowledge that the member's amendment may have been moved in the light of a bad experience that he would like to prevent - we would all like to do that - we cannot preclude people from engaging bargaining agents to help them in situations in which they are needed. In many cases they can prevent a small problem from developing into a major dispute.

For that reason, we must give people the opportunity to have an agent available to act on issues that may arise. I hope, through a range of other provisions in the Bill, that we can cut to a minimum the problems that the member foresees, such as people visiting work sites with other agendas and using that right in an extreme way. I believe that is what the member is getting at. I accept that there is a danger of that but, on balance, we need that provision to make the system work.

Mr AINSWORTH: I understand that the employee needs to have on hand a bargaining agent to take up his case with his employer when a problem arises. That is clearly available in this proposed new paragraph. However, removing the words "or may arise" does not remove any of the employee's ability to have representation when matters that might not have occurred at the time of negotiation, or at the making of an employer-employee agreement, arise later. If those matters were to occur, and provided the employee still had an appointed bargaining agent - one would presume that that is what the Bill implies - the bargaining agent could make representations on behalf of the employee with the employer. The wording as it stands not only provides an opportunity for a bargaining agent to talk to the employer about issues of concern to the employee that are

already on the table, but also gives him a crystal ball that will allow him to look at other matters that might happen and to start negotiating on them. That could cause industrial disputation, which is unnecessary. Perhaps I am shadow-boxing - knowing of some bad experiences - but it would be worthwhile removing those three words. It would still leave an employee with the right to have that bargaining agent work on his behalf to deal with genuine grievances.

Mrs EDWARDES: I support the amendment. The minister suggested that the member for Roe was boxing at shadows. The member is arguing that by retaining this proposed paragraph, the bargaining agent is allowed to box at shadows and to bring to the table those matters that may never eventuate. As we have discussed, minister, this can happen, but leaving in those three words will delay and make more costly and complex the system of dispute resolution.

Mr KOBELKE: We are now discussing fluidity and how redundancy and restructuring are regular occurrences. For example, a rumour might go around that the employer is going to downsize and restructure. There is a question there but how does one determine what a question is? If the boss says that he is not considering that at the moment, but there are signs that he is, it may be appropriate for the employee to want his bargaining agent to say that the employee is about to take out a mortgage, so can he be given an undertaking that he will have a job in a month or a year's time. One hopes that a bargaining agent is not needed to do that. However, if the words "may arise out of" were not in the proposed paragraph, we would preclude the employee from using a bargaining agent for those sorts of situations. That is why it is appropriate to keep those three words.

Amendment put and a division taken with the following result -

Ayes (20)

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

Noes (26)

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

Pairs

Mr Ainsworth	Mr Brown
Mr Day	Mr Hill
Mr Marshall	Mr Carpenter

Amendment thus negatived.

Mrs EDWARDES: I raise with the minister the broader question of bargaining agents. He would be well aware of some of the concerns about the competency and quality of bargaining agents. I am talking particularly about training, lack of insurance, responsibility, code of conduct and ethical standards. This applies not only in this proposed section but also to any advocates who appear in the workers compensation system and who regularly appear before the Western Australian Industrial Relations Commission. I endeavoured to work with them so that they would start identifying some of those people who should not be taking money from those whom they are allegedly representing. There is a lack of a broad general standard that should apply. The alternative to that is to attach a voluntary code to the Industrial Relations Act. What are the minister's thoughts on that issue? Have those concerns been raised with the minister? I am sure they have been raised with him over many years. Some industrial relations commissioners will not allow a number of people back in their courts. A similar situation has been experienced in the workers compensation system. Bargaining agents do not just sit around a table; their role is to go into those dispute hearings. I do not want to get into the argument of legal advice and the Legal Practitioners Act, but they are providing advice on the rights and responsibilities of employees and how the

employer-employee agreements will affect them. As such, a minimum standard should be put in place, particularly for conduct.

When we get to the unfair dismissal issue, I will relate to the minister one very bad example of the conduct of one of these advocates. I am sure that the minister will be absolutely appalled, as I was, by the lack of ethics displayed on that occasion, and which resulted in costs to employers. That is another issue. There are impacts on employees. Firstly, they are not getting the best possible advice. Secondly, the standard and the quality are such that they could do better for the same dollar if they knew who was available and there was a registration process. I know that has been talked about often. There is a real issue with the costs to employers, such as wasting time on issues, which just helps some of these people supplement their income.

Mr KOBELKE: My understanding is that there is no recognition of bargaining agents in the federal arena, which has Australian workplace agreements. People can play that role, but there is no regulation at all. Perhaps the best comparison can be made with the Western Australian workplace agreements, which have bargaining agents and a form of regulation which looks at their role. I am not across all of that. However, we will follow on from that example in the first instance. Many of the member's comments are directed more towards industrial agents than towards bargaining agents.

Mrs Edwardes: However, they could be the same.

Mr KOBELKE: Yes. However, I do not know whether the member was relating her suggestion of bad stories to bargaining agents or to industrial agents.

Mrs Edwardes: To industrial agents.

Mr KOBELKE: I have heard those complaints, but I have not heard complaints against bargaining agents.

Mrs Edwardes: No, neither have I, except when they play the same role.

Mr KOBELKE: Similar roles and, in some cases, the same role.

I turn briefly to industrial agents, because they are not covered by this proposed section. I had hoped to do something about that in this reform Bill because there is a need to ensure we maintain minimum standards and put in place a more effective form of registration for industrial agents. We will look at including that in our next round of legislation, so I will not enter into that now. However, on bargaining agents, in the initial move we will look at a regulatory system similar to that for workplace agreements. Obviously it is something we need to monitor. Then, when we look at the next round of legislation, we will look at what is appropriate for bargaining agents when deciding how to deal with industrial agents. As the member quite rightly pointed out, often they are the same person, and we will take that up at that time.

Mrs EDWARDES: I also raise with the minister proposed section 97UJ(2) which refers to part II, division 4. To which section of that part is the minister referring?

Mr KOBELKE: That is the section that allows for the registration of employer-employee organisations.

Mrs Edwardes: Can the minister point me to the section? I could not find it.

Mr KOBELKE: It starts on page 138 of the blue book.

Mrs EDWARDES: I turn now to proposed section 97UJ(6), which refers to a number of sections to which this proposed section will be subject and which does not affect the requirement of those sections; that is, only a person who is registered under section 112A(1a) may appear as an agent under sections 31, 81E or 91. Can the minister explain that proposed subsection?

Mr KOBELKE: This relates to the discussion we had in passing a while ago about the difference between bargaining agents and industrial agents. If the matter goes to the commission for the arbitration of proceedings under an EEA, the bargaining agent would have standing before the commission for that purpose. However, the EEA in its dispute resolution does not have to use the commission. In the case that it did, a bargaining agent would be acceptable. This would provide the ability to authorise the bargaining agent. For other matters before the commission, the person would have to have standing as an industrial agent. That is the reason for that requirement. The things that an industrial agent can do cannot be done by a bargaining agent unless the bargaining agent is credited as an industrial agent.

Mr JOHNSON: I am trying to come to grips with a bargaining agent. I have a feeling that under this legislation, the minister is going to set up a whole new industry of bargaining agents.

Mr Kobelke: This is in the Workplace Agreements Act. It is already there.

Mr JOHNSON: However, this will be used much more often.

Mr Kobelke: You have been telling us that the EEAs will not be used.

Mr JOHNSON: Obviously the minister is hoping that a union can be a bargaining agent?

Mr Kobelke: No. Bargaining agents are established under the current Act and they can be unions now. Mr Kobelke: It does not change. It is in the Workplace Agreements Act now.

Mr JOHNSON: Will they continue to do so under this new legislation?

Mr Kobelke: Yes. It largely mirrors what is already there.

Mr JOHNSON: How much are bargaining agents used at present?

Mr Kobelke: I do not have statistics. I do not have a lot of anecdotal information, so I do not know.

Mr JOHNSON: Obviously the employee must fund them. People do not get anything for nothing in this world, so I take it that the employee has to pay the bargaining agent to act on his or her behalf. That must be the case as it should not fall on the employer to pay for the bargaining agent to bargain on behalf of the employee.

Mr Kobelke: Employers also use bargaining agents.

Mr JOHNSON: Under this legislation I can see that employees will be encouraged to use bargaining agents, and unions will almost certainly make a massive push to be bargaining agents as they feel they will be able to get more for the workers than anybody else. In which case, will the unions do it for nothing, will they do it for no charge provided workers join the union, or will they charge a fee? If a fee is charged, what will it be? Is it open slather? Can it be anything? Will there be a scale of charges that the bargaining agent must adhere to?

Mr KOBELKE: The main points made by the member were addressed by the member for Kingsley, but not exactly in that way. She immediately went to issues of control of these people because she is aware of industrial agents, who are technically different, some of whom have bad reputations.

Mrs Edwardes: A small number.

Mr KOBELKE: A small number is giving them a bad reputation and causing problems for some people. We both acknowledge that we have not heard any bad stories about bargaining agents who operate under workplace agreements. The member is absolutely right; they charge for their services. There are issues of cost, professionalism and performance. If people are paying, are they getting good advice? The current regulatory regime is not adequate to enforce that. We did not initially envisage a strong enforcement role either. The issue must be looked at and I have already explained to the member for Kingsley that it is a matter with which we will proceed. As an overview, we can say that the bargaining agent provisions contained in the Bill reflect, in most respects, the provisions already in the Workplace Agreements Act, although there are some small changes. It does not fit with the member's earlier statement that there will suddenly be a large number of them and a great deal of cost. That would happen only if there were a lot more EEAs than workplace agreements.

Mrs Edwardes: I bet there are not.

Mr KOBELKE: The member for Hillarys was suggesting that there would be too many of them.

Mr Johnson: An employer would prefer an employee to be on an EEA rather than the award because of the flexibility provided by an EEA.

Mr KOBELKE: I accept what the member says but he should not overlook the fact that a large number of employers have told me that they do not want EEAs as they prefer the award. They have the choice.

Mr Johnson: That is fine if they have the choice. If, in the guise of bargaining agents, we see unions get more involved and undercut everybody else by not charging anything on the understanding that an employee signs up to become a union member and pays union fees -

Mr KOBELKE: That is an annual charge. The fact is they can do it now but they have not done so. That is because they have been totally opposed to workplace agreements. They are still totally opposed to EEAs. It is their call on whether they operate in the same manner as they currently do with workplace agreements or whether they change their policy and represent people.

Mr Johnson: I have concerns about the sort of charges that will be levied by either the unions as a deferred payment on an employee becoming a union member or other bargaining agents who may overcharge. I am concerned that people may get ripped off by bargaining agents.

Mr KOBELKE: That is the valid point that was raised earlier by the member for Kingsley. If these people have recognition in law that they can perform a particular duty, we need to ensure that they are providing a professional service and not simply taking money and not providing a quality service to either employees or

employers. That matter is currently covered in a vague way by regulation. It is a matter of the degree to which it needs to be tightened. I give the undertaking that the Government will put in place some regulations, and it will be looking at industrial agents. There are some problems among some of the agents. At that time, it will be appropriate to also look at bargaining agents and ensure we provide a similar regime. That will be in the next round of legislation.

Mrs EDWARDES: I am interested in the reporting of a registration system. We do not wish to assist the Labor Party to build up its coffers by providing a replacement for the premium property tax.

Mr Kobelke: I had not thought of that!

Mrs EDWARDES: Now that I have mentioned it, I draw the attention of the minister to proposed section 97UJ(3) -

> An appointment of a bargaining agent may be terminated at any time by notice of termination given in writing to the agent.

I think the language is a bit loose as it does not specify a point in time.

Mr KOBELKE: Is the member suggesting that it should take effect from a certain date?

Mrs Edwardes: It is a bit loose and it needs a time at which a notice can be given.

Mr KOBELKE: It is the same as the provision for workplace agreements. We have just copied it.

Mrs Edwardes: I do not have a problem with improving legislation, whichever party introduced it.

Mr KOBELKE: I give an undertaking that our people will consider it to see whether something can be done.

Mrs EDWARDES: I want to speak on proposed subsection 97UK before we address further amendments. I have not heard of any particular concerns that might give rise to this provision. Is that the case or is this a drafting exercise?

Mr KOBELKE: Because bargaining agents are a new concept introduced with workplace agreements, it was not accepted in all quarters that they had a role to play. If someone nominates a bargaining agent, he is to be treated as the bargaining agent. For that reason there is a requirement to recognise the bargaining agent and that people cannot be coerced or induced to put in place a bargaining agent, in name only, who is not a bona fide representative of the particular party, whether it be an employee or employer.

Mrs EDWARDES: Bargaining agents must be recognised, but no specific notification is required to be given to employers. I hope there will be recognition of any untoward conduct by an employer, whereby the bargaining agent has not done the right thing and has simply produced his notice of appointment.

Mr KOBELKE: Proposed subsection 97UK(1) refers to compliance with section 97UJ(4). As such, the notice of appointment must be presented properly.

Further amendments by the National Party relate to division 3. This is the last opportunity for members to speak on division 2 before a vote is taken. After that, it will be open for amendments to be moved to division 3.

Division put and a division taken with the following result -

Ayes (26)

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

Noes (20)

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

Pairs

Mr McGowan	Mr Ainsworth
Mr Carpenter	Mr Day
Mr Hill	Mr Marshall

Division thus passed.

Division 3: Form and content of EEA -

The ACTING SPEAKER (Mr McRae): I wish to facilitate the two amendments on proposed section 97UL(1)(c), the first in the name of the Leader of the National Party at page 12, lines 28 and 29, to delete the lines, and the second in the name of the member for Kingsley at page 12, line 29, to insert after the word "casual" the words "fixed-term employment". I will test the intention of the House as to the first amendment and take them in the order in which they appear on the Notice Paper.

Mr TRENORDEN: I am happy to do that, Mr Acting Speaker.

The ACTING SPEAKER: So that we do not exclude the member for Kingsley's intended amendment, it will be possible to test the intention of the House only up to and including the word "casual". It will be necessary to leave in the semicolon and the word "and".

Mr TRENORDEN: By way of practicality, if my amendment were passed, the member for Kingsley may be satisfied; but that is not for me to say.

The ACTING SPEAKER: Nor is it for me to say. I am allowing the House to determine its intent. If the Leader of the National Party's amendment is not passed, the member for Kingsley may want to test her amendment.

Mr TRENORDEN: I move -

Page 12, lines 28 and 29 - To delete -

(c) specify whether the employment to which it relates is full-time, part-time or casual

Employment relates to two activities. The first is the provision of the EEA and the other is the letter of intent to employ that is given to the employee by the employer. I ask the minister to think about this amendment carefully because he is duplicating something that may not be his intention. In every case of the employment of a part-time or a casual person, the minister is asking for a particular transaction to take place, whereas if this subdivision referred to employees and the letter of employment specified whether they were to be full-time, part-time or casual, it would save the industry a considerable amount of documentation and paperwork - not only small industry but large industry as well. If it is left the way it is, particularly in the casual area, the whole process would have to be repeated. If it referred only to employment and the letter of intent contained reference to full-time, part-time or casual, the employer would not have to go through that process and the employee would be no worse off. When the employee receives his letter saying he is offered employment in XYZ company and that it is full-time, part-time or casual employment, he can deal with that issue as he sees fit. As it is, it creates a serious amount of bureaucracy, which the minister said at the commencement of this process was

not his intent. I hope the minister takes on board what I have said. I earnestly hope he will agree with us on this issue.

Mrs EDWARDES: I support the amendment moved by the Leader of the National Party. Members will note that I propose to move an amendment further down the track which seeks to remove the formal requirement to constantly submit new employer-employee agreements, particularly in cases that involve existing employees who, for example, move between casual, part-time and full-time employment. There are a number of options. I will provide the example of a university student. University timetables have a habit of changing because of the needs of lecturers, students and so on. Therefore, an EEA might be set up for a student who wants to be employed on a part-time basis, but because his university timetable changes, he might ask to go casual. If that occurs, the employer and employee will have to go through the process of submitting an EEA again. It may well be that by semester 2 the student's timetable will enable him to become a full-time employee, because he can work more than 20 hours a week. In order to do that, he would have to go through the whole process again. I am talking about the same employee and the same employer. That happens on a regular basis in some industries that have not only a high turnover of staff, but also a high number of changes in employment relationships. That relates to the point I made about excessive transaction costs. Employers may have to go through the same process with the same employee over and over again if that person's employment arrangements change, such as if he is promoted or transferred.

I cannot believe that we are heading towards such excessive bureaucracy, as the Leader of the National Party described it. I suggest that that level of bureaucracy is not needed. It will be excessive not only for employers but also for employees. They will not want to read those damn documents every time they get them!

Mr TRENORDEN: I will provide an example of something that is happening on a daily basis. Because of the state of the meat industry, abattoirs have no idea what their supply will be. Demand for their product is huge, but because of seasonal and other factors, supplies are sometimes limited. Abattoirs that employ casual and part-time workers might say to those people that they can give them work for two weeks, but do not know when they will be needed after that. The employees are called when supplies arrive at the abattoir. That is happening constantly in that industry. Those sorts of gaps occur in a range of industries. Surely it is not sensible to offer an employer-employee agreement every time a person turns up for work. The person might work for only four days!

Mr KOBELKE: There is a real issue here, which I will try to address, but members opposite have brought forward a lot of issues that do not relate to this clause. Stand-downs are an issue in abattoirs. That industry depends heavily on the availability of livestock and on the market. An EEA can be designed to include stand-down clauses. The issue of promotion is covered by another part of the Bill. An EEA can be designed to allow for promotion. We are dealing with whether an employer must specify at the time of registration of the EEA whether the person is a full-time, part-time or casual employee. The Government is saying that that should be done. In some cases that will mean that a new agreement will be required when there is a change in an employee's status. I accept that and I accept that it is cumbersome and may seem unnecessary. I do not think it will happen often.

I have a son who works for a supermarket chain that uses an industrial agreement. For the first three or six months of his employment, my son was employed on a casual basis. The supermarket's policy is to have permanent part-time employees, so after my son had been there for a while he was made a permanent part-time employee. He works for about 15 hours a week and is expected to be at work during those hours. He has leave entitlements. That supermarket chain made the decision to provide its staff with some certainty so that they could build up better staff-employer relationships.

The Government is trying to ensure that the basis upon which a person is employed is outlined when that person is taken on. Only a small number of employers abuse that system. A person on a workplace agreement may have been employed as a permanent part-time worker, but after a while the employer might decide to get rid of him. That might be because of a personality clash or whatever. Even if that person had worked for the employer for several years on a part-time basis for 20 hours a week, the employer could suddenly make that person a casual employee and give him two hours work here and there. The employee cannot maintain that job in those conditions. The terms of contract should be specific when a person is engaged or an agreement is entered into. That makes for a much better contract of employment. The Government recognises that there may be a need to register a new EEA when the term of contract is changed. That will happen, but I do not think it will happen anywhere near as often as members opposite suggest.

The two examples members opposite provided are covered by other parts of the legislation. Stand-down and promotion provisions can be included in an EEA. In those cases, the EEA would not need to be re-registered. It is fundamental that a person know whether he is a casual, permanent full-time or permanent part-time employee.

There is the opportunity to change. There may be a probationary period in which an employee starts as a casual or part-time employee on an undertaking that if he proves himself or the business expands, he will be given permanency. Both the employer and employee have obligations in that situation. The Government believes it is a positive move. Only a small number of people might need to re-register agreements. That is not a big enough impediment to prevent the provision of a level of certainty to employers and employees through the designation of the basis of employment as full-time, part-time or casual.

Mr TRENORDEN: The minister did not address the issue. Why can that not be outlined in the letter of appointment that is given to the employee? A letter of appointment outlines the basis upon which a person is employed and would cover what the minister just said. That would mean that an office would not have to keep providing new employer-employee agreements. I am not arguing about the Government's attempt to do the right thing for employees. The issues the minister raised have been around for a hundred years. I do not think that the minister can look me in the eye and tell me that this Bill will cover every employer. There are always ways to get rid of employees. The Government will not stop that process. I suggest that it is more important to provide an environment in which an employer has a comfortable, streamlined process. If an employee has already been issued a contract, that is fine. The letter should set out what the employee has been offered. If it says he is a casual employee, he works on a casual basis. If it says he is a part-time employee, he works on a part-time basis.

Mr Kobelke: What is the difference between the letter and putting it in the EEA?

Mr TRENORDEN: Once a person has been engaged as an employee, that letter will be written only once. Perhaps in the case of the minister's son, his employer might want to write another letter to say that he is no longer a casual but a part-time employee. That would happen once, unless there were a change. Why not issue one contract for that individual? These changes might occur frequently. The minister said that these changes might occur occasionally. However, they might be a major irritation to some people. Why would the same level of security not be provided to the employee by the letter of appointment?

Mrs EDWARDES: The issue is the cumbersome process required to achieve change. The minister has said that employers can contract out in the EEA the requirement to prepare an EEA for every eventuality. It could cover promotion, change of working relationship and so on. That takes me back to the complexity and cost of these agreements. The employer will be faced with presenting a new EEA every time a condition of employment is changed or drafting one that covers every possibility. Is that what the Government wants? This legislation will hinder what the Government is seeking to do. The member for Avon's amendment might resolve that problem.

The contract of employment - it could be a letter - would still form part of, and back up, the EEA. It could be tested in the same way. The letter of employment - which would allow the employer to avoid a complicated process - could form part of the EEA and sit underneath it.

Mr TRENORDEN: This is a reasonable proposition. What is the difference? There will be two documents. The letter would involve a simple process that industry would understand and accept. Why not consider this proposal? If the minister were to consider it more carefully, he might agree.

Mr KOBELKE: I am happy to reconsider it, but I am not sure that I will be convinced. It is fundamental that an employee know whether he is a full-time, part-time or casual employee. That situation might change, but it is important to have that information to be able to negotiate from a position of strength. If that requirement were removed, we would weaken the employee's position. In that situation, the employee could have his hours changed drastically and not be protected. If this amendment were accepted, employees might wish to protect themselves by having far more detail about conditions and hours of work specified in the EEA. We would end up with a simpler EEA if the employer were required to make a decision up-front about the form of employment; that is, whether it is full-time, part-time or casual employment, knowing that that would allow employment across a range of specified hours. If we do not allow for that statement up-front, we might find that more discerning employees who understand their rights will want to negotiate far more rigid EEAs to protect those rights. There would be a trade-off in how these EEAs might work.

The Government is trying to offer maximum flexibility, which was the selling point of workplace agreements. I accept that this legislation involves a higher level of regulation. However, it is also designed to allow maximum flexibility for employers to arrange working conditions to achieve the productivity they want. If we allow that and still have the safeguards, there will be trade-offs in various areas. If the trade-off is the removal of this provision, we might find that more discerning groups of employees will demand far more detail in their EEAs, which will reduce flexibility for employers. I am not sure that would be good for employers.

Mr TRENORDEN: The employers to whom I have spoken support this amendment. What is the difference in the employee's standing if the conditions of employment are set out in an EEA as opposed to a letter of appointment? Under this legislation, if an employer provides a letter offering an employee a casual position, that

employer will be required to write up an EEA stating those conditions. The big end of the market will involve professional people who will be offered similar conditions. If an employee received a letter stating that he was to be employed on a full-time, part-time or casual basis, he would still be able to negotiate an EEA. If the work force comprised 350 or more people, there would be a standard contract. The minister has acknowledged that.

A letter would provide no less legal protection. It would clearly state the basis of the employment. I do not see the minister's argument.

Mrs EDWARDES: Under proposed section 97UE, the letter would form the contract of employment and would stand in the place of and behind the EEA. At the end of the day, we are talking about form.

Mr Kobelke: I am not convinced of any advantage.

Mrs EDWARDES: If I were back in the legal profession, I would include in an EEA a clause that contracted out those other clauses and decreased the transaction costs. It might cost the businessman more in legal fees to draft such an EEA, but he would try to reduce his transaction costs. If they were to do that, employers would not be required to go through the whole process every time they wanted to make a change. The member for Avon's proposal is reasonable. The minister's son might get a letter congratulating him on being made a permanent part-time employee and on being such a valued staff member. Six months later, he might receive another letter congratulating him on obtaining his degree and advising him of a promotion to another store and detailing his conditions of employment.

Mr Kobelke: What about when the employer wants to make a person a casual employee working three hours a day?

Mrs EDWARDES: As I said, there will always be bad apples; that is, employers who have not followed the proper process. The methods used might prompt the employee to take the initiative to resign. That will always be the case; we shall never stop that. The majority of employers and employees will find this a very cumbersome process. It will also involve excessive transaction costs.

Mr TRENORDEN: Why would the employer not insist that the EEA stipulate that a person will be given employment, but it will be on a full-time, part-time or casual basis?

Mrs EDWARDES: EEAs could also include a clause providing that the employer could transfer the employee to any of the company's stores from time to time and so on. Many options would be available.

Mr TRENORDEN: This is a reasonable proposition. I hope the minister is giving it serious consideration.

Mr KOBELKE: The member is suggesting that somehow an employer could write into the EEA that the conditions would be variable. That is not the point. This provision stipulates that the EEA must specify the type of employment. That will provide greater certainty. The member has not convinced me it will be of much value in terms of savings and reliability.

Mr Trenorden: Why is there any difference in the proposals? The minister has said that the form of employment must be specified, and he has admitted that that will be far more bureaucratic. Where is the difference? Why not wipe it altogether? The concerns the minister has expressed suggest that he is half convinced to delete it altogether.

Mr KOBELKE: No, not at all. I am not willing to accept the amendment at this stage, but I will go away and talk about it and will come back to the member for Avon next week. We can look in the other place -

Mr Trenorden: Why does the House not adjourn before dealing with this amendment?

Mr KOBELKE: I would like to make a little more progress. The Government will need to recommit the Bill anyway, because there is a technical amendment further on. That will be done next week or the week after. At the moment, I will not accept the amendment, and when the House has dealt with this matter, I will consider at what time the House will rise.

Amendment put and a division taken with the following result -

Ayes (20)

Mr Barnett	Mrs Edwardes	Mr McNee	Mr Trenorden
Mr Barron-Sullivan	Mr Edwards	Mr Masters	Mr Waldron
Mr Birney	Mr Grylls	Mr Omodei	Ms SueWalker
Mr Board	Ms Hodson-Thomas	Mr Pendal	Dr Woollard
Dr Constable	Mr Johnson	Mr Sweetman	Mr Bradshaw *(Teller)*

Noes (25)

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

Pairs

Mr Ainsworth	Mr McGowan
Mr Day	Mr Carpenter
Mr Marshall	Mr Hill

Amendment thus negatived.

Mrs EDWARDES: I move -

Page 12, line 29 - To insert after "casual" the words "fixed term employment".

Looking at the mix of workplace arrangements that can be made, although the Government has recognised full-time, part-time and casual as regular workplace arrangements, I submit that fixed-term employment is also a regular arrangement. It is particularly important in light of the change to the definition of "redundant" and what will happen to an employee upon the expiration of the EEA. The contract of employment stays in existence. If a worker has a fixed-term contract, what would happen if the EEA applied only to full-time, part-time or casual arrangements? If a worker has only 12 months or three years on a contract to complete a particular project and the time expired, that would not be recognised in any way in the form or content of the EEA. However, the worker on a fixed-term contract would not fit into any of the other categories.. This might mean that he could not complete a particular project. A scientist is a clear example. He might work all sorts of hours, yet this section does not provide for it.

Mr KOBELKE: The amendment is not acceptable to the Government. The EEA legislation as currently drafted does not preclude a fixed-term contract. If someone were employed for a fixed term and the employer wanted to have that contract governed by an EEA, then it would be open to do so. This clause will not prevent that. If what the member for Kingsley wants is accepted, it will signal that there is a form of EEA that can specifically be used to cover fixed terms. There would be a danger that a worker who, without full knowledge of the facts, thought he had job prospects for some years based on an EEA, but discovered that his employment was fixed term.

There is a separation between the contract of employment and the current EEA. It is a fine, but important, distinction. Someone might sign an EEA that does not contain a wage indexation clause and be under the impression that the job will still be there and he can either renegotiate the EEA after three years or return to the award. The worker needs to know that his employment is ongoing, even though the current EEA is for only a limited period. I am concerned that if this amendment is adopted, people may not realise that they are getting the job for only that period. I want to make clear that if the EEA is a contract of employment for a fixed term, the EEA will contain more than just a word that says "fixed term".

It will be specified in the EEA. A person signing an EEA will know that it is an EEA with a range of conditions. A key component of that contract of employment is that it is a fixed term for a specific period. An EEA could have a fancy variation that puts a person on a fixed-term contract of three years employment with the EEA running for two years and another EEA negotiated for the third year. I do not want the two contracts mixed up and therefore would not accept it in the Bill as another viable alternative to full-time, part-time and casual employment.

Mrs EDWARDES: I take on board the minister's comments and I understand the potential for confusion. I accept his view that an EEA would not preclude a fixed term of employment. I am happy to withdraw the amendment.

Amendment, by leave, withdrawn.

Mr GRYLLS: On behalf of the Leader of the National Party, I move -

Page 13, lines 14 to 30 and page 14, lines 1 to 3 – To delete the lines.

I have moved that the whole of proposed section 97UM be deleted.

Mr KOBELKE: I had hoped that the Leader of the National Party would speak to this amendment. However, I do not want to delay the House. I will wait until we return next week and he can speak to the amendment, which we will oppose. However, it is an appropriate time for me to seek to adjourn debate on the Bill and return to it next week.

Debate adjourned, on motion by Mr Kobelke (Minister for Consumer and Employment Protection).