LABOUR RELATIONS REFORM BILL 2002

Consideration in Detail

Resumed from an earlier stage of the sitting.

Debate was interrupted after clause 4, as amended, had been agreed to.

Part 6: Amendments about industrial agreements and good faith bargaining -

Mrs EDWARDES: We had some debate on clause 125 yesterday. I now move -

> Page 130, lines 14 to 16 - To delete the lines.

This amendment deals with clause 125(2), which inserts a number of paragraphs. Paragraph (ad) states -

> to promote collective bargaining and to establish the primacy of collective agreements over individual agreements;

The proposed collective bargaining system is not collective in the true sense. We do not support this provision because all that it does is to provide for union collective agreements, not non-union collective agreements.

Mr KOBELKE: We do not support the amendment. What the member for Kingsley believes is the effect of the provision is not true. We have not allowed for non-union collectives, but it does not follow that we should not have this provision in particular objects so that there is a wish to promote collective bargaining. That is our intention and the issue about whether "collective" should be union or non-union is a subsidiary matter.

Amendment put and negatived.

Mrs EDWARDES: I move -

> Page 130, lines 25 and 26 - To delete "employers, employees and organizations" and substitute "employers and employees".

The key stakeholders in a workplace relationship are the employers and employees. A successful bargaining environment is one in which the responsibility to reach agreement explicitly rests with the bargaining parties, and our submission is that those bargaining parties are the employer and the employee. This legislation has changed the bargaining environment to that of employers and unions. That is not acceptable.

Mr KOBELKE: I will briefly deal with the philosophical issues and the practicalities behind this provision. This Government has a philosophically different approach from that of the Opposition; that is, the Government supports the collective. Although we recognise and allow for the individual, the primacy of the collective serves best the interests of both employees and employers in this State. That is not the Opposition's view. We part company on that issue, and for that reason the member for Kingsley is seeking to make this amendment. We reject the amendment on the basis that the collective is the way to go and that if organisations are left out, the role they play is not recognised, when it is already recognised in the Act, without our amendments. We are enhancing the provision to allow the collective approach to work more effectively. However, that provision is already enshrined in the Act. The second point refers to the practicalities. Lines 25 and 26 set out the objects of the Act, which are to encourage employers, employees and organisations to reach agreements appropriate to the needs of enterprises within industry, and of the employees in those enterprises. If the amendment were to be passed, the provision would encourage employers and employees to reach agreements appropriate to the needs of enterprises within industry and of employees in those enterprises. This may highlight that we want employees and employers to get to those agreements and, through a range of provisions, we have sought to expand and promote that. We do not have a problem with that. However, if we remove organisations from the provision, the effect will be that the organisations that are represented and have a major role under the Act will not be required to meet the needs of enterprises within industry. That effect is contrary to what is the general philosophical position of the member for Kingsley. By removing the words "employees, employers and organisations", this provision would say that it is not an object of the Act to get these outcomes in the interest of enterprises and industry because we do not want organisations to be involved. On a practical basis, the amendment does not achieve the desired outcome and is totally opposed to what we wish to achieve. In putting this provision into the legislation we are asking the Industrial Relations Commission to recognise that we want the parties to reach agreements that meet the needs of enterprises within industry as well as those of the employees. This is new to the Act and will guide a range of decision-making processes within the commission. It is appropriate and important that the needs of particular enterprises be recognised in that process. To water down the provision and say that we want only some of the players to achieve that goal is not a move we wish to support.

Amendment put and negatived.

Mrs EDWARDES: The next amendment standing in my name deals with a serious issue in part 6 of the Bill. I move -

Page 132, line 28 to page 133, line 8 - To delete the lines.

Clause 129(1) inserts a provision that allows an industrial agreement to apply to more than one enterprise. When it applies to more than one enterprise, "pattern" bargaining occurs in which one agreement flows on to all agreements. Victoria had a major campaign called Campaign 2000, in which the potential for pattern bargaining and widespread industrial disputes was highlighted. The Construction Forestry Mining and Energy Union in the Victorian building industry initially negotiated with the Master Builders Association of Victoria for a 24 per cent wage increase over three years. The MBA's 1 500 member companies took a collective stand in defiance of the claim and locked union workers out of their employment, which they are permitted to do under the legislation, but in negotiations with the break-away group of 11 employers, the union bargained for an 11 per cent pay rise and an effective 36-hour week through extra days off. The concept of pattern bargaining involves the union pursuing the larger companies, as they are better able to spread the higher labour costs across a number of projects with reasonable margins. What happens in practice is that the smaller subcontractors working on big construction projects normally accede to the site rates struck by the head contractors and the union. Prices and costs of building and construction rise. Mr Grollo, one of the country's largest builders, was the first to relent to the pressure applied by the union. He was quoted as saying that he had been "hard hit" by union industrial action, albeit protected action; it was clearly designed to promote a cascade of agreements with all the other builders. That is exactly how this clause will operate.

I have a real concer n that when the current EBA for the convention centre expires real pressure will be on to force the increased rates and impose a 36-hour week. The estimate from those in the building and construction industry is that costs on that site will go up 40 per cent. One can imagine the consequences.

I will refer to the current weekly labour costs for general builders labourers. The current wage rate is set at a 38-hour week. No EBA payment exists in the minimum award rate, but there is one for the $5 million metropolitan office complex and the $20 million central business district project. The figure for fares in the minimum award rate is set at $66.50, and for the $5 million metropolitan office complex and the $20 million CBD project it is set at $97.25. Again that is an increase. Going down the list we see increases over and above the minimum award rate. This applies to superannuation, portable long service leave, redundancy pay, pro rata annual leave and leave loading, site allowances and structural frame allowances. The last two do not exist in the award. Productivity allowances and union training levies are not in the award. The figures for the $5 million metropolitan office complex show an increase of 64 per cent over the award, and those for the $20 million CBD project are 75 per cent over the award. One can imagine the flow-on effects of a 36-hour week; they would be enormous. The companies involved in those areas are broad-ranging and include cottage industries and civil construction. The impact on all of those players would be enormous. If a group of contractors is working on a $5 million office complex or a $20 million CBD project and a group of bricklayers is working down the road, when the commissioner makes an order and takes into account fair and reasonable issues, he will note that the blokes down the road are being paid a certain amount. I moved off the issue of pattern bargaining, but the potential for a blow-out in those costs is enormous.

Mr KOBELKE: I understand that the potential for pattern bargaining causes concern, but the member is boxing at shadows. We need not concern ourselves with that issue as it relates to these provisions. The member referred to an example in the Victorian building industry. Victoria does not work under Western Australian law; it works according to federal legislation. The federal legislation does not contain the provisions that we are inserting in this legislation, to which I referred a moment ago, which require the commission to look at the needs of enterprises. That is a way of recognising the interests of all the parties, and it is important that that be included in the objects of this legislation. The federal system used in Victoria allows for protective industrial action. We do not have that in this legislation and we are not including it. A whole range of scenarios, which do not exist in our system, led to the fear of pattern bargaining. To suggest this legislation drags in pattern bargaining is to misunderstand the application of this provision.

Under the legislation, if employers want to spread the agreement across more than one workplace or enterprise they will be able to do so. An example of that would be franchises. A company, such as McDonald's Family Restaurants, has a whole range of enterprises that are separate, independent companies and it can standardise everything. The companies standardise the way they cook the meat, how they clean the windows and the appearance of the gardens and the uniforms. The company may say that because all its restaurants work on the same basis, even though the franchises are separate companies, it wishes to apply a standard agreement across all those franchised companies. This legislation provides the company with the ability to do that.

If the member thinks that employers who do not want this legislation will be dragged into it, I draw her attention to page 135, proposed section 42(6), which makes it clear that -

> Where bargaining is initiated under subsection (1) with more than one intended party to the agreement, all the negotiating parties are to bargain together unless the Commission, on the application of a negotiating party, directs that the negotiating party may negotiate separately with the initiating party.

It is open to either of the parties to tell the commission it does not wish to be involved with the other party, and it then has the opportunity to opt out. It is up to the employers to decide whether they see an advantage in negotiating jointly; if they do not see an advantage, they go their own way. I do not think one can make a case that this legislation creates the potential for problems to arise from pattern bargaining.

Mrs EDWARDES: The minister has a very narrow view of the operations of the building and construction industry. I am glad he referred me to proposed section 42(6), because that is an insult. When the builders and the contractors raised the flag and said they had a problem, the minister promised, as part of his policy, that there would be enterprise bargaining. However, he has given us industry bargaining, and that is what will happen following the insertion of proposed subsection (1a) after section 41(1). There is no doubt that this will be economical for the unions; it is designed that way. The building and construction industry has a small group at the top comprising the major builders of projects etc. They have signed EBAs with the CFMEU. Beneath that group is another group of companies and they are becoming major players within the central business district, primarily because they are far more competitive than those on the top level following the signing of the EBAs with the union movement. The union is targeting those employers. Those barriers have not been broken down. The unions negotiate with one of the top employers and then the results flow down to the second layer. That is fine. The minister says, "Just go to proposed section 42(6)." I can imagine one of those builders going into the commission and saying that he does not want to be part of this industrial agreement and is happy to negotiate with the union. The reason those employers did not sign the EBA in the first place was that they do not want to negotiate with the union. The minister is not providing a choice. The minister is naively saying that proposed section 42(6) gives them a way out. What absolute nonsense! They would say they do not want to be part of the industrial agreement; they are happy to negotiate with the unions direct. I can imagine BGC Construction saying that. I can imagine some of the other key players who have stood out for so long against the CFMEU saying, "Yes, Mr Commissioner, we are now happy to negotiate with the union." That is nonsense. That proposed section is an insult to all the submissions the minister received about pattern bargaining. Pattern bargaining will become a key feature of the industrial scene in Western Australia. The costs will go up enormously, and that will impact on the whole community and the Government. The minister has not done an economic analysis of the impact on not only the Government but also the broader community. It is absolute nonsense for the Government to believe that proposed section 42(6) will be a way out.

Amendment put and a division taken with the following result -

Ayes (21)

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

Noes (29)

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

Amendment thus negatived.

Mrs EDWARDES: I move -

> Page 133, after line 8 - To insert the following -

(2) Section 41(6) is amended by inserting after "award" -

"or an EEA".

Section 41(6) of the Blue Bill states -

> Notwithstanding the expiry of the term of an industrial agreement, it shall, subject to this Act, continue in force in respect all parties thereto, except those who retire therefrom, until a new agreement or an award in substitution for the first-mentioned agreement has been made.

Unless "or an EEA" is inserted after the word "award", there will never be an opportunity for an EEA to be entered into once an industrial agreement is in place. If an industrial agreement is in place there cannot be an EEA. Once the industrial agreement expires, section 41(6) of the Blue Bill states that an employee can move on to a new agreement or an award. I suggest that an EEA should also be included.

Mr KOBELKE: This amendment is simply pointless. The member has taken issue with the fact that it is not possible to register an EEA if an industrial agreement in place, therefore employers are prevented from offering an EEA to employees while an industrial agreement applies and, that being the case, it is impossible for an EEA to replace an industrial agreement. Once the industrial agreement expires, it is possible to negotiate an EEA. If the member for Kingsley is arguing that people should be able to have an EEA when an industrial agreement is in place -

Mrs Edwardes: No, when there is no industrial agreement in place.

Mr KOBELKE: They can do that now.

Mrs Edwardes: No, section 41(6) of the Blue Bill prevents an EEA being entered into once an industrial agreement has been in place.

Mr KOBELKE: Section 41(6) of the Blue Bill must be read in line with section 41(7), which refers to the fact that an employer can unilaterally bring an industrial agreement to an end with 30 days notice. I did not have a hard and fast rule about the mechanism that is to be used. The principle was clear in the Government's policy document, and it has not changed. It is enshrined in this Bill. When an industrial agreement is in place, an EEA cannot be entered into. That has always been the Government's position. The issue is, where is the end point of the industrial agreement, in order to make it clear that an EEA can be offered. The end point could have been at the expiration of the nominated period for the industrial agreement, knowing that the industrial agreement is continuing. There would then be an issue about how to deal with an industrial agreement and an employer-employee agreement because they would be in conflict. There must be a way of finishing off an industrial agreement when it is at the end of its nominated period. As the member would know, it is a regular practice for an industrial agreement to remain as the conditions of employment often for a considerable period because the parties are renegotiating a new one or it is not to the advantage of the parties to opt out of it; that is particularly true for employers. The member, as the minister who was involved in the Westrail train drivers' case, would know that the Government had an industrial agreement with Westrail drivers negotiated through their union. The drivers brought the agreement to an end after it had gone past its nominated period because in their opinion they were in a worse situation. Their bringing the agreement to an end caused a huge problem for the Government because it did not then have the productivity, hours and flexibility that the agreement provided. I think I am correct that it was an industrial agreement, and the employer - the Government - was disadvantaged by chopping it off.

We are providing this mechanism that either side can cancel. It is more likely that an employer would cancel it, because if an employer were to offer an EEA, the whip would be in the employer's hand. An employer might decide not to cancel it but to run it for a time because of continuing negotiations and so on. It would be in the employer's hands to formally terminate the agreement and give 30 days notice at the appropriate time. When 30 days have elapsed from the date of the notice to quit an industrial agreement, the employer can offer an EEA.

Mrs EDWARDES: Section 41(6) of the Industrial Relations Act reads -

> Notwithstanding the expiry of the term of an industrial agreement, it shall, subject to this Act, continue in force in respect of all parties thereto, except those who retire therefrom, until a new agreement or an award -

I suggest "or an EEA" -

> in substitution for the first-mentioned agreement has been made.

"Those who retire therefrom" are referred to in subsection (7) of the Act. Subsection (6) would then read -

> except those who retire therefrom, until a new agreement or an award or an EEA in substitution for the first-mentioned agreement has been made.

Subsection (7) refers to any party to the agreement giving notice to quit; however, subsection (6) states that notwithstanding expiry, the industrial agreement continues in force "except for those who retire therefrom"; that is, subject to subsection (7), until a new agreement or an award is negotiated. The words "or an EEA" are excluded from subsection (6), which is clearly an omission.

Mr KOBELKE: The position I suggested to the member has been the guiding principle in the past. I pointed out to some employer groups that came to us that it is clearly the intention of the Act. None has come back with legal advice to refute it. I am therefore on fairly firm ground with the advice I have received from our advisers. Some of the key employer groups who came to us raised that issue; again, they did not come back to us with legal advice that I had it wrong. I believe the clause stands as I explained it. The member's point may be that it should be available automatically from the end of its nominated period.

Mrs Edwardes: No, it may be in substitution when the agreement expires. If it were the minister's intention to put the matter beyond doubt - a million clauses throughout this Bill put things beyond doubt - he would insert those words. It might be the minister's intention, but the clause does not provide for it when an industrial agreement expired, and subsection (7) does not help.

Mr KOBELKE: The amendment moved by the member will not achieve that, but I am happy to repeat, to make it absolutely clear, that it is a principle of the Government in this legislation that an employer should be able to offer an EEA on the expiry of an industrial agreement. An expiry will occur 30 days after notice has been given by either party, under subsection (7) of the Act, that the agreement is at an end.

Mrs EDWARDES: I ask the minister to seek advice based on my interpretation prior to the Bill's going to the Legislative Council. Because subsection (6) of the Act was not amended, it might have an unintended consequence and might not meet the minister's intention.

Amendment put and negatived.

Mrs EDWARDES: The Opposition opposes clause 130. Although I do not have an amendment to it, it is a part of the Bill that will be put to the vote as a whole. The Opposition will not have an opportunity to oppose this clause separately. We strongly oppose it because it deals with a section of the Act relating to the registration of industrial agreements. The minister has continually said that the registration of an industrial agreement requires the agreement of both parties. Can the minister point to the clause that states that that is essential? There are no criteria set out in proposed section 41A for the registration of an industrial agreement. The words to be deleted in section 41A of the Industrial Relations Act come under the heading "Restriction on power to register industrial agreements". It is amazing that the proposed section does not provide for the registration of an agreement if the agreement applies to a single enterprise. That was an issue I raised earlier in respect of pattern bargaining and terms of agreements that are contrary to the Act or the principles of the Act and so on. Proposed new section 41A, headed "Registration of industrial agreement", has limited criteria compared with the public interest test in an EEA. All that is required is a specific expiry date no later than three years after the date on which the agreement came into operation. Under proposed subsections (1)(b) and (c) an agreement cannot be registered unless it includes any provision specified in relation to that agreement by an order referred to in section 42G and an estimate of the number of employees who will be bound by the agreement upon registration.

Proposed subsection (2) then states that an agreement, to which an organisation or association of employees is a party, shall not be registered unless the employees who will be bound by the agreement upon registration are members of, or eligible to be members of, that organisation or association. There is therefore limited criteria for the registration of an agreement. The minister has been at pains to say that an industrial agreement will not be registered unless it is agreed to, and probably by virtue of the word "agreement". Can the minister point to the clause that requires that agreement?

Mr KOBELKE: The provisions about which the member is seeking advice are currently in the Act.

Mrs Edwardes: Can't you put your finger on them?

Mr KOBELKE: There is no specific clause. The Act was constituted for the making of agreements. It is proposed that section 41A be deleted. It simply refers to how an agreement applies and the registration of an agreement; it does not go into any detail. That is an example of the way the Act addresses the issue, and it is not being amended. If the member is suggesting that other provisions will impact on it, I am happy to look at them. The Act does not have a specific set of criteria by which the commission will step through the process, and that is not being amended.

Mrs Edwardes: We have talked about mediation, conciliation and arbitration. Is that the process?

Mr KOBELKE: This relates to good faith bargaining. Good faith bargaining is not required to reach an industrial agreement.

Mrs Edwardes: That is correct. Putting that aside, does the Act provide that parties should reach an industrial agreement through mediation, conciliation or arbitration?

Mr KOBELKE: No. Those matters relate to good faith bargaining.

Mrs Edwardes: That is addressed along with industrial agreements and good faith bargaining; they go hand in hand.

Mr KOBELKE: Provisions in the Bill, as amended, will enable people to activate the good faith bargaining process. It is possible, but not required, that that process will produce an industrial agreement. It is not central to industrial agreements. Industrial agreements can be entered into and registered. Often they are reached by consent; that is, two parties sit down and negotiate. One employer group has approached a union about negotiating an industrial agreement. That group has not negotiated an industrial agreement before, but it wants to look at it as a possible employment vehicle. If they reach an agreement, they will be able to seek registration. There is no process that the commission must tick off.

Mrs Edwardes: We have dealt with the provisions relating to industrial agreements and good faith bargaining. A process has been established to deal with the notice and the response.

Mr KOBELKE: That process is for good faith bargaining.

Mrs Edwardes: Irrespective of that, when we were talking about unfair dismissal applications, the minister said that the process in the Act for dealing with unfair dismissals would be followed. That involves mediation, conciliation and arbitration. What is the process?

Mr KOBELKE: Proposed section 41A does not substantially amend the legislation; although it is amended to deal with demarcation matters. If two parties formulate an industrial agreement, they will then seek to have that agreement registered. Proposed section 41A does not change that. The commission will register the agreement subject to certain matters; that is, the nominal expiry date cannot be more than three years, it cannot be registered if it includes any provisions specified in relation to that agreement by an order referred to in section 42G, and it must include an estimate of the number of employees who will be bound by it. If it complies, it will be registered.

Proposed subsection (2) includes another requirement in an attempt to reduce the potential for a demarcation dispute when two different organisations seek to register an industrial agreement to get coverage.

Mrs EDWARDES: Many employers have expressed concern about the lack of certainty in the process for registering industrial agreements. Irrespective of the availability of enterprise orders, industrial agreements may well be taken out of their hands. They are also concerned about the lack of particularity and/or criteria for the registration of industrial agreements. Those concerns might not have existed in the past because there was a greater range of choices and non-union collective agreements were available.

Proposed subsection (2) addresses demarcation disputes. It might be a good drafting attempt, but it will not resolve demarcation disputes such as those that have arisen in the past. Those issues emerged in workplaces in the 1960s and 1970s. I predict that the mining industry will be the first sector to witness their re-emergence. The age-old argument between the Construction Forestry Mining and Energy Union and the Australian Workers Union will rear its head once again.

I refer the minister to clause 131, which deals with initiation of bargaining for an industrial agreement, and move -

> Page 135, after line 3 - To insert the following -
>
> (e) the consequences under section 42I(1)(a) and (b) if the bargaining fails or if the employer refuses or does not respond to the notice within 21 days;
>
> (f) full details, with particularity, of the claim;
>
> (g) a claim that an employer could reasonably be expected to agree to; and
>
> (h) a claim that is not substantially the same as a claim made against another employer in the same industry.

This amendment is designed to provide for particulars about bargaining to be included in the notice issued to the employer. It also addresses the major concerns raised about pattern bargaining. The minister's proposal is very limited. I do not know whether he intends to regulate to require more detail to be provided in that notice.

Mr KOBELKE: I have no problem with proposed paragraph (e). It is appropriate and likely that that will be included in regulations. The 21-day limit might need to be changed, and that could also be done by regulation.

Proposed paragraph (f) provides that full details of the particularity of the claim be submitted. That is not required under the Industrial Relations Act. That imposition might make the process more difficult.

Mrs Edwardes: Why relate that to the Industrial Relations Act? In some instances, the minister is happy to say that the legislation is similar and in others he says that even that Act does not contain such a provision. We are dealing with legislation for Western Australia.

Mr KOBELKE: Industrial agreements have been available and in force in Western Australia for quite some time, and they are available in other States. Therefore, it is instructive to look at the provisions in other jurisdictions. We obviously draw on that experience. We have different points of view and different structures, and aspects of those other systems would not suit Western Australia. Other jurisdictions have protected industrial action. We do not allow for that in our legislation. There is a range of differences and we can argue why there are differences. It is also instructive to look at similarities in other systems. Other jurisdictions have similar processes for establishing EBAs. That is not a requirement of the federal system, and it could be quite restrictive if we had to go to those particulars and undertake the work required to do so.

Proposed section 42(3)(g) refers to "a claim that an employer could reasonably be expected to agree to". It may be difficult to enforce that provision, because it requires a higher level of subjectivity. I am not sure how one would enforce that. Proposed section 42(3)(h) would potentially defeat the operation of proposed section 41A, as has been previously discussed. On that basis, we cannot accept proposed section 42(3)(h). I have indicated that matters that go to the better functioning and governance of the industrial agreement process will be dealt with through the regulations. The first part of the amendment has merit and will be looked at in that light. However, other parts of the amendment do not serve the purpose of the provision and in fact run counter to the purpose of the provision.

Amendment put and negatived.

Mrs EDWARDES: I move -

> Page 135, lines 4 to 6 - To delete the lines and substitute the following -
>
> (4) If there is no applicable industrial agreement or enterprise order in force, and provided that no bargaining period has been initiated or is in force under Division 8 of the *Workplace Relations Act 1996 (Commonwealth)*, a bargaining period may be initiated under sub-section (1) at any time.

This amendment attempts to ensure that only one bargaining period is dealt with at a time. The reason for adding the provision that no bargaining period has been initiated under the Workplace Relations Act is that the Act provides for protected action, but this legislation does not. As such, if two bargaining periods were commenced with the same employer for the same claim, there would be great confusion and strike action could easily occur, but it would be protected under the federal provisions as opposed to the state provisions. I suggest to the minister that it is clearly not his intention that two bargaining periods can be commenced, with the parties hopping between the state and federal jurisdictions to obtain the best deal.

Mr KOBELKE: As I have related in other areas, the intention of the Government is to encourage more people to come under the state jurisdiction. However, people will form their own opinions. There has been much press coverage about people who intend to move from the state system to the federal system. Under the previous Government, tens of thousands of workers left the state system to join the federal system. We would like more people to come back to the State system. However, it is their choice. They will make the judgment. We do not seek to impinge upon that right of choice. This legislation gives people the right to choose to have both at the same time. The legislation of the previous Government had convoluted provisions to try to preclude people from moving from one jurisdiction to another. That is not our approach. We believe nothing will be gained from imposing this prohibition on people entering a state industrial agreement on the basis that they already have an agreement that is covered by the federal Act.

Mrs EDWARDES: The minister normally does not support jurisdiction hopping, and I would have thought that he certainly would not support it when bargaining periods were being commenced at the same time against the same employer and on the same claim. It makes a nonsense of the big picture of industrial relations in Western Australia that the minister is supporting people who do that. This is a worthwhile amendment, because it provides that people can be covered by only one jurisdiction at a time. People can still choose which jurisdiction they want - federal or state. However, to commence two bargaining periods at the same time will create a great deal of confusion. I believe this has been contrived with the intention of ensuring that unions can seek to get the best deal they can from either jurisdiction.

Mr KOBELKE: One salient fact is that if two bargaining periods were in place, the federal jurisdiction would have precedence over the state jurisdiction.

Amendment put and negatived.

Mrs EDWARDES: I move -

Page 135, line 10 - To delete "90 days" and substitute "30 days"

This provision relates to the period within which bargaining must not be initiated. The shorter time frame of 30 days will provide more certainty and flexibility than is provided by the longer time frame in this legislation of 90 days.

Mr KOBELKE: We debated at great length the transitional arrangements for the phasing out of workplace agreements and the moving into EEAs. A range of problems was raised. We recognise that some needed to be dealt with, but others were only scaremongering. The transition needs to be managed carefully otherwise people may find themselves in difficult circumstances that may lead to disputation. We are seeking to restrict this to industrial agreements. When an industrial agreement is drawing to a close there must be smooth management of the terms of employment beyond the life of the industrial agreement. It is quite common for the matter to roll on for some time after the end of an agreement. That is not necessarily the best outcome. It may lead to dissension or disruption in the workplace because people may not have had a pay increase for two years. Normally there is a milestone increase, but not always. People may have been waiting for a long time for a pay increase. It is good industrial relations to try to put in place a new agreement as soon as possible after the expiry of the old one. The process must start with ample time to reach agreement. The member for Kingsley's amendment means that cannot be done for 30 days. The Government thinks 90 days is more suitable, and it does not agree to any reduction of that period. There is no impediment to the parties to an industrial agreement starting negotiations even earlier. The issue is when they can start negotiations on matters that will be recognised by the commission, particularly with good faith bargaining. The Government prefers that if the process is started and parties want the commission to be involved, 90 days is not a long time to try to conclude a matter so there can be a seamless transition at the expiry of the old agreement. If the period were 30 days it is highly likely that there would not be a smooth transition from one industrial agreement to another. On that basis, the Government rejects the amendment.

Amendment put and negatived.

Mrs EDWARDES: The next amendment standing in my name is to delete "7 days" and replace it with "28 days". This is to extend the prescribed period for the response to the initiation of bargaining. The response must be within 21 days. The draft that was sent to the limited stakeholders provided for 21 days; that is, the commission was not to extend the prescribed period by more than 21 days in total. When the Bill was introduced into this Parliament, the 21 days was reduced to seven days. It is an absolute nonsense to extend the period for only seven days. It would make a lot more sense to extend it for 21 or 28 days - I suggest 28 days. The initiating party will have a lot longer to prepare his notice and submission. Therefore, to allow the respondent only 21 days, with an extension of seven days, is clearly a nonsense, and puts the parties on an uneven edge in the bargaining. It will certainly not contribute to good faith bargaining. I move -

Page 136, line 3 - To delete "7 days" and substitute "28 days".

When the minister responds, will he identify why the period of extension was reduced from 21 to seven days?

Mr KOBELKE: The question of whether or not a party wishes to enter into an industrial agreement is an important part of the whole process, and is also caught up with good faith bargaining. The whole intent of these provisions is to move things along more quickly, and hopefully get a resolution that is acceptable to both parties - clearly, that is crucial to an agreement - at the earliest possible date. Therefore, we must make sure that parties come to the table with clean hands. The matter should not drag on and on. It should be known up front whether a party will take part in the negotiations for an agreement. There should not be an initial period in which there is delay and in which a party does not state in good faith, to use the general term, what is his position. This provision was changed from the one that was in the earlier draft because after we looked at all the provisions in the context of the overall effectiveness of the package, we believed that to allow a longer period, such as 21 days, at the start was likely to undermine or reduce the effectiveness of the process.

We are saying that there is a requirement that within seven days the respondent party must say yes, it wishes to negotiate, or it does not. I am sorry, we are talking about an extension. A party has 21 days to respond, and it can seek an extension of a further seven days, rather than an extra 21 days. I should clarify that. There is already 21 days in the initial part of the process. The next part of the process involves a response as to whether or not a party wishes to take part in the bargaining. If the party says no, one can go down the paths that are available as a result of that decision, and get on with it. If the party says yes, people will get on with trying to reach agreement. It may be that after several weeks or months of negotiation the parties decide that they cannot agree. If they cannot agree, they cannot agree. However, the process needs to be moving. As I overlooked for a moment, the period in which to respond is 21 days. If a respondent says that he has not been able to respond

within 21 days, he can get an extension of up to another seven days. However, by that stage the matter is already in the system, and hopefully things are starting to move. This provision is needed so that someone does not block the process and stop matters moving forward to a resolution.

Amendment put and negatived.

Mrs EDWARDES: I move -

Page 137, line 5 - To insert after "bargaining" the following -

excluding commercially sensitive information unless agreed to by the negotiating parties

Proposed section 42B(2) deals with the processes for good faith bargaining. One such process is the disclosure of relevant and necessary information for bargaining. That has implications for companies, particularly those that have commercially sensitive information. I suggest that all companies have information that is commercially sensitive, particularly to their competitors. That information should not be able to be disclosed, unless agreed to by the parties.

When this provision was introduced in New Zealand, it was very quickly changed, because good faith bargaining did not work when the section was so wide and open as to disclose relevant and necessary information for bargaining. The New Zealand legislation now excludes commercially sensitive information. I suggest that the minister should, similarly, accept this amendment. If he is not inclined to accept the words I have chosen at this stage, he should do so before this Bill reaches the Legislative Council, because this provision has the potential to create major upset when it comes to the disclosure of relevant and necessary information in good faith bargaining.

Mr KOBELKE: The Act already provides for this. The commission must look after the interests of all parties. It has the right to require or demand parties to provide different sorts of information. The commission must operate in good conscience and in fairness; therefore, it must respect the rights of the various parties. If a party believed that information he had was commercially sensitive, that would be dealt with by the commission. I do not think the commission would allow that information to be released were it commercially sensitive, and particularly were it not central to the matter that it was trying to resolve. Those provisions already exist in the context of the way in which the commission normally operates. If an amendment such as this is allowed - this situation has arisen under the Freedom of Information Act - the question of what is sensitive information will become a totally subjective judgment. The material will be withheld because one party, without any factual basis, simply claims that something is commercially sensitive. That is my concern with the amendment that has been moved by the member. As I said, that matter is already covered in the way the commission functions and is expected to function. I make it clear that the commission is expected to look to the rights of both parties. If a party makes a claim that a matter is commercially sensitive, and that claim can be substantiated, it is within the powers of the commission to make sure that the information remains confidential and is not, through the processes of a matter that is before the commission, brought into the public arena or spread to other parties, which may be to the detriment of one party.

Mrs EDWARDES: The minister's response clearly shows a lack of understanding of how workplaces operate. That is surprising, given the major concern in New Zealand. Perhaps the minister was not aware of what occurred in New Zealand, about which I am also surprised, given that the good faith bargaining provision was lifted from the New Zealand legislation and put into this legislation.

Mr Kobelke: Ours is a different model from New Zealand's legislation.

Mrs EDWARDES: It is similar. Should I say that word?

Mr Kobelke: The title is similar.

Mrs EDWARDES: Yes, it is similar. A few words have been changed, because New Zealand has a different system; it does not have an award system. However, this provision will cause major problems. The need to protect parties has been outlined. This will cause a major headache. No wonder the number of applications to the Industrial Relations Commission has increased to 20 000. This legislation will provide for unnecessary applications.

Amendment put and a division taken with the following result -

Ayes (20)

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

Noes (28)

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

Pair

Mr House	Mrs Roberts

Amendment thus negatived.

Mrs EDWARDES: I refer the minister to proposed section 42B(2)(f). Given that we are attempting to deal with as many clauses as possible, I ask the minister to give a short and concise answer about what he understands is meant by the term "reasonable facilities". Are we talking about an office, mobile phone or car? How far should the term extend?

Mr KOBELKE: The provision of "reasonable facilities" will vary greatly from case to case. The commission will decide. What is required from a company that employs 10 people will clearly be very different from what is required from a company that employs 1 000 people who are scattered across a large area. I am clearly of the mind that the cost to the company must be marginal. If a company enters into good faith bargaining, it should not deny appropriate process through the inadequate provision of facilities. The provision of reasonable facilities might simply involve the use of a room, so that people can have a meeting, or the use of a fax machine. A large organisation might extend that assistance to payment of fares. If that were the case, it would have to be a minor cost in terms of the operations of the company. In my view, the term "reasonable facilities" should not be interpreted as meaning that they should be provided at a sizeable cost to a company, in relation to the total operations of the company.

Mrs EDWARDES: I do not propose to move the amendments standing in my name to delete lines 10 to 13 on page 137, or to delete the lines between page 138, line 15 and page 139, line 3. Proposed section 42F, which I had planned to move to delete, involves the commission determining a code of good faith. In New Zealand, a similar approach has not added much to what was prescribed in the Act. I suggest that given the extension provided by the Act, it is not necessary here either. I am happy to give the minister a copy of the code that is in place in New Zealand. It would show him that this proposed paragraph is irrelevant and does not add anything to the process.

I do not propose to move the amendment standing in my name to delete the words "and arbitration" in line 11 on page 139. That flows on to the next proposed amendment on page 139, which was to line 13. I had proposed to delete the words "may exercise its powers" and to insert instead "may only exercise its conciliation powers". There is a view that conciliation should be the process used in this area. We spoke earlier about the process for industrial agreements and about mediation, conciliation and arbitration. Quite clearly, the proposed section in question - 42E(1) - deals with arbitration. Arbitration is the imposition of an agreement on parties. I proposed those amendments in order to outline clearly the concerns about that approach.

I also do not propose moving the next amendment standing in my name, which was to line 23 on page 139, to insert after "thing" the words "related to the obligation in section 42B(1) to bargain in good faith". Essentially, if the minister is serious about bargaining in good faith, a negotiating party should do or refrain from doing particular things. The amendment would have been of value. It would have ensured that there was a clear obligation on the parties to bargain in good faith.

The other amendment I do not propose to move was to line 31 on page 140, to insert after "subsection (2)" the words "except on the grounds that the order exceeds the matters agreed to be dealt with under subsection (1)(c)

or there has been an error of law". Again, the aim of the amendment was to extend the appeal provisions and to ensure that we keep reminding the minister that the limited provisions he has provided for appeal are far too narrow and do not suit all instances. In fact, they will ensure that very few appeals go to the industrial appeals court, which in many instances could result in a travesty of justice.

That brings us to proposed section 42H, which essentially sets out the circumstances in which the commission may declare that bargaining has ended. I will move a number of amendments to this proposed section, to ensure that parties have a right to be heard. I move -

Page 141, line 2 - To insert after "party" the following -

and after providing the parties a reasonable opportunity to be heard

That is a reasonable position. It is surely one that the minister will support.

Another amendment seeks to ensure that the applicant has bargained in good faith and has not engaged in industrial action and the claim is not unreasonable. That is what good faith is all about. I will move that amendment next, as there is still an amendment before the Chair. The third amendment to proposed section 42H deals with the extension of the appeal. It seeks to insert the words "except on the ground that there has been an error of law" to allow for an increase in the limited grounds of appeal in these provisions.

Debate interrupted, pursuant to standing orders.

[Continued on page 9081.]