LABOUR RELATIONS REFORM BILL 2002

Consideration in Detail

Resumed from 13 March.

Debate was adjourned after clause 3 had been agreed to.

Clause 4: Part VID inserted -

The ACTING SPEAKER (Ms Hodson-Thomas): I understand that a number of amendments have been circulated and they stand in the name of the Leader of the National Party.

Mr KOBELKE: I wish to make a suggestion, with the concurrence of the other side, as to how we proceed with this clause. The clause goes from pages 3 to 69 and deals with the establishment of employee-employer agreements. It would be difficult to make progress if we handled this clause backwards and forwards, and it would not be a productive debate. We need to limit the debate in some way. We could go through clause by clause, either formally or informally, but I suggest that we proceed formally through clause 4 by division and subdivision, which means we would take a vote on each subdivision and then move on to the next subdivision. In that way we could make progress and have the debate centred on the particular matters structured within a subdivision.

Mrs Edwardes: Do you mean a division within the part?

Mr KOBELKE: Sometimes a division is about 10 or 12 pages long, and it may have two or three subdivisions within it. I do not want to deal with more than two or three pages at a time on a particular area.

The ACTING SPEAKER: Minister, I understand you need to put a motion.

Mr KOBELKE: I have not formally moved that because I am seeking to work cooperatively with the Opposition. I am making that suggestion and if it is acceptable I will move it formally.

The ACTING SPEAKER: I draw the minister's attention to the fact that the Leader of the National Party is not here. I understand that he has given notice of a number of amendments to clause 4.

Mrs EDWARDES: I have no difficulty with the suggestion put forward by the minister. However, it can just as easily be dealt with clause by clause in an informal sense. We have dealt with Bills in that way previously. We dealt with the Acts Amendment (Lesbian and Gay Law Reform) Bill in that way, which also has large numbers of divisions or clauses within parts of the Bill. The issue though is that we cannot then go back and debate earlier clauses. Although we may not necessarily want to go back, we could be limiting and restricting debate if we agree formally to debate the Bill in this way. For instance, debate may be restricted on a particular division, subdivision or section of the Bill when it would have been more appropriate to be dealt with in a previous clause. I have thought about this since the minister first raised it with me. It is a complex Bill. The fact that we do not have a detailed explanatory memorandum makes it more difficult. The minister underestimated members in this House when he said they probably would not have understood a more detailed explanatory memorandum.

Mr Kobelke: I would exclude you from such a statement.

Mrs EDWARDES: I think the minister underestimates other members in this House. It proposes a difficulty in such a complex Bill. I am prepared in an informal way to deal with the Bill division by division. The issue also concerns the Leader of the National Party. He would not be permitted to debate the divisions that we had passed. It might be easier to move as we have done previously in an informal sense without voting for a formal structure and just deal with the Bill page by page. I would prefer that because it makes for a more logical debate as against flipping back and forth in the Bill. However, that will restrict some members who may not be in the House for the whole of the debate from raising specific areas of concern to their electorate. I am in two minds. I understand what the minister wants to achieve, and I support the reasoning behind it. However, I can also foresee that it may impinge on other members' rights in this House if they cannot debate issues that arise when they are not part of debate on a motion.

Procedure for Consideration in Detail Stage - Motion

Mr KOBELKE: I take on board the comments made by the member for Kingsley. I move -

> That in relation to clause 4, a separate question be put in relation to each subdivision or, where there is no subdivision, each division.

That will formalise the process. Where the Leader of the National Party or anyone else has an amendment on the Notice Paper, I will postpone so much of that division as is necessary so that can be taken up at a later stage.

Mrs EDWARDES: The consideration in detail stage will take some time; it will not be over in a couple of hours. Given that a number of people are not in the Chamber, such as the Leader of the National Party and the Independents, I ask that we defer voting on the motion until after question time this afternoon when we can resume debate and appropriately deal with the Bill. In that way other members will not feel that their rights have been infringed, which is my concern. I can understand and sympathise with the minister, and I would prefer the debate to roll on clause by clause, but I am only one member of this Chamber and I cannot speak for the other members. I believe that they ought to be involved in this decision. As the Bill stands on the Notice Paper members understand that clause 4 is unlikely to go to a vote for some time. Therefore, they know they can come in and out of the Chamber to participate in debate. I would feel much more comfortable if we could vote on this motion after question time when it is more likely that everybody will be here

Mr KOBELKE: I will state my understanding of how things might proceed. I will then ask for guidance or correction from the Chair if I am wrong. The system the member proposes contains some rigidity. I understand that once we deal with an amendment and that question has been resolved we cannot go back to an earlier stage of the Bill. That may mean that the Leader of the National Party - who is now here - would still miss out.

Mrs Edwardes: That is correct, minister.

Mr KOBELKE: I do not want to do something that is counter to the member's wish, but I believe that moving formally to debate subdivision by subdivision will make the debate easier to control; otherwise members may come in to speak on an issue but they will not be able to speak on it if an amendment has been dealt with. The fact that amendments are moved progresses us through the clause. It will be easier for members to understand, given the complexity of the Bill, if we set down the rule to proceed subdivision by subdivision. I do not wish to limit debate or exclude anyone. The first division dealing with employee and employer agreements relates to the preliminaries and extends from page 3 to page 6 of the Bill. Division 2 goes from page 6 to page 12. I see a natural progression if we deal with these matters by division or subdivision. To do otherwise will make it difficult for people to understand where we are at. Without a rule, members may think they can come in and debate an earlier clause, but they cannot if an amendment has been moved, because we cannot go back to an earlier stage once an amendment has been moved. I have moved the procedural motion that we handle debate subdivision by subdivision.

Mr Trenorden: I agree with the minister.

Mr KOBELKE: I did not want to put the vote if members were unhappy with the procedure. However, if people are generally happy that we go this way we can take a vote on it.

Question put and passed.

Consideration in Detail Resumed

Division 1: Preliminary -

Mrs EDWARDES: Division 1 essentially deals with employer-employee agreements and incorporates the definition clauses. I have one amendment standing in my name on the Notice Paper. Before I move that amendment, I will ask a question of the minister. Proposed section 97U(3) refers to proposed subsection (2), which states -

> References in this Part to "**employer**" and **"employee"** include, where the context so requires, a person who will be an employer or employee if a proposed EEA takes effect.

A change was made to the Bill after it had gone to a limited number of stakeholders for public comment. Proposed subsection (3) now takes into account that -

> Subsection (2) is not to be taken as showing that the terms "employer" and "employee", as defined in section 7(1), -

That reference is to the Industrial Relations Act -

> do not also include a prospective employer and a prospective employee for the purposes of other provisions of this Act, including without limitation the definition of "industrial matter".

I ask the minister to explain that proposed subsection.

Mr KOBELKE: The question asked by the member for Kingsley relates to when a person is judged to be an employer or employee. That is obviously important in determining the law that applies when someone is offered a job. Case law relating to the current Act shows that there is prospective application. The Government is seeking not to qualify or override that application, so that provision for it will remain in the Act. Proposed subsections (2) and (3) are included in the Bill to take that into account.

Mrs EDWARDES: I understand that the double negative in proposed subsection (3) was used in an effort to not override that provision. However, I wonder what is between proposed subsections (2) and (3) that made it necessary to incorporate that change.

Mr KOBELKE: The change was necessary to provide clarity, because the Act already makes provision for prospective application, which is substantiated by case law.

Mrs Edwardes: To do what?

Mr KOBELKE: To provide that there is prospective application for employers and employees.

Mrs Edwardes: Why is proposed subsection (3) needed when dealing with employers and employees if a proposed EEA takes effect? That is covered by proposed subsection (2), which states -

> References in this Part to **"employer"** and "**employee"**-

Why is there a need to link in proposed subsection (3)? Proposed subsection (2) would not take away what is being done in any event.

Mr KOBELKE: The explanation I have been given by the officer assisting me is that there was an issue with EEAs replacing workplace agreements and how that would affect the situation prior to taking up employment. That is caught up in the whole definition. During the consultation process, concern was expressed that this might somehow impinge on the way in which the relevant provisions relating to prospective employers and employees in the existing Act worked. This provision perhaps overstates the point in order to provide clarity. The change was made because concerns were raised during the consultation period that the relevant parts of the Bill would impinge on or in some way qualify or alter the existing operation of the Act and its definitions of employer, employee and prospective application. I have been told that some legal advice suggests that it is redundant and that, because of the concerns that were raised during the consultation phase, the change does nothing extra but will make it absolutely clear.

Mrs EDWARDES: I move -

> Page 3, after line 24 - To insert -
>
> > **"EEA"** means an employer-employee agreement and a collective employer-employee agreement;

This amendment provides a definition of an EEA. The definition provides for an extension of an EEA to incorporate not just an employer-employee agreement, but also a collective employer-employee agreement. If this Government were really serious about providing choice and flexibility in the workplace and wanted to ensure that a full range of workplace options were available for individuals and employers, it would obviously provide not only individual agreements, known under this legislation as EEAs, and opportunities to go onto an award or into a union collective agreement, but also non-union collective agreements. In his response to the second reading debate, the minister indicated that less than one per cent of employees had taken up non-union collective agreements. He was not willing to make one more amendment. He said it would be complex. With all due respect to the minister, his response did not do him justice. I want to know the real story behind the decision not to include a non-union collective agreement in the legislation. It does not make sense to say that if people want a non-union collective agreement, they can go to the federal Government. As I indicated during the debate, if that were the case, we would not need a State Government. If the federal Government provides for health care, education and police, why do we need a State Government? A past policy of the Labor Party has been to get rid of State Governments, which would enable the federal Government to work directly with local councils. That is perhaps reflected in the thinking on this Bill - the State does not really need that system because it is provided by the federal Government. That is a flaw in the system.

The minister and the Gallop Labor Government came to power on their policy to ensure that flexible working arrangements would be put in place. I regard the EEAs as a sop to the business community in an endeavour to try to quell some of the fears that arise in response to this labour relations legislation. The EEA is nothing more than a Clayton's workplace agreement. It is window-dressing. I am talking about choice. The Government has merely said that particular arrangements will be available in workplaces and that if people want anything else, they can go to the federal agreement. That has more to do with the fact that primacy for collective agreements - but only union collective agreements - is included in the objects of this Bill. That gets down to freedom of association principles - people's right to belong or not belong to a union. There is a flaw in the system. That point, when taken with a number of others, tends to indicate that this legislation breaches International Labour Organisation conventions. In the past, the minister has been very strong on ILO conventions. I do not fully understand why he is dismissing non-union collective agreements as something that people can access through the federal Government. That is nonsense. That explanation does not do the minister any justice.

Mr JOHNSON: I support the amendment moved by the member for Kingsley. I endorse many of her comments, because she has made some very valid points. The clause should provide for the flexibility and right to make non-union collective agreements. This Government came into office with the promise of providing flexibility in the workplace. However, this clause does not provide that flexibility. As my colleague has said, this clause provides for absolute primacy for union collective bargaining. That is not a choice.

I know many workplaces in which people prefer to use the employer-employee agreements system with individual EEAs between the workers and management. In some workplaces the whole work force may like to have a collective agreement. I have seen instances in the past in which management representatives have sat down with representatives from the work force and have come up with an overall agreement on working conditions, pay and so forth. That is right and proper. The only ones who would suffer in that instance would be the unions.

Every member of this House knows that the minister is favouring union collective agreements. There is no question about that. I believe that the public knows that this minister and this Government are in favour of having a totally unionised work force so that if people are not members of a union they cannot get a job. The Government wants to take away the fundamental, democratic right of workers to decide whether to join a union, and to discuss with employers how they want to work, their hours, their salary, and so forth. That is flexibility, and that was, of course, the benefit of workplace agreements. I accept that the Government wants to bring in EEAs as an alternative to workplace agreements. This legislation will not last long, because it will come up for review in the not too distant future. I have no doubt that when it comes up for review, we will see some horrific changes.

The Government wants to promote union collective agreements. I agree with the member for Kingsley that the minister has said quite flippantly that if workers do not want that, they can go to a federal award. However, if all these matters are handed over to be dealt with under a federal award, what will be the purpose of having the Western Australian Minister for Consumer and Employment Protection, because he will exist in name only? I have often said that education is the responsibility of the States, so why have a federal minister?

Ms MacTiernan: This is an intellectual debate!

Mr JOHNSON: Was that the voice of my little petal?

Ms MacTiernan: I was remarking on the eruditeness, as always, of your comments. I find them astounding. Your capacity for learning never ceases to amaze me.

Mrs Edwardes: When we were in government, there was a real relationship between the former member for Alfred Cove and the now Minister for Planning and Infrastructure, who was then in opposition. I think the member for Hillarys has taken his place in her mind.

Mr JOHNSON: That is what worries me.

Ms MacTiernan: Beware of the black widow spider is all that I say.

Mr Marlborough: Your future is looking bleak.

Mr JOHNSON: I had to explain a few things to my wife last night because I think some of my colleagues had told her a few things about my comments yesterday. I think the world of the member for Armadale. I love it when she interjects on me. She says that she likes to hear my voice, but I love to hear her voice, not when she shouts but when she speaks normally. However, her minister will be very cross with her if she interjects too much, because he wants to get through this Bill.

The amendment moved by the member for Kingsley is just and fair, and I totally support it.

Dr WOOLLARD: The wording of the amendment is very fair. If it were adopted, we might well find that more people in different workplaces would join unions, because they would realise how difficult it is to draw up an employer-employee agreement. I am sorry that I came into the debate late. I am not sure why the Government is not welcoming this amendment so that an EEA will mean a collective EEA.

Mr AINSWORTH: I support the amendment moved by the member for Kingsley. It is very important that employer-employee agreements give employers and employees, and particularly employees, genuine choice. Despite the perhaps philosophical objections that the Government has to workplace agreements, in many cases they have worked extremely well. In many cases in which employer-employee agreements have been drawn up and have worked well, that has been done without the involvement of the union. It is important that employees have the opportunity and right, which is what I believe it is, to enter into those types of agreements in whatever fashion they think fit. I support the amendment, because it will provide in the system that greater degree of flexibility and choice that is the right of employees.

Mr KOBELKE: The fact is that our legislation offers more choice; it does not reduce choice in a range of areas. The member for Kingsley is saying that we have not gone the extra yard and provided for non-union collective agreements. She is seeking to do that by means of this and a subsequent amendment. The form of non-union contract or collective agreement that was put in place by the last Government had a registration take-up of less than one per cent of the work force. I accept that there was some use of it, but it was very little. The take-up across the Commonwealth as a result of similar commonwealth legislation is something like 15 per cent of the work force. It is more significant, but it is still moderately small. The choice is there because people can turn to the commonwealth legislation.

It is a fair criticism to say that if this legislation had all the bells and whistles on it, there could be a non-union collective agreement. I have no problem with that in principle. However, the point I made was that a fair bit of work must be done in order to do that. We did not consider that essential, given the very low take-up. That is why it is not in the legislation, and it is not appropriate to put it in the legislation.

I do not in any way wish to go outside the standing orders. If this amendment is lost, I do not believe there will be any point in taking the next amendment. However, I will still need to address the next amendment so that members will understand why we are opposing this amendment.

Mrs Edwardes: I still intend to move it.

Mr KOBELKE: Okay. I will be brief. The next amendment is a simple lift-out from section 170LK of the commonwealth Workplace Relations Act. That is the core part of the establishment of a non-union collective agreement. The federal Workplace Relations Act contains a range of other sections designed to make non-union collective agreements workable. None of those is proposed. This amendment simply makes the point, and I accept that - it is a valid point. However, it is not feasible to provide for non-union collective agreements. If this proposed amendment and the next proposed amendment were passed, the legislation would not contain the required voting procedures and other regulatory mechanisms. It is not a simple matter of saying that we would like non-union agreements. A complex structure must be established, but that is not included in the member's proposal.

The Government did not go down that path because the amendments would be substantial. They could be lifted from the federal legislation, but they do not fit in with what the Government is doing in this State. Therefore, for a range of technical reasons, the Government has decided not to go down that path. The Opposition has stated that the legislation should contain those provisions, but its proposal would not achieve that. The situation is much more complex and is not addressed by this proposed amendment. The Government will not accept this amendment.

Mrs EDWARDES: That is the reason for the definition. It would not be necessary to lift the rest of the sections; we simply need to provide the power to negotiate with a group of employees who are in the majority. I understand that a couple of t's might not have been crossed. However, incorporating non-union collective EEAs with collective EEAs would provide mechanisms for registration, dispute resolution and so on. The minister claims that I have lifted only one section. That is true, but the definition provides for a large part of that. I accept that a few i's might not have been dotted, but that is no excuse to reject it out of hand. The minister could easily have had his officers review the proposed amendment and, if he were serious, incorporated this proposal in the Government's amendments. I doubt that it would have been as complex as he is suggesting. We could have incorporated an entire section dealing with non-union collective agreements. Equally, we could have done as I have suggested and incorporated this in the collective EEA process. The voting process could be covered by regulations, which would include the requirement for a majority.

Amendment put and negatived.

Division put and passed.

Division 2: The making of an EEA -

Mrs EDWARDES: Proposed section 97UA deals with the making of an EEA. I have referred to it as a Clayton's workplace agreement. It is window-dressing and it is unworkable. The Queensland Labor Government attempted to appease the business community, which was seeking support for flexible working arrangements. The arrangements it put in place have proved unpopular and costly. Timeliness is important in business, but it is not a characteristic of that State's system. The business community, the legal profession and those who have a role in workplace relations in this State believe that these arrangements will be very unpopular and will not be used as frequently as are workplace agreements.

This situation emerged because both the state and federal Labor Parties are totally opposed to individual agreements. The unions carried on a debate about individual agreements in the year leading up to the election.

They make no bones about the fact that they oppose individual agreements. They do so because they are not part of the process, which allows employers and employees to make their own arrangements. At the second reading stage members opposite said that that was nonsense and they made much of the imbalance of power between employers and employees. I recognise that in some instances employers might exercise their power over employees. However, many employers and employees like to make their own arrangements and to have the flexibility to meet the needs of both groups. That is the direction in which workplaces are heading.

The conventions of the 1950s no longer exist. In 2010 and 2020, workplaces will be very different and there will be a greater need for flexibility. I have indicated in this place previously that in future public policy will need to reflect the fact that workers will be doing a mix of part-time and casual work and might be self-employed at the same time. If we throw in contractual arrangements, it will provide a broad mix of working arrangements, some of which will be negotiated collectively.

Superannuation portability will become an important issue. Long service leave is portable in the construction industry, because it is recognised that workplace sites change on a day-to-day basis. That notion has not yet hit the labour movement in Western Australia, nor has the Government understood the important need to look after the rights of employees involved in those varied working arrangements.

The introduction of EEAs would be a costly exercise. I have been informed about the transaction costs involved in registering an EEA, the lack of timeliness, the information required, appeal rights and so on. They are issues of concern and I will address them as we progress through this debate.

This Government has introduced a process that it knows is unworkable. The unions know it is unworkable and unpopular. The disruption that will result will provide the unions with an opportunity to play a greater part in the development of workplace conditions and terms of employment. The business community is not convinced that this legislation will provide flexible working arrangements.

Mr JOHNSON: Once again, I endorse the words of the member for Kingsley, who, with her legal expertise, has a great deal of knowledge of how this legislation will operate in the workplace for not only employees but also employers. As I said earlier, the employer-employee agreement system will be temporary. It will become so cumbersome that, eventually, it will be almost unworkable. It is not the Government's favoured position. Why? It is not the union's favoured position. The unions obviously want everybody in the workplace in Western Australia to be a union member. They make no secret of that. That is why no ticket, no start signs are on most building sites. However, the unions are not au fait with the resolve of many Western Australian workers. The majority of people in the work force do not want to be union members. They often do not agree with union tactics. They do not want to be continually on strike over trivial matters that the unions use to bulldoze the employers into giving way. We have seen many instances in the past of those tactics, which I deplore. The vast majority of Western Australians feel the same way. That is why, during the next election, people will remember this Bill. They will see the damage it causes and they will vote the Australian Labour Party in Western Australia out of office. Why? Clauses such as this will create higher unemployment and will cause businesses to go bankrupt. As I have said in this House previously, within the next three years a record number of businesses will go bankrupt and unemployment will reach record heights. The minister is pushing the union's collective agreement for philosophical reasons. I understand that, although I do not agree with it because I have a different philosophical view. However, the Government is misleading the public by including this provision because it campaigned at the election on the basis of providing greater flexibility in the workplace. This clause will not do that. It will not provide the flexibility people seek because, as I said, the huge majority of workers do not want to be part of a union. They do not want to waste some of their wages every week on union dues. Union membership has declined because union membership is no longer compulsory.

I talk to many people in the work force, as does the minister. Most of them want to work for a good living and at the end of each week spend time with their family. They do not want to be members of a union and they do not want to pay union membership fees for the unions to waste. As I said before, often a worker must pay more than one union. He may be a member of the plumbers union or the electricians union but in order to be employed on a certain work site, he must join another union. This Bill will allow membership of multiple unions, but it will not be a matter of choice because the requirement to join a union will be enshrined in legislation.

I endorse the valid comments of the member for Kingsley. However, I do not for one moment expect the minister to take on board those comments. He may be vaguely interested, but he will not do anything about them. I oppose the division.

Mr KOBELKE: This division outlines the provisions for creating an employer-employee agreement. It is obvious that the Opposition believes that the EEA system is not a genuine proposal and that union domination will occur in the work force. That belief is wrong on both scores. First, the Government is genuine about the

EEA system. It clearly intends that it will work and it will be used. Members opposite appear to have not understood the technical aspects of the Bill, which are perhaps difficult to grasp.

The Government's proposal for the implementation of EEAs has not been attempted in any other State to date. The effect of statutory individual contracts introduced here and at the federal level has been to undermine the collective system - to simply remove any collective approach and downgrade the Industrial Relations Commission by fettering various aspects of its operations. That approach in Western Australia, nationally and in other countries has caused a huge amount of job insecurity. If members listen openly in discussions with their constituents, they will realise that job insecurity is a huge problem in this State. They may interpret the causes of job insecurity differently from the Government, and that is a matter for debate. However, they must accept that huge job insecurity exists. Much more bullying and intimidation occurs in the workplace than occurred 10 years ago. That is a real problem to which many causes can be attributed.

The Government is proposing a system that respects the collective approach, which is very important in seeking to improve those areas. The Government agrees that choice is also very important; therefore, it is providing employer-employee agreements as a genuine choice. That means that the collective will work much better, although I am not denying that the collective has problems with that choice. Many of the awards contain extremely rigid provisions, which impede expansion, productivity and growth. The Government wants to remove that rigidity. Although we clearly acknowledge that awards are very important and we are promoting them in a range of ways, we have not overlooked the restrictions they impose.

The EEA system will, for the first time, create genuine and productive competition between the individual contract in the EEA and the collective. Throughout Australia, EEAs have been used to try to destroy the collective rather than create a dynamic, competitive system between the two. Under the Labor Government in Queensland, where workplace agreements are not used, the Government tried to reintroduce a solely collective system and remove the major use of contracts. Our union colleagues are not in favour of this system, and they have not supported it. However, it is the Government's proposal, which this Bill will implement and which the Government will make work. The impact on the collective of genuine individual contracts will help to drive improvements in the award system. That is crucial to making industrial relations work in an innovative and competitive economy like ours.

I ask members to try to come to grips with the Bill. The EEA proposal is radically different from systems in other States in Australia. This proposal will not take work practices or industrial relations back to the 1960s, which a casual reading of some elements by some people may have led them to believe. This Bill will implement a new, creative dynamic between individual contracts and the collective. As a result, we will see the modernisation of awards so that they become much more employer friendly. That will drive this system and that is why EEAs are important, even though the Government would prefer collective bargaining to the signing of individual contracts.

This Bill is not a collection of a whole lot of black marks on paper to somehow position the Government. It will implement something that has not been tried in Australia before. I hope that it will be fruitful in providing not only greater protection and fairness but also greater productivity through the flexibility that will be created by competition between the individual and the collective.

Mrs EDWARDES: The minister referred to Queensland and said that this proposal was radically different from practices elsewhere. I do not want to overstate it, but I thought the minister had been critical of individual agreements in Queensland, as is the business community here and in Queensland. What is the difference between this EEA proposal and individual agreements in operation in Queensland?

Mr KOBELKE: It is some time since I carried out the comparison, so I cannot give chapter and verse about how the Queensland workplace agreements compare with the EEAs proposed by the Government. The proof is in the tasting. The last time I checked, the take-up rate of workplace agreements in Queensland was about 12 a month. They are simply not being used. I anticipate that the Government's agreements will be used.

Mrs Edwardes: What is the difference in the practical implications?

Mr KOBELKE: I stand to be corrected on this, because it is some time since I compared the two, but the workplace agreements in Queensland are totally within the ambit of the Industrial Relations Commission. They do not step outside the award. That is covered, in the present legislation, in proposed section 97UE(1), which states -

> An EEA, while it has effect, operates to prevent from extending to the employee any award that would otherwise do so . . .

In addition, there is provision for matters of dispute to be handled by dispute resolution procedures in the EEA, rather than being referred to the commission. Systems such as that appeal to some employers, who do not wish third parties such as the Industrial Relations Commission to be involved. Much of that attitude is not well founded, but that is their position, and the Government is providing that choice. The EEAs in this legislation will provide flexibility, which, although it is available through industrial agreements in Queensland, requires the involvement of unions there. If an employer does not wish to involve unions, a flexible arrangement can be put in place with employees. In technical ways, these things are different from what happens in Queensland, and may be some of the reasons for the very low uptake rate in that State. It may also be due to the fact that the agreements there did not become established before the current Government was elected. They were brought in by the previous National Party Government, as I understand it, and they were changed on two occasions by Labor Governments. It may be that they were not established beforehand, so there was no appetite for them. It is different here in Western Australia. There has been a small but significant uptake, and therefore there is an appetite for workplace agreements. Having got used to the practice, people may think they wish to continue, and that is why the EEAs have been provided.

Mrs EDWARDES: I would not mind if, at some point during the debate, the minister could provide a copy of that comparison.

Mr Kobelke: I had a paper from Queensland, which I looked at prior to doing the Government's legislation. I do not have a paper which compares the two.

Mrs EDWARDES: Even that would be useful, because employer groups have said to me that the system has not been popular in Queensland, and they fear that the rigidity which the minister identifies as a problem in Queensland will apply here. If I can understand the differences, I can put forward that information.

I bring the minister back to the issue of choice. He said just now in his response that the EEA genuinely provides choice, but that does not seem to apply to public servants. There is no choice for public servants. In 1999, when in opposition, the present minister brought into this Parliament a Bill dealing with choice, which was aimed purely at public servants. It was intended to give new public servants a choice between workplace agreements and industrial awards. At the time he said that choice between workplace agreements and unemployment is no choice at all. He was totally focused on public servants, rather than the private sector. He said that the proposed amendments would restore choice, and that the then Government should support them. I quote from a radio news statement on 23 April 1999, when the present minister said -

> What we are talking about is real choices for people in Western Australia, not an absolutely ridiculous situation where they are forced into unemployment, rather than seek a workplace agreement . . .

On many occasions the present minister suggested that a choice of employment, and of conditions of employment, should be a basic right. To some extent he is putting that forward in this legislation, except for two areas: those who would like a non-union collective agreement - the House will debate that shortly - and public servants. In the debate in 1999, the present minister said that new employees should be given a choice. The Opposition knows of instances in which the present Government, when it came to power, changed the policy for individual public servants who had not as yet signed workplace agreements. Even though they had agreed to the job, the paperwork had been completed and all that was needed was a signature on the agreement, they were told they would be back on the award or the enterprise bargaining agreement. That decision cost public servants money. I gave instances in this House last year of employees losing up to $2 000 a year. That may not be very much to the minister, but to 19 or 20-year-olds, it is a very important issue. They were particularly upset that they had made an agreement, and then all of a sudden they were to lose. What has changed the mind of the minister since 1999 to the position that public servants should not be given the choice between individual agreements and industrial awards?

Mr KOBELKE: The position has not changed. Choice is fettered in various ways. When the present Opposition was in Government, it promised choice, but it was choice only for employers. The then Government was denying the reality, saying that employees had choice, while denying employment to anyone who did not sign a workplace agreement. The then Opposition was showing up this hypocrisy by introducing a Bill to address that issue, and to deliver on what the Government was promising. The then Opposition had said all along that its preference was for the collective approach. To understand this, one must appreciate that there is a hierarchy of choice. The first choice is always with the employer, whether it be the Government or the private sector, who decides whether to take on people. The employer then has the choice of the form of contract offered. We have always set that up. Under the previous Government, the employer could choose to establish workplace agreements, but there was no choice for the employee. It was a choice between signing the agreement or not getting the job. The Government still accepts that the first level of choice is for the employer. As the employer,

the Government has said that, in the overwhelming majority of cases, it will not be using individual contracts. That has always been a clearly stated policy.

Mrs Edwardes: Why was that?

Mr KOBELKE: Because the Government believes that the collective approach is a better way to go. The individual contract is of benefit only in the cases of specialised individuals who tend to work as individuals, and who require a special package to attract them. A gynaecologist required to work in the Kimberley would be an example. There would be only one, and a specialised package would be required. The Government is still leaving open the prospect of using individual contracts in the public sector in cases such as those, as well as for chief executive officers. The Government has always said that to the unions and others. In some limited cases the Government reserves the right to use individual contracts, whether they be workplace agreements or the new EEAs. As a point of principle very early on, as it supports the principle of the collective, the Government declared that it would not be using individual contracts of any kind generally across the public service. For people working in similar jobs, there should be standard bands of pay rates and conditions. They can be different from one agency to another, if the requirements are different, but people should be working alongside each other on the same basis. The Government currently faces huge management problems because of the disparity created under the last Government. That disparity was not created only by workplace agreements. It was created by the method used, so it existed also between enterprise bargaining agreements. The Government is trying to overcome that disparity for good management reasons and fairness to workers. The point about choice must be seen in that hierarchy. The Government does not take issue with the fact that the hierarchy of choice in contract employment is employers first, because they are offering the employment. The Government has decided not to use individual contracts generally across the public sector but to grant the choice to employees if employers decide to use individual contracts. The Government's position is clear: we do not regard individual contracts as the best or fairest form of management across the public sector, and we stated clearly before the election that we would not use them generally.

Mrs EDWARDES: I take the minister back to the debate in 1999. He has indicated now that the Government, as an employer, has made a choice about the type of working arrangement to be offered to employees. However, in 1999 the minister, as an opposition member, moved the following motion -

> That this House condemns the Court Government for requiring new public sector employees to only be offered employment under the terms and conditions of a workplace agreement and for the Government's denial of choice which makes a lie of its justification and selling of workplace agreements as providing choice in the workplace.

I suggest to the minister that I could submit the same motion, which would read -

> That this House condemns the Gallop Labor Government for requiring both existing and new public sector employees to only be offered employment under the terms and conditions of an industrial agreement or an enterprise bargaining agreement and for the Government's denial of choice.

The minister has changed his position. I do not quibble with him that the Government stated its position prior to the election. However, the minister's view of providing choice is a nonsense when applied to public servants. This is the only Government in Australia that is denying public servants the choice between an employer-employee agreement and an enterprise bargaining agreement.

The minister also suggested that we as a Government tried to further push down the wages and conditions of Western Australia's public servants. The minister realised, when issuing this Government's package to public servants, that we did not drive down wages and conditions. It is costing this Government $130 million to bring that package up to a particular benchmark. Many public servants will have their salaries maintained until others on lower salaries catch up to them. They will, in fact, be punished for having accepted higher remuneration, probably as a trade-off for other conditions. That will result in a major cost increase. It has cost the Government a lot of money to implement its workplace policy on public servants. The critical issue is that the Government is not offering choice to public servants, which puts the lie to the Government's philosophy that it says underpins this legislation.

Mr KOBELKE: The point of the member for Kingsley may be good political positioning in an attempt to create an image but it is not factual. During the term of the Court Government we were committed to abolishing workplace agreements. We have said constantly that we would get rid of workplace agreements. How can the member say that we are offering choice in workplace agreements when we have always said that we would abolish them? What we said, in driving home the point to the then Government, was that it offered a choice to public sector employees and denied it at the same time. A total charade was carried on in which one thing was

said by Minister Kierath, who said that all government employees had a choice, when, in fact, they were not given a choice.

Mrs Edwardes: You are misrepresenting him.

Mr KOBELKE: No. He continually talked about choice for employees and said that employees had more choice under what he had put in place, yet his Government totally denied them a choice.

The Bill we have brought into the Parliament will fulfil the undertaking that the previous Government failed to deliver. Our stated position was to abolish workplace agreements. That has not changed. That is what we are doing. We continue to believe that the Government should not offer workplace agreements generally. We have not varied our position. Individual contracts have been used in the past in some areas, particularly under common law. We are simply getting rid of workplace agreements and giving employers a choice about using a statutory form of individual contract - that is, an EEA - or a collective form. We as a Government will not offer individual forms of contract generally, but we will ensure that employees now have a choice. I know that will be difficult for employers and I am sure we will debate that issue when we reach that clause in the Bill.

Mr JOHNSON: The minister has contradicted himself because public servant employees will have only one choice; that is, take it or leave it. The only choice they will have is for a collective agreement by the unions or no agreement, because this Government will not allow EEAs in the public service. The minister said that there will be some EEAs in specialised areas, such as gynaecology, whose members move about because there is a shortage of them or for some other reason.

I remind the minister of a case I have mentioned in the House previously. One of my constituents, a nurse, came to see me. She was desperate to continue her workplace agreement. She does not have that choice anymore. Why can public servants not be offered EEAs, which would give them some flexibility? The Government is the employer of the largest work force in this State, yet it is refusing to give that work force the democratic right to have individual agreements by means of EEAs.

The member for Kingsley and the minister talked about what happened when we were in government and the minister was in opposition. The minister said that workers had no choice. However, the member for Kingsley was correct in her interjection when she said that they did have a choice; that is, stick with the award or go on to a workplace agreement. Many thousands of people, particularly in the public sector, went on to workplace agreements because it suited them. I know that it suited my constituent the nurse, and I know of many others who have a flexible working agreement with their employers because of their particular family situations. The Government with this Bill will deny that nurse a flexible working agreement. Western Australia has a shortage of nurses and the Government is creating a situation in which we may lose more nurses. That nurse said that she would not be able to work on a normal roster, which is the only one that will be offered to her now, because her family situation does not allow that to happen.

Mr Kobelke: That point of rostering is not true.

Mr JOHNSON: Perhaps the minister can answer that point. Many members of the public are of the same view in their understanding of this legislation and what is afoot for them. I also want the minister to justify to this House and to the people of Western Australia why he has refused to give the public servants in Western Australia - the largest work force in WA - the choice of flexibility which they deserve and for which they have an absolute right to ask. He is denying them the absolute right to have that flexibility. I know that the reason from a political point of view is that the public service will be totally dominated by the unions and will be the area from which the unions will get the majority of their income. This Government will collect the union fees and hand them over to the unions because it knows that at some stage it will get a fair chunk of that money back. The minister knows that and I know that because the unions are the major contributors to the funding of the Labor Party.

Mr Kobelke: The CSA?

Mr JOHNSON: The minister is smiling and I am smiling because we both know that what I am saying is true.

Mr Kobelke: No, you are talking absolute nonsense. You do not know what you are talking about.

Mr JOHNSON: I predict that in two years every person employed by the Government in the public service will have to pay union fees, which will be collected by the Government. That is my prediction.

Mr Kobelke: By way of interjection -

Mr JOHNSON: Instead of making an interjection, I would prefer the minister to stand and answer all the questions. This is a serious issue - one about which I feel very strongly - because the Government is attempting to remove the democratic right of the public service.

Mr KOBELKE: I have covered the points that have been raised about choice. However, the member's claim that these measures are about increasing the membership of the Civil Service Association of Western Australia, and that the funds will go to the Labor Party, is sheer nonsense. To my knowledge the CSA has not contributed, in any way, to the Labor Party. It is apolitical in that sense and is not affiliated with the Labor Party. However, affiliated unions do contribute to the Labor Party. The CSA is not affiliated, and to my knowledge it never has contributed, directly or indirectly, to the Labor Party. Therefore the member's argument does not stack up.

Mrs EDWARDES: Some unions would vehemently oppose the Gallop Labor Government ever receiving one cent of their money, because they do not support some of the measures that are being introduced. However, the minister is trying to portray that his measures are fully supported. This is all just window-dressing, because if we were to take away the skin and look under the shell we would find that these measures will provide for union domination. The CSA may not currently contribute money to the Labor Party coffers, but there will be a strong representation via this legislation to convince it otherwise. I am sure that this is what the minister and the Labor Party is all about. The CSA may not have contributed in the past, but I bet my bottom dollar that once the union dues start flowing back into the coffers, it will in the future.

I turn now to public servants. The minister suggested that leaders - that is, the chief executive officers of each of the departments - might be offered individual agreements, as would gynaecologists, in an attempt to attract them to particular areas. I understand that. What about some of the other leaders in our community, such as school principals? School principals have formed a strong association, and approximately 1 400 members of that association have entered into workplace agreements. Obviously, they would still like the opportunity to exercise that right. The members of that group of school principals believe that they are being disenfranchised. Will the minister clarify whether school principals will be one of the small groups that will be extended the opportunity and choice of an EEA?

Mr KOBELKE: I cannot give a straight answer to that question. I will need to discuss it with the Minister for Education. I understand that they will not be extended the option of an EEA. However, that is not a hard and fast rule because it is a complicated area. If they were to choose an EBA, they would clearly need a union. There is also the issue that principals might not wish to be in the same union as other staff. I need to talk to the principals' association. I have had one meeting with the association, and I am happy to have further meetings. The association indicated this was not a matter of urgency because its current workplace agreements will run for some time. Obviously, the Minister for Education and the State School Teachers Union of WA will also have a key interest in this issue. There are a range of complexities, and we need to look at all of them However, it is my general feeling that if 1 400 people are carrying out similar work, that does not fit the general criteria for the Government to offer them EEAs. We will need to talk to various parties to determine the final position on this matter.

Mr AINSWORTH: If school teachers work under a collective agreement, what happens when teachers are required to teach in remote areas and need to be offered special incentives to do so? That situation would not come under the same financial arrangement as that of a teacher in a metropolitan classroom or in a more desirable country school. Can special arrangements be accommodated if such a teacher is working under a collective arrangement, or would he also need to be on an EEA?

Mr KOBELKE: The member correctly alluded to the answer. The EBA, which we call the industrial agreement, has the flexibility to put in place allowances for people who work in remote areas or carry out specialised work. Sometimes EBAs have not been flexible, and there have been some restrictions in the collective system, but they generally provide tremendous flexibility. I have talked to people who work in the retail industry, who have told me that their EBAs allowed for not only 12-hour shifts, seven days a week, but also pay differentiation. If an individual was a very good salesperson, he could have built into his EBA a different rate of pay from that of those working alongside him, because he was recognised as being very good at his job. Some employers do not wish to have an EBA with the union. If the union is not willing to accommodate them, the EEAs will be available.

Clearly, we want flexibility for teachers, and we would enter into negotiations for an EBA that would provide the flexibility of special conditions and allowances, if that were judged to be necessary or useful, to promote education in remote areas or in areas to which it is difficult to attract teachers. We do not need individual contracts to do that. That is a management matter within education. The technical basis for that employment contract is not really advantaged one way or the other by using an individual or industrial agreement.

Mrs EDWARDES: I bring to the attention of the minister a contract that has just been let by Computerised Application Management System for the Western Australian Industrial Relations Commission. One of the points made in that tender document states -

> The likely changes to the industrial relations act and the impending folding of the workplace agreements act are primary drivers for this change. At present the commission receives approximately 4 000 applications per year.

Do those 4 000 applications relate to workplace agreements? The document continues -

> With the introduction of EEA's it is predicated that this number may rise in excess of 20 000.

Do the 20 000 applications represent the number of applications that will be sent to the commission under the entire Act, not just the EEAs? Do the 4 000 applications represent what currently goes to the commission? I do not believe they are workplace agreements; however, I will stand corrected. If so, the Government is really increasing the number of applications to the commission, and there is not an enormous increase in the proportion of EEAs.

Mr KOBELKE: I am not aware of the contract, and I have not read it. However, the commission does not deal with workplace agreements. It has dealings with workplace agreements only when they reference dispute resolution to the commission. It does not do this under its powers as a commission; it is referenced in the workplace agreement. I do not know whether such cases are recorded on the system. If they were recorded, the number would be very low. However, without seeing the document, I do not know whether it includes variations or also covers unfair dismissals. I suspect that is the general work of the commission, which most probably covers all the matters that go to it. It mentions 4 000 applications a year. I suspect that includes all forms of work that are registered. However, that is a guess. I would have to clarify that.

Currently, all the workplace agreements are registered and handled by the Office of the Commissioner of Workplace Agreements. That office is being downsized because of a decrease in the number of applications. Staff and resources will be transferred to the registrar of the Western Australian Industrial Relations Commission, who will take on this new role. The commission is obviously preparing its system so that it will be able to cope with the amount of work that will need to be done. The experience gained from the Office of the Commissioner of Workplace Agreements will be used to augment the resources that will be put into the registrar's office at the Western Australian Industrial Relations Commission.

Mrs EDWARDES: This question is probably outside the terms of proposed section 97UA or, in particular, division 2, so I ask for the indulgence of the House and the minister. We were just talking about the increased number of applications that will be lodged with the commission. The number of applications is expected to increase from 4 000 to 20 000. Not all those applications would relate to the transfer to the commission of the work connected with workplace agreements. There will obviously be an increase in the workload of the commission. What are the estimated budgetary implications for the IRC?

Mr KOBELKE: I cannot provide that information. We are certainly preparing for this year's budget, and those figures have been included. However, I cannot give them off the top of my head. There must be an estimation - it is only an estimation. Only in time will we know the real situation. The reforms in this Bill seek to limit the number of applications regarding unfair dismissal. The overwhelming majority of the work of the commission currently is on unfair dismissals, and 25 per cent of those unfair dismissal cases involve people in their first three months of employment. The changes in this legislation seek to remove most of those cases. Hopefully, the amount of work in the unfair dismissal jurisdiction will decrease. However, one cannot be sure, because a few years ago, just before the member for Kingsley became the minister, the Commonwealth changed its law, and suddenly there was a huge influx of cases into the Western Australian system because of what the Commonwealth did. We must take account of those changes.

The majority of the work in the commission currently relates to unfair dismissals. We are seeking to reduce that. However, there will be additional work in connection with the registration process. That process will take the time of the commission in two different ways. One is in setting the rules and standards, and we will debate that matter at another time when we reach that clause. The rules must be set, and the commissioners will get involved. The registration of the employer-employee agreements is a clerical job that will be done by the registrar, or people who are deputised by the registrar to do that work. Although there may be a large number of agreements, the number of full-time equivalents and other resources required to deal with them will be substantially less than would be required to deal with, say, one unfair dismissal case which goes through the commission and which may involve a week's hearing.

We hope that there will be a major reduction in the number of unfair dismissal cases. The resources that have been dealing with those cases, plus the additional resources, will go to the commission to deal with the registration process for the agreements and the role of the commission in the initial stages, which could be major, in setting up the rules for the EEAs.

Mrs Edwardes: In light of all those changes, do you believe extra commissioners will be needed?

Mr KOBELKE: That is a vexed question. Some people are saying that we will need them and that I should appoint extra commissioners. However, basically, commissioners are appointed for life; they cannot be removed. I know that there are some delays in the commission now because there has been some pressure on the commission. However, if we are successful, as we hope to be, in removing 25 per cent of the unfair dismissal cases, which is the bulk of the commission's work, that will free up the commissioners, and there may not be a need for more commissioners. We will monitor the situation closely. I do not want to waste taxpayers' resources by appointing someone whom we will have to maintain if the work drops off. I would rather monitor the situation closely, and if extra commissioners are needed, obviously a case for that will be put forward, and the resources will be allocated.

Mrs EDWARDES: I move -

Page 6, after line 13 - To insert the following -

97UAA. Collective Employer - Employee Agreement

(1) The employer may make a collective employer-employee agreement with a valid majority of the persons employed at the time whose employment will be subject to the EEA.

(2) The employer must take reasonable steps to ensure that every person employed at the time whose employment will be subject to the EEA has at least 14 days' notice, in writing, of intention to make the EEA, and the EEA must not be made before those 14 days have passed.

(3) At or before the time when the notice is given, the employer must take reasonable steps to ensure that every such person either has, or has ready access to, the proposed agreement, in writing.

(4) Before the EEA is made, the employer must take reasonable steps to ensure that the terms of the EEA are explained to all the persons employed at the time whose employment will be subject to the EEA.

(5) If a proposed EEA is varied for any reason after the notice is given, the steps in subsections (2), (3) and (4) must again be taken in relation to the proposed EEA as varied.

Essentially, this amendment provides for collective employer-employee agreements. The minister said that it is a flag-waving exercise. If it is a flag-waving exercise on a small scale, I am still pleased to put forward the amendment. However, I believe it is more than that. I will pick up on the critical points that the minister keeps raising. He said that this legislation is about giving more choice, and he indicated that employers have the first choice of the type of workplace arrangement they will offer. However, employees' choice must be taken into account. A number of employees would like to get together and have the same agreement. Essentially, they are all doing the same job and working in the same workplace, and they would like to share the same benefits. However, they do not want the union involved in the decision making.

At the moment, one such group of people within the building and construction industry is attempting to get up an enterprise bargaining agreement without the union being involved - very brave people in this climate of militancy by the Construction, Forestry, Mining and Energy Union and its actions over the past 12 months. However, those people are attempting to do that. Since this legislation was introduced, all the work in that direction has stopped, because there will no longer be a provision that enables them to do so. Even if they went onto individual agreements, those agreements would not exist for very long. Those people want to negotiate together; they do not want to negotiate individually. For them, that is very much the key part. They no longer have the choice of opting for a state, non-union collective agreement. They will have to decide whether they wish to go across to the federal arena. They and other employees and employers will need to work out whether the federal system will provide what they need.

Clearly, the issue is that those people do not have a choice of making a collective agreement without a union being involved. That is a serious breach of the freedom of association provisions espoused by the International Labour Organisation. Although this State could argue about that because only the Commonwealth can take matters to the ILO, those people could go across to the federal system; therefore, there would not be a breach.

There is a real concern that parties are unable to make non-union collective agreements. It is not just political flag-waving. Some groups of employees would like to join together and make an agreement. Some employers would also like to make provision for a similar arrangement, whereby all their employees agree to the same terms and conditions so that there is no differentiation between them. However, under this legislation there is no choice.

Often in this House the minister has mentioned Fielding. Fielding was a former commissioner of the Industrial Relations Commission who carried out a major review of the industrial relations system in 1995. When the minister was in opposition and I was the minister, he was constantly at me about when I would implement the Fielding recommendations. However, the first opportunity he gets, he implements only one. This was one of the recommendations that Fielding made at page 170 of his report onwards. Yesterday the minister said that the union movement supported non-union collective agreements. It did. The Trades and Labor Council at that time supported the non-union collective agreements that were being proposed.

Mr Kobelke: I am not sure whether I said the union movement supported them; it no longer opposed them. It was vehemently opposed to them when Brereton first tried to do it.

Mr BARNETT: This is a very important subject. When Gavan Fielding was the commissioner, he did some outstanding work. Generally, he has thought freely and openly about the future of the industrial relations system. Knowing the man personally, I am interested in and respectful of any comments he makes on industrial relations. We should hear more from the member for Kingsley.

Mrs EDWARDES: I am glad that the minister clarified his understanding of the union's position for me. A number of unions would be as vehemently opposed to non-union collective agreements as they are to individual workplace agreements. The former Government often dealt with Tony Cooke, through what was then called the Trades and Labor Council. Tony was a very pragmatic and reasonable union official. Although the gloves were taken off behind closed doors and we often spoke frankly, after our discussions we knew what positions we could take to our respective constituents. I could sit down with him and work out the big picture. He had a big vision for Western Australia and its workplaces. I appreciate the time we had to work together on many issues, including workers compensation, occupational health and safety and labour relations.

He supported non-union collective agreements. Although I do not remember whether he was opposed to the final matrix, I thought that the Fielding report indicated he did support it; however, that is beside the point. There was support for non-union collective agreements. It was a major recommendation of the Fielding report. This Government says it supports choice and wants to provide for a number of flexible working arrangements in the workplace, yet the one arrangement that it left out is non-union collective agreements. The Government's thin argument proposes that non-union collective agreements would be complex and require a lot of work given the small take-up. I remind the minister that the rest of the Bill is complex. Some of the other mechanisms the Government will, through this legislation, put in place for union involvement and the like might have led to an even greater take-up of non-union collective agreements.

Before this legislation passes through Parliament, I urge the minister to rethink this policy. I do not know whether it is a policy. The Government supports non-union collective agreements. Either it did not get around to it, or there was some other reason that the Government did not include that provision in the Bill. I do not accept that it was not included because of the complexity of the arrangements. When briefing parliamentary counsel and/or the Cabinet, the Government could have included EEAs and collective EEAs as options. I cannot understand why the Government left collective EEAs out of the process without reasons more valid than that they are provided for in federal awards, which anybody can access, and that they have a low take-up rate. I urge the minister to rethink the matter before this legislation passes through the House. If the minister does not like my amendments perhaps I will not go back to my previous career of drafting legislation; I will stick to my day job. If the minister does not like my amendment he should feel free to bring to this House amendments that will provide for the non-union EEA to be put in place. I do not believe it is as difficult or complex as minister has attempted to make out.

Mr KOBELKE: The member's reference to the International Labour Organisation was like Don Quixote tilting at windmills. Through the Committee of Experts, which is one of a range of structures within that organisation, the ILO found that our current legislation contravenes -

Mrs Edwardes: Don't misrepresent its words, be very careful of what you say.

Mr KOBELKE: I am not referring to the ILO's other formal structure; however, the Committee of Experts found that the current Western Australian legislation undermines the collective. The member's suggesting that the lack of choice in this legislation undermines the ILO conventions can be compared with trying to fly without a feather; there is no basis to that suggestion whatsoever. The low take-up of non-union collective agreements

could be due to a range of reasons. One reason is that they appear attractive on the surface as some employers want to work with their work force collectively but are opposed to union involvement because they have had a bad experience or are philosophically opposed to them -

Mr Barnett: Or their employees are not members of the unions and could not give a rats about the unions.

Mr KOBELKE: My limited understanding is that non-union collective agreements have not been all that successful and they run into all sorts of difficulties. I was given an example of a workplace that had a high turnover and no-one was sure who was responsible for the collective agreement because there was no established body, such as a union, to provide permanency to monitor the situation and help maintain the collective.

Mrs Edwardes: That can easily be put into the legislation.

Mr KOBELKE: That happens under existing legislation. The commonwealth Workplace Relations Act consists of a range of sections. The member for Kingsley has used section 170LK in her amendment. It is interesting that she did not choose to use the whole section. She did not include the two subsections relating to notification of unions.

Mrs Edwardes: Those two subsections were not needed because the union is incorporated in the proposed section dealing with bargaining agents.

Mr KOBELKE: They provided for giving notification, which is a fair process.

Mrs Edwardes: But if you take up my definition clause, the unions can still be involved, if the members so wish, through the bargaining agent process.

Mr KOBELKE: Nevertheless, the member does not want to include the notification procedures.

Mrs Edwardes: That aspect is covered.

Mr KOBELKE: I do not think that it is. The amendment would require many other matters to be amended or considered; for example, there is no definition of "valid majority". How would that work? The requirements to make EEAs would be influenced by this amendment if it were to be included. A new provision for individual EEAs would be need to be included to require the employer to explain the terms of the EEA to the employee as matter of consistency. My adviser has provided me with a list of other matters relating to the legislation that would have to be resolved and taken into account. It is not a viable alternative or a workable proposition to incorporate this new proposed section. It is a statement of principle that the Opposition believes should be included and I accept it as that; however, it is not a workable proposal.

We have not taken up the workable proposal because there has been such a low take-up rate that it was not considered worthwhile to go to all the effort at this stage to provide it. By "all the effort", I mean that it is a matter of not only drafting, but also talking to employer groups, unions and small business and asking them how they want the provisions to work, because they must be happy with them. They were not interested in putting in a huge effort because they do not have the appetite for it. If people told us the workable proposal was part of the solution to improve the system, we would work on it. However, we have not done that now and it is not appropriate to include one section that will not put in place a workable system.

Mr BARNETT: I understand the legislation will provide for awards, collective agreements with unions and employer-employee agreements, which I do not think will be taken up to any great extent. I have no objection to a collective agreement with unions if that is the choice of the workers and that is what the unions want. However, why does the Government preclude a collective agreement that does not involve a union? If workers want a collective agreement, why should they be forced to negotiate it through a union? Many sectors of our economy are not unionised and never will be. The level of union membership in the private sector is only 15 per cent, which says it all. Is there a union in the information technology and communications sector? No. Is there a union in the advertising and public relations sector? No. The areas of public relations, communications, advertising and web pages are rapidly growing employment bases in our economy, but they are not unionised and are never likely to be unionised.

Mr Marlborough: That is not true. You are living in the past.

Mr BARNETT: If they exist, they play a minor role.

Mr Marlborough interjected.

Mr BARNETT: I thank the member for Peel for his usual brilliant interjection.

Whole sectors of employment are not unionised. Some of the rapidly growing areas of employment have a young, educated, informed, independent and self-motivated work force that is never likely to be unionised. Yet those people are precluded from reaching a collective agreement with their employer. Why would the

Government introduce legislation that precludes employers and a group of employees from reaching a collective agreement? Why is the Government trying to prevent this? What does the Government fear from empowering people to make their own decisions? The Opposition does not have a philosophical objection to a union-employer collective agreement. However, if that is permitted - which it should be - why not also permit a non-union collective agreement when employees are not members of a union or work in an industry sector that is not highly unionised or has no union representation? Why would the Government preclude those people from getting together and negotiating a collective wages and conditions deal with their employer? Why preclude industries such as the IT sector entering into an arrangement that is fair to all parties? The minister has given no reason except that he does not think it will happen. It has happened, and it will continue to happen. People will either not have an agreement and will carry on regardless or, if the workplace gets to a size at which they feel exposed, they will move into the federal jurisdiction. This minister will become a minister for a declining area of responsibility, as once again this Government hands over its powers to the Commonwealth Government, as it has consistently done since it came to office.

Mrs EDWARDES: I will not labour the point. The minister has acknowledged there are a number of reasons for the less than one per cent take-up of these agreements. We have not seen any evidence to support the minister's figures. We do not know whether there has been a drop or a growth in the take-up rate in any year, and whether the figure of one per cent relates to the availability of non-union collective agreements or whatever. If the minister has any particular concerns with the drafting of the amendment - I promised not to give up my day job - he can get parliamentary counsel to assist him.

The amendment will not restrict employees who wish to enter into a non-union collective agreement from contacting the union to assist them. One of the reasons for the unions' fall in popularity is that they took a philosophical position on workplace agreements and collective bargaining and decided they would not participate in negotiations. One of the downfalls for the union movement is its narrow-mindedness in not providing these services for its members. This could have been a growth area for the unions. If they were serious about putting aside ideology and working out how to help their members, they would hang up their shingles and offer to work with members who wish to negotiate individual or non-union collective agreements. Employees have the right to contact a union, and the amendment I proposed would not change that, because unions fall within the definition of a bargaining agent.

I ask the minister to reflect on the submissions that have been made by numerous bodies. Not one submission objected to being given the option of a non-union collective agreement. I ask the minister to take on board the debate and consider including this provision in the Bill. This is a serious flaw in the key principles that the Government is putting forward; that is, choice and the provision of providing flexible working arrangements for employers and employees.

Mr BARNETT: I urge the minister to accept this amendment. The minister may choose to redraft this amendment, and we accept there may be ways to improve the drafting. Apart from the advantage to employers and employees of being able to enter into a non-union collective agreement - we should allow that to happen under the basic principle of freedom of association - the mere fact that federal legislation has non-union collective agreements creates an immediate disparity between the state law and the federal law. The inevitable consequence of that disparity is that both employers and employees who wish to have a non-union collective agreement will move into the federal system. Why would the Government not include a provision that at least matches at a state level the system already available at a federal level? It is overwhelmingly logical to do that.

Does the minister have an estimate of the flow of employers and, more importantly, employees into the federal jurisdiction because of the lack of provision for non-union collective agreements? Rio Tinto Ltd, the largest private sector employer in this State, has already indicated its 4 000 employees will move to the federal system. Other mining companies and major industrial groups in this State will follow. How great will that flow to the federal system be? Does the minister regard that with concern, or does he share the Premier's view that it does not matter?

Mr KOBELKE: I have answered that question on more than one occasion and I am happy to answer it again. However, I will not go over the same things.

Mr Barnett: That is what you are in Parliament for.

Mr KOBELKE: We are not here to accommodate the Leader of the Opposition's dummy spitting.

Mr Barnett: You are here to answer questions.

Mr KOBELKE: I have answered that question. I was willing to repeat my answer, but given the member's attitude he can read *Hansard*.

Mr BARNETT: I asked the minister whether he had an estimate of the number of employers and employees moving to the federal jurisdiction because of this Bill. If the minister cannot answer that question, it demonstrates that not only is he ideologically opposed to the rights of individuals to make choices, but also he is disposed to allow the decline of the jurisdiction of industrial relations in Western Australia that will occur across a range of industry sectors. Either the minister does not care, or he is incompetent as a minister and wants less work. Most Labor Party ministers do not turn up to work before half past nine in the morning. This minister wants fewer responsibilities and less work. Like any minister of the Crown, this minister should ensure that state legislation is attractive and useful for employers and employees in this State. The failure to provide for a non-union collective agreement is a major omission in this legislation. If the Government accepts only one amendment it should be to provide for the option of a non-union collective agreement. That is the only way the Government will preserve any part of a state-based industrial relations system. Once an employer, particularly an employer with operations in more than one State, moves to a federal jurisdiction, it will never come back. The Government will lose the ability to achieve employment growth, local content and investment opportunities in Western Australia. Industrial relations need to provide a competitive advantage for this State. The omission of non-union collective agreements will be to the detriment of this State. That is a substantive point, and a substantive minister would have an answer.

Amendment put and a division taken with the following result -

Ayes (18)

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

Noes (26)

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

Pairs

Mr Ainsworth	Mr Brown
Mr Day	Mr Carpenter
Ms Sue Walker	Mr McGowan

Amendment thus negatived.

Mrs EDWARDES: Proposed section 97UB provides that employer-employee agreements may deal with post-employment matters. These are obviously rights and obligations that are to take effect after the termination of employment. What are the post-employment matters?

Mr KOBELKE: This provision deals with the rights and obligations that typically take effect after the termination of employment. They include the return of an employer's property; for example, the employer could take action if the employee had not returned tools. It also deals with the restraint of trade and confidentiality; for example, should an employee be required to sign a contract that he will not disclose confidential matters relating to that trade, that would still have effect. An EEA may deal with such post-employment matters.

Mrs EDWARDES: Proposed section 97UC deals with other provisions about making an EEA. Proposed subsection (3) states that matters that may be dealt with in EEAs made with certain categories of employees are subject to the restrictions in the Public Sector Management Act and the Port Authorities Act. What restrictions in both those Acts would be looked at when dealing with an EEA?

Mr KOBELKE: I think it is simply a procedural matter to avoid jurisdictional overlap. Matters already in those Acts could be seen to cover some aspects of this area.

Mr AINSWORTH: Proposed section 97UD deals with an EEA being made on behalf of a person with a mental disability. Is there a process by which the person's representative is chosen or vetted? Is there a procedure to have an official representative with some status?

Mr KOBELKE: It is a very good question. A lot of time and effort has gone into this. Division 9, which starts at page 44, has 10 or more pages covering the provisions. It enables that to be a factor in the registration of EEAs. When we get to that division, I will be happy to try to answer more detailed questions on that matter.

Mrs EDWARDES: I have the same concern as the member for Roe; that is, the minister seems to assume that the represented person cannot sign for himself. That is simply not the case. The minister is allowing the representative to take away the individual right of that employee to sign his own agreement. He can have all the representation, support and other protection provided in division 9, but the minister is making a huge assumption that the majority of people with disabilities cannot sign for themselves. The witness could still sign, as the clause provides. By denying the right of the individual to sign the document the minister will deny him the fundamental right to be treated as an individual.

Mr KOBELKE: I have sought advice on how a person is designated as having a mental disability. If the person had a mental disability and signed a contract, but no-one picked up on that, I presume the contract would be valid. The issue is about safeguards. This provision is to protect someone who has a mental disability and who needs assistance.

Mrs Edwardes: Doesn't division 9 include the safeguards?

Mr KOBELKE: Yes.

Mrs Edwardes: Why can he not sign his own document when safeguards underpin that?

Mr KOBELKE: Some people, who clearly deserve as full a life as possible and to engage in the community, are in employment where they cannot make decisions for themselves. A range of support services are in place for those people. We are leaving open the opportunity for them to sign EEAs. However, clearly, a proper process must be followed, and that is provided in division 9. There is a threshold issue. If someone were of low intellectual ability but was not designated as having a mental disability, he would not need to use these provisions. They exist to provide a safeguard for people who clearly have a mental disability, but who can work under an EEA. This must apply to people with disabilities other than mental disabilities. Many people with handicaps such as Down syndrome lead very full lives and participate fully in the community, but they have special needs. We are opening up the potential to provide special employment arrangements for them because, for example, they may have low productivity. The quality of the lives of their families and friends might rest on their ability to work. A wage structure should be in place to account for their different levels of productivity. We have sought to do that. We have indicated that a general order may be required to deal with that.

Some of the disability groups made it clear that the commonwealth-supported wage was good, but it contained restrictions, which caused difficulties; therefore, workplace agreements were useful because they provided a simpler employment arrangement for those people with very special needs. The Government is mindful of that and it has tried to ensure that provision is made within the whole structure of the Bill. Reference is made in the Bill to the commonwealth-supported wage system. We want to use that and draw from it to provide a simpler, more flexible system for those people. That goes beyond this section of mental disabilities. However, it indicates that we are keen to continue the trend of some years to mainstream people who have been locked away. That trend recognises that these people can lead full lives and be valuable members of the community. However, they might need special arrangements, which are being incorporated in EEAs for people with mental disabilities and, in the broader scope of employment conditions, for people with a disability other than a mental disability, which limits their productivity. The clause will provide the capacity for a lower wage structure if they are to be gainfully employed.

Mrs EDWARDES: I take the minister's point. If someone who had a legal incapacity to sign were to sign and the support provisions were not provided, the contract would no longer be in existence. The person would be protected. The Bill provides that all persons with mental disabilities have a legal incapacity to sign. That makes a major presumption that those people cannot sign for themselves. If they wanted a document witnessed by their authorised representative to confirm that they had received all the support they requested, that would be a different issue. The legislation allows for under-18-year-olds to enter into EEAs, which they can sign and have their signature witnessed by certain categories of people. If a person with a disability did not have a legal incapacity to sign, why would he be unable to sign his own workplace agreement and have an authorised representative witness the agreement?

Mr KOBELKE: I think the member is confusing the provisions that "enable" with some form of compulsion. This provision will enable people who may otherwise not be able to sign a contract to enter into a contract. Proposed section 97WV "Application for approval" reads -

(a) This section applies to a person -

(a) Who has the prospect of being employed by an employer under an EEA; but

(b) who is in general incapable, because of a mental disability, of making reasonable decisions on matters pertaining to an employer-employee relationship.

If such a person signed an agreement and could clearly establish that he was not mentally capable of making such a decision it would create uncertainty. The Bill will simply enable the people with disabilities to do something.

Mrs Edwardes: It extends the requirement further than intended. Subdivision 2 on page 47 provides the approval process for someone to act for a person. I am making a basic argument. If someone with a mental disability had the capacity to sign but appointed an authorised person, why not allow him to sign and have the authorised person witness the document?

Mr KOBELKE: I am sure the member understands that if the person did not have the mental capacity to make the decision but was capable of writing the signature, legally, someone would have to stand in his shoes for the decision; therefore, the person standing in his shoes as the representative would have to sign. If out of respect for the rights of the individual we should modify the form to enable the person with the mental disability, who would be incapable of making a decision, to sign the document to afford that person a sense of participation, that would be a good thing and I have no problem with it. We may consider whether, under regulations, that can be included on the form so that the person may sign if he wished to do so. However, if, according to the law, someone did not have the mental capacity to make the decision, the person who these provisions allowed to sign in the other person's stead would have to sign.

Mrs EDWARDES: I thank the minister for his comments. The issue is that reference is not made to "legal incapacity to sign". A person with a mental disability has not been defined, in a legal sense, as someone who might be included in the group of people who do not have the capacity to sign. The Government may want to do amend that.

Mr Kobelke: Incapacity to sign is not necessarily related to mental capacity.

Mrs EDWARDES: I am talking about a legal incapacity to sign. That may be what the Government is intending, but I do not think the provisions reflect that. When the Parliament has dealt with the Guardianship and Administration Act, it has been conscious of the need to respect the rights of individuals, particularly those with disabilities. I ask the minister to reflect on my comments. Some of those organisations within the disability sector are concerned that the Government is proposing to take away a right of those individuals. The provisions for those persons to receive advice and support will remain. It would be much appreciated if this legislation gave those people the ability to sign their own employment agreements.

Mr Kobelke: We engaged in very thorough consultation with the Office of the Public Advocate and the Disability Services Commission. They told us what they thought should be included in the Bill.

Mrs EDWARDES: I have no doubt that the Government listened to that. The point is that things presented to people in writing seem different. Some people are concerned that their rights will be infringed and that they will be discriminated against. I know that is not the Government's intention. It would be appreciated if the minister reconsidered the provision and in some way allowed those who have the legal capacity to sign but who need the support covered in division 2 to be able to witness those documents.

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

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

This amendment is in line with the National Party's view that this legislation should provide as much choice as possible for employers and particularly employees. Proposed section 97UF precludes an employee from entering into an employer-employee agreement with his employer if an industrial agreement is in place. The deletion of the proposed section would remove the restriction on employees to enter into what may well be advantageous EEAs. There are many cases in particularly the mining industry in which the pay levels offered under workplace agreements are considerably higher than what would have been the case under an industrial arrangement.

Mr Bowler: You must be joking.

Mr AINSWORTH: I should not take an interjection from my good friend. The message we get from both employers and employees in the mining industry is that they are happy with the terms and conditions they have negotiated under workplace agreements, and unhappy with the proposals in this legislation. Those employees are actively seeking to work with their employers to move across to the federal jurisdiction. The only reason they will do that -

Mr Marlborough: Have you been to Karratha this week?

Mr AINSWORTH: I have been to Meekatharra this week, but not Karratha.

Mr Marlborough: Two hundred people at a time are meeting with the union in Karratha to discuss this legislation.

Mr AINSWORTH: They are probably telling the union what they think of it.

Mr Marlborough: It may well be that they are. There is much interest.

Mr Birney: One of the major mining companies in my electorate employs between 600 and 700 people. It asked its employees whether they wanted to stick with workplace agreements and go to the federal system or stay on the state system, which will become unionised. The result of the vote was that 87 per cent of the work force would rather stay with workplace agreements, albeit at a federal level.

Mr AINSWORTH: That information is similar to what I am hearing. The aim of this amendment is to retain the rights of those workers who for whatever reason choose a path other than that of an industrial agreement. It may be that an individual agreement is supported and arranged by the trade union. We are not opposing that. We want to provide maximum flexibility for those workers to make that choice. We do not want those workers confined by, in this case, an existing industrial agreement. Under this legislation, an existing industrial agreement would preclude employees from moving to individual EEAs. A worker may choose to stay with his existing arrangement. He may not want an EEA. However, we believe that if a worker wants to negotiate something that is more financially advantageous or flexible, he should be given that opportunity.

The deletion of the proposed section would give workers a greater choice. It would not preclude the involvement of unions, but it would give workers an alternative. If we want true freedom of choice, we cannot endorse a proposed section that prescribes that an employee cannot strike an EEA if an industrial agreement exists. That goes against the spirit of what this legislation should be about; that is, improving the terms and conditions available to all workers.

Mrs EDWARDES: If this amendment is moved and/or voted on, I will not be able to discuss earlier proposed sections. I would like to talk about proposed section 97UE. The member for Roe jumped a page of the Bill. I also wish to speak on proposed section 95UF, and I do not want to interrupt the flow of the debate. Maybe we could debate the amendment to proposed section 97UF but allow me to ask questions about proposed section 97UE before the vote on the amendment. I am in the hands of the House. I will follow whatever is convenient.

The DEPUTY SPEAKER: Member for Roe, I suggest that you seek leave to withdraw your amendment so that the House can deal with proposed section 97UE, after which you can again move the amendment.

Mr AINSWORTH: I am happy to do that. I apologise to the member for Kingsley. I did not realise that she wanted to speak on earlier proposed sections. In fact, I thought I was being prompted to move the amendment. If the House consents, I am happy to withdraw the amendment until we deal with the earlier proposed section.

Amendment, by leave, withdrawn.

Mrs EDWARDES: I thank the House. Proposed section 97UE appears complex, but will probably not be the case once it is explained. The minister mentioned something when we were talking earlier about employer-employee agreements. What will be the effect of this proposed section? How will it link in with the no-disadvantage test?

Mr KOBELKE: I do not think it will link in with the no-disadvantage test.

Mrs Edwardes: Maybe your answer to my first question will clarify that.

Mr KOBELKE: As we are aware, individual contracts have always been available. Some years ago, they were available at common law, which meant that they did not override the award. A contract might have offered higher pay, but if, for instance, the award prohibited a worker from working more than eight hours straight, the employee would be caught, even if he was willing to work extra hours. The common law individual contracts on occasions ran up against restrictions in the awards. Of course, common law individual contracts tended to offer much higher rates of pay, and the awards were largely ignored. The previous Government's workplace agreements and the commonwealth workplace agreements formed a statutory individual contract that sits

alongside, but is separate from, the award system. The conditions under the employer-employee agreement have no reference to the conditions in the award, other than in the registration process in which a no-disadvantage test applies. Once the contract is established and registered, none of the parties to the EEA can then seek to use various provisions that may be in the relevant award from which it is divorced.

Mrs Edwardes: If an EEA has been registered and gone through a no-disadvantage test, then no other award, or its terms or conditions, or any new award that comes into place will affect that EEA?

Mr KOBELKE: That is correct, unless the parties make provision for it in the EEA. If the parties wished to provide for the terms to be varied by an amendment to an award - that would be highly unlikely - they would be able to.

Mrs Edwardes: Once an EEA is in place, it would be only the award that it was tested against.

Mr KOBELKE: Even the existing award from which the no-disadvantage test was removed, cannot be applied.

Mrs EDWARDES: Therefore, if the existing award against which it was tested were amended during the term of the EEA, it would not then apply to the EEA?

Mr KOBELKE: No.

Mrs EDWARDES: In proposed new section 97UE(2) the contract of employment is regarded as part of that EEA, regardless of the provisions of that contract. Can I have some clarification on that matter? I understand that some workplace agreements are a contract of employment, and others annex a contract of employment. Therefore, it is a workplace agreement with a contract of employment almost attached to it. There is a differentiation in that, which I will comment on later when dealing with workplace agreements. What will this particular new subsection achieve? Does the EEA provide for an employment contract and form part of the contract; that is, the contract of employment is registered as an EEA, as against the EEA registering the contract of employment, regardless of the provisions of that contract? On the other hand, does the new subsection refer to a separate document at some point in time and will the EEA, as some of the workplace agreements have, annex that contract of employment for registration?

Mr KOBELKE: I will outline the two most common scenarios. A contract of employment with an existing employee does not always have to be a written one, but normally it is. When the EEA is registered and becomes effective, it sits alongside that contract of employment, which it may vary. However, there may be conditions in the contract of employment that are not picked up in the EEA. If, by agreement, they have not been varied, done away with or enhanced, then those conditions still exist and are not necessarily put aside.

Mrs Edwardes: Does this new subsection provide that the EEA has effect regardless of the provision of that contract? If the provision does not get picked up, then it does not apply.

Mr KOBELKE: That does not contradict what I was saying because if the EEA modifies, varies or overrides conditions in the original contract of employment, they are then varied to that extent, regardless of the provisions that the contract covers. However, if there are conditions in the original contract that are not in any way varied or affected by the EEA, then they will still hold.

Mrs Edwardes: We end up with two contracts; the EEA and the contract of employment.

Mr KOBELKE: Yes, it would be messy but that would be the case. The second scenario is that of a new employee. It is then expected that the EEA also forms the contract of employment. It could be otherwise, but that is what would generally be expected.

Mrs EDWARDES: Proposed new section 97UE(3) states -

> The provisions of an EEA have effect subject to section 5 of the MCE Act.

Section 5 of the Minimum Conditions of Employment Act refers to the application of minimum conditions. Therefore, how does that link in with the no-disadvantage test? Either the no-disadvantage test has to be satisfied by the award, or, if there is no award, by the minimum conditions. Why is this new subsection necessary?

Mr KOBELKE: That is important because once the EEA has been registered, then any change to the award does not affect that contract of employment. However, a change to the Minimum Conditions of Employment Act does affect the contract. If the person was on the lowest wage with the no-disadvantage test against the Minimum Conditions of Employment Act, the annual increase in wage has to flow through. That is not the case with the award.

Dr WOOLLARD: I believe that members of the senior executive service will sign EEAs. Therefore, why will the Government not allow directors of nursing at the larger teaching hospitals to sign an EEA? They are just as senior and have similar academic qualifications and, in some instances, far greater responsibility than the senior executive servants. Why will the Government force enterprise bargaining agreements on these senior, well-qualified people who have responsibility for the hundred of thousands of people who pass through these tertiary hospitals?

Mr KOBELKE: The question asked by the member does not relate to any of the sections under consideration. However, it is an issue that has generally been related to EEAs and, therefore, I am happy to provide an answer. My understanding is that registered nurses come under a federal industrial agreement. Clearly, they are not caught in any way by the legislation we are discussing. Part of the problem is that change is envisaged. When there is change there is uncertainty, and it is a matter of how the structures work. There is no difficulty in varying a federal or state industrial agreement to make special allowances for senior nurses, if the nurses and the Government want that. It is more a management issue than a matter relating specifically to this Bill. I accept that it is an issue, but given that it is a federal issue and can be handled through industrial agreements, it does not relate to the provisions now before us, which relate to the making of an EEA.

Dr WOOLLARD: It is a federal issue for nurses in aged care, but not for those in the state hospital sector; they are employed under a state award. There are federal awards for some areas of nursing, but not for directors of nursing at the tertiary teaching hospitals. Therefore, am I correct in assuming that the Government will support these senior nurses, who are at the same level as staff in the senior executive service, if they apply for an EEA?

Mr KOBELKE: What the member asks is confusing because she refers to the State. The member began by talking about senior nurses; that is, heads of nursing and the like. It is my understanding that they would be registered nurses, and, as such, are covered by a commonwealth agreement. Currently, they are not employed under state conditions. A problem may exist, but it will not be affected by this legislation because the nurses are employed under commonwealth law. The member is suggesting that that is not the case. I need to know the specific group to which she refers. The situation is different if the member is referring to enrolled nurses. However, if she is referring to registered nurses, they are generally covered under the commonwealth system, and have been for many years.

Mrs EDWARDES: The directors of nursing might like to come back to the state system if the minister were to assist in meeting their needs!

Mr Kobelke: They can join the thousands rushing to join up!

Mrs EDWARDES: The minister should not be too flippant, they just might!

The member for Alfred Cove was referring to a group of senior people within the public sector who are leaders in our community, and as such would like to be respected in their positions.

I refer the minister to proposed section 97UE. The contract of employment exists whether or not it has been varied or changed by an EEA. Therefore, the terms and conditions of an existing contract between an employer and employee can be varied or changed. However, under an EEA, a new contract does not override any other conditions that have not been picked up by the EEA. How will an individual change his contract of employment if he does not want all of the conditions picked up? Some people would assume that the EEA, particularly if they have referred to the contract of employment or had it varied in some way, would provide for a new contract. That will cause many small business people major difficulties in their understanding of what the EEA comprises. It will also provide an administrative burden, because there will essentially be two layers to the employment arrangement with the employee.

Mr KOBELKE: The complexities of this can create problems. However, if we take a straightforward approach to these matters they will not arise. The legislation recognises that problems will arise from time to time, and makes allowances for them. In that respect the EEAs are no different from the provisions in the Workplace Agreements Act 1993. That Act had the same potential for a contract of employment plus a workplace agreement.

Mrs Edwardes: Will this affect the registration for the no-disadvantage test? If all the conditions contained in the contract of employment have not been picked up in the EEA, will it affect the registration?

Mr KOBELKE: Not at all. I am confident that the no-disadvantage test will be fairly straightforward. It will run into difficulty when employers try to cut wages. If employers try to look for a way to drive down wages, the benchmarking exercise will be tighter, and all the extras that are hanging on will become a problem. For most groups, such as the mining industry which pays above award wages, it will simply become a package. It will be benchmarked against the award, picked up and, I assume, particularly with larger organisations, everything will

be bundled together and there will not be any difficulties. If someone has tried to do a fancy deal and has a contract of employment comprising various things, then there will be complexities. It will be unusual to run into these problems, but we must take them into account. Also, if there are clear conditions in an existing contract of employment, the legislation provides that they cannot simply be pushed aside. If there were substantial issues, they would be picked up in the EEA -

Mrs Edwardes: Therefore, the EEA does not form a new contract.

Mr KOBELKE: No, not for an existing employee. It has the effect of varying the contract of employment.

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

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

Certain workplaces would receive quite an advantage if this amendment were passed.

Mrs EDWARDES: I support the amendment. The concern is that if one employee wants to go down the path of industrial agreement, if the workplace has 100 people, that agreement will cover the remaining 99 workers. The remaining 99 workers would not be given the choice of entering into an EEA. Therefore, this is not a majority situation within the work force. Once a handful of employees tread the path of industrial agreement, no current or future employee can enter into an EEA. I put it to the minister that, by virtue of proposed section 97UF(1)(b), which links in section 41(6) of the Industrial Relations Act 1979, an EEA cannot be offered at that workplace. Section 41(6) of the Industrial Relations Act 1979 states -

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

Therefore, once an industrial agreement is in place in a workplace, an EEA can never be offered to any member of that work force in the future. Would that measure not have a major impact on the key principle that the minister believes underpins this legislation; that is, individual choice? Even if we were to accept the fact that one or a handful of employees in the workplace can influence the working conditions of the whole workplace, and that an EEA cannot be entered into while an industrial agreement is in force, it does not matter, because when the industrial agreement expires, by virtue of section 41(6), an EEA can never be offered.

Mr KOBELKE: That is simply not true. That was a fear held by some businesses. Section 41(6) indicates that the industrial agreement continues on after the nominated period. However, section 41(7) stipulates that after 30 days notice the employer can unilaterally terminate the agreement. Remember that the employer has the first choice. If the employer has the industrial agreement - the EBA - and has decided that he wants to go to an EEA, when it expires or at the time of the employer's choosing, notice is given under section 41(7). That will terminate the operative period of the industrial agreement. He is then open to offer an EEA.

Mrs Edwardes: Under section 41(7) the agreement expires after 30 days?

Mr KOBELKE: Yes.

Debate interrupted, pursuant to standing orders.

[Continued on page 8373.]