LABOUR RELATIONS REFORM BILL 2002

Consideration in Detail

Resumed from 27 March.

Part 8: Amendments about right of entry, record keeping and inspection of records -

Debate was adjourned after Mrs Edwardes had moved the following amendment -

Page 165, after line 11 - To insert the following -

49JA. Exemption from Certain Provisions on Religious Grounds

The rights empowered on a representative of an organisation in Sections 49E, 49H and 49I shall be transferred to the Industrial Inspectorate where -

(a) all employees employed in the workplace are employed by an employer who holds a current certificate of exemption issued under Section 49JB; and

(b) none of the employees employed in the workplace is a member of a union; and

(c) there are no more than 20 employees employed to work in the workplace.

49JB. Issue of Certificate of Exemption

(a) The Industrial Registrar may, for the purposes of Section 49JA, issue a certificate of exemption to an employer who is an individual if the Industrial Registrar is satisfied that the employer is a practising member of a religious society or order whose doctrines of beliefs preclude membership of any other organisation or body other than the religious society or order of which the employer is a member.

(b) The Industrial Registrar may revoke a Certificate of Exemption if -

(i) the employer to whom it has been issued agrees; or

(ii) it was issued in error; or

(iii) the Industrial Registrar is satisfied that the employer has ceased to be a person eligible to be issued with the certificate.

Mr BOARD: When the House adjourned last night we were dealing with an important amendment moved by the member for Kingsley in a desperate attempt to support a religious group in Western Australia called the brethren. That group is represented all around the world and has a long history of 172 years. Its nature is unique in many ways. The fundamental core of the religion is non-association. It is not a question of non-association with unions; it is a question of non-association, whether it is with educational groups, social groups, political groups or any other groups. Their fellowship is with their own brethren. It is a strict code within their religion, and it is one they put before other social requirements. The Opposition moved an amendment that is in line with federal legislation and what has been done in New South Wales, New Zealand and other jurisdictions. It is to give an exemption based on religious grounds to this group. The Opposition has moved the amendment in the hope that the Government will see that not allowing such an exemption will put a small and unique minority group in conflict with the law of the land. The group does not seek to be in conflict with the law of the land but the religion would put it in such conflict. In this case, the law will ask the brethren to go against their religion. That is something they cannot tolerate and will not accept. If the Government bulldozes this through, there will be potential conflict in Western Australia and a potential loss of jobs. That would be something unsavoury for us all to witness. None of us wants that. I am sure that the minister is a man of principle and a man who has religious convictions. I am sure he understands their position. I do not know why he said last night that it was unacceptable for the amendment to proceed as it has been accepted by the Labor Party in other parts of Australia. I quoted Simon Crean last night who said that unions can accept such exemptions. Unions in Western Australia also believe that freedom of association through religious orders does not run against their principles. I do not know why the minister continues down this path. It would be a simple matter to give the exemption to this group. The exemption will apply only to this group. If the minister cannot find it in his heart to support this amendment, will he give a commitment today that he will talk to the brethren to try to resolve this issue? He could make that commitment today if he is not prepared to support the amendment. If he did, we would have

something that would be workable for them so they do not find themselves in an intolerable situation. I am sure the minister does not want the brethren to be placed in this situation.

Mr KOBELKE: It was expected that there would be a nine-hour break between last night's sitting and the start of today's proceedings. As we started at nine o'clock this morning, the House would have had to finish at midnight. The debate reached the stage at which other members and I wanted to contribute but there was no time to do so. The debate on this has continued today. Without unduly delaying the passage of this Bill, it is appropriate that this matter take more of the House's time. It will give me the opportunity to make further remarks.

I will respond in more detail to the member for Murdoch's request. It does not sit well with people to speak of principles in a very narrow way and think that only one principle applies. There is the principle of being honest; there is the principle of ensuring that a person does the work so that when he says something, it is based on fact. People are espousing these principles without making the commitment to do some work on what they mean. In going over the importance of these principles, I will refer to some fairly important documents, not from a legalistic point of view but to establish that there are matters of principle in trying to apply those principles to our law. That is a very important process. I will read part of the Universal Declaration of Human Rights, which was established by the United Nations on 10 December 1948. That declaration has legal effect, because as both a State and a nation we commit to the articles in that declaration and some of the conventions that flow from them. I do not want to pursue the legal argument, although it is important. I raise the issue only to indicate that there are matters of real principle that the nations of the world, including Australia and Western Australia, have tried to respect and establish in their statutes. Article 18 of the Universal Declaration of Human Rights states -

> Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

I am sure everyone in the House believes that is something we should seek to uphold and allow people to fulfil. That supports the arguments that have been put by many people already. Article 20 states -

> (1) Everyone has the right to freedom of peaceful assembly and association.
>
> (2) No one may be compelled to belong to an association.

The right to freedom of peaceful association means not simply that people can gather together but that they can gather together for a purpose. That is taken up in a range of International Labour Organisation conventions. I could go through a range of them, but I will mention only one because it is pertinent to the debate today. Article 3 of ILO Convention No 87 states -

> 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
>
> 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

I emphasise the last part of the first section of article 3: workers' and employers' organisations have the right to organise their activities and to formulate their programs. If we say that the religious freedom of the brethren totally dominates the right of people to organise, we are making a decision. As law-makers, sometimes we must make those decisions when matters conflict, but it is not a decision that we make lightly. People have an established right in state, national and international law to organise. To organise means not just joining a group but actively pursuing the interests of that group. The difficulty is that that would be contravened by these measures.

Mr JOHNSON: I support the amendment. I inform the House that no pairs are in operation during this part of the debate. I am appalled that the Premier is not in the Chamber to take part in the debate on this fundamental principle. We have heard the minister espouse the virtues of international human rights, yet the minister, through this legislation, will abuse the human rights of the brethren in Western Australia, who want to live their lives in peace and harmony, create employment, run their businesses and lead a very law-abiding life. They have no problem with being checked up on, if it is the Government that is doing it, because they abide by the law.

There is no reason that the minister cannot accept the amendment. He could even amend the amendment so that government inspectors may inspect the workings of the business and any records that are kept. That would enable the Government to be assured that people were receiving more than the minimum wage and that businesses were adhering to WorkSafe Western Australia Commission and occupational safety and health practices. That is not a problem. The brethren are happy to comply with that. However, the minister wants to

allow private organisations - unions - to enter business premises, including brethren business premises. Union representatives are not officers of this Government. Unions are private organisations, for which their representatives collect funds, which end up in the coffers of the Labor Party. That is deplorable. The minister wants to give more power to unions than is given to the Police Service. Police must get a search warrant to enter business premises and inspect records. The Police Service is a government instrumentality. It has the authority of the Government. The Government wants the unions to be able to abuse that position - to be able to go into any business they want. We are talking about brethren businesses. The brethren have a wonderful, Christian community. They want to live their lives in peace.

I will not take any longer to debate this issue because we need to get onto other areas of the Bill and I know other members wish to speak. I deplore the minister for not accepting this amendment.

Mr KOBELKE: The right of people to organise is a fundamental and important principle. Members opposite may not believe that that is a high priority, which I accept. We all make personal judgments about such matters. However, they cannot thumb their noses at the fact that this right is recognised in international, Australian and Western Australian law. This deals with the right of people to organise themselves into a union and take action through a union. The provisions that would be put in place by this amendment would deny people the right to do that. This right is held as firmly and conscientiously as the brethren hold their rights. People should be able to hold those rights. Members opposite simply do not want to recognise that in this State, this nation and around the world, tens of thousands, if not millions, of people have put themselves at a disadvantage and have perhaps let their kids go hungry in order to take up the right to organise in a union. It is a fundamental human right. People have been bashed or shot and killed because they have upheld the right to organise in a union. Members opposite and hundreds of thousands of Western Australians might not take that matter seriously, but it is taken seriously by a lot of people.

The brethren are a small group, but its members have sincere, fundamental beliefs about their religion. The Government respects that. However, members opposite cannot now act as people of principle by saying that an amendment is required, because they did not do that for the eight years they were in government. For eight years, they did not give a tinkers, but now it is a fundamental principle that the rights of these people be respected. However, members opposite take no account of another fundamental principle. Someone was shot and killed in this State because he exercised the right to stand up and organise a union. It brought down a State Government. A Premier was thrown out. I think that Premier had the shortest reign as a Premier in this State, because a person who sought to organise a union was shot and killed.

Mr Masters: In which century was that?

Mr KOBELKE: Last century. The member for Vasse might not know much about Western Australian history, but it is a fact. People hold these beliefs firmly. Therefore, it is important that we carefully weigh up these matters. The amendment proposed by the Opposition - I accept it was done with the best of intentions - in part says that if there are no union members in the religious group - the brethren - the group is given an exemption. However, if there is a union member, the exemption goes. What the amendment in effect says is that the brethren cannot employ a union member.

Mr Masters: Not that they can't, but that they don't.

Mr KOBELKE: There are two issues. The first is whether a person can be a union member. I do not think the brethren exclude that. What they exclude is any dealings with unions. That is why it came back to convention 87; and there are other conventions. Under the Universal Declaration of Human Rights, there is the ability to assemble and to organise. To organise means that there must be a representative, and that representative must be able to speak for the people. That is the problem. Quite sincerely, the brethren do not wish to recognise that organisation or deal with its representative. Therefore, there is this conflict between the wish to guarantee people the right to practise in full their religion and the right of people to be able to organise and to practise what follows from that organisation through a union.

Mr Johnson: Which is the most important - the way people live their lives or their wage packet?

Mr KOBELKE: The member obviously has no understanding of the course of human history and the development of the union movement for well over a hundred years. People have sought to work together, to build the community, to respect each other's rights and to advance their interests. This amendment would deny people the ability to do that. We might be able to reach a compromise to deal with these issues, but not in a quick way like this.

Mr McGOWAN: I will make only a brief contribution on this matter. I realise it is a divisive issue.

Several members interjected.

Mr McGOWAN: This is one of those issues that has been debated seriously, and with some emotion, by this Parliament. I would appreciate being able to put my point of view without interjection, because I did not interject on members opposite when they were debating this serious issue.

I respect the religion of the brethren, as I respect all religions. I acknowledge that these people must hold their views with a great deal of sincerity, because any people who have attended the Parliament, sat in the gallery for the amount of time that they have and endured the hours that have gone into this debate must hold their views quite forcefully. Last night the members for Avon and South Perth put arguments in support of the amendment moved by the member for Kingsley. They talked at length about the history of the Australian Labor Party, and, in particular, the objections of the Australian Labor Party to conscription during the First World War and during the Vietnam War.

The member for Avon made a mistake when he said that the Australian Labor Party objected to conscription during the Second World War, which of course it did not. The ALP actually introduced conscription during the Second World War. However, during the First World War and the Vietnam War, it objected to conscription. Those members said that that was analogous to this situation. There is no analogy. Those events related to the compulsory enlistment of young men to fight and die overseas. That is a different issue from the one with which we are dealing today. Today we are dealing with a conflict between freedom of religion and freedom of association. Not one simple universal principle can be upheld in that regard. There is a conflict between two universal principles.

In opposing the amendment, my point of view is based upon two things. I will deal with the lesser argument first. Often in our society we apply laws that affect people who are members of religious bodies because those laws conflict with their religion. However, those people are compelled to comply with the law of the land. The member for Armadale raised a couple of examples. I will raise another, admittedly more extreme, example, and it relates to the Mormon religion. Under that religion, men are permitted to have a number of wives. That is an extremely serious offence under the criminal law of Western Australia. Mormons are not given an exemption under the criminal law of Western Australia. One single law is applied.

My second objection to the amendment moved by the member for Kingsley - admittedly, my first objection is the lesser of the two - is that a lot of employees are not members of the brethren. The member for Murdoch said that, across the State, the brethren might employ up to 2 000 people. However, many employees are not members of that religion. As a Labor member of Parliament, I am concerned about the rights of those people. It strikes me that this Parliament would not put in place a law that allowed an employee who is a member of the brethren to object to and stop his employer becoming a member of an association such as the Chamber of Commerce and Industry of Western Australia because it offends his religion. However, the member for Kingsley wants to apply a law that operates the other way. It offends me that the rights of employees would be infringed under the amendment moved by the member for Kingsley. Not all employees are members of that religious body.

The member for Murdoch indicated that we should meet with the members of the brethren, and I had a half-hour meeting with them.

Mr MARLBOROUGH: I would like the member for Rockingham to continue his remarks.

Mr McGOWAN: The member for Murdoch rightly said that we should meet with the brethren to work out a compromise. The Minister for Consumer and Employment Protection has said he would like a further meeting to take place. I met with members of the brethren in the large caucus room. Admittedly, I would have liked it to go longer; it went for only 25 minutes. During that meeting, I asked the leaders of the brethren movement of Western Australia what they would do if they found that one of their employees was a union member or that one of their employees wanted to join a union. It is a fair question. They knew that the question involved Labor principles, and they were reticent about answering it. I asked it on a number of occasions. They said that they would be guided by the scriptures. They had earlier explained that the scriptures say that someone is not permitted to work for the brethren if he is a member of an association such as a union. In effect, they said that they would not employ a member of a union, and that if they learnt that a member of the union was an employee, he would not continue to be an employee of that organisation. As a member of the Labor Party and this Parliament, that offends me. That is my point of view. We on the Labor side stand up for the rights of employees. Those rights have been laid down, as the minister has said, through the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights, the European Bill of Rights and conventions of the International Labour Organisation. All those conventions, which have been largely agreed to by the countries of the world, arose out of the horrendous events of the Second World War, in which freedom of

association throughout occupied Europe was devastated and made an offence. Those conventions were developed in that context. All those conventions include the right to freedom of association. That is what we stand for. That is my point of view. I acknowledge that the brethren community has a strongly-held alternative point of view. I also acknowledge its right to freedom of religion. However, other people also have rights, and that is why I will oppose the amendment.

Mr BOARD: Is the minister still prepared to sit down with the brethren and try to work out a compromise? He is not prepared to accept the amendment; however, he and the brethren community might be able to develop something that could work on the ground so that the brethren community does not find itself in conflict with the law or its religion.

Mr KOBELKE: Today I continued my remarks from last night and amplified my concern that two matters of principle are in conflict and cannot be easily resolved. Last night I indicated to members of the brethren that I am happy to examine the matter to consider what can be done. When two principles are involved, it is not a case of dealing with only one side. I must deal with a range of community groups, including the unions, who want a particular principle upheld that is established through the Universal Declaration of Human Rights and a range of International Labor Organisation conventions. Can we reach a compromise that will respect the rights of the unions and the brethren and impinge on some people's rights in only a minor way? The legislation will impinge on some people's rights, but if we can minimise the effect of that, I am happy to do so.

I have given an undertaking, which I will repeat, that this amendment cannot be used in this legislation because some fundamental issues must first be resolved. It is not a matter of some technical drafting. The principles and key issues and strategies must be dealt with. After that is done, we must deal with the technicalities of what it is possible to achieve. It is not a dead issue; I am happy to continue working on it. Over the next year, I will hold discussions with a range of parties, including the brethren. We are bringing back some legislation next year that might provide us with an opportunity to do something about it then. Although I cannot guarantee that, I commit to having an open mind. I will be willing to have further discussions on this area to find out whether a compromise can be reached.

Mr Board: Would it not be possible to sit down with the brethren prior to the passage of this legislation through the upper House to see whether something could be done - they understand your position; it is clear.

Mr KOBELKE: The member has failed to recognise the point that I have made several times. There is a conflict between very important issues of principle. The member and others have put the brethren's point of view, and I have also heard it from the brethren. The union movement put another point of view, which is well-founded in national and international law. The unions must also be party to the discussions. This is not a one-sided issue.

Amendment put and a division taken with the following result -

Ayes (20)

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

Noes (26)

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

Pairs

Mr Ainsworth	Mr O'Gorman
Mr Grylls	Mr Brown
Mr House	Mr Murray

Amendment thus negatived.

Mrs EDWARDES: I will refer to a number of other amendments on the Notice Paper. However, I have no intention of moving them, so that we can finish with part 8. One of the amendments is on page 165, after line 16, to insert a new clause 49L, whereby an authorised representative must not, directly or indirectly, record, disclose or make use of information obtained in the exercise of the power under proposed section 49I, except in certain circumstances. This provision is a serious omission from this legislation. The other proposed amendments deal with other requirements of the authorised person. Those issues can perhaps be taken up in the Legislative Council, given the restrictions under which we are placed.

Part put and a division taken with the following result -

Ayes (26)

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

Noes (20)

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

Pairs

Mr O'Gorman	Mr Ainsworth
Mr Brown	Mr Grylls
Mr Murray	Mr House

Part thus passed.

Part 9: Amendments about procedure and enforcement -

Mrs EDWARDES: Part 9 will result in significant changes in penalties for offences under the Industrial Relations Act. Essentially, criminal penalties will no longer be applied to civil convictions. I refer in particular to proposed section 83E. Of critical importance are section 70 offences that relate to elections, section 102 offences that relate to obstruction and new section 80F(4). Section 102 deals with obstruction in the case of a person, who is lawfully required to, failing to produce or exhibit or allow to be examined a document, or when lawfully asked a question refusing to assist in a ballot by providing a returning officer with the membership of

the employment organisation, or falsely representing that a person is a member of an employment organisation. I regard the changes in sections 70 and 102 to be particularly important. Although the penalties will be weakened by their becoming civil penalties, an industrial magistrate will still hear these cases. The penalty is $5 000 for the employment organisation or association and $1 000 for all other cases. Previously the fines would have been at the discretion of the industrial magistrate. I remember asking the minister a question early last year about section 72 - I refer to clause 150 of the Bill - which outlaws threats of violence, injury, punishment, damage, loss and any form of intimidation to induce the candidature or withdrawal of candidature in relation to elections. I stated that this section was deficient because it does not make the offering of an inducement or bribe to withdraw candidature an offence. I referred to the circumstances of the previous year and the allegations made in the Construction, Forestry, Mining and Energy Union bribery scandal in which the assistant secretary of that union, Joe McDonald, was secretly taped offering Terry McParland a bribe to withdraw his nomination against union boss Kevin Reynolds. I thought the Government would have taken this opportunity to close this loophole. An investigation into this matter found that the offering of a bribe was not outlawed in either the state or the federal jurisdiction.

That loophole has not been closed. Instead of being serious about taking action against unionists, the Government has not attempted to make a change. I thought this Government would have taken the option of strengthening the penalty provisions. However, it has attempted to weaken those penalty provisions by reducing them to civil penalties. When I asked the minister whether he would amend this section to make the offer of an inducement an offence, he said he was in the process of amending the Industrial Relations Act and that issue might be considered, although no decision had been made as to whether any action would be taken. It was clear that the Government would not be taking any action on this matter. I believe that lack of action is absolutely incorrect. The minister has failed to take the opportunity to close the loophole that permits persons to offer bribes. This not only gives the green light for that type of action to continue but also denies the community the right to have unions that are accountable.

Mr KOBELKE: Section 70 states, in part -

> (2) A person shall not, in or in connection with an election for an office -
>
> (a) threaten, offer or suggest violence, injury, punishment, damage, loss, disadvantage, or any form of intimidation for or on account of, or to induce -

I emphasise the word “induce”.

> (i) candidature or withdrawal of candidature;
>
> (ii) a vote or an omission to vote;
>
> (iii) support or opposition to a candidate; or
>
> (iv) a promise of a vote, or an omission to vote, or of support for, or of opposition to a candidate;

To induce in that way may be regarded as bribery. The member who asked the question is a lawyer, and she may wish to go into the legal niceties of the difference. Those things are contrary to the Act, but I would be incorrect if I called them offences.

Mrs Edwardes: Absolutely.

Mr KOBELKE: I am talking about what is in the Act now.

Mrs Edwardes: You have changed it.

Mr KOBELKE: The member is the lawyer. I do not think I can call it an offence. That Act was put in place by the previous Government. All those things are contrary to the Act, yet there is no penalty. We are upgrading that provision to provide for a penalty. The amendment provides in proposed section 83E (1) and (2) that even though it is not an offence, it is a contravention of the civil penalty provisions and will attract a penalty of $1 000 for an individual and $5 000 for an employer, organisation or association. The Act will now contain some teeth. A civil penalty will also mean that if someone contravenes the Act, it is more likely that there will be a conviction, because the burden of proof is lower. Even if there were a penalty, which is not the case currently, it would generally be judged difficult to get a conviction because of the burden of proof in the way the Act is structured. However, by moving to the civil penalty provisions we are ensuring not only that there is a penalty but also that it is easier to obtain a conviction and get the penalty paid.

The other issue is that if someone continued to contravene, the person would face even higher penalties under the enforcement provisions. We are ensuring that the Act has real teeth. The legislation made by the previous Government has no teeth, much to the embarrassment of the previous Government. If accusations were made

that that was happening on a high profile issue, the previous Government could take no action because pursuant to its legislation there was no penalty. The Government is making a provision so that in future, if there is a basis for such a case, action can be taken through the imposition of a penalty.

Mrs EDWARDES: It does not matter how the minister dresses it up, he is weakening the provisions. The offence has been changed from a criminal to a civil one, and it will go before a magistrate, who has the discretion to issue a penalty. The minister is quite clearly wrong. The Opposition is embarrassed that the previous legislation did not allow for a person allegedly caught on a tape offering a bribe to be charged with an offence. The federal Government was similarly embarrassed, but then moved to amend its Act. Given the close links between the minister and the Construction, Forestry, Mining and Energy Union, I would have thought that the minister would have moved a similar amendment. However, the unions are governing this State. They are making the decisions to change the status of the offence from criminal to civil. The minister can talk about the burden of proof and the like, but unless he is serious about closing loopholes when they are identified, he is not serious about strengthening the penalty provision or taking action. He has quite clearly signalled that there are two types of offences - one for the Government's union mates, and another for the rest of the community. The community, and union members have a right to expect that the rules of this State apply to everyone. Intimidation and thuggery are not acceptable practices. The minister has weakened these provisions, and has failed to take an opportunity to close a loophole. How embarrassed will the minister feel when this next occurs, after he had an opportunity to make that change? Will he then hide behind the fact that he thought the provisions were being strengthened and penalties introduced, and that the Government was doing the right thing? It is not doing the right thing. The minister has not taken the opportunity to amend that section and outlaw the types of offences talked about in the McParland-Reynolds incidents. By not doing so, he has failed the union members of this State and the community of Western Australia.

I do not propose to move the amendment standing in my name to clause 150, deleting lines 7 to 12 on page 169. I move -

> Page 169, after line 12 - To insert the following -
>
> (4) When a person, intending to commit an offence under s.70, begins to put his intention into execution by doing an act that is more than merely preparatory to the commission of the offence but does not fulfil his intention to such an extent as to commit the offence, he is said to attempt to commit the offence.

I do not know whether that will be sufficient. I do not have the resources of the State to check with the Solicitor General and the Director of Public Prosecutions whether that will cover the circumstances that applied in that instance. If I had been the minister, I would have asked those questions of those two highly experienced legal brains, and made the amendment. I am moving this amendment to highlight that this Government is quite happy for that sort of thuggery to continue in this State. It has failed to even ask the question, and to bring in an amendment accordingly. Not all union members are happy with their union executives. The Government is not providing for any action to be taken against this type of activity. It is asking union members to trust the Government and their union executives.

Mr KOBELKE: As a lawyer, the member for Kingsley has far more knowledge about these legal procedures than I do; therefore I find it surprising that her comments are inaccurate and, as a result, misleading. Section 70 is headed "Offences in relation to elections". However, that section does not create an offence because under the Interpretation Act, an offence does not exist unless a penalty applies. The heading "Offences in relation to elections" does not create an offence. There is no offence, yet the member keeps speaking as though there is an offence. The difficulty with the member's amendment, which I understand is based on criminal law, is predicated on there being an offence. As no offence exists, it will be of no effect.

Other difficulties would arise if the member for Kingsley's amendment were passed. If the section were not amended as we propose -

Mrs Edwardes: Don't criticise me. Why didn't you seek to amend it?

Mr KOBELKE: I have. Our amendment will make the provision more workable and will fix the problem the coalition Government created.

Mrs Edwardes: Why won't you close the loophole?

Mr KOBELKE: The member's amendment will not work in its present form. If that approach were successful in making it a criminal offence, the burden of proof would be greater. The chances of successful prosecution in this general area of industrial law would be very slim. If a provision in an Act is a paper tiger, it will be of no effect.

This Government has provided a civil penalty that will resolve the problem in two ways: firstly, it will include a penalty of $1 000 for an individual and $5 000 for an organisation, which will mean that a finding can be made based on the potential to enforce the penalty. Secondly, under civil jurisdiction, the burden of proof will be easier to determine; therefore, effective action could be taken if someone contravened the provisions in section 70. It will address the problem that was created by the previous Government, which moved the penalties.

Mrs Edwardes: What have you done to close the loophole that will allow this State to take action given the very strong legal advice that section 70 was deficient in taking action at that time?

Mr KOBELKE: I am not conversant with that legal advice. I do not know whether the basis of that legal advice is the wording of the provision or the lack of penalty.

Mrs Edwardes: It was about the wording of the provision. You obviously did not seek the advice of the Solicitor General or the Director of Public Prosecutions, despite my asking the question in May last year.

Mr KOBELKE: Bribery is a criminal offence. Laws exist in the statute books that allow action to be taken. The member for Kingsley's language is very colourful and fulsome about evidence that must be mounted for a successful prosecution.

Mrs Edwardes: It did not allow for elections in a union. There is a clear difference.

Mr KOBELKE: Bribery is a criminal offence. We are dealing with industrial law and seeking to provide, quite properly, that an offence will be committed if anyone seeks to induce an improper outcome in an election, characterised by the general provisions I have read into the record. We are providing that if people offer that inducement there will be a penalty. There is no penalty now. Any prosecution would have failed under the Industrial Relations Act because no penalty applies.

Mrs Edwardes: It would not have failed; that advice is wrong.

Mr KOBELKE: In what way?

Mrs Edwardes: The industrial magistrate has the discretion to levy a penalty. The advice you are getting is wrong. I double-checked that with one of the top legal brains in Western Australia, who is experienced in industrial relations matters.

Mr KOBELKE: We could try a backdoor way that would produce some effect. However, there is no penalty attached to these provisions; it was removed by the previous Government.

Mrs EDWARDES: Clearly, the minister has no intention of including any criminal offence provisions in the industrial relations area, despite the attempted bribing of a candidate. It seems that is okay if it happens in connection with a union election, but it is not okay in connection with any other election. Even though I raised the issue in May last year, the minister had no intention of seeking advice. That does not do him justice as the minister responsible for this area. We will have one rule for one group and another rule for the minister's union mates.

Mr KOBELKE: The member has point of view, and I totally reject it.

I must correct a mistake I made. I said that the penalty was removed by the previous Government. That is incorrect, it was removed in 1984 not 1994.

Amendment put and a division taken with the following result -

Ayes (18)

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

Noes (26)

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

Pairs

Mr Ainsworth	Mr O'Gorman
Mr Grylls	Mr Brown
Mr House	Mr Murray

Amendment thus negatived.

Mr KOBELKE: I move -

Page 179, line 28 - To insert after "penalty" the words "by order".

This amendment has been introduced to clarify that penalties imposed for offences under proposed sections 83A, 83B(10) and 83E(9) are not payable to an affected party. This amendment clarifies that only penalties imposed by order will be subject to proposed section 83F(2), allowing the magistrate the discretion to award the penalties to the affected parties.

Amendment put and passed.

Part, as amended, put and a division taken with the following result -

Ayes (26)

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

Noes (18)

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

Pairs

Mr O'Gorman	Mr Ainsworth
Mr Brown	Mr Grylls
Mr Murray	Mr House

Part, as amended, thus passed.

Part 10: Amendments about minimum weekly rates of pay and other conditions of employment -

Mrs EDWARDES: Employees cannot cash-in their full four weeks annual leave; they are entitled to take only 50 per cent. Therefore, an employee can cash-in only three weeks when entitled to six weeks annual leave. A review conducted on the minimum conditions of employment and workplace agreements revealed that employees valued the opportunity of having their annual leave paid out in order to use the extra money for overseas holidays, an unexpected wedding, renovations of the bathroom and kitchen, and the like. In other instances, it was annualised and not taken. Often the nature of an employee's hours means that he has plenty of time off from work. For example, fly in, fly out workers may work two weeks on, two weeks off, or whatever the variation may be. Employees often value taking their annual leave as a payment, because they are already enjoying a considerable amount of time off from work to spend with their families.

Research has revealed that it is not good for an individual employee to regularly work 52 weeks each year. From my many years of experience working with chartered accountants, I know that it is also not necessarily good for employers. In an endeavour to determine whether any untoward events were taking place, we would look first to instances of employees who had not taken annual leave for some time or who had recorded many absences from work. Taking into account all those respective positions in an attempt to balance them, it will be seen that the employees who have taken advantage of the opportunity to cash out their full four weeks leave will lose out on that opportunity to pay for major household items of expenditure, some of which might have been unexpected. Secondly, employees will no longer be able to annualise their leave. Employees who spend a considerable time away from their workplace regard that as a major infringement on their ability to be able to earn more. The minister said that it would not apply to employees on workplace agreements who have annualised their leave and who want to go back onto an award. Those people, in fact, will get a higher rate of salary maintenance and can then double dip. An employee might have annualised his leave but when his workplace agreement expires he will receive annualised leave and a higher salary. It is amazing that the minister, as a member of the Government, is happy for employees to double dip in those circumstances.

I put those comments on the record. Although I can understand to some extent, from what I have read, where the minister is coming from, employees will miss out on those conditions.

Mr KOBELKE: Did the member ask me a specific question?

Mrs Edwardes: The minister may want to respond to the points I made.

Mr KOBELKE: The key point is that under the Workplace Agreements Act - and the Minimum Conditions of Employment Act, with which we are dealing - it is possible for employees to trade off their annual leave. That means that they can work year in, year out without taking or accruing any annual leave. That is not a reasonable minimum standard. The standard for many years in this State has been four weeks annual leave. We are willing to reduce that standard in the Minimum Conditions of Employment Act to at least two weeks. Under our general policy approach, that Act must come up to general community award standards but must not surpass them. In some respects the provisions in the Act will sit below those standards but we wish to move it closer to a general community standard that is regarded as the minimum award.

Mrs Edwardes: What tipped the balance for you to move down this path?

Mr KOBELKE: It was stated clearly in our policy document.

Mrs Edwardes: What, apart from that?

Mr KOBELKE: I will finish on that issue and then go to the general issue. The Minimum Conditions of Employment Act will allow people to trade off their leave but they must retain the right to take at least two weeks.

I will now refer to the more general issue. The system under the Minimum Conditions of Employment Act established by the previous Government led to a reduction in the standards of employment and wages relative to community award standards. There was a need to tighten up a range of matters. We made a clear commitment in our election policy that we would improve those minimum standards to take them close to the award. However, we said we would do it with consultation and with minimal cost impacts. It was not to be done in a way that created large cost impacts on employers. We were therefore not specific. We issued a discussion paper with a draft of the Bill in about September 2001. We canvassed an increase to standards in six areas with minimal cost impact on employers. We discussed the standards with employers and pruned them back to a more limited number because some would have cost impacts. We then provided in the Bill for those matters to be upgraded over time and for power in the commission to monitor those standards. Obviously, that process will allow the parties to present their case in the commission where they will be heard. The cost implications, the downside of those changes and the positive aspect to increasing minimum conditions will be considered by the

commission with the monitoring power given to it in the Bill. We have specifically improved some of the minimum standards, and this is one of them. It is to ensure at least two weeks annual leave is available and that people cannot trade-off the entire four weeks.

Mrs EDWARDES: Clause 165 contains proposed section 10, "Entitlement of employees to be paid a minimum rate of pay". It states -

> An employee is entitled to be paid, for each hour worked by the employee in a week, the minimum weekly rate of pay applicable to the employee under section 12, 13, 14 or 15, divided by 38.

The previous minimum conditions of employment had a divider of 40. It was regarded that 40 hours a week was the correct way to obtain an hourly rate for calculating the minimum wage. What does this mean? Employers and employees need clarification. Does it mean that people must now work a 38-hour week? The minister has put it on the record that that is not his intention.

Mr Kobelke: That is correct.

Mrs EDWARDES: If a person works 40 or 42 hours a week, does he do so at the hourly rate or is he working 38 hours at the hourly rate and the extra hours at a penalty rate? If that is the case, all hours worked beyond 38 hours a week are at the penalty rate. That means that a 38-hour week becomes the standard.

When sick leave and annual leave is assessed under the minimum terms of employment, they are based on a 38-hour week. If a person works 40 or 42 hours a, week the calculation of the average number of hours worked over a year is not taken into account for the calculation of annual leave and sick leave. Will the minister clarify the position?

Mr KOBELKE: As applied to workplace agreements, the Minimum Conditions of Employment Act uses 40 hours a week. That means that the contract of employment can specify the hours. If a person is caught by the minimum wage under the Minimum Conditions of Employment Act - which is currently $400.40 a week - the figure is divided by 40, which is just over $10 an hour. If a person works part-time, his hourly rate of pay would be $10 an hour. If a person is contracted to work a 40-hour week and he works five hours overtime, the extra five hours are paid at the hourly rate. The hourly rate is derived from dividing the minimum wage by 40. It should be divided by 38 because awards are commonly based on a 38-hour week. Some awards are set at 37.5 hours a week and some may be set at 36 hours a week. Generally, the minimum standard is 38 hours. In order to have rough comparability between the minimum conditions and award conditions, we should use the figure of 38 hours to work out the hourly rate. It will have no impact on the number of hours a person works. If a person is contracted on an annual salary, he will not be affected. If a person is contracted to work so many hours a week for a certain amount, he will remain unaffected. A person will be affected if he is contracted at the minimum wage under the Minimum Conditions of Employment Act. He will be paid the minimum rate for 38 hours. The minimum rate is $400.40 for a 38-hour week. If a person works a 40-hour week, he will continue to work a 40-hour week, but he must be paid for the extra two hours.

Mrs Edwardes: At the hourly rate?

Mr KOBELKE: At the hourly rate. The minimum wage is currently $400.40 for a 38-hour week. The divisor is achieved by dividing 40 by 38, which is then needed to calculate the amount to be paid for any additional hours worked above the 38 hours, or if the person works part-time -

Mrs Edwardes: The assessment of annual leave and sick leave is calculated at the minimum. Therefore, if the person works more hours in a year, it is still averaged out to work out the person's calculation for annual leave and sick leave.

Mr KOBELKE: The calculations for long service leave etc are based on the standard hours worked. The standard hours now become 38 hours, so it will be based on that. However, the person may work 40 hours. It depends on the standard rate. If the person is contracted to work a 40-hour week, that would be used as the basis for calculating annual leave etc.

It is a bit complicated. It depends on whether we are referring to the contract of employment or the minimum conditions. If a person is employed under the minimum conditions, it will flow through into the provisions in the Bill. Many people may have a contract of employment that is close to the minimum conditions. They may be employed for a 40-hour week, which is above the minimum; therefore, it is slightly higher and that will flow through into changes in the calculations for annual leave and other factors.

Mrs EDWARDES: I refer the minister to clause 172 of the Bill, which amends section 40 of the Minimum Conditions of Employment Act. This clause will amend the definition of "employee" by inserting "trainee". It also amends the definition of "redundant". Subclause (1) will delete a number of words. That is quite different from the draft Bill that went out to the limited stakeholders. There was some concern about the original

provision, which required all employers to notify the unions of the redundancy of an employee, regardless of whether the employee was a union member. Obviously that would have had a great impact on the operations of employers. Section 40 of the Minimum Conditions of Employment Act deals with what is done when a redundancy occurs. The definition of "redundant" states -

> . . . means being no longer required by an employer to continue doing a job because, for a reason that is not a usual reason for change in the employer's work-force, -

The words that will be deleted are "for a reason that is not a usual reason for change in the employer's work-force"-

> the employer has decided that the job will not be done by any person.

If a person were made redundant for a reason that is not a usual reason for change in the workplace, it would fall within the provisions of the Act. Essentially, seasonal workers, who work in many industries, would now be caught by this legislation. This could involve apple and strawberry pickers, boat manufacturers and metal fabricators. All these provisions would apply. The only exclusion would be that seasonal workers would not be given leave to attend job interviews. By putting that exclusion in section 43 of the Act, it is clear that all the provisions in part 5 of the Act that relate to redundancy now apply to seasonal workers. Why has the minister gone down this path? We are talking about apple and strawberry pickers and other seasonal workers in farming or industries such as metal fabrication and boat building. At the end of the day, a boat is built and the employer must wait for the next order before he can build the next boat. Therefore, the serious issue is whether the Government is making it really hard for employers and workers by deleting that phrase. As such, I suggest that if this Bill had gone out for consultation in that form, a lot of other reasons would have been put forward about why this is an inappropriate amendment given the definition of "redundant".

Mr KOBELKE: I will seek to allay the member for Kingsley's fears before I formally explain why the Government is doing it this way. The amendment will provide workers who are made redundant with eight hours in which to seek another job. It is not an onerous imposition on employers, but it is a cost. However, it is a minimal cost. It will not apply to seasonal workers. Clause 173 amends section 43.

Mrs Edwardes: I referred to that clause.

Mr KOBELKE: That clause makes it clear that seasonal workers are excluded.

Mrs Edwardes: Only in that section; not in any other section.

Mr KOBELKE: We are talking only about redundancy provisions under the Minimum Conditions of Employment Act. All it currently provides for is eight hours in which to seek another job. That is all a worker will get as the minimum condition. We can look at potential flow-ons at a later stage, but that is all that is provided by the redundancy provision. The provision was couched in this way to simplify an ambiguous statement that could result in disadvantage to low-paid employees. The term "for a reason that is not a usual reason for change in the employer's work-force" is not meaningful. The "usual reason" could be very restricting, and could effectively nullify the entire clause and create a situation in which no employee is construed as redundant under the Minimum Conditions of Employment Act. It is felt that the inclusion of these words in the current definition potentially excludes many redundancies from the effect of the provisions, since redundancy may well be seen to have occurred for a reason that is a usual reason for change in an employer's work force. This amendment will bring the provision into line with community standards. That is why the Government would not accept the member's amendment. As it is currently worded, it is doubtful whether it would have the intended effect. The Government clearly wishes it to have that effect. That is the reason for the Government's amendment to the Act. The Government does not believe the amendment will have any detrimental effect by going further or including people like seasonal workers. To make sure, that has been covered by a further amendment.

Mrs EDWARDES: I move -

> Page 194, lines 26 to 28 - To delete the lines.

This amendment would reinstate the phrase that is being deleted by the Bill.

Amendment put and negatived.

Mr WALDRON: The National Party no longer wishes to move the amendments in the name of the member for Merredin.

Mrs EDWARDES: I refer to proposed section 51G(2) and (3) on page 200. Will the minister highlight exactly what proposed subsections (2) and (3) mean? Will those proposed subsections set up adult rates for apprentices and/or trainees if they are over the age of 21 years, irrespective of which year of an apprenticeship they are in?

Mr KOBELKE: The member would be well aware that some awards already contain rates of pay for adult apprentices; that is, apprentices over the age of 21 years. These provisions give the commission the ability to set those rates more extensively. However, it is up to the commission, according to the case put to it. The gentleman who has been cutting my hair for the past 15 years or so -

Mrs Edwardes: What a good job he does too.

Mr KOBELKE: I thank the member. I will pass on her compliments. Some people do a remarkably good job with very poor material. That gentleman made it clear to me that he was having difficulties getting an apprentice. I also received a telephone call from a woman who wanted to get back into the work force. She thought that she would enjoy being a hairdresser. However, as she had had children and was a little older, she must be paid the full adult rate. The people she approached told her that although she might learn more quickly because of her experience, it was not commercially viable for them to take on a person who would still be unproductive for a year or two and to whom they must pay the adult minimum wage.

We are leaving it open to the commission to establish a variable range of rates of pay for people over the age of 21 years who may wish to enter into a formal apprenticeship. It may open the door for more people to undertake that training to get employment. A range of competing interests must be taken account of. It is appropriate that the commission have the power to do that. It will be up to the commission to make a determination. The various parties will be able to put their views so that it is an informed decision on what is workable and acceptable in this area. There is room to move in this area. Under these provisions, the commission will have the power to do that.

Part put and passed.

Part 11: Other amendments; and Schedule 1 -

Mrs EDWARDES: Part 11 has the title "Other amendments", which might be regarded as everything else that was thought of but that did not easily fit in the other parts. Some people might therefore believe that these provisions are of a minor nature. However, part 11 contains some very serious amendments in a number of areas. The amendments redefine an industrial matter to include anything at any time. They will include musicians and those in similar occupations in the definition of "employee". The new definition of an industrial matter will include occupational health and safety. That is wrong, and I have raised it a number of times during the debate. The part also deals with the so-called third wave legislation. I know that some parts of the debate that occurred at that time were heated and heady. However, rather than making a blanket statement that the third wave legislation was unwanted, unworkable and would be repealed, the Labor Party should have identified why each section of the third wave legislation was no longer required.

The provisions for secret pre-strike ballots will be removed. Currently, a secret ballot must take place prior to industrial action. That provision exists and is highly regarded in many jurisdictions. The minister argues that it has never been used. However, it functions as a deterrent. It gives the members of some unions extra power over the executive. I know from talking to others that it is regarded as a valuable tool for enabling union members to have a say in the operation of their union. Union members will be discriminated against by the removal of this provision. It may not work in the building and construction industry; I do not think very much works in the building and construction industry. However, in other areas in which the unions are more moderate, the secret ballot is a valuable tool for union members who want to have a say.

The other parts of the third wave legislation that will be repealed include those that give the commission a direct power to order striking workers back to work. Why is the Government removing the direct power to order a return to work? Did it get caught up in the heady rhetoric that the third wave legislation is unworkable, unwanted and no longer needed, and decide to remove the lot; or was the matter seriously considered? I do not think it was. I hope the minister clarifies this. Although the Western Australian Industrial Relations Commission will still have some power to order workers back to work, the Government is waving a flag to unions, indicating that it is prepared to remove the specific powers of the commission to order striking employees back to work.

We are also concerned about the removal of the regulation of political expenditure by organisations, essentially unions. Why would the Government want to remove that? This also will take the power away from the union workers and support the union executive over its members.

Mr TRENORDEN: I would like to hear the member continue.

Mrs EDWARDES: The people who will be discriminated by the removal of that part of the third wave legislation are the union members themselves.

The Labor Government might be satisfied to look after the union executives and officials; however, the individual union members would be discriminated against.

I refer to the collection of union dues. The former Government passed legislation so that employers were not required to collect union dues. This Government wants to reinstate that requirement. Specific provisions in the Bill ensure that an employer cannot refuse to do that. Those provisions might meet the needs of the union executive, but they do not meet the needs of the union members. Over the years, there has been a huge drop in union membership. As soon as the former Government's legislation took effect, employees had to decide whether they wanted to pay to be a member of a union. Not only did employees decide not to join a union, but also many resigned their memberships in droves. Currently, about 15 per cent of private sector employees and, on average, only 24 per cent of public sector employees are union members. That means that 80 per cent of people are happy not to be members of a union. A significant change will occur as a result of this provision. When industrial agreements are negotiated, one of the provisions will be that the employer must again collect the union dues of union members. This is a significant part.

I refer the minister to clause 183. The proposed definition of "employer" would include labour hire agencies and/or group training organisations. Why does the Bill include group training organisations? We suspect they are included because labour hire companies have successfully proved in court that they have no employees under their contract arrangements. This amendment and the third party unfair dismissal amendment will impact on those contract arrangements.

I also refer the minister to clause 183(3) and the use of the word "pertaining". Why has the Government decided to amend section 7(1) of the Act to include the word "pertaining"? Is it to widen the definition of "industrial matter"? Clause 183(3)(d) widens the definition of "industrial matter" to mean anything; it means whatever occurs between an employer and the employee's employment relationship and beyond. Under the current Industrial Relations Act, the recent strike action by the Construction, Forestry, Mining and Energy Union was not of an industrial nature. Will these changes mean that the nature of the strike would be regarded as being industrial because the union is concerned about the perceived attack on it by the royal commission? The removal of the specific power to order employees to return to work would put Western Australia at risk of an increasing number of strikes in the future.

Mr KOBELKE: The member covered a range of aspects. I will try to respond to those of which I have taken a note and the member can come back to me on others. She covered a range of aspects by trying to move through the Bill quickly. The removal of section 44(5b) is because it was part of the third wave secret ballot provisions. Section 44 already has ways by which the commission can get people back to work. As far as I am aware, the provision in subsection (5b) has never been used. It is not as though we are removing a power that needs to be there. It was part of an arrangement for secret ballots that was designed not to work. It was designed to tie people down in a lengthy, complex and bureaucratic process so that nothing would work. For that reason no-one has used it. It is irrelevant and an obstacle to good industrial relations.

I have spoken to people from labour hire companies who are very concerned about the way in which some aspects of their industry are growing. They are obviously happy that they are in a growth industry. They see real potential opportunities, but they see them undermined by some of their competitors who do not maintain the required minimum standards in a range of areas. To give an example, they said that they could go to an hourly hire-out rate, and that is the basis on which they must compete. They said that the two main costs of labour are what they must pay the workers and what they must pay for workers compensation. Their allegation was that many companies classify people in a different area so that they pay lower workers compensation premiums, which is illegal but they get away with it. They lower their costs and, therefore, have a better opportunity of picking up work and undermining a labour hire company that is working correctly. Alternatively, they pay people below the statutory minimum requirements. Again, they get away with it because of the difficulty of enforcing the law and the question of who is the employer and who is the employee.

It is therefore in the interests of the labour-hire industry that we establish fair minimum standards. It also means that some companies do not get an unfair advantage by being able to reduce their costs of labour in a way that lowers general community standards. That is why we need to make sure that they are covered. I was asked why on page 207, proposed subsection (3) inserts "or pertaining". We have taken that on advice as a way of ensuring that the powers and how it can exercise them are clear to the commission.

I do not see how in any way we can extend to an industrial matter the jurisdiction of a federal government royal commission.

Mrs Edwardes: Would the strike that happened on Monday be regarded as an industrial matter under the changes you intend to put in place?

Mr KOBELKE: Any stoppage of work has the potential to be regarded as an industrial matter. It must come before the commission. If people are conducting their normal course of work and there is a clear expectation that they will be at work during certain hours and they leave, clearly that is the basis for an industrial matter.

Mrs Edwardes: You mentioned yesterday that you have not provided for protective action in the Bill. By the changes in industrial matters, are you permitting strikes of the like that we saw on Monday to be one of those legitimate matters?

Mr KOBELKE: Definitely not; there is no intention of doing anything of that nature at all.

Mr TRENORDEN: In view of what is happening today and the sessional order, although we have passion for it, we will not be moving our motion.

Mrs EDWARDES: I have an amendment that I do not propose to move, but I would like to refer to it. It is to delete lines 13 to 20 at page 208. It would remove the repeal of section 7(3) which states that occupational health and safety is not an industrial matter. This part of the Bill reintroduces occupational safety and health issues into the industrial relations arena, which is a retrograde step for workplace safety. Occupational safety and health issues are dealt with under a separate Act, department and commission, so that it is clear they are not industrial matters. The Bill reintroduces the advocacy role, and there will be employer resistance. The present system relies on everyone working together, which has led to a major reduction in the incidence of workplace injuries.

Mr KOBELKE: It is important to ensure that the commission can take up occupational safety and health matters. I will not go into the jurisdictional issues at the moment. The approach of the last Government was to use a sledgehammer to crack a peanut. The evidence is that from time to time unions have sought quite improperly to use health and safety matters for industrial purposes. The Government agrees with the member for Kingsley that that should not happen. However, we should not stop the commission from dealing with a matter because it has a health and safety component. That is not the right way to go. I am opposed to people using health and safety provisions for other ends, because it undermines health and safety in the workplace. However, it is not widespread. It happens occasionally and we need to deal with it, but we should not stop the proper functioning of our system, particularly matters that come before the commission in which health and safety is rightly a component of a bigger issue. Occupational safety and health issues should be able to be taken up at appropriate times.

Mrs EDWARDES: I move -

Page 208, lines 21 to 31 - To delete the lines.

This proposed subsection provides that a person can be defined as an employer if he or she engages a person under a contract to perform musical, theatrical, dance or comic entertainment. In 1995, the Musicians Union of Australia made a submission to the Fielding inquiry on the basis that some bands had trouble with some hotels and wanted the Industrial Relations Commission to recover their contractual benefits. This clause will make a contractual relationship an employee relationship, when that is not the case with the majority of entertainers. The industry has serious concerns that this will greatly impact on local talent in particular. The wording of this clause will include entertainers who are employed at twenty-first and fiftieth birthday parties, or whatever. The Government has gone from the sublime to the ridiculous. This is clearly a contractual benefit and not an employee relationship. The impact will be great, particularly on local talent. The third aspect is that it relates to a domestic situation. The Opposition strongly opposes this clause because it will be prejudicial to many employers and to entertainers in the industry and in domestic arrangements.

Mr KOBELKE: The member's wish to remove this subsection is in some respects well founded. The intention was to enable musicians and other performers to have recourse to the commission in a case of denial of contractual benefits. The way it was drafted is broader than that. Members will see an amendment in my name on page 22 of the Notice Paper, whereby I will seek to narrow the application to the denial of contractual benefits. Some employees seek to support themselves by means of employment in the entertainment industry and, because of the way the industry works, if they are not paid they have no simple recourse to try to gain the money that is due to them. A young woman - an exotic dancer - came to see me some time ago; she had worked in some hotels but they had refused to pay her. They told her, "Do a strip show or two, and if we think you're good, we'll pay you." They did not pay her. She had no way of getting payment for the work she had done in those hotels. If someone is contracted to do work as an entertainer or as a musician etc they should be able to go to the Industrial Relations Commission to seek payment if they have not been paid. Of course, resolution is up to the commission. If it is a matter between two friends - for example, someone in the family who sings at a wedding - there is no contract of employment. The commission will not look at those sorts of things. If someone is contracted to do a job, there is the potential for enforcement of the contract by taking to the

commission a case for denial of contractual benefits. The amendment I will put later seeks to restrict the legislation to that, whereas, in the current form, it has much broader application, which is not the intent.

Amendment put and negatived.

Mr KOBELKE: I indicated during my contribution on the previous amendment that I would move -

> Page 208, line 24 - To insert before "For" the following -
>
> Subject to subsection (7),

It is proposed to insert a new subsection (7), which will constrain the application of proposed subsection (6) to matters of contractual benefits.

Mrs Edwardes: I have not had a chance to go back and reflect on this amendment. Which section are we changing in the Act? Is it the definition section?

Mr KOBELKE: Yes; section 7, definition of employer and employee.

It is appropriate to recognise that a whole range of industry groups have worked with us, and we are very appreciative of that. Often in these areas the proposals we put forward are not the desired changes people would like, but in this instance we had fairly lengthy discussions with members of the Australian Hotels Association, and they drew to our attention - as has the member for Kingsley, because she may have spoken to the AHA - that the current legislation created real problems for them. It is my understanding that this amendment, although not the best possible outcome for them, is workable; and they are happy to work with the Government on that basis. I thank members of the association for the constructive way in which they assisted the Government to arrive at a proposal that allows employers to enforce their rights, and does it in a way that will not cause any real detriment to the hotels and other industries that employ these people.

Amendment put and passed.

Mr KOBELKE: I move -

> Page 208, after line 31 - To insert the following -
>
> (7) Subsection (6) has effect only to the extent necessary to enable a claim of the kind referred to in section 29(1)(b)(ii) to be referred to and dealt with by the Commission in respect of a person who would not be an employee but for the operation of subsection (6).

Amendment put and passed.

Mrs EDWARDES: Clause 189(2) repeals section 7(2) of the Industrial Relations Act. That section removes the requirement that employers collect union membership dues under an award. That section was one of the key factors in the decline in union membership. If unions offer a relevant service, they do not require organised employer deductions to gain additional memberships. When I worked at Charles Moore, I was a member of the shop assistants union. My union fees were deducted from my pay packet. I did not make the decision about that. The key issue, which was often remarked upon by some of the staff, was that we never saw the union official. Payroll deductions have the tendency to make union officials lazy and ignorant of the needs of their members, particularly if the officials do not get out and talk to members and if they adopt, as is said about the secret ballot, a "union knows best" approach. This is one of the key amendments that supports union officials. It certainly does not support union members, because it places no obligation on the union and its officials to respond to and meet the needs of members. This amendment will help them to remain lazy.

Mr KOBELKE: The member has overlooked proposed new section 7(1)(g), which reads -

> any matter relating to the collection of subscriptions to an organization of employees with the agreement of the employee from whom the subscriptions are collected including -

I repeat that it reads "with the agreement of the employee".

Mrs Edwardes: If an industrial agreement on which the employees had not signed off was in place, how would that affect the application of this provision?

Mr KOBELKE: Proposed subsection (1)(g) allows such a provision to be placed into an award or industrial agreement; and, once it is there, the effect is that the individual employees must agree to it.

Mrs Edwardes: If an industrial agreement or award on which the employees had not signed off was in place, they could just sign a little form and tick in the box indicating that union dues are to be deducted?

Mr KOBELKE: Yes - the individuals must agree.

Mrs EDWARDES: Clause 192 on page 216 contains amendments dealing with pre-strike ballots. On the basis of what has been relayed to me by the more responsible unions, the provisions for pre-strike ballots have required union officials to be more responsible and accountable to the wishes of their members. It has enabled union members to express their views about strike action without fear or favour, because they know that they can call for a secret ballot before a strike. Although this provision has not been used - as I indicated earlier, I do not know what could be put in place to bring the Construction, Forestry, Mining and Energy Union into line - it has given members of other unions more power. The removal of this provision will discriminate against union members by taking away their status and power in taking strike action. The right of union members to vote by secret ballot is a major part of freedom of association. They could have a choice; it would not be compulsory. Nevertheless, they should be given that opportunity.

I refer to clause 192(4), which seeks to repeal section 32(8), and to subclause (5), which seeks to repeal section 44(6b) of the Industrial Relations Act. Those amendments will remove the specific power for the Industrial Relations Commission to order striking employees to return to work if a strike constitutes a breach of an award, an industrial agreement or an undertaking given by the union. The commission may make a return-to-work order if a strike is contrary to the pre-strike ballot laws. If the strike is not about wages and conditions, what ability will the commission have if its direct and specific powers are removed? No doubt a number of sections can be drawn on to provide the power to order striking workers back to work. However, with the removal of these subsections, the Government will indicate to union officials that it is okay to strike. The specific power will be removed, and it will be much harder for the commission to order a return to work. That is wrong and it will result in an increase in the number of working days lost due to strike action.

The number of days lost was reduced in 1999-2000 to only 87 working days per 1000 employees compared with the national level of 104 days. I would hate to see these statistics return to previous levels, which were almost double that. It would be a sad indictment on not only this legislation but also the Government's approach to the actions of union officials and strikes that are often held over matters that are not related to pay and conditions or safety.

The DEPUTY SPEAKER: Does the member for Wagin intend moving the amendment in the member for Merredin's name?

Mr Waldron: No, thank you, Madam Deputy Speaker; given the sessional order, we will not do so.

Mr KOBELKE: The level of industrial disputation is very good in this State. I think it is a fraction better than when the member for Kingsley was in government, which I suspect is more due to chance than any major change. I recently reviewed the latest figures on industrial disputation. The trend has been a decrease in disputes over the past decade. Although the state figures have been better than the national figures over the past year, they follow the national trend. There is no basis to claim that the coalition's legislation was responsible for that. There has been a marked reduction in the number of industrial disputes throughout Australia since the late 1980s. That is a good thing, which this Government wishes to see continue and which will require our addressing a more complex range of matters. The member's claim that the low disputation rate is attributable to one part of the statute has no substance.

Dr WOOLLARD: Clause 192 refers to pre-strike ballots. Part VIB should be amended rather than repealed. Union members should be able to request a pre-strike ballot, particularly if they are concerned that union officials are not necessarily acting in the best interests of their members. The terms of a pre-strike ballot are best determined by members of a union. Therefore, I move -

Page 216, line 5 - To insert after "repealed" the following -

Part VIB - Pre-strike provisions

Decision on pre-strike ballot

96K. (1) Each organisation of employees will conduct a ballot of their members to decide whether the process for making a decision within that organisation for members of that organisation to strike, will include a pre-strike ballot.

(2) If a majority of the members of the organisation voting in the ballot referred to in subsection (1) are in favour of a pre-strike ballot, that organisation will incorporate that requirement in the rules of that organisation.

(3) If subsections (1) and (2) have not been complied with within 12 months of the commencement of the Labour Relations Reform Act 2002, no member of that organisation of employees may participate in any form of strike unless a pre-strike ballot has been conducted in accordance with section 96L.

Pre-strike ballot

96L. (1) A pre-strike ballot referred to in section 96K(3) will be conducted by the Electoral Commissioner appointed under the *Electoral Act 1907*, or a person nominated by the Electoral Commissioner.

(2) The Minister shall, within 3 months of the commencement of the Labour Relations Reform Act 2002, cause to be prescribed by regulation, the procedures to be complied with by any organisation of employees and the Electoral Commissioner for a pre-strike ballot.

Mr KOBELKE: I support secret ballots and hope that unions use them and have provision for them in their rules. I respect the intent of the amendment. It is similar to mine. However, I will not accept an amendment I saw for the first time only one minute ago. This is a complex area and the amendment will not achieve the member's objective. It does not provide a workable model to ensure people have a right to democratic decision making in unions.

Dr WOOLLARD: This amendment would provide members with democratic rights. If part VIB is repealed, some union officials might say that the requirement to hold pre-strike ballots has been removed and that provisions covering such ballots are no longer necessary. Union members who want those provisions retained will lose that important option. If part VIB is repealed, it will no longer exist.

Amendment put and negatived.

Mrs EDWARDES: We would have liked to explore in greater detail a couple of other clauses, particularly clause 193 that deals with political expenditure by organisations. This provision will discriminate against union members in that they will have no choice about what union officials contribute or donate to political parties. Another issue deals with the accountability of union organisations for their records and books. It is interesting to note that that will now be the responsibility of union officials and not the employees of unions. We were also not able to deal with the issue of wage fixing principles in any detail. I raise all those issues to put it on the record that they were areas we would have liked to discuss had we been given the opportunity.

Part, as amended, and schedule put and a division taken with the following result -

Ayes (26)

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

Noes (19)

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

Pairs

Mr Brown	Mr Grylls
Mr Murray	Mr House
Mr O'Gorman	Mr Ainsworth

Part, as amended, and schedule thus passed.

Title put and passed.

Standing Orders Suspension

MR KOBELKE (Nollamara - Minister for Consumer and Employment Protection) [12.34 pm]: I move, without notice -

> That so much of the standing orders be suspended as is necessary to allow the moving of the third reading of the Labor Relations Reform Bill 2002 forthwith.

The sessional order requires that all questions be put at 3.00 pm. Because the Bill was amended in the consideration in detail stage and would therefore not be brought back until the next day of sitting, it would preclude members speaking to the third reading of the Bill. The Opposition has managed its time to allow one or two members to speak to the third reading, and it is the Government's intention that they do so. Therefore, it is necessary to suspend standing orders to allow third reading debate to commence forthwith.

Question put and passed with an absolute majority.

Third Reading

MR KOBELKE (Nollamara - Minister for Consumer and Employment Protection) [12.36 pm]: I move -

> That the Bill be now read a third time.

MRS EDWARDES (Kingsley) [12.37 pm]: Western Australia requires a greater level of investment, higher productivity, and more jobs. The Labour Relations Reform Bill 2002 will achieve the exact opposite. This legislation is based on the premise that only the Labour Party and the unions know what is best for employees.

The Opposition has not been given an opportunity to go through some parts of this legislation in full detail. That is to the detriment of the Government, because during the debate it was revealed that the minister did not fully comprehend the implications of some of the provisions in the Bill. The Opposition was denied debate on individual clauses in parts 6, 7, 8, 9, 10 and 11, and it was denied the opportunity to move its amendments. Independent members and members of the National Party were also denied the same opportunity. The lack of opportunity to debate certain provisions was made even more significant because we did not receive a detailed explanatory memorandum. The sessional order meant that there was only limited and restricted debate on a number of important clauses. Had the Opposition been allowed to debate these clauses, more issues would have come to light, such as the delegation of power to the minister.

The parts that were not debated might have a greater chance of scrutiny in the Legislative Council. That proper scrutiny is left to the Legislative Council detracts from the powers of the Legislative Assembly. Also, because

the minister responsible is not a member of the Legislative Council, he will not be subjected to that greater level of scrutiny.

Another key issue is that there has been no economic analysis to determine the impact of this legislation on jobs, small businesses, industry and investment. There has been no analysis to determine how this legislation will affect the disability services sector. In this House we have talked about the crisis in accommodation in the disability services sector. One of the critical factors in the disability services sector - indeed, in the community services and aged care sectors - is that it is essential that we have carers to look after people with disabilities. There will be an impact on the community services and aged care sectors and two issues will arise from that impact. First, the Government in the next budget should provide extra funding so that those sectors can accommodate the impact of the changes on their operations and maintain the same level of service. This is the Government's legislation and it has an absolute obligation to ensure that those services are not reduced as a result of it.

The Minister for Housing in the other place was unaware of the Boral report carried out by Homeswest on the impact on the housing sector, particularly Homeswest housing, as a result of the unionisation of the building and construction industries with which it must deal. That report estimated an increase of 30 per cent in housing costs. There have been changes to that estimate. It is currently less than 30 per cent, but it is still a major cost increase. The Government has done no analysis of that cost increase. What is the answer? The Government should put more money into the budget to cover the increased costs of construction to ensure that there is no reduction in the amount of available Homeswest housing. Again, that key impact will affect the community. I do not say that the cost increases will not flow to the Government in the construction of new infrastructure, such as schools and the like. The convention centre is clearly at risk of such an impact. I reiterate that the effect of those impacts will be felt by the community, particularly in view of the limited consultation on the Bill and the absence of a detailed explanatory memorandum.

The Bill took 10 months to draft and limited stakeholders got 10 days of consultation on it. That meant many stakeholders did not have the resources to adequately consider the implications of the Bill for their members. The members of employer associations did not have an opportunity to consider the legislation; therefore, the impacts on them and their workers were unable to be fully explored. It is only now that those impacts are coming to light. I brought into this place during the second reading debate several examples that demonstrated what businesses and employers thought of the legislation. I received another survey form from another employer only a day or two ago that asked whether the Government had consulted that employer. The answer was no. The employer also commented that the Government had shown a blatant disregard for the relationship between employees and employers and that there had been a return to the "them and us" mentality. I emphasise the class war that members opposite talked about that will be created with a return to a union-employer relationship as opposed to an employer-employee relationship - the major stakeholders.

The survey further asked whether the proposed legislation would increase costs for the employer's business. The answer was yes, definitely: the family would now have to work on public holidays; the increase in costs would mean a reduction in the hours worked by the employees; and the employer was not prepared to change the trading hours. That employer runs a garden centre currently open 364 days a year. The 1998 workplace agreement, in full consultation with the employees, suited both the employees and the employer. It was flexible with over-award payments, annual leave factored into the hourly rate and sick leave paid out if not taken. Again, the union movement is absolutely opposed to any changes in principle. I spoke about the principle of rostered days off. It does not matter whether rostered days off meet the needs of employers and employees; the union movement will not accept them even at the request of union members.

The Bill is very complex. The drafting of the Bill has been quite unusual in a number of respects. The minister admitted that a number of people were involved in drafting the Bill. That comes through very clearly because the Bill is not drafted consistently. Some of the terminology is most unlike that used by parliamentary counsel. One clause stated that "employers will be punished". That is a most unusual phrase. I wonder which union adviser drafted that. He should have used the phrase "employers will commit an offence", which is the normal drafting phrase. There has clearly been a lot of union involvement in drafting the Bill.

Workability and certainty for employers and employees is not provided by the Bill, particularly upon the expiration of workplace agreements. The minister wrote a letter to Unions WA, which was subsequently distributed to Rio Tinto Ltd employees. It did not tell the full story. It did not refer to the fact that when conditions conflict with an award, workers cannot contract out of the award. Unless an agreement is put in place, employees will be referred to the award.

Conditions are not protected. I identified two key areas: fly in, fly out operations and when shift conditions differ. If a person gets into the habit of not telling the full story, integrity and credibility will be put at risk and

questions about what we are to believe will arise. That is an important issue for the minister and the Government.

I discussed at length the key issue of privacy. Non-union members feel that there will be a great invasion of their privacy. The minister said that all employees would be able to write to their employers requesting that their records not be accessed by others. That provision is not in the Bill. There is concern about the minister's lack of understanding in some areas. The legislation clearly develops a strong emphasis of union power. Unions will now have the ability to control workplaces; they have become de facto government inspectors. They now have occupational health and safety issues as a matter of breach and as an industrial matter. Their rights of entry and access are far beyond those needed to relate to members of their organisation. They will have primacy of a union collective agreement because this Government did not provide for non-union collective agreements. That puts unions in a clear monopolistic position when negotiating terms and conditions for employees.

This legislation causes serious concern. It will not restore the balance that the Government talks about. There is no balance. By giving primacy to unions and putting them in a position of strength and power, it should be recognised that only 15 per cent of private sector employees belong to a union. It creates a serious issue for the other 85 per cent. I am sure that the minister has a figure in mind to which he would like to see union membership increase. Similar changes have been made in Victoria. The former Victorian Minister for Industrial Relations said that she wanted to see union membership increase to 30 per cent of the work force.

The cost to the community and to employers indicates that this legislation will not be good for businesses or employees. I have pointed out also that it certainly will not be good for union members, because their rights have been taken away from them in favour of those of union officials. Although I recognise that there are some very responsible union officials and union members, we have seen ample evidence of precisely why this legislation should not proceed.

Debate interrupted, pursuant to standing orders.

[Continued on page 9149.]