



SECOND READING SPEECH IN THE SENATE ON LABOR'S WORKPLACE RELATIONS AMENDMENT (TRANSITION TO FORWARD WITH FAIRNESS) BILL 2008

By Senator Mathias Cormann on 17 March 2008

[Senator CORMANN](#) (Western Australia) (8.45 pm)—I rise to put forward both a Western Australian Liberal perspective on this bill and the perspective of a participating member of the Senate inquiry into the [Workplace Relations Amendment \(Transition to Forward with Fairness\) Bill 2008](#). The government has been very vocal in its argument that it has a mandate to rush this flawed legislation through the parliament. Never mind, incidentally, that it never respected the successive mandates of the previous government when it came to key economic reforms. But, as mandates go, the people of Western Australia have given a very clear mandate to those of us representing them and the Liberal cause in this parliament. We were faced with the most aggressive and well-funded scare campaign on our workplace relations reforms ever by Labor and the union movement, and yet the Liberal Party and Liberal candidates in Western Australia received enough popular support to increase our representation in this parliament. Liberal members of parliament now represent 11 out of 15 lower house electorates in Western Australia, and we continue to be represented by six Liberal senators out of 12.

Representing the people of Western Australia, we have a clear mandate to speak up for Liberal values and principles, to speak up for freedom of choice, to speak up for choice and flexibility in the workplace and for the right of an employee to directly negotiate their employment contract with their employer without third-party involvement if that is what they choose—and, yes, subject to a no disadvantage test, which we support. We have a clear mandate to speak up for a workplace relations system that has helped lay the foundations for the unprecedented economic growth we have been experiencing over the past 15 years—in fact since, yes, the Keating reforms we supported in 1993 and since individual workplace agreements were first introduced into Western Australia by the Court government in 1993. In short, I would argue that we have a clear mandate to speak up for the economic prosperity and wellbeing of the people of Western Australia and that Labor most definitely does not have a mandate to destroy jobs and to damage the economy.

While we will not be opposing the government's bill, we have a responsibility to point the finger at the many flaws that have been revealed during our inquiry into this bill. This bill is the first step in implementing Labor's pre-election policy aimed at taking our workplace relations system back into the last century. Make no mistake: this bill will start the process which, over time, will put our prosperity and, in particular, our currently strong Western Australian economy at risk. It will not happen straightaway. The economy Labor inherited on taking office was too strong for that—so strong, in fact, that the CCI in Western Australia told us that: There is almost nothing that can be done to improve the economy further.

But conversely, of course, there are things that can be done to do damage to our economy. There is no doubt in my mind that over time the impact of the government's approach to workplace relations will, regrettably, become increasingly clear. As we get closer to where the government and its leaders in the union movement actually want to take us over time, Australians will start to see the impact on employment—that is, down; on levels of industrial disputation—that is, up; on productivity—down; and on inflation—up. The impact on our capacity to keep developing our economic prosperity and wellbeing will, indeed, become progressively clear.

The Western Australian economy—as you would know, Mr Acting Deputy President Murray—is the heartbeat of our nation, with a forecast economic growth rate of seven per cent this financial year, an unemployment rate of 2.8 per cent and a resource sector driving investment, jobs and wages growth and delivering to both state and federal governments a stack of cash in royalties. Labor would have you believe—and said so again during our inquiry into this bill—that it is all simply due to the mining and resources boom. All we need to do in Western Australia is dig it up, ship it out and sell it to the highest bidder—pretty simple, really, isn't it! The reality is much more complex. The reality is that we would not be in a position today to take advantage of increasing world demand and world prices for our resources if we had not done the hard yards and done what needed to be done to improve our productivity, to reduce levels of industrial disputation, to develop a better relationship between employers and employees and to become a more reliable supplier and exporter of our resources. There is no doubt that a more harmonious workplace relations system has been instrumental in attracting investment and helping get projects in Western Australia off the ground.

The thing about economic reform is that the impact becomes clear only over time. Yes, the workplace relations reforms at a state level in Western Australia in 1993 and federally by the Keating government in 1993—which I have already said we supported—and the Howard government in 1996 and beyond were the foundations of the economic growth we have experienced over the past 15 years. What we are passing here today—and the bills that will follow on from this one, going down the same path—will have an impact over the next decade, and the future will, no doubt, tell the story.

Western Australians have done well with an industrial relations system which offers flexibility and choice to employers and employees. Western Australians want to continue to benefit from such a system, and they said so loud and clear at the last election. In the majority report from the inquiry into this bill, government senators downplay the importance of a flexible industrial relations system to the economy in my home state of Western Australia. They say, essentially, that it does not really matter:

The committee noted an almost alarmist reaction from some quarters in Western Australia at the prospect of the demise of AWAs in that state. The committee went to Perth to find out more about this, but was underwhelmed by the import of what it heard.

The reality of course is very different. Business in Western Australia is worried about the impact of this legislation and business in Western Australia has clearly expressed its preference to keep a form of individual employment agreement making. Political leaders in Western Australia are worried. Even the Premier of Western Australia Alan Carpenter was worried when Labor released its Forward with Fairness policy in April 2007. In a very courageous moment—a moment which was, sadly, much too short once the Labor Party machine managed to shut him down—in a moment of disarming honesty he told the media that Labor's plan

to rip up AWAs could hurt WA's mining industry and the Australian economy. That was the Labor premier in my home state of Western Australia on reading the release of Labor's industrial relations policy in April 2007. This is in fact what Alan Carpenter said:

"Labor has to be sensitive to the fact that in some parts of the economy and in Western Australia in particular individual employment agreements have become almost the norm and are an integral part of that particular industry," ...

Business in Western Australia is worried because they know that this bill is only the start of what will be a series of bills aimed at putting unions back at the heart of workplace relations arrangements across Australia.

Business in Western Australia is very disappointed that, under Labor's reforms, they will eventually lose the option to enter into new individual statutory employment agreements. They know that it will reduce their options and flexibility in how to structure their workplace arrangements. But the reality is that business knows that they have to be pragmatic. They know that this legislation will pass and that this is what will happen. They know that they now have to deal with a government which told them before the election that they would get injured if they stood in their way. So of course what else is there for them to do but focus on the practical inadequacies in this legislation—not one of which has been taken up by government senators in their majority report, incidentally, despite soothing noises being made by the chair of the inquiry in particular in relation to an issue for the construction industry. I am talking about the issue that, due to the transient nature of the workforce and the project nature of the work, some employees, in particular pre-existing employees, will not be able to access ITEAs, Labor's form of AWAs.

Senator Marshall commented from his perspective on how the inquiry in Perth was conducted. As an aside, quite frankly in my view as a senator for Western Australia the committee's Perth visit was an absolute farce. Despite the importance of the WA economy to the strength of our national economy; despite well-documented concerns from business and political leaders in Western Australia prior to the election, including not only Premier Alan Carpenter but also the mining and resources sector in particular; and despite Western Australia being the only state where the government cannot claim a mandate for its workplace relations reforms, just over three hours were allocated to hear from various witnesses. An hour and a half of that was taken up by Unions WA and a Labor-friendly academic.

The major employer organisation was scheduled for only 45 minutes of testimony. Only 45 minutes! There were eight senators present and this organisation was only given 45 minutes. After a five-minute opening statement, the chair Senator Marshall proceeded to ask questions for over 30 minutes. This was only interrupted by follow-up questions from Labor Senator Sterle. It was only after several protestations, including a gentle inquiry from Senator Murray, that we got an extension of time to ask at least some questions of the major employer peak body in Western Australia. In answer to one of my questions asking the CCI to expand on the proposition in their submission that AWAs had contributed to improved levels of productivity across Western Australia they said:

Ms Kuhne—It is certainly the case that the opportunity for business to offer the full range of choice of agreements to their workforce has meant stability in industrial relations. There is actually a graph that shows that industrial disputation in WA has been reduced to almost nothing. ...

Later on the witness continues:

It coincides with the commencement of state workplace agreements back in 1993.

We argue that there is a correlation between the offering of individual agreements and stability in the workplace in terms of industrial disputation. We have had that stability, which has in itself, we would argue, assisted productivity because there have been so few working days lost.

A bit later I asked the question: in an ideal world, moving forward, would there be a place for individual employment agreements from your point of view as part of the suite of options available? Ms Kuhne on behalf of the CCI said:

Ms Kuhne—If there was some means of individual agreement making, we would be satisfied.

How can the chair of the inquiry come into the Senate today and say that there was no significant concern expressed and that essentially business organisations were quite happy? How can government senators say in their majority report that business in Western Australia really is not as concerned as they would have thought they were?

As soon as we started to develop a line of inquiry at our committee hearings in Perth, the chairman shut the opposition questioning down. This was the case particularly in Western Australia. I have to concede that things improved greatly in subsequent hearings. It was really as if the chairman was worried about what business in Western Australia might have to say. Our request to hear from the CCI again in the afternoon was denied by the chairman even though a number of senators and the committee secretariat had gone to the effort of travelling all the way to Perth and had in fact planned initially to be available for a full day of hearings. There is no way that the evidence at the inquiry in Perth can be seen as proving a case one way or the other. We did not have the time to get to the bottom of things. It was an absolute farce. From my point of view, the last thing governments senators were interested in was finding out the truth; they were focused on protecting the Labor holy grail in what they were worried could be unfriendly territory for them.

This bill is only the start of Labor's workplace relations reforms. I am very concerned about where these so-called reforms will lead us. I am particularly concerned about the impact on our economy and on jobs. I put it to the Senate, as I put it to the inquiry in Perth, that unemployment is at an all-time low; industrial disputations are at a record low; productivity is higher; wages increased at a faster rate than under the previous Labor government based on productivity gains and in the context of a low inflation environment. It sounds pretty good to me. So what is the problem the government is trying to fix? They say that they want to make the system fairer. Well, I say that that is fair enough. We agree that making things fairer is a good thing. If individual statutory agreements are available as one of the options with a no-disadvantage test which makes them fair then what is the main objection to keeping them as an option long-term if that is something that business tells us it is good for the economy, good for jobs and good for our prosperity moving forward?

I asked a series of unions giving evidence at the inquiry what their main objection was to making Labor's AWAs, which they call ITEAs, a permanent feature of our workplace relations system now that the government has made them fair again by making them subject—quite appropriately, I believe—to the new no disadvantage test. There were a range of answers, but principally the unions considered them unfair because of the capacity to negotiate away award conditions. But what about the no disadvantage test? Once you have the no disadvantage test surely that is adequate protection. Some unions conceded that there were also union negotiated collective agreements which in fact negotiated

away award conditions. 'Yes, but the worker will be compensated' they said. So what you are saying is that they will not be disadvantaged? 'Yes, that is right' they said.

We had evidence to the inquiry from Professor Stewart that Labor's new no disadvantage test as it applies to individual statutory employment agreements is actually stronger than that which applies to collective agreements. What is the main objection then? What is the problem? If business tells us it is good for the economy, it is good for jobs and individual statutory employment agreements are now at least as fair as collective agreements—why wouldn't we keep them available as one of the options? The bottom line that I heard from the unions was the ideological support for collective agreement making ahead of individual agreement making as well as the view that the unions should be involved in the process. The reality is that this is what this is all about: there is no doubt in my mind that the abolition of individual employment agreements is aimed at bringing back union dominance to the workplace over time. While I acknowledge that unions are not a bad thing, unions have an important role to play, and collective agreement making is an important part of the range of options available by way of industrial instruments, but so are individual statutory employment agreements used in the right way and, yes, subject to a no disadvantage test. I do not believe that what is emerging is good for the economy. It is not good for jobs.

I know that this bill will not change union right of entry. When I was asking some questions on the main objections to individual statutory employment agreements and we came down the path that unions thought that unions ought to be involved, one of the government senators interrupted me, saying, 'This is not going to change union right of entry.' I know that. But the abolition of individual statutory employment agreements will help to force the union movement back to the table in businesses where they have not had a role in recent years. The economy will once again be exposed to the risk of more strikes and increased levels of industrial disputation—perhaps not straight away, because that would be too damaging to the Labor cause having only just been returned to government after 12 years of opposition, but over time that is highly likely. There is no doubt in my mind that over time we will see excessive wage demands from unions, which will put pressure on inflation. To that extent, this bill and the bills that will follow in its footsteps will clearly undermine the Prime Minister's declared war on inflation. It provides further ammunition to the declared enemy of inflation.

This is a transitional bill that aims to transition towards a further bill which will abolish all forms of new individual statutory employment agreements. The key feature of Labor's reforms—the foundation without which the whole thing would fall apart—is the declared objective to achieve award modernisation. Award modernisation is a very laudable objective, and one everybody would support. But what is clear is that everybody—unions, employers and academics—who gave evidence at the Senate inquiry expressed different levels of concern about the ambitious timeframe and the complexity of the task at hand. I ask the government: what happens if you do not meet your timeframe? What if you are not able to achieve award modernisation to the extent that you set out to? What if you are not able to come up with a system of award modernisation that will not disadvantage employers and not disadvantage employees? What happens to your substantive reforms down the track if you do not achieve that? I have not heard a satisfactory answer to those questions.

In summing up, all Australians in business in the Australian economy deserve, in my view, to keep access to a form of individual statutory agreements. They have served Australia well as one of the options in our industrial relations system, subject to a fairer no disadvantage test properly monitored and efficiently

enforced. Reducing flexibility in the workplace is bad for our economy, particularly in my home state of Western Australia. It is bad for jobs and it is bad for Australia. Thank you.