

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 2021

Second Reading

Resumed from 17 November.

HON NICK GOIRAN (South Metropolitan) [3.55 pm]: I rise on behalf of the opposition to speak on the Industrial Relations Legislation Amendment Bill 2021. At the outset, I indicate that I am the lead speaker for the opposition alliance in my capacity as the shadow Minister for Industrial Relations.

Members will be aware that this bill, which consists of 129 clauses, is substantially similar to a bill that was introduced in the fortieth Parliament. The overarching theme of any bill that has been introduced by the McGowan Labor government is that there is rarely any genuine attempt at consultation with stakeholders. This has been highlighted yet again by the bill before us. Some of the major issues that emerged during consultation with the 2020 bill, when the opposition was briefed and had the opportunity to consult with stakeholders, were as follows. Firstly, there appears to have been no consideration of the impact the proposed changes will have on jobs and the economy in Western Australia, particularly as the state struggles to recover from the COVID-19 crisis. Secondly, the legislation will create confusion and uncertainty as to which jurisdiction workers may be covered in. Thirdly, there will be unprecedented new powers for union officials to enter workplaces, including those used for habitation purposes, to take photographs, audio, video and other recordings. Fourthly, it appears that this bill will give unions powers that are better reserved for regulators and inspectors. Fifthly, unions may be able to forum-shop between state and federal jurisdictions. It appears that none of these matters that were raised in the fortieth Parliament have been addressed by the government in the bill before us. Since then, the Chamber of Commerce and Industry of Western Australia has provided a fresh submission identifying five areas of concern: firstly, the introduction of Easter Sunday as a public holiday; secondly, changes to right of entry provisions to allow unions to make electronic recordings of worksites; thirdly, removing the current exemptions for domestic workers; fourthly, expanding the scope of private sector awards; and, fifthly, extending the state industrial relations system to capture all local government councils.

The opposition has a concern about the substance of the consultation that has been undertaken by the government. We have a new Minister for Industrial Relations—I say “new” in the sense that the minister in this house was not the responsible minister for this portfolio in the last Parliament when the preceding bill was before us. It appears there has not been substantive consultation on the issues of concern that were raised in the fortieth Parliament.

Perhaps worse than the lack of consultation is the broken undertaking given by the McGowan Labor government in the fortieth Parliament. During debate on the 2020 bill, the government’s then Minister for Industrial Relations, Hon Bill Johnston, gave an undertaking to amend the bill following concerns that were raised about clause 58. The equivalent clause in the bill before us is clause 65, and it has not been amended by the government; that is, it appears that clause 65 is in identical form to clause 58 in the last Parliament. For the benefit of members, clause 65 will amend section 98 of the Industrial Relations Act 1979 to give industrial inspectors the power to enter someone’s private home. Under new section 98(3A) an inspector must give at least 24 hours’ written notice of any proposed entry, except in circumstances where the owner or occupier is carrying on an industry at the location or premises, or the commission has made an order waiving the 24-hour notice period. The problem is that the government has not defined what it is to carry on an industry for the purposes of amended section 98. Although industry is defined in section 7 of the Industrial Relations Act, what constitutes the carrying on of an industry for the purposes of amended section 98 may be subject to some mischief, especially as one considers the consequences of the COVID-19 pandemic, particularly as more people have been working from home.

I want to draw to the attention of the new Minister for Industrial Relations three occasions on which his predecessor gave an undertaking on this issue. They can be found in extracts from the *Hansard* of the other place on 20 August 2020. The first occasion is found at page 5369 of the *Hansard* of the Legislative Assembly of 20 August 2020 when the former minister who had responsibility of this portfolio said —

... when the bill goes between the houses I will be proposing an amendment to clarify the provision in proposed section 98(3A)(b) to place an obligation on the commission to act only in exceptional circumstances.

We then turn to the following page of *Hansard* of that same day, page 5370, where the minister says —

... I am very happy—I will do this between the houses—to come up with an amendment that will make subclause 98(3A)(b) clearer about what the commission needs to do. It might be that we do it by including some new drafting. That will deal with the issue that the member has raised.

I pause there to indicate that the reference is to the then member for Hillarys, Peter Katsambanis, who was the then shadow Minister for Industrial Relations. Later, on that same page, 5370, of the Legislative Assembly *Hansard*, for the third time the then minister provides that undertaking in this form. I quote —

I have promised that, between the houses, I will bring in an amendment that clarifies that this is in those sort of exceptional circumstances.

It is recognised and acknowledged that the election victory for the McGowan government in March this year has absolutely changed the quantum of numbers in both houses, but that does not allow the government to walk away from an undertaking provided by the then responsible minister in the previous Parliament, not once, not twice, but three times. Trust has been broken by the former minister, and it is the opposition's view that the government and, indeed, the new minister have a duty to make good on that commitment. These are two of the areas of concern that the opposition has—the lack of consultation and the broken undertaking. However, I also want to put on the record our strong objection to the rhetoric of the former minister during the last Parliament. I note on 21 August 2020 that the then minister is quoted in a media release as saying —

“The WA Liberals and Nationals should hang their heads in shame. It is astounding they voted against a Bill which would ensure Australia's compliance with the international anti-slavery protocol.

“WA's industrial laws are the only ones in the country that exclude some employees from their coverage, including those engaged in domestic service in a private home.

“It is naive to think that modern slavery is not occurring in Australia in private homes.

The media release goes on to quote the minister saying —

“Maybe the WA Liberals and Nationals should talk to ordinary Western Australians to see whether they support modern slavery ...

“This is a test of leadership for Liza Harvey: will she stand with the most vulnerable in our community or will she ignore them?”

This media release is so short on fact and so heavy on rhetoric that it is astounding that any cabinet minister would agree to sign off on it. One wonders whether it was proofread before it was released. It is highly offensive to suggest in any way that any member of the opposition is supportive of modern slavery. As a member who has consistently advocated against such practices, I personally take great offence at that suggestion. Indeed, it might interest some members to know that I was one of the few members of Parliament who attended the Asia-Pacific Regional Workshop: The Role of Parliamentary Committees in Combating Human Trafficking & Forced Labour, which was held in December 2019. I note that Hon Matthew Swinbourn, who is away on urgent parliamentary business, was one of my parliamentary colleagues who attended that day. The event was held under the auspices of the Commonwealth Parliamentary Association, which was hosted by the then President of the Legislative Council, Hon Kate Doust. Although I take the comments of Hon Bill Johnston in the media release personally and distance myself entirely from them, I do so on behalf of all opposition members who are appalled by his rhetoric to, without equivocation, oppose all forms of modern slavery and, I might add, any type of forced labour and human trafficking. The suggestion by the former minister is highly offensive and perhaps it is no wonder that the Premier thought it fit to move the member on from the industrial relations portfolio and hand it to a different minister—one who has a track record of being far more temperate and moderate in his remarks about these types of matters. I would like to think that the new Minister for Industrial Relations would not assent to the garbage of the former minister that somehow any concerns raised by any member, including one from the opposition, about elements of the bill that is before us somehow justifies referring to honourable members as effectively pro-slavery and pro-modern slavery. It was an outrageous remark by the former minister.

Indeed, it might interest some members to know that one of the outcomes of the Commonwealth Parliamentary Association conference held two years ago—in fact, the Legislative Council chamber was utilised to host the international conference and it was probably one of the last remaining international conferences that occurred prior to the pandemic—was to consider what Parliament might be able to do in that respect. Hon Matthew Swinbourn and I have had multiple discussions about ways in which that might be able to be achieved, whether that be by way of a select committee inquiry, some other form of inquiry or in the form of a parliamentary friendship group or the like. There is certainly something to be said about looking into this issue in greater detail. That will require some hard work by any member who is interested in that. If it is ever done across both parliamentary chambers, I would like to think that Hon Bill Johnston, albeit no longer in this capacity, might lend his assistance to that particular cause rather than spruik these offensive false media statements, as occurred during the course of the last calendar year. Indeed, it could be said that there would be some merit in the Legislative Council considering an inquiry into the nature and extent of modern slavery practices in our state. If an inquiry of that sort took place, it could identify the forms of modern slavery and the prevalence of modern slavery practices in our state. It could identify the extent to which companies, businesses and organisations, including government departments and government trading enterprises operating in Western Australia, rely on modern slavery practices in their supply chains. It could assess and review the existing legislative and policy framework. It could assess and review service delivery and agency responses, including the effectiveness of these responses for victims. It could identify ways in which regional cooperation can be strengthened with federal, state, territory and Asia-Pacific governments, Parliaments and agencies. Further, it could consider any new initiatives or legislative frameworks that may reduce the incidence of modern slavery practices in Western Australia and in Western Australian supply chains. If Hon Bill Johnston or another member

is interested in exploring that a little further, I encourage them to come and have a chat with me and we can see if this can be achieved on a bipartisan basis without resorting to the nonsense of that media release from last year.

The Industrial Relations Legislation Amendment Bill 2021 is a start in addressing modern slavery in this state, but just because it is a start, it does not mean it is the finish of this matter; further work needs to be done. In addition, it does not justify the McGowan Labor government sneaking a clause into the bill to allow, for the first time, a union representative to enter a person's home. It simply does not justify that. If a union representative has a concern about what is happening in someone's home, they should report the matter to the department or to the police. That is not what is happening in this bill. What is happening in this bill, which is absolutely nothing to do with trying to address modern slavery, is a sneaky clause that allows a union representative to obtain from the Industrial Relations Commission an order to enter a person's home. Under the current law in Western Australia there is an absolute prohibition against union representatives carrying out that type of activity. It is crystal clear under the current act; there is an absolute prohibition. It cannot happen. Once this bill passes, that absolute prohibition will be tampered with by the McGowan Labor government, courtesy of this bill, in what is referred to as "exceptional circumstances". I might add that these exceptional circumstances have not been defined by the government, despite repeated requests from the opposition in the last Parliament for the government to provide some clarity on this issue. That is what will happen as a result of this bill. These types of things should concern ordinary Western Australians. More to the point, if the government and the new Minister for Industrial Relations believes it is genuinely crucial—not desirable, but crucial—for union representatives to be able to enter a person's home, there should be some explanation provided as to what the exceptional circumstances are that could possibly justify that. What are the exceptional circumstances that justify a union representative entering a person's home in the absence of the union representative going to the department or to the police? It is so crucial that they need to go to the Industrial Relations Commission to obtain an order in exceptional circumstances. Western Australians are entitled to know that. We have been asking about this for more than a year. We will be asking about that over the course of today and tomorrow, unless the government decides to refer this matter to the Standing Committee on Legislation, in which case that committee could look at it over the summer recess.

Members might also recall an article that was published on 11 June last year titled "Perth Mint gets its gold from company owned by killer and using child labour". That article includes the following extract —

Perth Mint, owned by the West Australian government, has bought hundreds of millions of dollars' worth of "conflict gold" from a convicted killer in Papua New Guinea, in breach of its ethical policy.

An investigation by the *Australian Financial Review's* national affairs correspondent Angus Grigg published on Thursday, has revealed the Perth refiner purchased the gold from small-scale miners in PNG, which have been long criticised for their use of child labour and mercury.

Conflict minerals like gold are usually mined via unsafe practices in conflict-ridden countries, such as PNG and the Congo, and are often used to fund violent armed groups, which use the riches to secure strategic trading routes.

Speaking to 6PR's Gareth Parker, Mr Grigg said the Mint had repeatedly ignored concerns raised by staff about the sourcing of its gold from PNG suppliers and whether this breached ethical guidelines.

...

Mr Grigg said basic checks showed the company bought the metal from small-scale miners across PNG's highlands where children in places like Bougainville are employed to mine the metal.

In addition to its use of children, the company uses mercury to cut the gold, a practice that has been banned in Australia for its devastating effect on humans—exposure to the heavy metal is known to cause cognitive impairment and development issues in children.

The article goes on to say —

But while Mr Grigg said the government-owned refiner claimed to carry out a thorough audit and check of suppliers his own investigation suggested otherwise.

"The big issue is that the Mint has really got out in the front foot and said it's at the forefront of ethical sourcing policies, it says that it's making huge steps to stamp out conflict gold," he said.

"But even the most cursory checks of those who it buys gold from shows that this policy is paper-thin at best."

Ironically, during the last Parliament, in and around the time this article came out in June 2020—the heinous media release from the former minister came out in August of the same year—it is interesting that the McGowan Labor government claimed that the opposition was ambivalent or naive about the occurrence of modern slavery in this state. One has to ask what the government has done since the release of this report to investigate the complete breakdown in the ethical guidelines relating to the Perth Mint supply chain. This article states that Perth Mint gold had been sourced from a company that is known to use child slave labour and to use mercury to cut the gold, a practice that has been banned in our country due to its devastating effects. Maybe a committee needs to inquire into this matter and into modern

slavery occurring in our supply chains. It is simply not enough for the government to issue media releases falsely stating that the opposition is somehow pro-slavery when we have matters like this sitting unaddressed and un-responded to. It is not enough for the government to simply say, as will happen, no doubt, over the next 48 hours in yet another media release boasting about the passage of this bill, that the government has amended our industrial relation laws to bring them into line with international labour protocols. The work cannot stop there. It needs to be more than that.

Members might also note that in September last year, again, in and around the time of the heinous media release by the former minister, a special report appeared in *The West Australian* with the headline “These are the kids being forced to wed”. The article details human trafficking that is currently occurring in our state whereby children are forced to marry much older men. The report makes for some disturbing reading. I commend the Australian Federal Police for its ongoing work on combating human trafficking and the WA Forced Marriage Network, which also provides support to victims and works tirelessly to train frontline workers and members of the public to identify cases of forced marriage. Just as we are all concerned with forced labour and modern slavery in our state, we should also be concerned about matters like forced marriage. I look forward to the government taking these types of issues more seriously than what was demonstrated in the previous Parliament by the former minister.

I want to take a moment to quote the response that was put by the opposition at that time, on 21 August 2020, which reads —

“The Liberal Party unequivocally condemns slavery in all its forms, so it is a disgrace that Minister Johnston seeks to politicise such an important issue like workplace slavery ...

“The Minister chose to include other contentious issues in the Industrial Relations Legislation Amendment Bill 2020 rather than having a separate piece of legislation that deals with workplace slavery.

I pause there to note that nothing has changed. It was always the case that the opposition indicated that it would support a standalone piece of legislation. That is not what happened in the fortieth Parliament. It is not what has happened in the forty-first Parliament. Yet again, we see some contentious clauses being snuck in. The response from last year continues —

“Several contentious issues were identified during consideration of the legislation. These include major concerns with unions being empowered to enter private homes.

“Furthermore, the provisions to change local government from the federal award to the state award have been heavily disputed by the Western Australian Local Government Authority—the peak local government body in this State.

“During the parliamentary debate on this legislation, the Liberal Party informed the government of its concerns with these matters, and sought to make amendments. The government chose to ignore these concerns and instead used its numbers in the Legislative Assembly to pass the bill. So rather than work with the Liberal and National parties, the government has tried to exploit slavery.

“Politicising serious issues like slavery is what Minister Johnston does when he cannot get his own way and therefore is unable to deliver on his promises that he makes to his union mates.”

Those were the comments of the opposition last year. Nothing that has transpired since then dissuades us from those remarks. What happened last year should not have occurred. I simply urge the government, which will, of course, get this bill through over the course of the next 25 hours—the bill will pass at some point over the next 25 hours—and call on it to be responsible with its rhetoric because, if it is not, it can expect a response along the lines of what occurred last year. It would be regrettable if that were the outcome, given that I know, and I put on the record my confidence, that every member of the Legislative Council is equally appalled by modern slavery and has no tolerance for it in any way whatsoever.

Members will be aware that there is also a supplementary notice paper for this bill. I have already indicated to members that the bill consists of some 129 clauses. It is a mammoth bill that has been drafted over 191 pages.

To give members some indication of how significant this bill is, they may like to refresh their memory of the explanatory memorandum, which in itself is 147 pages in length. It might dawn on members that what will happen over the course of the next 25 hours is that the Legislative Council, the house of review, will be expected to consider and scrutinise a 191-page bill that is so complicated that the government has had to resort to a 147-page explanatory memorandum. The house of review is expected to fulfil its duty and task sometime in the next 25 hours. For the benefit of observers, it is not as though there will be 25 hours of consideration. I cannot imagine that the Leader of the House will agree to that. I cannot imagine that the long-suffering Minister for Industrial Relations will look forward to 25 hours of Committee of the Whole House. But if we were serious about this significant piece of legislation, that is what we would do—we would commit to reviewing this bill for every minute of the next 25 hours. But that is not going to happen. Shortly, we will adjourn for the benefit of another very important process.

I welcome the Minister for Regional Development into the chamber. I know that she feels passionate about the Industrial Relations Legislation Amendment Bill, as we all do. It might interest the minister to note that in about six minutes' time, the President will take questions without notice; thereafter, we will have one hour and 20 minutes to consider this bill.

Hon Kyle McGinn interjected.

Hon NICK GOIRAN: I thought the member supported this bill.

Hon Sandra Carr interjected.

Hon NICK GOIRAN: No, I am not bothered; it is your honourable member on the front bench there.

Hon Kyle McGinn: Why not get on with it?

Hon NICK GOIRAN: Time is the issue, honourable member.

Hon Kyle McGinn: If you didn't spend all the time talking about nothing and actually spoke about the bill, we could deal with the bill.

Hon NICK GOIRAN: Honourable member, so far the entire Legislative Council debate on this matter has gone for 35 minutes. Such is the intellectual ineptitude of some members, they think that 35 minutes of debate is too long! The bill is 191 pages long. This government has resorted to a 147-page explanatory memorandum. We have had 35 minutes to consider it and, apparently, that is too long. These guys want to go on holidays, President!

Several members interjected.

Hon NICK GOIRAN: I do not know why they do the job. Why are they here!

Hon Kyle McGinn interjected.

The PRESIDENT: Order, Hon Kyle McGinn! Thank you. You have a few minutes left, Hon Nick Goiran.

Hon NICK GOIRAN: Thank you, President.

I would have thought that all members would agree that one of the significant roles of the Legislative Council is to scrutinise and review legislation. The simple point, honourable members—you might be tired, but do not worry, you only have 25 hours to go and then you can go on holidays! I would have thought, Hon Kyle McGinn, that a bill of 191 pages —

Hon Kyle McGinn interjected.

Hon NICK GOIRAN: I do not even know whether the honourable member has read the bill or the 147 pages of the explanatory memorandum. My point is that 37 minutes of debate is hardly excessive. In fact, this bill warrants a lot more scrutiny. That is one of the reasons that I give the Minister for Industrial Relations fair warning that in due course, probably after question time, I will move to have this bill discharged and referred to the Standing Committee on Legislation. No doubt when that happens, members opposite will say, "Oh no, we can't possibly do that. We can't possibly agree to that." Why would that be the case? Why would the government object to a 191-page bill, with an explanatory memorandum of 147 pages, being reviewed over the summer recess? Tomorrow is the last sitting day for this calendar year. Parliament will resume on 15 February. We can come back on 15 February and have this matter properly considered by the Standing Committee on Legislation. Members opposite will not want that, no doubt for multiple reasons. The first is that it would require some work and the second is that it would not allow for the sneaking in of the clauses. It is clearly very, very important for the McGowan Labor government to ensure that a union official has some capacity to enter a person's home, which at the moment is absolutely prohibited as a matter of law. Of course it would want to sneak this in over the next 25 hours. It could not possibly have it considered by the legislation committee. In fact, according to some members, apparently half an hour is too long to debate a bill like this, which has 191 pages. Half an hour is too long for some of these members; they are obviously the type who fall asleep in the middle of a movie. I know that the Minister for Industrial Relations is taking this matter seriously, unlike some of his colleagues, who regrettably are too tired.

We would like all matters contained in the supplementary notice paper to be properly considered by the Standing Committee on Legislation and not simply rushed through over the course of the next day or so. A number of amendments are standing in my name on behalf of the opposition. Members will note that we have amendments to clauses 2, 16, 18, 24, 25, 38, 65 and 70, and an amendment to insert a new clause 40A. Some of those matters are ancillary and consequential on other amendments, but there are substantial concerns that warrant proper inquiry and investigation. I am not confident that that can be done over the course of the remaining few hours that are available to us.

Debate interrupted, pursuant to standing orders.

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