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SPEECH

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SPEECH

<p>Date Wednesday, 24 September 2008</p> <p>Page 5571</p> <p>Questioner</p> <p>Speaker Furner, Sen Mark</p>	<p>Source Senate</p> <p>Proof No</p> <p>Responder</p> <p>Question No.</p>
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Senator FURNER (Queensland) (7.16 pm)—I rise tonight to speak on one of my passions—industrial relations. I respectfully consider myself to be a proponent in this area when it comes to industrial relations for working families. Last week we heard of the government’s rescue of workers rights and conditions as a result of new industrial relations changes that will produce changes for the betterment of working families in our society.

The Deputy Prime Minister, in her speech to the Press Club, spoke about the fair go. I am sure those on the other side of this chamber realise what the fair go is, unless they are out of touch. The inspiration of society that always aims to give every citizen a decent standard of living is what a fair go is all about. To understand where we are currently when it comes to industrial relations, I guess we need to examine what happened in the past under the Howard coalition government. In reflecting on some of the matters that are still in place under Work Choices, I turn to a couple in respect of matters such as dismissals.

One of the most severe and insidious parts of the legislation was the erosion of workers rights for the right to challenge unfair dismissal. When the Howard government introduced this particular part of the legislation, they spoke about small workplaces and they specifically put in an exemption for workplaces with fewer than 100 employees, therefore giving them no right to unfair dismissal. I would challenge that being a small workplace. And remember that that 100 employees includes only full-time, part-time and regular casuals; it excludes short-term, irregular casuals or seasonal workers.

If we go to the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employers 1982, to which Australia is a party, and in particular to division A, ‘Justification for Termination’, we find that article 4 says:

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Under Work Choices workers have no rights currently in respect of that matter because there is no opportunity

to challenge a valid reason in workplaces of less than 100. But let us go beyond that to workplaces of greater than 100. There is a perception out there that, in cases where a worker is terminated for redundancy, for example, and challenges that as the genuine reason, that worker is also unprotected in respect of that particular feature of the legislation.

The new provision that was introduced specifically said that workers could be terminated for operational requirements. So, effectively, there is a moving feast here of what is an operational requirement when it comes to that particular part of the legislation. One example we should consider is the example of the Village Roadshow case, where a 52-year-old worker who had worked for the cinema chain for 19 years was made redundant because the cinema had decided to demolish and rebuild. All the other employees were transferred to the new business and redeployed, but this worker was terminated. The Village Roadshow is not a small business; it is quite a large business in this country. The 52-year-old worker challenged the dismissal and took it to the Australian Industrial Relations Commission, but it was the federal government, the Howard coalition government, that challenged that decision of the AIRC—not the company—and it was appealed on to the full bench of the AIRC, where it was ruled that that was a genuine operational reason and there had been no unfair dismissal. Once again referring to the same ILO C158, article 8 says:

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body.

When you have definitions of operational requirements and exclusions in workplaces of less than 100, how can that ILO convention have application?

The previous government also offered a sum of \$4,000 for assistance with legal advice, but as you would know, Madam Acting Deputy President Moore, the process of resolving a dismissal under these arrangements is extremely lengthy and adversarial when it comes to dealing with the legal system. Four thousand dollars would barely touch the sides of running a case to get some satisfaction and settlement on that matter. So what is the Labor government going to do? It is going to reinstall balanced protection

for workers in workplaces with timely periods and procedures to ensure that workers are sheltered from unfair dismissals.

I will now turn to agreements. In my previous experience in my 19 years as an official, employers welcomed the involvement of unions in workplaces and negotiations of agreements because they had a wealth of knowledge from dealing with other industrial relations matters and business operational requirements in other places to assist them through the process. They had the credibility and the capacity to reach agreement. Before Work Choices it was the case that, if you had agreement, it would prevail until the parties decided to terminate it or reached agreement on a replacement agreement. Under Work Choices the situation is that after 90 days beyond the expiry date the employer can terminate the agreement forthwith, with no recourse whatsoever. Therefore, you are not in a position to renegotiate an agreement beyond that 90 days.

Businesses purchase other businesses and acquire new arrangements, and one of the main concerns is the transmission of the business and the transmission of the rights and conditions. Under Work Choices, it does not matter whether you are satisfied or dissatisfied with those conditions—you only retain them for a period of 12 months if you decided to move on to the new employer. Then, after 12 months, you can make a decision to either accept the new arrangements or move on to another workplace.

The previous government went to some lengths to exclude particular provisions from agreements—for example, remedies for unfair dismissal, union involvement in the dispute settlement procedure, renegotiation clauses, paid delegates training leave, paid union meetings, bargaining fees, and the list went on. If you made a mistake by claiming one of those matters during a negotiation or mistakenly put it into your new agreement, the previous government also wanted to have you fined \$33,000 for every breach. Bear in mind that the view of the previous Prime Minister, Mr Howard, was that workers always had the option of going out and finding another job. If they did not like what their boss was offering, that is all they needed to do. Working families in this day and age want sustainability and some consistency in their working conditions. They do not want to have to toddle off to other workplaces and be concerned about whether they are going to be employed. Under Labor's new legislation, parties will be able to bargain over a wider range of content than they can present and put into a new agreement.

On freedom of association, the Work Choices legislation attacked unions' ability to enter a workplace and protect members' interests. The legislation

provided for employers to select the venue for the meeting—it might have been outside the human resources office or, in some cases, in the car park or in a bay in a warehouse where trucks might be entering. They were just outrageous arrangements that were unsuitable for both for workers and their safety.

There is another convention that deals with this. It is the ILO Convention (No. 87): Freedom of Association and Protection of the Right to Organise Convention, 1948. It is article 11 that I refer to:

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all reasonable and appropriate measures— (Time expired)