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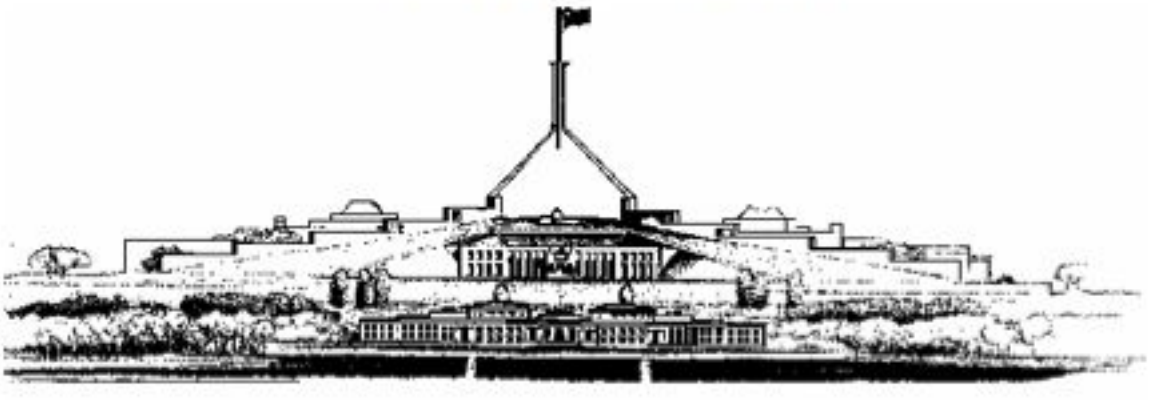

THE SENATE

BILLS

Fair Work Amendment Bill 2013

Second Reading

SPEECH

Thursday, 27 June 2013

BY AUTHORITY OF THE SENATE

SPEECH

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Questioner		**Responder**	
Speaker	Xenophon, Sen Nick	**Question No.**	

Senator XENOPHON (South Australia) (20:41): I wish to make some brief contributions in relation to this important bill, the Fair Work Amendment Bill 2013. It is important because it deals with a number of issues. Some are good—particularly the family friendly provisions—but others may be job killers, and that worries me.

I will confine my remarks to a couple of areas, and I think it is worth reflecting on the contribution made by Professor Andrew Stewart, who is someone I have a great regard for. He is one of the academics who helped draft and develop the Fair Work Act. Two weeks ago today he was reported in *T he Australian* as stating that the nation's workplace tribunal—the Fair Work Commission—risks being swamped by the new bullying regime, and that the ALP should have backed elements of the coalition's proposed changes.

Those people who know Professor Andrew Stewart, or know of him, would know that he is a well-known commentator on these issues. He worked with the government to help draft not these changes but the Fair Work Act, generally. In other words, he was among some of the leading thinkers in this field that were involved in scrapping Work Choices. He cannot be accused of being a friend of the coalition in relation to these matters. But I think it is fair to say that he is someone who has worked cooperatively and well with former Deputy Prime Minister and former Prime Minister Gillard when she had the carriage of these matters.

He has accused the government of using a sledgehammer to crack a nut in terms of unions having a greater ability to recruit non-unionists in workplaces. He has said that the evidence given by the commission's general manager, Bernadette O'Neill, to a Senate estimates hearing recently, was that the commission expected to receive 3,500 bullying complaints a year—almost 10 per cent of the total annual matters currently dealt with by the tribunal. He was concerned that the commission would be swamped by the work load. He said to Ewin Hannan, the industrial editor of *The Australian*:

I think there is a real risk that will happen.

He went on to say:

If you look at the numbers the commission has said it is planning on, now that's a huge number, as it is. It's very, very difficult to know what people will do.

He is quoted as saying:

I certainly think it would have been more sensible to build in some form of filtering mechanism to deal with bullying complaints.

He also made the point in relation to the right-of-entry proposal, which will allow unions to meet employees in their lunchrooms during breaks, that that has been sought by unions but opposed by the coalition and business groups. Professor Stewart thought the amendment was unnecessary, as the commission already had the power to deal with disputes about what meetings were held in workplaces.

The article in *T he Australian* went on:

Professor Stewart said the amendment was unnecessary as the commission already had the power to deal with disputes about where meetings were held in workplaces. "It's a sledgehammer to crack a nut," he said. "The number of workplaces where there is a dispute about union rights of entry are incredibly small and the commission has got the power to deal with those."

The article continues to quote Professor Stewart:

"There are going to be a lot of workplaces where it is not obvious where the lunchroom is. I think, in the end, rather than coming up with a sensible compromise, we have ended up, through political posturing and unpredictable shifts in views from the independents, with something less than optimal."

I will just say that I was not one of the Independents who Professor Stewart was referring to.

This is bad news for our workplaces. I want to make this clear: I am not anti-union. When I was a member of the South Australian Legislative Council, I introduced legislation ahead of the government on right of entry provisions for union officials with respect to occupational health and safety, because I am passionate about helping to ensure that when people go to work they should be able to go home to their families, their loved ones, safely. I have dealt with many, many people who have lost loved ones as a result of horrific industrial accidents.

I pay credit to Andrea Madeley, a courageous woman who lost her 18-year-old boy Danny a number of years ago in a horrific industrial accident. Andrea Madeley has established VOID, the Voice of Industrial Death, which has been a great advocacy service for reform and a great advocacy and support service for all those who have lost loved ones through industrial accidents. I believe that there are circumstances in which right of entry for unions, where the regulatory framework has broken down—where there are not enough inspectors—can be a safety valve, in a sense, for unions to have. That is something that I maintain is appropriate.

But I also think that we need to look at this legislation and heed the warnings of Professor Andrew Stewart, a man who I believe is very reasonable and sensible in his approach and who by any measure cannot be considered a friend of the coalition on these matters.

I also want to reflect on the issue of penalty rates. Alone in this place, because the coalition does not share my views, I believe that something needs to be done about the small business sector—those genuinely small businesses with 20 full-time equivalent employees or less. They have been hammered by penalty rates. The changes in penalty rates have led to the loss of thousands of jobs around the country. I say that as a result of a comprehensive survey undertaken by Restaurant and Catering Australia from over a year ago that indicates that equivalent to 3,000 full-time jobs have already been lost in the restaurant and catering sector. I speak to small retailers day in and day out who tell me about how hard it is to survive with weekend penalty rates and they have employees, particularly university students, who are prepared to work for a reasonable rate—we are not talking about below the award; we are even allowing for a casual loading—on weekends. But they have cut back those hours or shut down entirely on Sunday because the penalty rates are simply too punitive. That is something that we need to consider.

My concern is that this bill will make it even less flexible and that this bill will be a job killer in some sectors. It is worth reflecting on what was said in a *Sydney Morning Herald* editorial on 11 February of this year. And I do not think that anyone can accuse the *Sydney Morning Herald* of pursuing through its editorials a right-wing industrial relations agenda. But it said this about the whole issue of penalty rates:

Economic growth without a significant population increase requires a flexible workforce to be paid fair and affordable wages. When laws prevent this and impose outdated standards to the detriment of job creation and higher incomes for all, it is time for modernisation.

It is also worth reflecting on what Peter Strong, the head of the Council of Small Business of Australia, said. Peter Strong, for anyone who does not know him, has been a fearless advocate for small business in this country. He has worked well with both the government and the opposition. He had a very good relationship with the Gillard government and with the former Prime Minister in working for small businesses. No-one can accuse Peter Strong of being some form of right-wing ideologue. But Peter Strong made this point in a committee appearance on the inquiry into the bill that I put up on penalty rates:

In those small workplaces, as you know, if you sack someone because of penalty rates on a Sunday then you have to look that person in the eye and say, 'I'm sorry; you have to go.' It hurts you. It hurts them more, because that is money gone, but it hurts a small business owner because this is someone who they have been working with, who they potentially value, who lives nearby and who is part of their community.

We need to look at this in a sensible way. This is killing small businesses. It is denying many Australians, particularly young Australians, job opportunities on weekend. I thought that the coalition was the party for small

businesses. But you have abandoned small businesses by remaining silent on something that has hurt so many small businesses in this country.

I will not be accused, however, of being anti-union or anti-worker. I work with a number of unions on a whole range of issues. I have a very good and constructive relationship with Tony Sheldon, the head of the TWU, and have worked with him on the issue of the Qantas jobs that could potentially be lost because of the stupid, asinine and baffling management decisions made by Qantas. I work with the Licensed Aircraft Engineers Association and Steve Purvinas, the national secretary of that union, on the issue of jobs being moved offshore. I work with the CFMEU with Michael O'Connor, another union leader who I have great regard for, on the issue of dumping and Australian jobs being lost because of unfair trade practices and the importance of making sure that we can compete fairly in the marketplace. I will not be accused of being anti-union or anti-worker.

When young people come up to me and say that they lost their shift on Sunday that they were relying on to get through uni because the small business could not afford to stay open on the weekend, that shows that something is seriously wrong. We need to heed what the *Sydney Morning Herald* said in relation to that.

I would like to ask these questions of the government. The government is proposing to make workplaces less flexible. To me, a template of good industrial relations policy was that during the Hawke-Keating era. I think that they did a lot of good things. They were very good governments. The Hawke and Keating governments did a lot of good things for the economy. They drove productivity; they drove equity and fairness in the workplace. What we saw was a robust economy to a large degree and for most of the time that they were there. They put some reforms in place that put the Australian economy in good stead.

I am worried that what we see now is a less flexible workplace than in the Hawke-Keating era. I worry that we are denying jobs to many young Australians in particular. I am worried that the unemployment rate, while nominally at 5.5 per cent, does not in any way reflect the true unemployment rate in this nation, because we know that the Australian Bureau of Statistics measure of unemployment—which unfortunately is an internationally adopted measure—is a crock. Why? It is because you are considered to be employed as long as you are working one hour or more per week. So the level of underemployment is massive; the number of people who might have one or two or three hours or so per week is significant. The real level of unemployment is 12 to 15 per cent, and I fear it will go much higher.

So, this is not about exploitation; it is just about fairness, and giving those small businesses that want to do the right thing by the community a real opportunity. I want to ask the government about the current provisions of the Fair Work Act. The objects of the act include, under section 3(g), acknowledging the special circumstances of small and medium-sized businesses. However, this bill that we see before us, which has gone through a flawed process and has been criticised by the friends of the Fair Work Act, such as Professor Andrew Stewart, actually says that:

The FWC, in ensuring that modern awards provide fair and relevant minimum conditions, must take into account the need to provide additional remuneration for overtime; unsocial, irregular and unpredictable hours; work on weekends of public holidays; and shift work.

What about those students for whom, because of their study commitments, Sunday—the weekend—is the best time? What about those people who, because of their family arrangements, prefer to work after hours in those circumstances? And we are talking about people working well under 38 hours a week for that casual work.

I want to know from the government, on notice—because of this process whereby the debate will be guillotined—how section 3(g) of the act, in relation to the particular needs of small and medium businesses, will be considered in the context of these proposed amendments. Will they nullify 3(g)? How will it be dealt with? How will it be considered in a way that is fair and equitable? Perhaps I can just indicate, because there are a number of other speakers, that I have reservations about a number of the amendments in this bill. I think the process has been flawed. I want to acknowledge the important work the union movement does for the welfare of workers in this nation, and the work of the unionists I have a bit to do with: Michael O'Connor from the CFMEU, Tony Sheldon from the TWU and Steve Purvinas from the Licenced Aircraft Engineers Association. And I make it clear that none of them agree with me on the penalty rates provision, but I do not think my penalty rates proposals would in any way impact on their sectors, by and large, because it is about small business in just the hospitality sector and the retail sector, the two most vulnerable sectors in respect of penalty rates.

I want to make the point that unions play a vital part in our economy. I agree with people such as Bill Kelty that we do need to look at another accord. We do need to look at getting businesses, large and small—small business this time as well—to sit down with unions and government and work out how we can make our nation more productive—the sort of thing Martin Ferguson, who has made a valuable contribution in this place and in the union movement, has talked about: if you want to get a bigger share of the pie you need a bigger pie. We are going to shrink the pie with this piece of legislation unless it is amended in some meaningful way.