



## **DAVID MORRIS MP**

**Shadow Parliamentary Secretary for Environment  
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### **The Commonwealth and 'Fair Work' Changes Legislative Assembly 12<sup>th</sup> November 2009**

**Mr MORRIS** (Mornington) — This must be some sort of record. We only dealt with the original Fair Work (Commonwealth Powers) Bill on 3 June this year, yet here we are, not even six months later, amending the original bill. I think the term that was used was 'this is a refinement' consequent on the decisions of the parliaments of South Australia and Tasmania to refer powers. 'Refinement' is an interesting term.

It was also interesting to note the words of the minister in the second-reading speech:

*Our referral must be amended to reflect these changes and to enable the commonwealth to present uniform referral arrangements to all states.*

I would have thought that if the original legislation was all it was cracked up to be, allegedly pretty good stuff, then the commonwealth and the states of South Australia and Tasmania would have fallen into line. So clearly the original legislation was not up to much at all. We are once again confronted, without debate, with a refinement to the way our federation operates.

We have a group of ministers who sit in a room behind closed doors and out of public view, work out the process, work out the legislation, bring it out and bring it into the parliaments and say, 'Here it is. Take it or leave it'. That may be an efficient way to do things, and it may be the least controversial way of doing things in terms of prosecuting your argument. However, it is certainly a most undemocratic process when there is no public view of the debate that goes on; there is no opportunity for interaction between the public and the legislation when it is brought into the Parliament.

It forces us to rely on the very few lines of the second-reading speech. It forces us to try to read between those lines to glean the real intent of the legislation and the real impact of the legislation on the people of Victoria. Apparently — I make this observation in passing — we are now subject to the wishes of the parliaments of South Australia and Tasmania. Some 5.3 million Victorians are being dictated to by 1.6 million South Australians and not even half a million Tasmanians; so 2.1 million Tasmanians and South Australians are telling 5.3 million Victorians how to go about their business.

I raise that concern because I think it really is important that we do, to pick up the terminology, 'refine' the way we deal with these issues. There is harmonisation, to use the other buzzword. Harmonisation is important but it is also important to ensure

that we do not have to compromise the interests of the state of Victoria and Victorians in the process. At the moment the process does not allow for that.

The Liberal Party and the coalition have a long record of support for a uniform national system, so I am certainly not arguing against that principle. I am simply indicating differences with the process and I have considerable difficulty with some of the concepts that underlie the bill.

The bill essentially seeks changes to the original Fair Work (Commonwealth Powers) Act, including definitional changes to allow Victorian legislation to mirror the commonwealth act. Those definitional changes are largely unremarkable and I do not propose to go through them in detail. But by virtue of the definition process, we will have inserted in the act the concept of fundamental workplace relations principles, and I will come back to that.

I also note that the definition of 'essential services' is repealed and redefined in section 5 of the act. The bill proposes changes to the termination provisions in relation to the agreement for the commonwealth and also for the states, and for shortened time frames only to be available when there is a breach of the fundamental conditions, coming back from six months to three months. As I indicated, there are a number of concerns with the original act that remain unamended.

The concerns are well known, particularly the difficulties that small business has with the concept of unfair dismissal as it is laid out and the impact on legitimate independent contractors. I know some assurances have been given on this matter but there is some residual concern. There is the concern of additional cost to business. I am not talking about the cost of wages; I am talking about the very complex arrangements that are proposed.

Every time you add any sort of complexity to the process you are adding cost as well, and that means the opportunity to create additional jobs is reduced. That remains a concern. There is also the requirement to deal with a particular union, even if there is only minimal coverage in the enterprise concerned.

I come to this debate from a small business perspective, and that is probably a very different perspective from that of some of the large labour hire firms and so on. You are in the workplace shoulder to shoulder with your employees from day to day, week to week. That is something I have done for most of my working life. With the exception of two years, my working life has all been on that basis, so I come to this with a particular point of view.

Coming back to the fundamental workplace relations principles, my underlying philosophy is pretty simple. The reality is that there are rogues on both sides. There are bad employers, and there are bad unions — or bad people in unions, I should perhaps say, rather than generalising. They are a very small number in each case. Any system that you put in place has to retain flexibility. You need to protect each side of the partnership from the excesses of the other — and if it is going to work properly it

has to be a partnership. You need these rules in place to protect people — employees and employers — from the excesses of the rogues, but they are a very small number.

You cannot afford to let that imperative allow you to reduce flexibility as well. Most employers recognise the importance of adequately rewarding their valued employees. It contributes to the success of the business; it builds success for both the employer and the employee. Most employees understand the importance of the success of their employer's business. If the business succeeds, then there is the opportunity for advancement and to share in the success. On the other side, if the business fails, then clearly they are out looking for some other way to feed themselves and feed their family.

Any system deals with exceptions. On that basis I have some difficulty with new section 3A(a)(iii), which is the collective bargaining proposal. There is no provision for individual agreements; it is simply a one-size-suits-all argument, and it does not work. Similarly, with paragraph (v), which is the protection from unfair dismissal proposal, unless you have a decent definition of what is unfair and a workable definition of unfair, you are causing difficulties for both sides. Even if it is technically unfair, rogue employees can have a catastrophic effect on a small business, and there needs to be a fair mechanism to deal with that problem.

I make those comments from a practical perspective. I fear that, given the parlous state of the economy at the moment, the legislation may well have a significant impact. Unemployment continues to rise; underemployment is endemic. The timing of this so-called reform is unfortunate, to say the least.

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