INDUSTRIAL RELATIONS
LEGISLATION AMENDMENT BILL
1992

First Reading
Bill received from the Senate, and read a first time.

Second Reading
Mr ROBERT BROWN (Charlton—Minister for Land Transport) (8.00 p.m.)—I move:

That the Bill be now read a second time.

This Bill is another significant step along the path of fundamental reform initiated by the
Government since taking office in 1983, reform which is transforming Australia's industrial relations landscape. The measures it proposes exemplify this Government's approach to industrial relations reform, as distinct from the Opposition's alternative. The fundamental elements of our approach are:

- a flexible industrial relations system that at the same time enhances efficiency and equity at the workplace and responds to national macro-economic imperatives;
- the existence of democratic organisations of employees and employers to represent the interests of their members, as in all truly free societies;
- a role for public institutions, notably independent industrial tribunals, to provide social protections through the safety net provided by an effective award system and to contribute to industrial stability through the machinery of conciliation and arbitration;
- consultation and cooperation between workers, their unions and employers as essential ways to ensure that industrial reform and workplace changes are best framed and implemented on a sustainable basis; and
- a legitimate and necessary government role in reforms through supportive policies and labour market programs to promote desired outcomes at the national, industry and enterprise levels. Abandoning the reform process to the whims of the market through deregulation would be counterproductive.

This practical approach, founded on firm social democratic values, is directed towards delivering the best and fairest economic outcomes for Australia. It recognises the vital role that our industrial relations institutions and practices have to play in achieving these outcomes. A best and fairest economy is marked by internal cohesiveness, flexibility, optimum development of the skills and productive performance of the people, and sustained growth in living standards with a fair distribution of national incomes.

Accordingly, since 1983, this Government has set out systematically to pursue these objectives by applying Labor's approach to delivering practical reforms:

- we have applied a flexible accord wages policy responsive to Australia's economic circumstances; this has delivered responsible wage outcomes, a dramatic expansion in employment through the 1980s, very low inflation and record low levels of industrial disputation;
- we have improved the legislative framework governing the Federal industrial relations system;
- we have strongly supported the overhaul of award and trade union structures in Australia through industrial relations policies, workplace reform programs and assistance for union rationalisation; we are driving fundamental complementary reforms in education and training; and
- we are managing and overseeing a transformation of industrial attitudes and behaviour, away from the adversarial relationships of the past and towards the cooperative approach that is most conducive to a new workplace culture; our catalytic programs have helped to accelerate and extend this transformation through wider acceptance of the need for workplace reform and the adoption of international best practice in Australian firms.

This careful and sustained reform process has meant drawing together the industrial parties, with the tribunals, to work as one nation. It has necessarily rejected the 'big bang' type of confrontationist approach which would bring confrontation back to the workplace, subvert the 'umpire' role of the independent tribunals, and substitute blind reliance on market forces for wages policy and reform programs.

The deregulationist agenda—preoccupied solely with activity at the enterprise level, with negative cost cutting, to the exclusion of industry and national strategies—would lead to the exploitation of the vulnerable and disadvantaged in the community. This would be at the expense of the longer term dynamic strategies—implemented realistically and cooperatively—which are needed for genuine flexibility and development of a mobile, highly skilled workforce. Yet these are the
prerequisite conditions to produce in Australia the high wage, high productivity type of economy which dominates world markets. The Government proposes through this Bill to extend the process of practical reform that builds on the achievements already made through our approach. We believe that is the priority, not only of Australian workers and their unions but also of the great bulk of the business community.

I turn now to the main proposals in the Bill. It has five main elements:

1. a fundamental revision of the provisions of the Industrial Relations Act 1988 to facilitate and encourage workplace bargaining; the parties to a dispute within the jurisdiction of the Australian Industrial Relations Commission will be enabled to reach agreement on terms to settle the dispute and to have the agreement certified by the Commission to operate as an award;

2. a provision to enable the Commission to review unfair contracts;

3. conferral of specific duties on the office of Vice-President of the Commission in relation to registered organisations of employers and workers;

4. simpler processes for the recovery of unpaid award wages; and

5. improved machinery for national consultation on industrial relations matters.

Certified Agreements

The key aim of the new certified agreements provisions is to facilitate workplace bargaining agreements that boost productivity and improve the living standards of workers. There is now consensus in Australia on the need to focus industrial relations more directly on the enterprise and workplace. The participants in our system are moving steadily towards accepting greater responsibility for finding their own solutions to industrial differences, in a way which is constructive and produces lasting benefits for employers, workers and the community.

The changes made by the Industrial Relations Act in 1988 through the section 115 provision for certified agreements have been recognised as an important step forward. A certified agreement operates as a fixed term ‘closed’ award for its agreed specified period and does not necessarily have to conform with national wage principles. Until recently, however, all sides—including the Commission—have shown a very cautious attitude towards certified agreements. In practice, and notwithstanding some notable innovative arrangements such as at ICI, there have been relatively few agreements presented for certification. We are clearly past the uncertainties about the benefits of more decentralised bargaining and it is obvious that, for various reasons, the provisions are too restrictive in their operation for current needs. Accordingly, last October, in a parliamentary statement, the Minister for Industrial Relations (Senator Cook) foreshadowed legislative action to address the issue. The Commission in its national wage decision later that month also referred to some difficulties in the provisions.

The proposed legislation thus reflects experience with more decentralised bargaining and the existing provisions. Essentially, we are proposing that, within the scope of the constitutional conciliation and arbitration power, parties to a dispute should be able to settle their differences and prevent future disputes with greater confidence that their agreement will be accepted for certification.

Greater prominence will be given to certified agreements. A new division will be included in the Act to deal with such agreements. The division will be prefaced by a clause specifying that the objects of the division are to facilitate the making and certification of agreements and to encourage their use in the prevention and settlement of disputes. The Commission will be required to perform its functions under the new division in a way which furthers these objects as far as practicable. The intended effect of these provisions is to ensure that certified agreements are available as a real alternative to the mainstream award system and not reserved for exceptional circumstances.

There will be simple criteria for certification: no disadvantage to employees; the inclusion of dispute-settling provisions; and consultation by unions with their affected
members about the agreement. If an agreement applies to a single business, including a project or joint venture, part of a single business, or a single workplace, there must be a single bargaining unit comprising all relevant unions, though the Commission will be able to permit exceptions.

A key element of the new certified agreements provisions is that a certified agreement must not disadvantage the employees it covers, in respect of their terms and conditions of employment.

The circumstances in which the Commission may find that an agreement will disadvantage employees are specified. It must first consider whether certification would result in the reduction of employment entitlements and protections for employees covered by the agreement, under an award or under any other law that the Commission considers relevant. If the Commission judges that such a reduction would occur, it must consider whether or not the reduction is contrary to the public interest, in the context of the terms and conditions of those employees considered as a whole. The provision is not intended to operate in a way to reduce well-established and accepted standards which apply across the community such as maternity leave, standard hours of work, parental leave, minimum rates of pay, termination change and redundancy provisions and superannuation.

This test is designed to allow some flexibility in the arrangements which parties may include in a certified agreement, but to prevent reductions in protections or entitlements if they are unfair or against the public interest.

The Commission will be able to refuse to certify an agreement which applies more widely than to a single business if, as now, it considers the agreement to be contrary to the public interest. The Commission will only have such a discretion for an agreement which applies to a single business, part of such a business or a single workplace if the Minister for Industrial Relations applies to have the agreement’s effect on the public interest considered.

This ministerial power will only operate for 18 months as a safeguard while the operation of the new provisions becomes established. In these circumstances, an agreement may be refused certification if it is found substantially to jeopardise the public interest. Similar conditions will apply to the Commission’s powers to review an agreement’s operation once certified. I should emphasise that the ministerial power is not expected to be used in any but the most extreme circumstances.

A certified agreement will still be variable only during its specified period of operation on limited grounds, reflecting the agreement’s ‘closed’ nature. Under the new provisions, where parties agree, they will be able to extend the period of operation of a certified agreement. It is also proposed to change the arrangements which apply after agreements reach the end of their specified period of operation. At present, they cease to have effect after expiry. This has caused some difficulty. It is proposed that, after their specified term expires, agreements continue to operate but in the same manner as other awards. Alternatively, they can be replaced by a new agreement or a mainstream award or simply cancelled.

The new division will also contain a number of changes designed to streamline procedures for the certification of agreements and to facilitate their use. There is now a requirement that a Full Bench must deal with agreements which the President considers to be inconsistent with general wage fixing principles. This will be removed. So will the requirement prohibiting a certified agreement being based on the terms of another certified agreement. Where the Commission has grounds for refusing to certify an agreement, it may permit parties to vary the agreement to make it certifiable or it may certify the agreement subject to undertakings as to its operation.

The new provisions will represent a more complete approach to certified agreements, reflecting the Government’s expectation that the parties will increasingly seek to have their own arrangements accepted and given effect in the federal system. They are designed to accelerate workplace reforms and lift our productivity performance. I emphasise that this will be undertaken within an effective
framework which provides for best practice workplace bargaining, which ensures fairness and which maintains and consolidates appropriate roles for employers, unions and tribunals in the process.

Independent Contractors

The Bill proposes to amend the Act to:

- give the Commission power to review unfair contracts for the performance of work by independent contractors;
- give independent contractors the choice of joining a federally registered union; and
- maintain and extend the protections against coercion available to independent contractors.

There has been considerable misunderstanding of the Government’s legislative proposals regarding independent contractors, based either on misinformation or unwillingness to consider the actual effect of the proposals. In developing its proposals, the Government has consulted widely and at length with interested groups, particularly with employers. It has taken into account the needs of industry, as well as those of other relevant interests. In consequence, the Government made a number of amendments to the Bill before its introduction into this House.

The principal change was to remove proposed provisions that would have allowed the Commission to deal with certain industrial disputes about the use of independent contractors. In the Government’s view, it was appropriate to clarify the Commission’s role in this area because, in a modern economy, it is unrealistic to limit the jurisdiction of the national industrial tribunal strictly to matters involving only employees in the strict legal sense. Notably, the High Court has found that the principal constitutional power in respect of industrial disputes is not so limited.

The Government’s view is that the Commission already has a broad jurisdiction over industrial disputes concerning the use of independent contractors instead of employees to perform work, but considered that the issue should be put beyond doubt legislatively, with appropriate guidance for the Commission on how to exercise that jurisdiction. In the consultations with employer bodies, it became clear that they preferred to have the scope of the existing jurisdiction clarified by the High Court. The Government agreed to that course.

The other elements of the Government’s proposals, to which I have already referred, are still both necessary and desirable. The unfair contract review procedure will allow a party to a contract that is harsh, unfair or against the public interest to apply to the Commission for its review. Where the Commission is of the opinion that the contract is harsh, unfair or against the public interest, it will be able to vary or set aside the contract. It will also have the power to make interim orders to protect the position of a party to the contract, pending the outcome of proceedings.

In view of the campaign of concentrated misinformation to which the Government’s proposals have been subjected, it is necessary that I, on behalf of the Minister, set the record straight. The Government’s proposals do not stop people working as independent contractors, as the Opposition spokesman, the honourable member for Bennelong (Mr Howard) well knows, if that is what they want to do. They do not convert such people into employees. What they will do is provide a cheap and convenient means of redress to individuals who are working as independent contractors and who are being exploited.

The Government can only wonder at the antics of the Housing Industry Association and others who are campaigning so vigorously against the proposals. Why do they object so strongly to measures that will protect exploited members of the work force? If there is no exploitation, then the proposed provisions will have no operation. Notably, other employer bodies, although they do not regard the legislation as necessary, are not associated with this campaign.

These proposals do not introduce uncertainties into the tendering process. They will have no practical application to freely entered into contracts of a commercial nature. Decided cases before the New South Wales industrial tribunal under equivalent legislation make it clear that the Commission will not intervene
to protect people who merely regret having entered into commercial contracts.

The provisions provide a way to redress situations of unfairness on the merits of the case, without resort to the civil courts and the attendant costs and delays, or the unrestrained abuse of pressure tactics. The new arrangements will operate only on a case by case basis, not on a general or class action basis.

One of the extraordinary claims which have been made is that the new provisions will lead to increased prices for houses. This is nonsense. The proposed unfair contracts review procedure is more limited than that now available under some State laws. Such a procedure has existed in New South Wales for many years, and has recently been carried over by the former Greiner Government into the New South Wales Industrial Relations Act 1991. There has been no evidence that those provisions have increased housing prices. As the Master Builders Association has acknowledged, the Government's proposals will not lead to such increases. To claim otherwise is simply scaremongering. Those people who are responsible for it know that because that is their purpose.

Allowing independent contractors to join federally registered unions is not novel. Some independent contractors do so now. In addition, a union will not be able to seek among independent contractors a wider class of members than it may seek among employees. The protection available to independent contractors under the Act will continue to apply, and is to be extended to make it clear that an independent contractor may not be compelled to join a union nor be discriminated against on account of membership or non-membership of a union.

The term 'independent contractor' covers individuals who are performing work under a contract for services as opposed to employees who perform work under a contract of service. It will be explicitly limited to natural persons.

Vice-Presidential Duties

An increasingly important area of the work of the Commission relates to registered organisations of employers and employees. There are, for example, complex questions arising in relation to the rationalisation of unions in the federal system, through amalgamations, changes in coverage and associated rule alterations. At present, this area of work is undertaken by presidential members designated for the purpose by the President.

Reflecting the importance, complexity and amount of such work, it is proposed that the Act be amended so that a specific panel responsible for this area is formed in the Commission, headed by the Vice President. The panel will comprise the Vice President and presidential members designated by the President. All panel members will be available for other duties.

The establishment of the new panel is similar to the arrangements in the Act by which industry panels are established for the purposes of preventing and settling disputes in particular industries.

Small Claims

The Bill will make it easier for employees to recover relatively small amounts of money to which they are entitled under awards. This will provide a more efficient method of enforcing awards in situations where complex legal procedures and legal representation are unnecessary. A virtually identical scheme already exists in New South Wales for small claims under State awards. Similar schemes are commonplace for consumer claims.

The new small claims system will apply to claims brought in magistrates courts for amounts up to $5,000. The Government will be able to increase this amount by regulation. The main features of this new system will be exclusion of legal representation, relaxation of the rules of evidence and overcoming technicalities.

At present small but blatant breaches of award obligations can occur without it being worth while for employees to incur the legal expenses necessary to enforce their award entitlements. These small claims typically involve no difficult questions of legal interpretation, making the involvement of lawyers an unnecessary complication and expense. It is proposed that representation by
a barrister or solicitor will not be allowed unless the magistrate decides to allow it.

The Bill also proposes to give the Government power to make regulations restricting the magistrate's discretion to allow legal representation. For example, legal representation could be prohibited except when all the parties to the litigation agree to allow it. This is now the case under New South Wales legislation governing small claims under State awards.

Because of constitutional restrictions, the Commonwealth can only restrict a State magistrate's power to allow legal representation if State legislation already imposes the same restriction on the relevant State courts. That is why the Bill provides for this to be done by regulation. The regulations will be prepared in consultation with States that have enacted relevant legislation.

The regulations will also be able to ensure that officers of unions or employer groups will be allowed to appear in court to represent their members. The Commonwealth only has the constitutional power to do this if State legislation already includes comparable provisions governing the State jurisdiction of the relevant courts. This constitutional restriction will make it necessary for regulations to be made on a State by State basis, as for the regulations concerning legal representation.

Ensuring that parties to these cases can be represented by expert industrial advocates, rather than by barristers or solicitors, will help magistrates courts to address the practical issues that arise in these cases. This is another aspect of making enforcement of awards a more efficient process.

Changes to Structure of NLCC Council

The final major proposal in the Bill is designed to encourage greater tripartite consultation on industrial relations and other employment matters of national concern. It is proposed to enhance the representative nature of the National Labour Consultative Council by widening its membership to include another employer representative. It also proposes to give the Minister power to invite other persons and bodies to be represented at meetings, as appropriate. The Bill amends the National Labour Consultative Council Act 1977 accordingly.

Other matters

Several other minor technical amendments of industrial relations legislation are also included in the Bill.

To sum up, this Bill is a significant step in designing an industrial relations system which will facilitate our progress towards the leading edge of the regional and international economy. This progress can only be sustained and maintained if all those involved can take part and reap the benefits. Its governing objectives, therefore, are fairness as well as efficiency. Its governing method is through cooperation and participation, rather than confrontation and division. In this way, the whole community gains the rewards. On behalf of the Minister for Finance (Mr Willis), I commend the Government's proposals to the House, and I present the explanatory memorandum to the Bill.

Leave granted for debate to proceed forthwith.

Mr HOWARD (Bennelong) (8.28 p.m.)—I thank my colleague and friend the honourable member for Charlton (Mr Robert Brown) for the opportunity once again to indulge in a very favourite pastime of mine in this House: locking horns with the honourable member for Charlton. There is a certain irony, a certain coincidence, of some historical significance so far as industrial relations law in Australia is concerned, that this particular debate, which is about an amendment to the Federal industrial relations law, should take place on the very day that the New South Wales Minister for Industrial Relations of the past several years, Mr John Fahey, has been installed as Premier of New South Wales.

Let me commence my remarks by saying that, despite the rather unfortunate circumstances in which Mr Fahey has assumed the premiership of New South Wales, I personally congratulate him on the assumption of that very high office. He is a man I have an enormous respect for. I believe that he did an outstanding job for the coalition in shepherding the industrial relations legislation through both the Legislative Assembly and...
the Legislative Council in New South Wales. It will for ever be to the credit of the Greiner Government in New South Wales that it was prepared to stick to its guns, despite the adversity of numbers in the upper House in New South Wales, in order to get vital legislation reforming Australia's industrial relations system through the New South Wales Parliament.

Whilst it is true that it was the Queensland National Party Government—with which I did not always totally agree—that was responsible for the first legislation in Australia endowing individuals with the right to make direct employment contracts bypassing unions and industrial relations tribunals, it has in fact been in New South Wales that at a State level such legislation looks like surviving intact, at least for a considerable period of time. So I commence my remarks by acknowledging the contribution of the new Premier of New South Wales, John Fahey, to the cause of industrial relations reform.

I have to say to my friend the honourable member for Charlton, as I do to my friend the honourable member for Stirling (Mr Ronald Edwards), that the tide of history is against those who would retain the institutional grip of the organisations on industrial relations in Australia. The tide of history is in favour of contractual arrangements at the workplace level. Day by day further evidence accumulates. But, because of what I perceive to be a grave and weighty matter, I seek leave to continue my remarks later, and I am sure that on this occasion the Speaker will readily facilitate my request.

Mr SPEAKER—Leave is granted, and I thank the honourable member for Bennelong for his kind remarks. I was listening with interest to the matters he was raising before the House. I may even stay and listen to it later, but honourable members should not hold their breath.

Leave granted; debate adjourned.
INDUSTRIAL RELATIONS
LEGISLATION AMENDMENT BILL
(No. 2) 1992

First Reading

Bill received from the Senate, and read a first time.

Second Reading

Mr BALDWIN (Sydney—Minister for Higher Education and Employment Services) (12.57 a.m.)—I move:

That the Bill be now read a second time.

The Industrial Relations Legislation Amendment Bill (No. 2) 1992 is a portfolio Bill which amends 10 Acts in the industrial relations portfolio. The most significant amendments relate to section 111 of the Industrial Relations Act.

The Government's proposals concerning section 111 reflect our clear policy in industrial relations. We support cooperation over conflict, choice over coercion, and the proper protection of the interests of employers, workers and the general community. Such an approach provides the basis for achieving lasting economic and industrial reform fairly and flexibly.

If Australia's industrial relations system is to meet these objectives, it must guarantee employers, employees and their representatives that where agreement cannot be reached over industrial differences, there is a fair, speedy and impartial system for resolving such problems. For most of this century, this has been achieved at the Federal and State levels by the provision of a system of conciliation and arbitration, administered by independent industrial tribunals with the power to compel parties to disputes to appear before them, and to make binding awards, by arbitration if necessary, to resolve the matters in dispute.

This system has provided the basis for the fair and effective prevention and settlement of industrial disputes. Importantly, through awards, employees are guaranteed enforceable and equitable terms and conditions of employment.

The balance between Federal and State systems has been maintained partly by the preferences of the parties, partly by historical influences and partly by a mechanism in the Federal industrial legislation which allows the Federal commission not to hear a matter which is appropriately left for resolution by a State industrial tribunal. In the Industrial Relations Act, that mechanism is found in paragraph 111(1)(g).

Under that paragraph, the Australian Industrial Relations Commission can dismiss or refrain from hearing a matter on various grounds, including that the Commission should defer to a State industrial authority, or that further proceedings are not necessary or desirable in the public interest.

From time to time, the Commission acts under this provision without further hearing a matter. In this way, the Commission can leave the matter to be resolved within a State's jurisdiction if that appears to be more appropriate.

A matter should not be so dismissed where the issues in dispute cannot be resolved by the exercise of powers of compulsory arbitration in the relevant State jurisdiction in cases in which no other resolution can be achieved.

On the other hand, the Commission should be able to dismiss a matter if it is merely an attempt to re-open an industrial agreement freely entered into by the parties in a State jurisdiction that permitted access to compulsory arbitration. Nor should a temporary denial of access to compulsory arbitration be relevant, if it is the result of an award that was made within a system of compulsory arbitration. The proposed amendments recognise these situations.

Accordingly, it is proposed to provide that the Commission may not dismiss or refrain from hearing a matter where compulsory arbitration cannot apply or could not have applied in the State concerned. Without such amendments, industrial disputes within the constitutionally authorised jurisdiction of the Commission could be left unresolved, and one
party or another could be in a position to impose an unfair result by using much greater bargaining power.

I emphasise that the proposed amendments do not direct the Commission how to decide any matter to which they apply. Their effect will be to ensure that the Commission hears and decides such a matter on its merits, and that it cannot be dismissed without such a hearing.

The Government referred the proposed amendments to the National Labour Consultative Council and to State governments for their consideration and comment. The views of the National Labour Consultative Council members have been taken into account, resulting in some changes to the original draft amendments. A clause has been omitted which would have imposed an obligation on federally registered employer organisations to give notice of changes in their membership to the Australian Industrial Relations Commission and relevant unions. Such changes in membership can affect respondency to awards. The proposal has been removed for further examination by the National Labour Consultative Council.

The States were given the opportunity to comment on the Government's proposals. The governments of two States, New South Wales and Queensland, provided substantive comments. The representations led to some changes to the draft Bill. Proposed subsection 111(1a) has been altered to make it clear that State awards which cannot, for some period, be varied, are outside the proposed restriction on the powers under paragraph 111(1)(g). In addition, the Bill is framed so that 'employment agreements' as defined are also outside that restriction.

The concerns of these governments related to awards and agreements under their own industrial legislation, but are also relevant to other State systems which maintain compulsory arbitration as an ultimate means of determining disputes. The status quo under paragraph 111(1)(g) has been preserved in such cases.

The Queensland Government also suggested that paragraph 111(1)(g) should itself be amended by inserting an express provision to allow the Commission to dismiss or to refrain from further hearing a matter where it has been the subject under State law of an employment agreement, as defined.

The Commonwealth recognises the validity of this point and proposes to raise it in the National Labour Consultative Council and with the other States, to seek their views on amending section 111 appropriately. This will occur before the next sittings of the Parliament.

The other amendments in this Bill are all designed to improve the operation of the Acts concerned or the functioning of offices or bodies established under them. Each of the proposed amendments is sensible and of real value. They have been the subject of discussion in the tripartite National Labour Consultative Council and accepted by its members.

The Bill contains two further amendments to the Industrial Relations Act which should be mentioned. The first is to improve the operation of section 202 of the Act, to strengthen the administration of federally registered unions. Section 202 is designed to overcome difficulties that can occur when a Federal union and a State union have substantially overlapping membership. The section allows a Federal union to enter into an agreement with a counterpart State union. Members of the State union who are not within the Federal union's eligibility rules can then become members of the Federal union and participate in its internal affairs. The Federal union cannot represent the industrial interests of these members unless it successfully goes through the normal process, required by other provisions of the Act, to make the changes to its eligibility rules.

Section 202 provides a way of overcoming legal difficulties that might arise from the participation by the State union members in the affairs of the Federal union. The existing section 202 is confined to States which have legislation that confers corporate status on registered unions. Experience has shown that the section could usefully be extended to unions in the other two States—Victoria and Tasmania.

The new section 202 provides for this, and will also permit an agreement to be used to
facilitate amalgamations between federally registered unions. To avoid abuses, the new provision gives the Australian Industrial Relations Commission greater powers of supervision over agreements made under the section.

The new section 202 remains a provision concerned with the rights of members to participate in the internal affairs of a federally registered union. It does not give such a union any additional rights to represent those members industrially. For these purposes, a federally registered union is limited by its eligibility rules, which will not be affected by an agreement under section 202.

The Bill also gives the Australian Industrial Relations Commission the protection of the law of contempt of court. It will be an offence to do anything that would amount to contempt of court if the Commission were itself a court. Commonwealth law already gives this same protection to the Administrative Appeals Tribunal and the Trade Practices Tribunal.

This new provision will replace a broader provision in a paragraph of section 299 which the High Court has recently found to be invalid. The High Court interpreted that provision as purporting to prohibit criticism of the Commission even when that criticism was honest and fair. The new provision will not suffer from that defect.

Under this new provision, the genuine exercise of a right of criticism will not be an offence. The new provision will apply only if a person is acting in malice or attempting to impair the administration of justice.

The Bill also makes minor changes to legislation concerning occupational health and safety, Commonwealth employment and the membership of the Remuneration Tribunal. These are explained in the explanatory memorandum.

Financial Impact

The Bill will have no significant impact on Commonwealth expenditure. I commend the Bill to the House and present the explanatory memorandum.

Leave granted for debate to continue forthwith.

Mr HOWARD (Bennelong) (1.06 a.m.)—
The Opposition will oppose the Industrial Relations Legislation Amendment Bill (No. 2) root and branch, through every stage of its passage through the Parliament. It is a very important measure and it has enormous consequences for the industrial relations system of this country. It is a proposal by the Keating Labor Government that strikes right at the concept of any notion of electoral mandate in this country. Let us make one thing very clear at the outset. It is the dying hours of this Parliament and, in a sense, it is a disgrace that a measure as important as this should be brought before the Parliament at five past one on the last morning that it may sit. This Bill is not about giving greater choice to the workers of Victoria; it is about taking away choice from the workers of Victoria.

The Minister for Higher Education and Employment Services and the Minister Assisting the Treasurer (Mr Baldwin) had the impertinence in his second reading speech, the sheer and unadulterated gall, to say that this is about choice over coercion. Let me tell the House how it is the exact reverse. If this Bill is passed, it is the coercion of this Federal Parliament over the free choice of the Victorian people, expressed at a recent State election, and the free choice of individual Victorian workers to go into workplace agreements under legislation enacted by the Victorian Parliament.

This measure will enable any group of trade union officials in Victoria to apply for Federal industrial relations award coverage in relation to any work category in the State of Victoria. Irrespective of the wishes of people who may be working in that classification, if that award coverage is granted, then individual Victorian workers, often against their will, will be dragged out of those workplace agreements and put under Federal awards.

This legislation is not about allowing individual Victorian workers to apply to the Industrial Relations Commission for Federal award coverage. Every time the Prime Minister (Mr Keating) says that, he distorts the truth and misrepresents the position. This Bill is about giving the union bosses of
Victoria the power once again to assume control over what individual Victorian workers—many not belonging to those unions—want to do with their lives.

I sit here and watch the honourable member for Brisbane (Mr Bevis), who has a background in the trade union movement, and I watch other honourable members opposite. I invite them as part of this debate to disprove the central claim that I am making: are they arguing that this Bill gives individual workers the right to apply for Federal award coverage? I notice that they do not nod their heads, because they cannot. They know that what I am saying is correct. This Bill is about one thing only: placating John Halfpenny, the surrender of Paul Keating to John Halfpenny, and overturning the decision taken by the people of Victoria on 3 October to vote into power a government that has been given an explicit mandate to legislate to change the industrial relations laws of the State of Victoria.

Since the change of government in Victoria the industrial relations law of Victoria has been dramatically altered in accordance with the wishes expressed by the Victorian people on 3 October. The major change that has been made in Victoria is that, for the first time in over 90 years, individual men and women, subject to compliance with a number of minimum conditions, have been given the freedom to negotiate directly with their own employers and to enter directly into workplace agreements. This Bill seeks to overturn that freedom. This Bill is not about giving greater freedom; it is about circumscribing the freedom that has been given to the workers of Victoria. We have had this debate before and I see the same friendly faces opposite.

Mr Courtice—And we’re going to have it again.

Mr Howard—And, of course, we are going to have it again. I say to the honourable member for Hinkler (Mr Courtice), with the best of goodwill in this festive season—and I always have goodwill towards the honourable member for Hinkler—that I always feel a bit sorry for people who suffer from invincible ignorance when it comes to industrial relations. I say to the honourable member for Hinkler and to other honourable members opposite that this Bill is about one very simple proposition: are we, in 1992, going to support the proposition that it is trade union officials, and not the individuals concerned, who have the right to decide who is going to govern the enterprise and workplace arrangements of individual Australians? That is what this debate is about.

I am glad the honourable member for Hinkler nods. I will be delighted to spend the next few months debating whether the men and women of Australia should have the freedom to negotiate on their own behalf if they want to. We are not saying to anybody opposite that people should not have the right to negotiate through a union if they want to. There is nothing in the Federal coalition’s industrial relations policy that denies people the right to use a trade union. They can use anybody they like.

But what we will not accept, and what I am sure the Australian people will not accept, is the proposition that the characters opposite advance every time: the men and women of Australia are too stupid ever to negotiate on their own behalf. That is the essence of their industrial relations policy. They will never give to the Australian people.

The Government talks about the pride and the independence of the Australian people but, when it comes to the crunch, it will never allow them to negotiate on their own behalf—they are too stupid; they are too stupid. We apparently allow people to make monumental financial decisions about the house they will buy; we allow people to decide who they are going to marry or live with; we allow people to make all sorts of decisions of that kind without some kind of paternal influence, but when it comes to entering into an arrangement about how much they are worth, we say, ‘Oh, you can’t do that; you can’t actually allow people to make a decision on their own behalf; they might get it wrong’. So we are going to stop them doing it. We are going to bind them hand and foot and we are going to say in the good old paternalistic, totalitarian Labor tradition, ‘You shall not be allowed’. Yet those opposite have the infernal gall to
get up here and talk about choice over coercion. It is the exact opposite.

Dr Theophanous interjecting—

Mr Howard—I notice that we have finally been joined by another Labor member from Victoria. He ought to go and hide under a rock after what his mob has done to the State of Victoria over the last 10 years. He is the last bloke with any authority or warrant to enter this particular debate.

This legislation attempts to reimpose the writ of John Halfpenny on the workers of Victoria. That is what it is all about. It has nothing to do with freedom; it has nothing to do with individual liberty or individual rights. It has everything to do with handing back control of industrial relations to John Halfpenny. Never let it be forgotten that the present Prime Minister of Australia owes more than he likes to admit to the socialist Left in Victoria.

Government members—Oh, yes!

Mr Howard—'Oh, yes', they go on; 'Oh, yes'. He was getting more support from Joan Kirner and Wally Curran when he was trying to knock off Bob Hawke than he was getting initially from the Queensland Right, wasn't he, Brian? The honourable member for Hinkler put his hand up. I do not think I ought to remind him of a few conversations I had with him on that subject. I will not be so uncharitable or so ungracious as to do so, and he knows exactly to what I am referring.

When the honourable member for Blaxland (Mr Keating) was really struggling to knock off Hawke, about the only time people would talk to the honourable member for Blaxland, outside his mates in Sussex Street, was when he went down to see Joan Kirner. He had quite a thing going with the socialist Left down in Victoria, and Government members know very well that this is really quite a pay-off.

This has nothing to do with good industrial relations. It has everything to do with reasserting the authority of the Trades Hall Council; it has everything to do with handing over to the union bosses of Victoria the right to decide that Victorian workers who, of their own free will, have gone into workplace agreements shall be dragged out of those workplace agreements and placed under Federal awards. There is nothing that can be pointed to in this Bill that disputes the simple, unassailable proposition that no individual Victorian worker has the right, under this legislation, to obtain Federal award coverage.

Every time the Prime Minister or Senator Cook says that this Bill is to give Victorian workers the right to get Federal award coverage, they tell a straight out lie. They have done it repeatedly. They will go on doing it. I hope the honourable gentleman opposite will not fall into the same error. It is not about giving individuals rights; it is about giving trade union bosses rights. We believe that the changes that have been implemented in Victoria by and large were supported by the overwhelming majority of the Victorian people.

Dr Theophanous—Rubbish.

Mr Howard—The honourable member for Calwell makes a wholly original interjection. I have to give him marks for originality. I have never had anybody interject on me in the past and say, 'Rubbish'. That really is a very original interjection from the honourable member for Calwell. Let me remind him of this: who ran those advertisements in the Victorian election campaign featuring that bloke from New Zealand? What was that all about? That was all about Joan Kirner and the honourable member's mob in Victoria arguing that if Kennett were elected he would introduce industrial relations legislation similar to that in New Zealand.

The whole focus of the Government's campaign for the last three weeks was about scaring the daylights out of what it regarded as its traditional voters in its heartland seat about Kennett's industrial relations policy. Yet the honourable member has the nerve to get up in this Parliament and argue that in some way Kennett did not have a mandate to introduce industrial relations reforms. With great respect to the honourable member for Calwell, that is the rubbish that is being argued in this Parliament and not the statements that I am making.

I make no secret, and I did say this from the very beginning, that there are three areas
where our policy is different from the policy of the Victorian Government. The first area relates to the changes that are being proposed by the Victorian Government regarding strike action. We see no particular necessity for those changes, and they will not be enacted come the election of a Hewson-Fischer government on 6 March, or whatever the date is that may be decided by the Government. We make that perfectly clear.

On this particular subject I happen to share the view expressed by the former Prime Minister of Australia, Bob Hawke. Remember him? In the wake of the pilots dispute in September 1989 he said that there was a right to strike in Australia, and that it was being exercised. He did not see any particular need to change the common law of Australia in relation to the right to strike. That is my view, and that is the view of the Federal coalition. As far as we are concerned there will be no changes made to the right of people to strike under Federal law under a future coalition government. In that respect our policy is different from the approach of the Victorian Government. I make absolutely no bones about that at all.

Mr HOWARD—Honourable members opposite can interject as much as they like. We make no bones about that at all. The second area where our policy is different from the approach of the Victorian Government. I make absolutely no bones about that at all.

Mr Lavarch—Oh, yes.

Mr HOWARD—I say to the honourable member that I think the Australian people would trust my lips against his when it comes to the question of veracity on the subject of industrial relations, or indeed about anything else. The truth of the matter is that under the Federal coalition policy there will be no unilateral withdrawal of penalty rates or holiday loadings, and every honourable member opposite knows that that is our policy. I have said repeatedly, and I will say it across the length and breadth of Australia over the weeks and months ahead, that under our policy, and the reason they choose—

Mr Griffiths—Rubbish.

Mr HOWARD—that was a brilliant interjection. Is the Minister saying it is rubbish that awards include penalty rates and holiday loadings? The Minister has been bungee jumping once too often, that is his trouble.

Mr Griffiths interjecting—

Mr DEPUTY SPEAKER—Order! The Minister will cease interjecting.

Mr HOWARD—that has really got to his cerebral processes. He has been bungee jumping once too often.

Mr Griffiths—You are lying.

Mr HOWARD—He really is very worked up; I am getting very concerned about him. He is behaving disgracefully; he is being disgraceful.
Mr DEPUTY SPEAKER—Order! The honourable member for Bennelong will resume his seat. The Minister will withdraw the interjection that he made.

Mr Griffiths—I withdraw.

Mr HOWARD—Thank you Mr Speaker; I certainly appreciate the protection you have given me against—

Mr Griffiths—You are being provocative.

Mr HOWARD—I am certainly being provocative. I have never denied being provocative. If I may calmly return to a careful consideration of this issue, very clearly the situation is that under our policy, if there is a worker who is under an award that includes penalty rates and holiday loadings, and his or her employer and the person in question agree to stay under that award, naturally the employee will continue to enjoy the penalty rates.

If the person agrees to negotiate a work place agreement, then the question of whether there are penalty rates or holiday loadings quite properly becomes a matter of negotiation. But in the third situation where the employer said, ‘I want you to sign a work place agreement’ and the employee said, ‘No, I would rather stay under the award’, in those circumstances under our policy the award conditions continue.

Mr Griffiths—I don’t believe you.

Mr HOWARD—The honourable member for Maribyrnong, the Minister at the table, said that he does not believe it. In a sense, it does not matter what he believes. What matters is what the Australian people believe. When it comes to the choice, the Australian people will believe me over him. They will believe me over the utterances of his duplicitous, deceptive Prime Minister, because nobody has a worse track record of misleading the Australian people than the current Prime Minister of Australia.

Our policy in relation to this Bill is inscribed in stone. The position is absolutely unassailable. Under our policy, the enjoyment of penalty rates continues, except in circumstances where the individual concerned agrees to give them up.

Mr Griffiths—You have got to be joking.

Mr HOWARD—The Minister can interject and the Government members can carry on and guffaw as much as they like. This piece of legislation is part and parcel of an attempt by the present Government to slow down the process that will inevitably occur in Australia of freeing and deregulating the Australian labour market.

One of the things that I find most intriguing about this industrial relations debate is that the Minister at the table, the Prime Minister, Senator Cook, and no doubt my friends opposite have talked, and will talk, in absolutely shocked tones about the use of the dreadful common law. The Prime Minister talked about ‘a master and a servant’. By using ‘master and servant’ he thinks that he might conjure up some dark notion of eighteenth century or nineteenth century arrangements between employers and employees.

The Prime Minister condemns the fact that our industrial relations policy encourages people to enter into contractual arrangements with each other regarding their working arrangements, their pay and conditions. He said that that is absolutely wicked. He said that people should not be dragged into or encouraged to go to common law.

Is it not strange that that same man three years ago, along with his predecessor, the former Prime Minister of Australia, Bob Hawke, and the Secretary of the ACTU, Bill Kelty—

Mr Ferguson interjecting—

Mr HOWARD—I can tell from the reaction by the honourable member for Reid that he knows exactly what I am about to say. The honourable member for Reid knows a few things about industrial relations. He has a reasonable memory. He would remember that three years ago Bob Hawke thought common law was the greatest thing since sliced bread when it came to industrial relations. In the wake of the pilots dispute, Bob Hawke encouraged Sir Peter Abeles and Ted Harris to get their airlines to sue the Australian Federation of Airline Pilots. He stood by and applauded while common law was used by
the airlines of Australia to recover damages against Australian trade unionists. There is nothing that any of those opposite can do that will ever erase from the collective memory of the Australian people on industrial relations the fact that, when it came to the crunch and when it suited their political convenience, Bob Hawke, the then Treasurer and Bill Kelty embraced the use of common law procedures, common law arrangements and the recovery of common law damages with great zeal and with great gusto. Therefore, it is a monumental act of hypocrisy and humbug for the present Prime Minister of Australia and any of his acolytes, current or continuing, to argue that in some way there is something dreadful or nefarious about the use of common law because, when it suited those opposite, common law was the thing to be used.

Dr Charlesworth—Show us the legislation.

Mr Howard—I see the honourable member for Perth is getting agitated. There are no sanctions of that kind at all. Yet those opposite have an infernal gall, and a terrible disrespect for the truth. Why did those opposite chicken out on supporting Senator Powell’s amendment relating to sections 45D and E? Do they not want to have an argument with the employers before the election? Is that something they might like to try to do after the election if they were to scrape back. Why did they chicken out on it? They do not want to confront the employers on that subject before the election. Those opposite are a mob of humbugs on the subject of industrial relation.

When it suited the convenience of those opposite they were prepared to use the common law. When they wanted to bring a union to heel that they did not like, they said that they sooted the employers and said, ‘Go get them’. They called Abeles and Harris in and said, ‘Go and sue them, they’re elitist trade unionists; they’re not the real trade unionists’. That is what they did.

There is no difference in principle between what happened in the airlines case and what might happen in another situation. It was the Government’s Prime Minister, its Treasurer and its mate who runs the ACTU who were in favour of taking the Australian Federation of Airline Pilots to court. The Federation was sued and there were damages of $6m awarded against those pilots. It was the Government’s Prime Minister that clapped and cheered while that occurred. He rubbed his hands together and said, ‘That’s terrific’. He wanted that to happen. He wanted them to be made an

Are those opposite seriously arguing that that is a truthful statement of the position? Those opposite want a serious debate on industrial relations in Australia, yet they are prepared to give their authority, warrant and support to that kind of deceitful misrepresentation to the Australian people. There are no fines in our policy and those opposite know that. There are no criminal sanctions in our policy and they know that. There are no criminal sanctions of any kind in our policy. Those opposite have an absolute nerve—
example of. He was quite prepared to see them ground into the dirt and yet those opposite have the gall to get up here and say that they defend the rights of the individual worker and the individual employee.

Those opposite are not representing the rights of the Victorian workers, they are representing the rights of the trade union bosses of Victoria. This legislation is about handing back authority to the trade union bosses of Victoria. It is not about giving individual Victorian workers the right of free choice. They have a free choice; their free choice is to go into workplace agreements.

This legislation will authorise trade union officials to drag people out of those workplace agreements and put them against their will under the reach of Federal awards. Yet those opposite are seriously asking the Australian people to accept that this is an exercise in free choice. What those opposite are about is running a completely dishonest fear campaign on the subject of industrial relations. What they are about is running a campaign of fear and loathing. They are not about a serious debate on industrial relations. They are not about lifting productivity and they are not about recognising that productivity has been an abysmal failure under the industrial relations system that they operate.

I saw the Prime Minister a couple of weeks ago on television. It was a Sunday morning, which is a bit much, I know, but I had had a reasonably early night so I was able to take it. The Prime Minister was saying,'You know what these terrible Liberals are going to do? These terrible Liberals are going to adopt the failed policies of the Thatcher and Reagan governments'. The next morning I picked up the copy of the Economist that landed on my front lawn. There is a very interesting table at the back and it has all the economic indicia. I looked at the failed unemployment policies of Reagan and Bush which the Prime Minister says Clinton has inherited.

Do honourable members know what the unemployment level is now in the United States? It is 7.2 per cent. Do they know what it is in Australia? It is 11.4 per cent. In Japan it is about 3 per cent, and in Germany it is about 6.2 per cent. It is 7.2 per cent against 11.4 per cent, and it is one per cent lower even in the United Kingdom. The Government gets zero out of five on that particular comparison. If those figures for the US and the UK represent failed policies, we can only say that what the Prime Minister has given this country has been a monumental catastrophe.

Mr COURTICE (Hinkler) (1.36 a.m.)—I am very pleased to support the Industrial Relations Legislation Amendment Bill (No. 2). At the outset, I would like to congratulate the honourable member for Bennelong (Mr Howard) for making a very impassioned speech. I respect the honourable member for Bennelong. I think it is important to recognise that the honourable member for Bennelong has demonstrated tonight his capacity to lead the Liberal Party. There is no doubt that he has shown more elan, courage and vision in putting the coalition's proposition—even though we do not agree—than the honourable member for Wentworth (Dr Hewson).

There is no doubt that the honourable member for Bennelong has demonstrated tonight that he has the courage to mix it with those of us on this side of the House. That is more than the honourable member for Wentworth is able to do. I would like to congratulate the honourable member for Bennelong for at least giving an impassioned view on what industrial relations would be under the conservative parties—

Dr Charlesworth—It was a leadership push.

Mr COURTICE—Absolutely—and the conservative policies of the Opposition. While we do not agree, I think that should be acknowledged. I would also like to say to the honourable member for Bennelong that I have always admired his honesty and integrity. In fact, my aunt, who met him last year, was very impressed and thought that he was probably the best Liberal she had ever met. I have to tell him, as he probably knows, that her uncle was Clarrie Fallon, the State Secretary of the Australian Workers Union in Queensland and, of course, not a convert.

At the end of the day, there is a recognition and respect on this side of the House for the honourable member for Bennelong for
everything he says and does because he is an honest man and a decent person. We do not agree with his point of view, but we do agree that he understands the philosophy with which he pushes the argument. The honourable member for Bennelong is leading the charge on industrial relations because the honourable member for Wentworth has wimped out, as he has on so many other occasions. Of course, he is not here today.

Of all the issues that are so fundamental to the future of this country, industrial relations is one of the most important. To those of us on this side of the House, it is very important. It is interesting that the honourable member for Bennelong has to carry the weight and baggage of Reaganism and Thatcherism into this House in this debate.

This Bill is about freedom, but freedom is couched in so many terms and so many terminologies. It was said over 100 years ago, when Abraham Lincoln put forward the emancipation proclamation, that he was destroying freedom. Some people in the south said that slaves were free to choose whether they would be slaves or not.

What we are fighting and arguing about today is the right and the benefit of working men and women in this country to sell their labour, argue their labour and have an independent umpire. There are many people on the other side of the House who refer to all this debate about freedom. It was perceived under the Eisenhower Administration that at that time in the early 1960s, at the beginning of the Cold War debate, America was a free country. Of course it was free. The people were free to starve, as they are today. They were free to miss out on education, health and housing, as they are today. A total of 38 million people in America are homeless. That is not the freedom that we recognise.

The dignity of labour is what this debate and this Bill are all about. This Bill is all about the dignity of working men and women in this country and their ability to sell and bargain with their labour and have an independent umpire and union movement to defend and support them. The gutlessness and the cowardice on the other side of the House was demonstrated by the Kennett Government which, in the middle of the night, brought back powdered wigs and an $8,000 wage rise for its members and then said that the workers had to forego penalty rates. That demonstrates equality under the Liberals.

The good thing about those opposite is that they have never changed. My grandfather told me something once and I would like to tell honourable members, particularly the Victorians, because they have never come across this scenario. My grandfather said to me when I was a little boy, ‘Son, you should never kill a black snake’. I said to him, ‘Why, Grandfather? Why shouldn’t I kill a black snake?’. He said that there was always a chance it would bite a tory. I thought then that that was a bit harsh but now I have seen, today, the proposition that the Opposition has
put forward. I said to him then, 'Why did you say that?'. He said, 'Son, I lived through the Depression and my father lived through the 1890 Depression, and they have never changed'.

We have seen today what the Opposition represents in Victoria, and he was right. I can tell honourable members this: there are a hell of a lot of black snakes running around in Queensland. There are not many brown snakes because we have killed them, but the black snakes are safe and free. If we ever walk into this House with a bag full of black snakes, the Liberals have a problem.

At the end of the day, nothing changes. The perception does not change; the view does not change. It is a matter of whether we represent working class people or whether we do not. It is a matter of whether we care about working class people or whether we do not. It is a matter of whether or not we want to walk into a workplace such as a sawmill and say to those people, 'You have to bargain individually about productivity'. How can a sawmill worker increase his productivity without an increase in technology? He cannot.

He has to bargain what he has and lose what he has—and that is freedom! That is not freedom; that is manipulation. That is exploitation. That is why the union movement was formed and that is why the union movement has been attacked and assailed for 100 years. It is the only thing that stood between working class people and those who would take advantage of working class people.

It is interesting to note in the debate tonight, in 1992, as will be the case in so many debates between now and the next election, that nothing has changed in 100 years. The only people who are standing in front of the working people of this country, defending their rights, are those on this side of the House, in the Labor Party. Those on the other side of the House are defending the free enterprise that they talk about—the freedom for exploitation, the freedom to take money out of the pockets of workers, the freedom to tell young people that they can work for $3 an hour, the freedom to abolish the CES, the freedom to abolish the TAFE system and the freedom to abolish the education system—the very thing that allows people to get up the ladder and to get equality. The freedom will disappear and ensure that only the wealthy and the lucky ever endure and ever succeed.

That is what the debate is about. It is a philosophical debate. I am very pleased that this debate has finally hinged on the difference between both sides of this House. Over the last 20 years, both sides of the House have concentrated on panache, on scenarios, on dress and all the razzamatazz that has gone along with elections. But the election that is coming up will be based on the most important thing of all, and it will be the most important election since the war. It will be based on philosophy—not on clothes, not on charisma, not on all the things the other elections have been based on, when there have been only varying degrees of difference. There will be a clear distinction in this election between those people who support the view that working people in this country deserve a fair go and deserve protection, and those people who believe in a free market economy and who believe that people are free to starve, free to live in the streets and free to sleep in the gutters. That is the difference in this society.

If those opposite want to parrot that line, why would they want to put a tax of 15 per cent on the very people they pretend to care about? It is because they do not care about them. They can personify and pontificate, but they do not care about them—they never have and they never will—because they do not come from that area. They come from the people who have been the masters when it comes to wealth and privilege. At the end of the day, they are really talking about a division between Australians. That is what they are representing. I think it would be sad if this country went back down the tracks of what happened between 1929 and 1932 or 1891 and 1893.

The real choice for Australia is not just a philosophy; it is a mind set. Nothing has really changed. The honourable member for Bennelong has demonstrated his passionate belief in the proposition in which he believes.
He has articulated it very well and has been very honest in what he has said. There have been people on his side of the House who have been less honest, but he has been honest and consistent all the way along the line. What he really means is that working people do not have an independent umpire, do not have the protection of awards and do not have the systems that Australia created and has led the world in for 100 years.

When I looked down the list of speakers on this Bill I saw that the first four speakers are Queenslanders. I thought: why would they be Queenslanders? The honourable member for Oxley (Mr Les Scott), the honourable member for Fisher (Mr Lavarch) and the honourable member for Brisbane (Mr Bevis) are on the list. Why would all of us be speaking?

Mr Anderson—Because you’re slow.

Mr COURTICE—I am pleased that the interjection has come from a National Party member. I will tell the House why. It is because for 32 years we had a National Party government in Queensland. I can tell those opposite why we are speaking. We never again want to see a corrupt, criminal, spivvy government, run by spivs and crooks—run by criminals. Four National Party Cabinet Ministers are in gaol. The Police Commissioner is in gaol. The worst person of all—and I am sure the honourable member for Bennelong will agree with me on this, and I am sure the honourable member for Barker (Mr McLachlan) will too—was an idiot and a hillbilly called Bjelke-Petersen who should have been in gaol. He was a lunatic into the bargain, as well as a supporter of the Ku Klux Klan. They are the characters who led Queensland for 32 years.

It was the strength and courage of our great State that got us through—not the idiots who ran it for 32 years. I can tell the House why four members from Queensland will speak in this debate. We have lived through it. Other than East Germany, there is no place in the Western world that has come through such suppression as Queensland. That is why we are up on our feet defending the very rights of free enterprise, decency and integrity. Even the Liberal Party in Queensland can breathe a breath of fresh air. Even it is pleased that it has got rid of the hillbillies in the National Party, because after 32 years no-one would want to see them there. The agrarian socialists, the hillbillies, the throwbacks—

Mr DEPUTY SPEAKER (Hon. M.J.R. MacKellar)—Order! I hesitate to interrupt the honourable member for Hinkler, but I would ask him to return to the subject of the Bill.

Mr COURTICE—I apologise, Mr Deputy Speaker. I will get back to the Bill. I got carried away briefly. I was passionate about my belief in my beloved State because all of us Queenslanders love Queensland first and our country second.

Mr Elliott—What about the Sheffield Shield?

Mr COURTICE—I acknowledge the honourable member for Parramatta, who mentioned the Sheffield Shield. That is a sore point. Bill Tallon once said, ‘The only way we’ll ever win it is if we raffle it’, but I think we have a show this year and we have a great cricket team. I know the honourable member for Barker would appreciate that, given that he was one of the best batsmen that we ever saw. He was a top cricketer. I wish to goodness he were playing for Queensland at present.

I acknowledge that there is only one National Party member on the front bench, and he must be feeling pretty embarrassed. What it is all about is a philosophical view. This side of the House has a belief in decency; a belief that human beings have a right not only to argue and debate but to have an independent umpire and a union to protect them. If we take that away, we go back to the master and servant approach. It is not hard to use the pressure and the imposition on people by saying, ‘There’s 20 people here. You take a $20 a week pay cut or else we’ll sack 10’. That is the way the games are played. We know that. That is the sort of thing we are against.

Mr Connolly—So are we. You should read our Bill.

Mr COURTICE—Of course those opposite are not opposed to that. That is what they are trying to support by virtue of their proposition. That is why we are so pas-
sionately opposed to it. The one thing that differentiates us from those opposite is the inherent belief that working men and women in this country are entitled to sell their labour, to bargain their labour, to argue their labour and to have the protection of the trade union movement. Those opposite will not break that proposition.

The honourable member for Bennelong mentioned unemployment rates. It is important that we look at unemployment rates and participation rates. Let us look at the United States and Europe and the social structures that exist there. Let us look at holiday leave loading and all the other things that exist across Europe. Those opposite have a very competent, very positive and very useful mind set when it comes to those issues. They have convenient amnesia when it comes to those issues. The fact is that today we have the lowest level of inflation and the third lowest level of taxation in the OECD.

Mrs Bailey—Tell us why.

Mr COURTICE—The reason is that, in a world recession, we have put in place...

Mr Andrews—Tell us about our foreign debt.

Mr COURTICE—If we could wipe out all the graft in Queensland, we would wipe out all our foreign debt. The National Party could have funded it. If we look at the realities of economic structure, we see that we are doing better than most other countries. People are not queuing up here wanting to go overseas to England or to America; they are queuing in front of our embassies overseas wanting to come out to Australia.

Those opposite talk about New Zealand. There are 288,000 New Zealanders here now. They voted with their feet. They are here because they do not want to live under a tory government in New Zealand. They are pleased to be here, away from a GST and away from voluntary agreements. When those opposite go back to their electorates, they can tell the people there all the nonsense they want but, at the end of the day, the Opposition has a credibility problem because it is going to lose. (Time expired)
section of the Act, but the substitution of other words, which provide some other form of protection to the Commission, and which treat the Commission as if it were a court of law—but it is not. The Industrial Relations Commission is a tribunal; it is not a court. We do not have a court of labour law in this country, and I hope we never will.

This Government is determined to proceed with this legislation. That is why we are debating it in this House tonight. In April 1991, when the Industrial Relations Commission knocked back the ACTU and the Minister for Industrial Relations (Senator Cook) on a stitched-up deal known as accord mark 6, all those on that side of the House went into spasm. They attacked the Commission and the commissioners and some quite vitriolic things were said.

As I recall, Bill Kelty said that it was a sickening decision and that the trade union movement did not have to eat the vomit. That did not offend section 299 and did not bring the Industrial Relations Commission into disrepute. I maintain that, by constant attack over the past few years, the Labor Party has brought the Industrial Relations Commission into disrepute.

The Government, through the second part of this Bill, intends to reinforce the powers of the Commission, to give it wider scope and to bring it under further union control in order to recentralise industrial relations in Australia. Earlier this year the Industrial Relations Legislation Amendment Bill (No. 1) 1992 came through this place. It was known as the contractor's Bill. That Bill did three things to the Industrial Relations Act. The first was to remove the public interest test from the Commission's ability to look at so-called special deals. In this new found Labor philosophy of enterprise bargaining—rhetoric on the Labor side which, I might say, was picked up from our side of the House but without the substance—the changes to the Act made under the contractor's Bill removed the public interest test. The commissioners do not have to pay any regard to what is good for Australia or good for Australians, only what is good for the union movement.

I remind honourable members that only some 40 per cent of the work force in this country are represented by trade union membership. Yet we continue to add to the regulation in this Act, giving the Commission the power to deal not with the 60 per cent of individual Australians who do not belong to trade unions but with all Australians only through trade unions. We give trade unions monopolistic powers through this Bill that are available to no other Australian under any other circumstances. We have legislation to make sure that companies do not achieve monopoly status. It is only trade unions which have monopoly rights in this country.

The second part of the contractors Bill dealt with contracts of employment. It said that the Commission has the right to enter into legal contracts in the community and to determine whether or not they are fair. The conditions of fairness relate entirely to whether or not a contract of employment offers a contractor conditions which are different than had that individual been an employee.

There are many instances throughout industry where contractors provide services because they want to work in a free and cooperative environment. They want to be their own small business people—not under union control, not under the control of the Industrial Relations Commission and not as employees of a company who must report to work at one hour and leave at another. They like being contractors. The harder they work, the more money they earn; the more hours they work, the more money they earn. They like that provision.

In the housing industry in the State of Victoria, a bricklayer who works as a subcontractor to build a house can expect to receive $360 or $370 per 1,000 for laying bricks. But if that bricklayer is employed to lay bricks at a school, a hospital or a church under the so-called 'no ticket, no start' regime of the major construction industry, he lays the same brick in the same order for about $700 per 1,000.

Under the provisions of the contractor's amendment to the Industrial Relations Act, if a union comes along and says, 'That bloke laying the bricks on the house is being
exploited’, the Commission has the right to change the contract and make the contractor who is building the house pay the bricklayer $700 per 1,000. What is the difference between the brick and the mortar? The difference is, on the one hand, a freely operating independent contractor and, on the other hand, a contractor controlled by union regulations and rules, not by any requirements of the employer.

The third part of the contractors Bill said that individuals have no rights before the Commission, that the Commission is to hear and make dispute resolution decisions based on applications made by trade unions—a recognised monopoly power given further credence in legislation denying any rights to individuals to decide what is best for them or what they might want. So we create this huge bureaucracy that sets up volume after volume of rule and regulation, which attempts to prescribe working conditions, payments and all manner of how an individual shall work at a job, depending on that person’s classification, as decided by the union structure.

The second part of this Bill is the so-called ‘Attack Jeff Kennett Bill’. The new part of these amendments that will come into place if the Government has its way will move Victorians under State awards to Federal jurisdiction. I think that we really ought to look at the fact that Victorians went to the polls on 3 October. Victorians made decisions of their own free will and volition. They elected a new government to run the State of Victoria, pass laws, make rules and make regulations for their benefit. That new Government has done that. This Bill will strip the citizens of Victoria of the rights they exercised at the election on 3 October.

The provisions of this legislation give the monopoly power unions the right now to say to the Federal Commission, ‘Look, we want everybody who works in a particular job classification that currently falls under a State award to be under a Federal award’. The Commission now will have to take account of that application, because a union has brought it. No individual can make such an application; only a union can make that application. Whether or not the employees at a workplace in Victoria are happy with their lot and whether or not they follow the rules and regulations of the new legislation, and if they freely enter into a new agreement that specifies their employment conditions and their rates of pay, a union outside that workplace will have the right to go to the Federal Commission and say, ‘The deal is no good because it falls out of the award structure guidelines’.

It is a nonsense. Government members know it is a nonsense and I know it is a nonsense. With these amendments we want to re-regulate the industrial relations system in Australia. We talk about flexibility and we talk about individual rights. Government members talk about the need to increase productivity in workplaces in Australia, but they do not mean it. What they really want is to regulate the entire system to give the unions complete power over every workplace in every circumstance, so that everybody is treated equally. It is the Jeff Kennett Attack Bill.

The Prime Minister (Mr Keating) has gone mad with power and is determined that there will be no more States rights and that individuals in a State who have the audacity to vote into power a Government not of his persuasion will be dealt with immediately and harshly. In 1901 we agreed to a Constitution of federalism. We combined the States under one central body, but left the States their individual rights. Within this well thought out system that has worked until now reasonably well—in fact, it has worked so well that I would say that, if anything, Australia is a model for democracy and that our system of parliament in this country could well be echoed by others around the world, if they so had the desire to create a good flexible system. But this Government is not happy with that, because this Government does not believe in States rights. This Prime Minister believes in only one thing: one man for one job to control one nation and everybody in it. He certainly is making that obvious through the provisions of the second part of this Bill, which take away the rights of Victorians, bring them under federal control, and make sure that unions
have the monopoly rights to control the entire system.

It seems to me that honourable members on the other side of the House have a great desire to take us back to Fortress Australia. We know that if we are ever going to be internationally competitive, if we are ever to have any hope of creating new jobs, we have to deregulate the labor market, not re-regulate it, not bring in new inflexible controls and more bureaucracy. They know it and I know it; we all know it.

Mr Lavarch—What’s your margin?

Mr CHARLES—Do not worry about my margin. I will be back here, no problem. The real difference in this debate is all about the Government’s deal and its mateship with trade unions. That is what it is about. It is not about a fair deal for working men and women. It is not about a fair deal or a fair wage for a fair day’s work. It is all about making sure that the unions hang onto their power, so that this Government has the financial base to allow it to run television advertising at the next election campaign. Without that financial base, the Government is finished. Government members know that they are finished. They have no hope of explaining what poor, miserable position they might have, and it would be nice if they actually had a platform and could explain to Australians out there what they are going to do to try to get us out of this horrible recession that they caused, that they brought on, and what they are going to do about creating an environment that business and industry will have the confidence to invest in, which is the only way we are ever going to have jobs.

There is not much sense, is there, in building a bigger Government bureaucracy? There is not even much sense in building a bigger trade union monopoly and bureaucracy, because we will not provide any real jobs out of it. We will not create one dot’s worth of wealth. We will not make one more widget that another country wants to buy. We will not sell any more intellectual property into Asia or South East Asia, or even into Europe. Not one dot’s more of wealth will we create, not one more job will we create so long as we continue to pad the bureaucracy and pad the trade union bureaucracy as well. The Government knows it.

The only way we are going to get industry to invest is if we tell industry, ‘Look, you do not any longer have to live by this great raft of prescribed rules. We are going to allow you and your employees to work in a manner that can provide real productivity improvement and which will give you the confidence and the ability to compete with other countries, so that you can sell your products in other places’. If we do that, we might actually earn a few dollars worth of income and quit feeding on this debt that the Government has built up from $23 billion to $162 billion in just a little over nine years.

That is a terrific accomplishment! That is an accomplishment the Government really ought to be proud of. Government members should stand up and tell us about how proud they are of the debt that they have created—from $23 billion to $162 billion in a little over nine years. The Government has done a terrific job of creating more debt, giving us bigger interest bills to pay, and we are now looking to borrow the money on Bankcard to pay the interest, are we not? We can borrow the money. We can borrow more. We can always have more debt, but all we are doing is feeding the number of unemployed. We are not creating jobs. The Government has no idea how to create jobs. The only way we are going to get industry to invest is if industry can be competitive. Industry is not going to invest unless it can compete with companies who make the same products in the rest of the world.

I heard the honourable member for Hinkler (Mr Courtice) denigrate New Zealand. At the end of November, Douglas Myers, a leading New Zealand businessman, came to Australia. An article from the West Australian of 26 November stated:

... Douglas Myers says Australia’s economic and industrial reforms are moving far too slowly—so slowly they are a decade behind his country. It continued:

Unless Australia altered its present tack, it would take 10 years to catch up to New Zealand’s present position.
He is probably right. That country has quit examining the fluff in its belly button. It has quit navel gazing and it is now charging around the world building a new base of production, actively selling its products around the world and creating employment. By the way, its wage rates are rising in real terms while ours are falling. The Government's regulated system is denying Australians a fair wage for a fair day's work. The Government's regulations and controls have reduced the living standards of all Australians and reduced the real wages of all working men and women in this country. Today one million of them cannot find jobs. Mr Myers continued:

... the WA and Federal coalitions' radical labour market reforms may not go far enough.

(Time expired)

Mr LAVARCH (Fisher) (2.16 a.m.)—Probably the most incisive point in this debate and why the Opposition feels so passionately about it was well summed up when the Government first announced the proposal which has been incorporated in the Industrial Relations Legislation Amendment Bill (No. 2) 1992. The night it was announced a debate occurred on the 7.30 Report between the Minister for Industrial Relations (Senator Cook) and the shadow Minister for industrial relations, the honourable member for Benelong (Mr Howard). I watched that debate very closely because it was certainly the most agitated and the most upset that I had seen the honourable member for Bennelong in my five years in this chamber.

I could see in his eyes and in his face 1987 again. He believes he was robbed of becoming Prime Minister of this country in 1987 by Joh Bjelke-Petersen and his mad 'Joh for PM' push. The honourable member believes that the great madness which consumed the conservative side of politics in 1987 stopped him becoming Prime Minister. But in 1992-93 Joh Bjelke-Petersen has been replaced by Jeffrey Kennett. It is exactly the same thing. Absolute madness is occurring on the conservative side of politics. The honourable member for Benelong could see it then: history was repeating itself.

Throughout this term and for the vast majority of this year the conservatives have been on automatic pilot—they were going to win the election; it was just a matter of splitting up the spoils. They would make it into office; there was no problem at all. But all of that started to change. It started slowly, but it all came to a head and their support absolutely collapsed the day that Jeff Kennett became Premier of Victoria.

Why did the conservatives' support collapse? Obviously a bit of it had to do with the unsaleability of the GST package and everything which went with it—for instance, the idea that one could actually cut government expenditure and pretend that would improve employment at a time when we need a greater financial stimulus in this economy. Obviously it had something to do with that.

But what it all boiled down to was that people perceived in Jeff Kennett the future under a Federal coalition government. They knew what it would be like: the conservatives want to cut people's wages and conditions. The last speaker, the honourable member for La Trobe (Mr Charles), said that—it was out of the mouths of babes. What was the great example he gave in terms of proving that the system and the Government's industrial policy were wrong? He gave the example of the building industry. He said, 'Look at the terrible, shocking difference we have here. We have award workers getting something like $700 per thousand bricks and yet we have subcontractors running around getting something like half that—$360'. He said, 'This is terrible. Here we have this terribly regulated labour market and people are actually getting $700 per thousand bricks. If we did not have it they would be getting $360'. He thought that would be a great outcome: people would be paid less.

All of a sudden it has dawned on the Opposition—or perhaps it has not—that maybe the Australian people are not terribly keen on that. They do not like the idea of their wages being halved as in the example given by the honourable member of the building industry. We have only to look at the earlier debates about youth wages when those
opposite said, ‘We will cure unemployment by cutting people’s wages. We will institute this new system whereby people will be paid minimum amounts’. But maybe people did not really like that. Maybe young people thought there was some value in the concept of equal pay for work of equal value and the fact that people were doing this work at age 18 or 19 did not mean they should necessarily be paid less. Maybe people did not like that idea.

All of a sudden the wheels started falling off and support started plummeting. The white flag went up and we had all the meetings at night to go through Fightback version 2, which will be launched tomorrow. But that will not save those opposite. The honourable member for Bennelong made it perfectly clear tonight that there will be no change to the industrial relations policy; it will stay in place. He will not cop any changes to his baby. He will see it through, come hell or high water. But he has seen in Jeff Kennett 1987 again and he knows he will never be given a chance.

He is really between a rock and a hard place. Some of his rhetoric is, ‘The only difference between Jeff Kennett’s industrial policies and mine are a few commas, dotted i’s and crossed t’s’. We hear that version where he is 100 per cent behind what Jeff Kennett is doing. But at other times his rhetoric is, ‘Well, I’m not really happy with some of the things Jeff has done. It’s not really that ethical to go around putting out all your campaign literature and speeches saying “We’re not going to cut penalty rates or abolish leave loading or force you out of the award system” and then get into government and do the exact opposite’.

The honourable member may wonder why people may look at him slightly strangely when he comes out and says, ‘Well, we’re not going to cut penalty rates, abolish leave loadings or force people off awards. And if you get nasty employers we will set up an industrial advocate for you to go to and get some independent advice’. The people saw what Jeff Kennett said and then they saw what he did. It is a case of: do not read my lips, watch my actions.

That is what the people will do to the honourable member for Bennelong and the Opposition. They will base their decisions on actions. They have seen conservative government in action in Victoria and they know the truth of the situation. They know it is no good relying on what those opposite say, they have to watch what they do. That is why Opposition support has plummeted. People are not stupid. They know that is the end of the line.

What is so wrong with our current industrial relations system? Let us go through the outcomes and ask: where is it so wrong that we have to attack it and destroy it? Firstly, if it were a bad system we would probably have huge numbers of industrial disputes in this country. Literally thousands and thousands of working days would be lost because our industrial relations system is bringing about great conflict in this country. But if we look at the figures, lo and behold, that does not occur at all—Australia has one of the lowest levels of industrial disputation. In terms of our own experience, it is the lowest figure in some 30 years.

So we say: maybe something else is wrong. Maybe the industrial relations system is producing wages outcomes which are driving inflation out of control in this country. Maybe we can never be competitive because of our super high inflation rate contributed to by the industrial system. But when we look at the figures what do we find? We do not have rampant inflation in Australia. In fact, we have one of the lowest, if not the lowest, inflation rates in the OECD—in the industrial world. We can cross that one off our ‘what is so wrong that we need the radical surgery proposed by the honourable member’ list.

Then we might say, ‘Let us have a look at the wages, the profit share’, and say that maybe the system is such that it is producing an outcome which is completely uneconomic for this country; that wages are taking too great a share and profits are taking too little a share; and that is why there is not the investment that we need. But when we look at the wages to profit share, what do we find? The levels are equivalent to those in the
1960s. There is nothing wrong at all with the wages to profit share.

Unlike the recession that we had in 1982-83, controlled by the honourable member for Bennelong and his then adviser, the present Leader of the Opposition (Dr Hewson), the wages to profit share was absolutely out of proportion. It was smashed because of the outrageous wages explosion which occurred during that period. We have had no such wages explosion during this period because the Government actually does have an incomes and wages policy. So we have to cross that one off.

Then we come to this question of productivity, and that is the one that the Opposition is really hanging its hat on. It is saying that our industrial relations system is stifling productivity growth in this country and locking us into unrealistic practices, which is stopping us from harnessing all our initiatives and breaking forth and becoming far more productive.

The Fightback document—at least the one we have seen; mark !—gives the average productivity growth over the last decade of about 0.9 of a per cent. Those opposite say, ‘That is terrible. It is far too low; we have got to do a lot better than that’. Then they give their modelling of the three scenarios under Fightback: the old high road, low road and middle road. Let us be charitable to the Opposition and assume that it gets the high road scenario and everything falls into place, everything works to perfection and the best possible estimates are achieved. What is the actual model productivity growth in Fightback, version I? In the high road scenario it is 0.8 per cent growth in productivity—in fact, lower than the productivity growth which its own document identifies was achieved during the 1980s. So its own policy, of which industrial relations was said to be the central plank, achieves a productivity outcome lower than what the Government achieved during the 1980s.

Even at the moment we are seeing very high levels of productivity growth in this economy. We have to be realistic about these things. We can all get the catchcry ‘productivity growth’. But at this time productivity growth means higher unemployment because firms are getting more productivity out of their employees and are requiring fewer employees as a result.

So let us cut through some of the rhetoric and understand what we are really talking about. We do need higher productivity in this country, but we understand—and we have to be honest about it—that that comes at a price of some higher level of unemployment than we would probably like. But that is a consequence. Let us not just talk about the good side of these things; let us also talk about the other side.

Then let us talk about employment. Obviously that is the No. 1 issue facing this country. In this Parliament the Government and the Opposition should always be focusing on policies which will improve employment prospects for Australians. We should ask: is the industrial relations system in this country holding back employment growth? Is that the reason why we should be abandoning the current system and being so critical of the proposals contained in this Bill? The fact is that, although Australia obviously has tragically and unacceptably high levels of unemployment—and we must do everything in our power to address this problem—in the Australian economy today there are approximately 1.4 million more people in the work force than there were a decade ago. That is incredible. There are 1.4 million more people in the Australian work force than there were a decade ago.

The 1980s was a period of incredible employment growth in this country. Did the industrial relations system hold back employment growth in the 1980s? Were we going backwards in the size of our labour force, as occurred in New Zealand—the Opposition's model—where today there are fewer people in the labour force than there were a decade ago? The answer to that obviously has to be no, because there are 1.4 million Australians now in employment who were not in employment back in 1983.

What is the reason for all this? If we have not had high levels of disputation, if we do not have high levels of inflation, if we have an appropriate wages to profit share, if we
have reasonable levels of productivity growth, if we have a system which has not held back employment growth, then what is the problem, and what is the real motive of the Opposition?

Again, it was made very clear by the honourable member for La Trobe through his example from the building industry. At the end of the day, what was being said meant that someone getting $700 under the award was terrible, and if the award were destroyed and the market deregulated the equivalent worker outside award protection would get $360 for the same job. That is the Opposition's preferred outcome. That is, slash that person's wages in half and it is a better outcome. For whom is this better outcome achieved? Is it for that person and the wages being taken home? Is it for that person's family and the people dependent on that person? I would say the answer to that is no. But maybe the people employing the workers and paying them half are getting a little more: in fact, maybe they are getting a lot more of the cake.

We have to be concerned with policies that are increasing the size of the cake and not with the sterile policies of the Opposition. Its policies are not about creating wealth and making the cake bigger, but about giving the owners of capital a bigger slice and taking away from the providers of labour. That is the core of the matter when the rhetoric is hunted through and decoded.

Essentially, the Opposition believes that Australians are paid too much. It believes that Australia is a high wage country and that it should have a wage system which pays our people far less. It hopes through that that there will be employment growth, but that is not the difficulty with the Australian economy. Everyone knows, from any basic analysis of the economy, that wages are not the problem with the Australian economy: they are not high and conditions are not unreasonable.

The basic problem with our economy at the moment is low levels of demand and people not being confident to invest. The problem is nothing to do with wages, and it is nothing to do with conditions. Yet the Opposition says that the essential focus of its policies, an essential plank of its Fightback—version 1 or 2 or whatever version it finally takes to the election—is industrial relations. It is no surprise that support for the Opposition has dropped; it is no surprise that there are 100,000 people on the streets of Victoria; and it is no surprise if people do not believe what the Opposition says. People believe what they see with their own eyes: they believe the outcome, not the rhetoric. That is why the wheels have come off the Opposition's cart and why its support has gone.

It is wrong if it thinks it can solve the problem tomorrow by announcing a tarted up version of the GST that takes the tax off food, rejigs a few things and gives a nice new child-care policy. If it thinks that will make it a kinder and gentler alternative in the eyes of the Australian people it is wrong, because people know that the central issue is industrial relations. They know what the outcome of the conservatives' policies will be, because they have seen the same policies in operation in Victoria, policies which mean the taking away of basic conditions and paying people less.

Cut through the rhetoric, decode it, and that is what the message is. The fact that the cat has been let out of the bag and people have seen it means that we are going to have a repeat of 1987: the election that it was said the conservatives could not lose, that not even the Liberals could lose. But they did and they lost the following one. They are going to lose in 1993 and that knowledge can be seen on their faces now because they have come to realise it themselves.

This Bill is sensible legislation. It does not take away rights but extends them to people in Victoria. It improves the system there, and speeds up a process, which has always been available, for transferring from State to Federal awards. It does nothing new; it does not force any particular course of action: it simply opens up courses of action. It is sensible legislation and it should be supported by this House.

Mr ANDERSON (Gwydir) (2.35 a.m.)—The honourable member for Fisher (Mr Lavarch) has put before us all sorts of basically invalid reasons why the Industrial Relations
Legislation Amendment Bill (No. 2) is sensible. This legislation is about as sensible and logical and defensible as some of the claims he made about life under the Labor Government in 1992. He said, for example, that if our current system were no good people, in their state of dissatisfaction, would be on strike, protesting in the streets, restless and unhappy.

It is patently obvious that, in the recession the Government have given us, people are not going to put their jobs at risk by striking. They are not going to engender industrial activity. One hundred thousand people marched down the streets of Melbourne. Thanks to the policies of the Kirner Government, 300,000 people are unemployed in Victoria. The Kirner Government was thrown out of government by the people of Victoria. They had the good sense to realise that the policies of that Government, which were largely determined by its mates in the trade union movement, were primarily responsible for that State's becoming what is known as a 'rust bucket State'.

The honourable member for Fisher said that the Labor Government has beaten inflation. Of course it has beaten inflation. It has beaten inflation by making the economy comatose. The Labor Government has not put into place any of the necessary structural reforms which would beat inflation by the only legitimate means of controlling inflation, which is by making sure that demand does not outstrip supply.

If the profit share is okay, if it has returned to the magnificent levels of the golden era when Australia was a prosperous nation, delivering high standards of living and low levels of unemployment, why are businesses going broke at the rate of a new one every half hour, taking people's dreams and prosperity and, above all, their employees' jobs with them?

The honourable member for Hinkler (Mr Courtice) interestingly, and I think commendably, admires the leadership qualities of the honourable member for Bennelong (Mr Howard). He says that the honourable member for Bennelong is honest and trustworthy: sentiments with which I am sure everyone in this House would agree. However, the honourable member for Hinkler is right when he says that the Australian people will believe the honourable member for Bennelong before they will believe the gross distortions and misrepresentations pedalled by honourable members opposite in both their political and union garb.

The misrepresentation that this legislation is about freedom is not the only thing that is offensive in terms of the current political debate about industrial relations in this country. The misrepresentation pedalled by the Government that it looks after the interests of the working men and women of this country is also offensive.

The Labor Government tells us that it is the one which delivers a fair go. Honourable members opposite say that they are the people who protect the interests of the working people of this country. They say that the coalition wants to drive down people's wages and entitlements. We do not. Honourable members opposite are wrong. The coalition has made the simple observation that that process does not work. The Government has shown us that it does not work. Under the accord, that is effectively what the Government has been doing for the last 10 years, and over the last 10 years what we have seen has been a continual slide into the worst recession for 60 years.

After promoting growth by the convenient mechanism of debt financing for most of that period of time, there are some economists who now believe that the Australian economy has not actually grown independently of debt financing since the early 1970s. All we have, as a result of this process, is an unbelievable foreign debt, a debt which will hang around our children's necks like a millstone.

Mr Barry Jones—It's largely private.

Mr ANDERSON—It does not matter who has it; it still impacts on our living standards in the same way. It reflects an inefficient economy. It reflects a set of parameters which do not allow the Australian people to deliver the productive outcomes that they would be capable of in a properly constructed economic environment. We have a massive level of unemployment, despite debt financing of
growth and of jobs. The official rate of unemployment is 11.4 per cent, but that is only the official rate.

Mr Howard—There are all the underemployed.

Mr ANDERSON—As the respectable consultants in this country state and as the honourable member for Bennelong reminds me, if one adds in the underemployed with the unemployed in this country then there is probably about one in five Australians who are either not employed or else not able to find as much work as they would like. This is occurring in the country where no child was going to live in poverty by 1990. We have 600,000 Australian children living in a home where neither Mum nor Dad has a job at all. Guess who will grow up living in poverty? It will be a very disproportionate number of those children.

Then, of course, we have the horrifying statistic that in some of the outer suburbs of our major cities well over 50 per cent of our young people cannot find a job. Even those people who still have a job in this land of plenty, where in theory we have everything going for us, from fresh water to clean open skies to a well-educated people in a stable political system, are being squeezed out of jobs.

In fact, it is estimated that the living standards of Australians in real terms have dropped from being in the top third of the industrialised nations scale to the bottom third in just a generation. Imagine where we will get ourselves to within another generation with this sort of economic management. That is what our current working arrangements have delivered. Honourable members opposite want to tell the Australian people—they want to perpetrate the cruel hoax—that everything is getting better, and that it will all be okay in this best of all possible worlds. The Prime Minister (Mr Keating) tells us that micro-economic reform is complete. He says that the job has been done; that it is finished. That is part of the gross misrepresentation of the truth in this country.

If the job is complete, why is it that the OECD in a major report released just a little while ago says that our telecommunications are amongst the most inefficient in the world? Why does the report say that our shipping, our transport and our public service are only 50 per cent as efficient as like services abroad? In New Zealand it once cost something like $12 to move a tonne of newsprint across a wharf from ship to truck or truck to ship but, after reforms were introduced, it now costs $4. In Sydney it still costs the best part of $14 or $16 and in Melbourne $16 or $18. Why is that the case if we have completed the job of micro-economic reform in this country?

The job is not yet done. Australian living standards, Australian levels of employment, the future of Australian children will not improve until we face the reality that the job is not done and that we cannot continue to walk away from it.

While we are on the subject of freedom—a common theme in the debate tonight—let me say that the ACTU is running around saying that the honourable member for Bennelong is wrong when he says that trade union membership in this country is compulsory. The ACTU's claim may be true in the narrow sense, but try to get a job—

Mr Bevis—If it's compulsory why are there only 40 per cent in the unions?

Mr ANDERSON—The figure is less than that, but I will come to that in a moment. It is a good point. Try to get a job without a union ticket in some of our key industries that have the capacity to determine whether or not our mining, agriculture or manufacturing exports will succeed on world markets. Try to get a job on the waterfront without a union ticket. Try to get a job in a classroom without a ticket. Try to get a job on a building site in Sydney or Melbourne without a union ticket.
Compare the productivity and the efficiency of the construction industry with the largely privatised contracting arrangements that apply in the private house building sector. The private house building sector is one of the most efficient building sectors in the world, whereas the construction industry is one of the least efficient construction industry sectors in the world.

If it is not compulsory to belong to a trade union and workers are able to exercise the right not to join a union, why is it that we have just lost $60m or $70m worth of export income—at a time when this country just cannot afford it—because a miner in Western Australia decided that he would like to exercise his right in a ‘free’ country to not belong to a trade union? And all of this is happening when just 29 per cent of the private sector work force choose to belong to a union. Whenever they have the option, they will belong to a union only if they believe it delivers. Given that choice, they will opt out unless the union is perceived to be relevant and to be working in their best interests. Why should those unions have what amounts to a protected monopoly on the right to represent workers in this country?

I will tell a very interesting true story about what happened about two weeks ago. A quite senior mining official in my electorate said to me, 'I would like you to come and talk to the miners out at the place where I work'. It happens to be a very big coalmine in New South Wales. He said, 'Your policy is exactly what my mine and the people I represent need. I have had a good look at your policy, but tax changes in terms of the impact on business costs, the abolition of payroll tax, fuel excise and wholesale sales tax will have a huge and positive impact on my workplace—

Mr Truss—Wait until tomorrow!

Mr ANDERSON—Yes; wait until tomorrow. Then they will really see how good it can be. He said, 'It will make a huge difference to the viability and the productivity of my mine and to the number of jobs that can be offered in it. We have had a look at the tax cuts as well. The people I represent are on good incomes and they will take home a lot more under the arrangements that you are proposing, and that looks very attractive'. He went on to say, 'Best of all, we want to be able to engage in a workplace agreement under your policy approach; but you had better come and argue the case, because my trade union colleagues are so grossly distorting the facts for their own purposes that my members are starting to doubt what I am telling them'. There we have a union official in this country accusing his own colleagues of distorting and misrepresenting the debate.

We in the Opposition have no reason to drive down, and no interest in driving down, wages and entitlements in this country. It does not work. It would serve no purpose. We have seen that it does not work, and that it is not a productive way to go about things in this country after 10 years of Labor. The Labor Party is about trying to hide that reality for just a few more weeks, in the hope of falling over the line in a race that it has no right whatsoever to win. This legislation just continues the attempt to perpetrate the hoax, and it ought to be utterly and totally rejected for the sham that it is.

Debate (on motion by Mr Bevis) adjourned.
Mr BEVIS (Brisbane) (2.52 a.m.)—At nearly 3 a.m., with a couple of other Bills still to come before the House and a number of other speakers, I will keep my remarks much briefer than I had earlier intended. I have a couple of comments to make on some of the various economic points in the debate, although ‘debate’ is probably too kind a word to give some of the comments.

In terms of what has happened with industrial relations and disputes as the economy has improved or worsened, I am afraid the assertions of the honourable member for Gwydir (Mr Anderson) are flatly wrong. I suggest to the honourable member for Gwydir that he have a close look at the figures for unemployment plotted against the industrial disputes through the 1980s. He will discover that, as unemployment fell quite markedly on the election of a Labor government in 1983 and through to about 1987, industrial disputes also fell quite substantially.

The assertion the Opposition makes that there has been a record low level of industrial disputation simply because the economy has in the last year or so been in a difficult period with the recession is not borne out by an examination of the facts. Those honourable members opposite who were at pains to talk about telling the truth in some of the earlier debates might like to have a look at the figures in relation to their own assertions.

A focus in this debate, quite understandably given the nature of the legislation, is what in fact the people of Victoria may or may not have been seeking to do when the Kennett Government was elected. The Opposition has really focused on two things: freedom of choice and States rights. Under the States rights umbrella, the Opposition has referred to
Until now, the Federal Government has chosen to restrict that power. It is simply implementing that power now because a clear intention of the legislation is that people should have the right to compulsory arbitration. That being departed from in Victoria, the Government is simply implementing the intentions of the Federal industrial relations legislation.

I was interested in the honourable member for La Trobe (Mr Charles) coming forward with quotes from a rather self-interested source—I gather he is probably a member of the New Zealand round table—some businessman who said, ‘The Australian industrial relations system has not exploited its workers quickly enough’. I am not as interested in that remark as in some remarks made on the matter of common law. The honourable member for Bennelong (Mr Howard) came in here again and said how dreadful it was that the Labor Government also utilised common law against the airline pilots strike. That might actually be correct.

I will cite a few more worthwhile comments in regard to common law and its clear use against workers. William Holdsworth—people who were far more successful at law school than I might have heard of him—in his book History of English Law, 1924 edition, said:

In truth until political economists of the earlier half of the nineteenth century converted the legislature to the belief that freedom of contract was the cure for all social ills, no one ever imagined that wages and prices could be settled merely at the will and pleasure of the parties at each particular bargain; or that the contract between employer and workman could be regarded as precisely similar to any other contract.

In other words, the political dominant group in the nineteenth century suddenly decided that there had been a glorious history of freedom of contract up until then.

Finally, I quote another source on the question of the matter of this law. Sir Ian Gilmour, a Minister in the Thatcher Government, admittedly on the liberal wing of that Government, in a very interesting book I read this year titled Riots, Risings and Revolutions, had this to say:

There is a very interesting quote from a Minister of the Thatcher Government about the actual history of how this law developed. And that is the reality of what those opposite are trying to indulge in now—suppressing wages, suppressing conditions and diminishing people’s working rights. As the honourable member for La Trobe said, this represents a tremendous opportunity to halve the wages of people in the building industry and no doubt to halve those on even worse conditions.

Mr RONALDSON (Ballarat) (3.06 a.m.)—I will speak briefly tonight. If I for one minute thought that this debate was really about the rights of workers or about the concern of the Labor Party for the wages and conditions of workers, I probably would not have stood up tonight. The simple fact is that this whole debate is about protecting the privileged position of a very few people. That is really what it is all about. It is quite obvious to me from what we have seen over the last 10 years in this country that the trade union leadership could not give a tinker’s curse about what happens to the workers on the factory floor. They have absolutely no interest in and no concern about what happens to them; they are about protecting privilege, about protecting their own position. If they were really serious about the men and women of this country who simply want to get a job, who simply want to be in a position where they can properly provide for their families, where they can give their children a better standard of education than they had and they can put a roof over their heads, if they were really serious about delivering those three basic things that every man and woman in this country is desirous of, no matter where they are from, what their background is or what their employment or potential employment is, they would start addressing government and Parliament to abandon any semblance of neutrality between masters and men and to take an increasingly stern view of industrial unrest. Laissez-faire was becoming the dominant dogma, and the duty to protect the weak was neglected ... Following Adam Smith when it suited and ignoring him when it did not, Parliament embraced the fiction that ‘free contract’ existed between a powerful employer and a poverty-stricken workman, and nothing else was needed.
the very issues that the Federal coalition is about.

The Federal coalition recognises the relationship between employees and employers, and that is a very special relationship. It is not a relationship that in my view can be slammed here hour after hour, day after day, week after week by members of the Labor Party. I think it is absolutely deplorable that they can stand here and put this great division between two groups of people that have made this country work. Only under the Labor Party over the last 10 years has that system failed, and that system has failed because it does not recognise that special relationship. It has sought to drive a wedge into that special relationship.

If certain members of the Labor Party bothered to go out to factories and bothered to speak to employers and employees and bothered to have a look at what has happened historically before they started dividing this country, they would find that that very special relationship just happened to deliver a great number of things. It just happened to deliver productivity, it just happened to deliver good and real wages and it just happened to deliver proper workplace agreements and a relationship within the workplace. Most importantly, it happened to deliver jobs. That is what it delivered. That special relationship delivered jobs, and the simple fact is that what we have seen over the last 10 years is the destruction of that ability to create jobs through that special relationship.

Dr Theophanous—What are you talking about?

Mr RONALDSON—The honourable member for Calwell interjects with a comment like that. That is the very thing I am talking about. I sometimes wonder whether deep down there might not be some glee for honourable members opposite in the million unemployed. Perhaps they are getting something out of this. Perhaps in the back of their mind honourable members opposite think there may be some advantage in having a million people out of work. If that is what the honourable member for Calwell (Dr Theophanous) and his colleagues think, they should be absolutely ashamed of themselves.

Why does the Government not recognise that relationship? Why does it not put in place provisions to allow that relationship again to come through industrial relations in this country, so that we can start delivering jobs and the standard of living that used to exist under that special relationship? Honourable members opposite essentially should follow what we are doing. They should not give me this hogwash about Victoria.

How dare honourable members opposite mention Victoria in this House. How dare they mention a State that was devastated by the Victorian Labor Party. If honourable members opposite are worried about what is happening in Victoria, if they are worried about the tough decisions that are being made there, they should look at the state the State of Victoria was left in by their State ALP colleagues. They will see why some of the decisions had to be made over the last two months.

What really annoys me about what is happening in Victoria at the moment is that the new Government has absolutely no choice but to make some pretty tough decisions because of the ineptitude of the people whom the Australian Labor Party stood there and supported for 10 years. Let us get back to reality with regard to industrial relations in this great country.

Dr THEOPHANOUS (Calwell) (3.13 a.m.)—The honourable member for Bennelong (Mr Howard) made several comments tonight. He said that his policy had been misrepresented and that he wanted a genuine debate. I am quite happy for the honourable member to have a genuine debate. The reality is that the more people who understand what this policy is about, the better it is going to be, because we know how similar that policy is to the policy of the Kennett Government. The honourable member has said tonight that it is slightly different from the policy of the Kennett Government, but he is also on record as saying that it is about 80 to 90 per cent similar.

No sensible worker in this country is going to support the policy that the honourable member for Bennelong has put forward. We only have a sketchy outline of it. The
honourable member promised to deliver a draft Bill of this policy to the Parliament. We have not seen that draft Bill. There is a very important reason why we have not seen that draft Bill. We have had a contribution from three honourable members opposite on the very simple question of whether what is involved here involves a massive reduction in wages.

The honourable member for La Trobe (Mr Charles) affirmed that. That is right. That is what it is going to be. There will be big cuts in wages. The construction industry was given as an example. Then the honourable member for Gwydir (Mr Anderson) said that there are not going to be any cuts in wages and that, in fact, there are going to be improvements in wages. What nonsense.

The honourable member for Bennelong was trying to have five bob each way. He said that if a worker negotiated a reduction in his wages, or a reduction in his holiday leave, so be it. How is a working man going to negotiate with a big employer, especially in the current economic context, anything but a reduction in his wages and conditions? The honourable member's policy only allows a working man freedom to go into a reduced situation. This has been proven by the actions of the Kennett Government.

I will conclude with this example. One of the first acts of the Kennett Government was to sack 4,000 school cleaners. After it sacked those school cleaners that were earning roughly $400 a week—not exactly a huge pay—it told them they could all be re-employed on an individual contract for $250 a week. Two hundred and fifty dollars a week! That is the sort of industrial relations thuggery we are getting out of Mr Kennett.

In addition to that we have had 4,000 to 7,000 other people sacked by Mr Kennett. This is his idea of helping to resolve Victoria's problems. Of course, Victoria had problems, but what Mr Kennett has been doing in industrial relations and in every other area is making those problems much worse. The reality is that honourable members opposite have identified the Liberal Party and the Opposition parties here with that policy, and we are going to go to the election with that identification.

Honourable members opposite might try to run away from it by saying there are small differences, but the people of Australia will be offered a very clear choice in industrial relations. They will be asking themselves whether they want to go begging to their employer, who will be in a position to tell them that they can have half the salary that they had before as well as a whole lot of condition changes. We know that there are cases of this kind already, so nobody is going to be better off with the proposals put forward by the Opposition. The workers of this country—including those middle-class workers who previously thought about voting for the Liberal Party—are going to say that they do not want a bar of this system. That is why they are deserting the Opposition in droves. So this next election is going to be fought very much on this industrial relations policy. I can assure everyone, as several members have said earlier, it is going to be another loss led by John Howard.

Question put:
That the Bill be now read a second time.

The House divided. [3.22 a.m.]

(Mr Deputy Speaker—Mr S.C. Dubois)

Ayes ................. 68
Noes ................. 58

Majority ............. 10

AYES
Baldwin, P. J.
Beddall, D. P.
Bilney, G. N.
Brown, R. J.
Catley, R.
Courtice, B. W.
Crean, S. F.
Dawkins, J. S.
Duncan, P.
Patin, W. F.
Fitzgibbon, E. J.
Gear, G.*
Grace, E. L.*
Hand, G. L.
Hollis, C.
Humphreys, B. C.
Jenkins, H. A.
Jones, B. O.

Beazley, K. C.
Bevis, A. R.
Brereton, L. J.
Campbell, G.
Charlesworth, R. I.
Crawford, M. C.
Crosio, J. A.
Duffy, M. J.
Elliott, R. P.
Ferguson, L. D. T.
Free, R. V.
Gibson, G. D.
Griffiths, A. G.
Holding, A. C.
Hulls, R. J.
Jakobsen, C. A.
Johns, G. T.
Kelly, R. J.

In addition to that we have had 4,000 to 7,000 other people sacked by Mr Kennett. This is his idea of helping to resolve Victoria's problems. Of course, Victoria had problems, but what Mr Kennett has been doing in industrial relations and in every other area is making those problems much worse. The reality is that honourable members opposite have identified the Liberal Party and the Opposition parties here with that policy, and we are going to go to the election with that identification.
AYES

Kerin, J. C.
Langmore, J. V.
Lee, M. J.
Mack, E. C.
McHugh, J.
Morris, A. A.
Newell, N. J.
Price, L. R. S.
Sawford, R. W.
Sciaccia, C.
Scott, L. J.
Snow, J. H.
Staples, P. R.
Tickner, R. E.
West, S. J.
Woods, H. F.

Kerr, D. J. C.
Lavarch, M. H.
Lindsay, E. J.
Martin, S. P.
Metham, D.
Morris, P. F.
O’Keefe, N. P.
Punch, G. F.
Scholes, G. G. D.
Scott, J. L.
Simmons, D. W.
Snowdon, W. E.
Theophanus, A. C.
Walker, F. J.
Willis, R.
Wright, K. W.

NOES

Aldred, K. J.
Andrew, J. N.*
Atkinson, R. A.
Beale, J. H.
Braithwaite, R. A.
Cadman, A. G.
Carlton, J. J.
Charles, R. E.
Connolly, D. M.
Dobie, J. D. M.
Edwards, H. R.
Fischer, T. A.
Ford, F. A.
Hall, R. S.
Hawker, D. P. M.
Howard, J. W.
Kemp, D. A.
MacKellar, M. J. R.
McGauran, P. J.
Miles, C. G.
Peacock, A. S.
Reid, N. B
Riggall, J. L.
Ronaldson, M. J. C.
Scott, B. C.
Sinclair, I. McC
Sullivan, K. J.
Webster, A. P.
Woods, R. L.

Anderson, J. D.
Andrews, K. J.
Bailey, F. E.
Bradford, J. W.
Broadbent, R. E.
Cameron, E. C.
Chaney, F. M.
Cobb, M. R.
Costello, P. H.
Downer, A. J. G.
Filing, P. A.
Fisher, P. S.
Gallus, C. A.
Halverson, R. G.
Hicks, N. J.*
Jull, D. F.
Lloyd, B.
McArthur, F. S.
McLachlan, I. M.
Nehl, G. B.
Prosser, G. D.
Reith, P. K.
Rocher, A. C.
Ruddock, P. M.
Sharp, J. R.
Smith, W. L.
Truss, W. E.
Wilson, I. B. C.
Wooldridge, M. R. L.

PAIRS

Darling, E. E.
Blewett, N.
Keating, P. J.

Fife, W. C.
Nugent, P. E.
Hewson, J. R.

* denotes teller

Question so resolved in the affirmative.

Bill read a second time.
INDUSTRIAL RELATIONS AMENDMENT BILL 1992

Second Reading
Consideration resumed from 4 June.

Mr CHARLES (La Trobe) (10.25 a.m.)—I move:

That the Bill be now read a second time.

The Industrial Relations Amendment Bill seeks to amend section 299 of the Industrial Relations Act, which deals with offences in relation to the Australian Industrial Relations Commission. As the explanatory memorandum says, section 299:

... contains subparagraph 1(d)(ii), which provides that a person shall not, by writing or speech, use words calculated to bring the Commission or a member of the Commission into disrepute. To contravene this subparagraph is an offence punishable upon conviction by a penalty of:

(a) in the case of a natural person—$500 or imprisonment for 6 months, or both; and

(b) in the case of a body corporate—$1,000.

This Bill seeks to have 1(d)(ii) omitted from section 299. I first introduced the Bill to the House of Representatives on 8 November 1990 but it lapsed without a second reading due to lack of Government support. I then reintroduced the Bill on 16 May 1991, when once again it lapsed without a second reading through similar lack of Government support.

There is an old saying 'Third time lucky'. So on 4 June 1992, I reintroduced the Bill for a third time. Due to a recent High Court decision relating directly to this Bill we are now debating my Bill and I trust we will move to a third reading and royal assent.

The issue at stake is freedom, in this instance freedom of speech and freedom of the press. I have dealt with freedom of association in another Bill which is also before this House but which has now lapsed for lack of Government support. I must say this Government does not appear to be overtly concerned with the issues of freedom and the rights of the individual in this nation.

The provisions of section 299 (1)(d)(ii) are a clear denial to this nation's citizens of their inalienable right of free speech in our democratic society. They are likewise a denial of our assumed right of freedom of the press—a freedom critical to not only the dissemination of information but also the active debate of all public issues in a free democratic society.

In my original first reading speech, I argued that I had informed my learned colleagues who are members of the legal profession that the word 'calculated' in essence means 'likely'. In the context of the related clause, then one could read that clause as saying 'by writing or speech, use words likely to bring a member of the Commission into disrepute'. It is my view that such a statement, such a provision, gives the Industrial Relations Commission a measure of protection not given to a court of law, to the Parliament or to a member of the wider public—in fact, a freedom or protection from even the truth. If that is so, then one might say or write in the press that a member of the Commission is a terrible tennis player. This might be true but such a statement might well be likely to bring the commissioner into disrepute. In such a circumstance, a journalist writing that a member of the Commission is a terrible tennis player in fact makes himself or herself liable,
under the provisions of the Industrial Relations Act, to prosecution.

On 28 August of this year, the High Court brought down a judgment in favour of Nationwide News Pty Ltd. This judgment reversed a lower court decision that Nationwide News had contravened section 299 (1)(d)(ii) of the Industrial Relations Act by publishing an article in the *Australian* written by the late Maxwell Newton which was critical of the Industrial Relations Commission. The High Court found that section 299 (1)(d)(ii) of the Industrial Relations Act 1988 is not a valid law of the Commonwealth within the provisions of the Constitution. A report of the High Court decision in the *Weekend Australian* of 29 August said:

In the appeal to the High Court, Nationwide News argued that by suppressing comment on, and criticism of, the Industrial Relations Commission in such wide terms the Federal Government went beyond the powers granted to it under the constitution to legislate in relation to conciliation and arbitration. The High Court ruled the disputed section of the Industrial Relations Act was not a valid law within the provisions of the constitution.

I do not charge this Government with originating this iniquitous section of industrial relations law. Similar words were contained within the Conciliation and Arbitration Act of 1904 so we have lived with this provision for a very long time indeed. However, I am highly critical of the Government and the Attorney-General (Mr Duffy) for not acting to nullify a bad law when brought to their attention on 8 November 1990, when I first introduced this private member's Bill.

This Government also failed to act on recommendations of the Law Reform Commission in its report No. 35 on contempt, presented on 3 June 1987. That report suggested section 299 (1)(d)(ii) be replaced with other words which would give the Commission and commissioners a form of protection against defamation and slander less onerous than the offending clause. So the Government has before it two recommendations that it deal with this subparagraph. The first recommends revision and the second, this Bill, recommends its removal.

In framing my original Bill, I gave due consideration to the Law Reform Commission recommendations but, on balance, I concluded that the members of the Industrial Relations Commission are given adequate protection to right of defamation action in common law. In coming to that conclusion, I noted that the Industrial Relations Commission and the Conciliation and Arbitration Commission in earlier times have been highly selective in using this section of the Act.

Mr H.R. Nicholls, editor of the Hobart *Mercury*, was the first recipient of the Arbitration Court's arbitrary and selective use of section 299(1)(d)(ii) as it appeared in the Conciliation and Arbitration Act of that time, as it sought to have Mr Nicholls charged with contempt in 1911. Records also indicate that the section was used in *Bell v. Stewart* in 1920 and in *Howard v. Gallagher* in 1985.

The Australian Industrial Relations Commission has come under vociferous and sustained criticism since its decision in April 1991 to reject accord mark VI between this Labor Government and the ACTU. These sometimes blistering attacks have been made by members of this Labor Government's front bench, ACTU paid bureaucrats and various union officials. The Commission has been accused of lacking ability, of having obvious bias and of hypocrisy, impropriety and incompetence. The Commission's decision has been described as sickening but it was said that the trade union movement would not eat the vomit. The Commission has been told that it is just a cog in a very big machine and that, if it is feeling a tooth or two out of alignment with other cogs, then it is feeling it correctly. The Commission has been told that its membership includes mainly incompetent and underqualified people.

These attacks on the AIRC have been highly public and widely reported. It is clear that, in the public's mind, the Commission has been marginalised and its membership brought into disrepute. Nevertheless, the Director of Public Prosecutions has been unwilling to use the provisions of section 299 to discipline Government Ministers, ACTU officials or union officials. It is indeed strange that those most enamoured of the retention of our highly regulated and bureaucratic industrial relations system have been the ones
to slight the umpire. For as long as we retain the award system it is, in my view, imperative that we retain a truly independent umpire that has the total support of both the Australian community and the industrial relations players. Nonetheless, an inequitable law will not solve the Commission's problems.

Freedom of the press and freedom of speech are amongst the most basic guarantees in a free democratic society. Parliament has a responsibility as a legislator to ensure that we do not—even unintentionally—challenge, demean or degrade these basic rights. If we have a bad law—and I have believed for a long time that this is such a law—then it is incumbent on us to remove it.

The High Court decision upholds the stance that I have taken in this place since 8 November 1990. I call on the Government to accept my Bill and to allow it to proceed to a third reading. I commend the Bill to the House.

Mr DEPUTY SPEAKER (Hon. J.D.M. Dobie)—Is the motion seconded?

Mr Costello—I second the motion and I reserve the right to speak.

Mr BEVIS (Brisbane) (10.35 a.m.)—The subparagraph proposed to be removed by the Industrial Relations Amendment Bill is a standard provision mirrored in State legislation around the country and it is there for good cause. As a practitioner in industrial relations myself for more than a decade in State jurisdiction in Queensland under a Bjelke-Petersen National Party Government, I can assure honourable members that there were more than a few occasions when I had serious disagreements with the outcomes of those decisions and the benches involved. Nonetheless, the provisions in the Act to protect the Commission from public criticisms were respected by and large by all involved—and so they should be.

What we see here today in this recycled Bill before the Parliament is part of a broader plan adopted by the Opposition—adopted by the Liberal Party—to reduce the influence of the Industrial Relations Commission, to destroy its position in wage fixing in this country. Indeed, the Fightback policy as a whole bases its economic forecasts on zero wage growth till the year 2001. That cannot be accomplished if the Industrial Relations Commission is allowed to stay in place. That goes to the heart of the real issue pursued by the Liberal Party.

In July this year, the Australian Financial Review reported the shadow spokesperson on industrial relations, the honourable member for Bennelong (Mr Howard), under the headline 'After Slashing Youth Wages Howard Sets Sights on Adults'. It is clear that that is fundamental to their economic forecasts throughout this decade if they win government. A short time after that, on 29 July, the Opposition detailed some of those plans of the shadow industrial relations spokesperson when it said:

If it wins government—that is, if the Liberal Party wins government—the coalition intends to use pay rates up to 50 per cent below the award minimums specified in Australia's regulated wages system as a means for tackling unemployment amongst teenagers and adults out of work for more than a year.

The Opposition knows that it cannot do that while the Industrial Relations Commission is in place and it therefore seeks at every opportunity to attack the institution and to attack the people who are in it.

What we have seen here today is a more subtle but nonetheless direct attack upon the Industrial Relations Commission. I will refer later to some very direct comments which the honourable member for Bennelong made about the Commission and its composition. However, the Liberal policies in these areas are not even supported by major employer groups. The Herald-Sun in June of this year referred to comments made by the Metal Trades Industry Association—a key employer group. It said:

The Metal Trades Industry Association slammed the Opposition's plan to encourage companies and employees to deal outside the Industrial Relations Commission, saying it would lead to an explosion of legal costs.

That is an outcome which I am sure the honourable member for Higgins (Mr Costello), who speaks after me, would enjoy, he being a solicitor practising in industrial law.
He would be one of the few winners out of such a policy. Mr Bob Herbert, the Victorian Director of the MTIA, was then quoted as saying:

The worst thing they could do now is remove the tribunal.

That is the worst thing the Opposition could do. That is what the MTIA has said. It makes no difference to the Opposition’s hard core, ideologically driven policies, though the Liberal Opposition intends to persist. In fact, the debate we are having today is a re-run, in many senses, of the debates in this country at the turn of the century. The honourable member for La Trobe (Mr Charles) quite rightly referred to legislation in 1904 and comments made by Mr Nicholls at the time—a person well revered by some in the Opposition, including the honourable member for Higgins, who was proud to write the constitution for the H.R. Nicholls Society.

The debate we are having now is one that we have not seen in this country since the turn of the century. It is no longer a case of saying that unions are doing things wrongly, or that the Industrial Relations Commission is doing things wrongly. It is now a debate in which the Opposition says: ‘We do not believe industrial unions should be able to exist. We do not believe the Industrial Relations Commission should be able to operate. We do not believe there should be an umpire to which workers can go if they need to settle disputes’. That is quite plain in their policy.

They will say that they support the retention of unions and the Industrial Relations Commission with a smaller role. Indeed, it is a much smaller role. Their policy quite expressly states that a person can go to the Industrial Relations Commission as a worker—a person can have recourse to the Industrial Relations Commission—only if the employer agrees. A person can have recourse to the Industrial Relations Commission only if the employer agrees. Anybody who has been involved in industrial relations knows what a nonsense it is to say that, in a dispute situation, one can go to the Industrial Relations Commission but only if the employer allows it.

The shadow spokesperson on industrial relations, the honourable member for Bennelong is on the record on a number of occasions endorsing that proposition. To achieve that goal, which is critical to their Fightback package of zero wage growth for the next decade, those opposite know they must set about destroying the Industrial Relations Commission and attacking its very right to exist. In that respect it is important to have a look at some of the earlier comments that they have made. In April this year, the honourable member for Bennelong said in a press release:

The Liberal and National parties will not guarantee the security of tenure of future appointments by the Keating Government to the Industrial Relations Commission.

That is a quite blatant threat to the appointees to the Industrial Relations Commission that their tenure would be under challenge were the Liberal Party to win office. There was no hiding behind the bushes when it came to that argument. It was a straight-out attack on the members of the Commission.

There has been a lot of hoo-ha about the composition of the Commission, and that needs to be put to rest. There are 15 presidential members of the Industrial Relations Commission. Five of them have a union background: one-third. That is in keeping with the traditional balance on industrial commissions throughout the country. Typically we find approximately one-third with a union background, one-third with an employer background and one-third from the public sector or the judiciary.

When we have a look beyond the presidential members of the Commission we find that the balance is decidedly in favour of the employers. The important decisions taken by the Commission are taken by the Full Bench of the Commission. National wage cases are not determined by single commissioners; they are determined by the Full Bench. The composition of the Full Bench from 1983 to the most recent bench demonstrates quite clearly the predominance of employer representatives. In September 1983 the Bench was made up of three employers, one union representative and three others. Two years later, in Novem-
ber 1985, it was made up of three employers, no union representatives at all, and two others. In March 1987 it was made up of four employers, two with a union background and one other. In February 1989 it was four employers, one with a union background and two others. The most recent Full Bench, in October 1991, had two employers, one from a union and two from another background. If we add up every single Full Bench since 1983, we find that 42 of those sitting on the Full Bench had an employer background, 14 had a union background and 25 came from some other area.

The nonsense peddled by the Opposition, the shadow spokesperson and by those who have entered this debate on the other side about the bias in the Industrial Relations Commission is a fiction which they peddle knowing it to be untrue. They should be ashamed of their performance, but they know they have to do that if they are to try to discredit the Industrial Relations Commission to achieve their Fightback target of zero wage growth through until the next century.

The Metal Trades Industry Association has published a booklet that points out quite accurately that we cannot relate one system to a particular outcome. Japan has company bargaining with a very productive record, America has company bargaining with productivity growth worse than Australia, and Germany has a very centralised system and an excellent productivity basis to its economy. One cannot be linked to the other in the mad, ideological fetish with which those opposite have pursued the Fightback package and the key industrial relations component of that package. This Bill is part of that attack, and I oppose it. (Time expired)

Mr COSTELLO (Higgins) (10.45 a.m.)—The speech which we just heard is the kind of speech which is all too common in this chamber. It is the kind of speech that had nothing whatsoever to do with the Bill before the House—nothing. Regardless of whether the honourable member for Brisbane (Mr Bevis) had read the Industrial Relations Amendment Bill or understood it, he just took the opportunity to tell us everything he thought he knew—or that he thought the Opposition had said or believed—about industrial relations and to share in a blinkered, narrow and inflexible way all of the prejudices that he has about the industrial relations system.

This Bill does one thing and one thing alone. It seeks to delete from the Industrial Relations Act subsection (1)(d)(ii). It seeks to delete from the Industrial Relations Act the making of it an offence to bring a member of the Industrial Relations Commission or the Commission itself into disrepute. I would have thought that the Bill was unarguable. The argument is unanswerable because the High Court has found that part of the Act unconstitutional.

The High Court handed down a decision—as the mover of the motion said—in the case of Nationwide News Pty Ltd and Andrew Gary Wills, saying that that section of the Act is unconstitutional. Whether it stands in the Act or not, it has no effect. It is a dead branch. It is no more alive than the Communist Party Dissolution Bill was alive after the High Court declared it unconstitutional. That stayed on the statute books for nearly 20 years. But the High Court had declared it unconstitutional. Nobody could do anything under it. It had no effect in law. It was as if it had not been enacted. To stand here and oppose this Bill is to say, ‘We want to leave in the statute book a statute that has no effect whatsoever, can never be relied upon and has been declared unconstitutional’.

The argument in favour of this Bill is unanswerable. There is no answer to the proposition that has now been put forward by the honourable member for La Trobe (Mr Charles). As he rightly said, this question is as old as 1911, when a newspaper editor—Henry Richard Nicholls—was put up on a contempt of court charge for writing an article about what was then the Commonwealth Court, a court of conciliation and arbitration. In that case, the High Court said this—and it was a very great victory for free speech, even in 1911:

... if any Judge of this Court or of any other Court were to make a public utterance of such character as to be likely to impair the confidence of the public, or of suitors or any class of suitors in the impartiality of the Court in any matter likely to be
brought before it, any public comment on such an utterance, if it were a fair comment, would, so far from being a contempt of Court, be for the public benefit...

It would be for the public benefit. The courts then recognised that if one were to make a public comment—which was a fair comment—on a statement by a judge that was plainly wrong or impaired confidence in the institution, then far from being a contempt of court, or far from being a criminal offence as this unconstitutional subsection would otherwise make it, it is in the public interest. It is in the public interest to be able to scrutinise institutions and to know what they are doing and, where they are wrong, to point it out. It is absolutely in the public interest that this Parliament recognises that principle.

Rather than leave on the statute books unconstitutional legislation that impairs freedom of speech, that inhibits the opportunity to evaluate the job that public institutions are doing, we ought to say—as the High Court has said in its recent judgment, as it said as long ago as 1911—yes, we believe in free speech. People ought to have the right to scrutinise the Industrial Relations Commission—just as they ought to have the right to scrutinise the Parliament, just as we ought to have an informed debate, which we failed to have from the honourable member's speech. This Bill is unassailable, it is unanswerable, and it ought to be passed by the Parliament. (Time expired)

Mr LES SCOTT (Oxley) (10.50 a.m.)—Despite what the honourable member for Higgins (Mr Costello) and the honourable member for La Trobe (Mr Charles) have had to say this morning, I do not think any of us kid ourselves about what their real message is. I do not believe that they are really sincere in putting the Bill before us here today. Their real message is what their industrial relations policies are all about, that is, the destruction of the industrial policies that we see in Australia today and, of course, the destruction of the Industrial Relations Commission. Their message has nothing to do with the sincerity or otherwise with which they are putting it forward here today.

On this side of the House, we understand quite clearly what they are about. Honourable members only need to remember the utterings of the honourable member for Bennelong (Mr Howard) in many of his statements which the honourable member for Brisbane (Mr Bevis) referred to earlier. What they are on about has been rejected by people across Australia—particularly in Queensland, where we saw the rejection of Bjelke-Petersen and his voluntary employment agreements some time ago.

This Government has an exceptionally good record. The honourable member for Dawson (Mr Braithwaite) has been trying to protect a system that has been clearly rejected and will be rejected across Australia too, when the Opposition's Fightback package is disclosed for what it really is. We have only touched the sides of it so far. In their package they dedicate only half a page to industrial relations. A country can have good industrial relations or bad industrial relations. There is little doubt that, under the Opposition, we would have very bad industrial relations practices—practices which would do nothing to instil protection of the work force into this country.

This Government has provided, under the accord, one of the most stable industrial relations systems in this country for many years, particularly since 1983. It is something that we are justly proud of and something the Australian work force has been able to work with collectively and cooperatively. That would not exist under a coalition government. Australians have realised that fact, and the Australian work force realises that as well. The destruction of the industrial relations processes we have today and the imposition of some dreadful goods and services tax on Australians are something that the Australian work force will obviously reject.

It is quite clear that honourable members opposite are out to destroy the Australian work force. They have no respect for Australian workers. They just see them as some sort of a chattel that they can use. They are human beings, these people. I had to laugh when I actually read some comment from the honourable member for La Trobe in one of his first speeches here when he quoted
one of his own constituents. I quote from his *Hansard* report of 4 June:

A constituent of mine in the electorate of La Trobe recently said to me that in her view the Liberal Party represented the individual and the Australian Labor Party represented institutions. How true.

He said, 'How true', but how very wrong he is, because it is the Liberals that represent institutions and, on this side of the House, the Australian Labor Party Government represents the rights of individuals, and will continue to do so.

He only needs to see what is going on in many industries in Australia. Honourable members only need to look at the Opposition's record in Burnie, Tasmania, with the APPM dispute to see just what sort of industrial relations attitudes and practices they would have. These attitudes can be seen in their support for the employers in their attack on the work force there. Honourable members could consider the shearing industry in Australia at the moment with the New Zealand shearers coming over here and exploiting the Australian work force. Once again, that is the sort of thing that the Opposition would put up.

So the Opposition is not being genuine in what it is putting forward. It is just another one of its excuses to attack the Industrial Relations Commission, which has been one of those things that have provided good stable industrial relations in Australia. We will continue to provide those stable industrial relations that the Australian work force wants. So I reject this Bill out of hand.

Mr DEPUTY SPEAKER (Hon. J.D.M. Dobie)—Order! The time allotted for this debate has expired. The debate is adjourned and the resumption of the debate will be made an order of the day for the next sitting Thursday. The honourable member will have leave to continue his speech when the debate is resumed.