Legislative Assembly

19/06/2002

Industrial Relations Amendment (Unfair Contracts) Bill Hansard Extract

Second Reading

Mr WHELAN (Strathfield—Parliamentary Secretary) [11.17 a.m.]: I move:

That this bill be now read a second time.

The original intention of the unfair contract provisions of the Industrial Relations Act was to protect award terms and conditions from being undermined by artificial contract arrangements. However, because of amendments to the provisions and the way in which the provisions have been interpreted, the operation of the unfair contracts jurisdiction has moved away from that original intention. In recent times the unfair contracts jurisdiction has been used by highly paid employees as a way to hit the jackpot and obtain compensation after the termination of their employment. The Industrial Relations Commission of New South Wales has awarded benefits on termination to these former highly paid executives which are much more than what an ordinary worker can expect to achieve in the unfair dismissal jurisdiction.

A number of recent cases have shown that the commission may find unfairness in a contract notwithstanding lavish remuneration packages during employment and generous payouts on termination. The most notorious example is probably *Canizales v Microsoft Corporation*, in which a human resources director was awarded access to share options valued at $12 million to $14 million in a decision arising from his redundancy, even after evidence that between the ages of 21 and 31 the earnings of the applicant were more than $10 million. In that case Justice Peterson said:

> It seems to follow necessarily that a contract may be exceedingly generous in an objective sense, such that an employee may earn over ten years more than most will earn in a lifetime (or, what would take more than 66 years to earn at the rate of $150,000 per annum) yet the contract may be unfair in the statutory sense because of the manner of its termination.

This bill will ensure that the commission is not compelled to award such generous payouts to highly paid executives. The expansion of this jurisdiction to enable highly paid executives to achieve large compensation payments has coincided with significant increases in the number of claims being made. Almost twice as many unfair contracts applications were lodged in 2001 as compared to 2000—that is, 956 claims in 2001 compared with 552 claims in 2000. This was after a 76 per cent increase from 1999 to 2000. One firm conclusion can be stated: The unfair contracts provisions are being regularly invoked by people who are neither being exploited nor treated ungenerously. The consequences of this situation are both negative and serious. Similar provisions existing in other Australian jurisdictions are of much narrower application than the New South Wales provisions, and overseas centres with which New South Wales is competing for business and investment have no comparable provisions. This bill will limit these extravagant and speculative claims, and bring the provisions back in line with their original intention of protecting award terms and conditions. I commend the bill to the House.