

WORKPLACE RELATIONS AMENDMENT (A STRONGER SAFETY NET) BILL 2007
SECOND READING SPEECH

Introduction

Today I am introducing the Workplace Relations Amendment (A Stronger Safety Net) Bill 2007.

This Bill establishes a fairness test to strengthen the safety net for agreement making in the national workplace relations system.

The new fairness test will enhance the safety net for over 7.5 million Australians making workplace agreements. It will allow employers and employees to modify or exclude protected award conditions but only where employees are fairly compensated.

The fairness test will guarantee employees fair compensation in lieu of conditions such as penalty rates and overtime and shift loadings.

With this Bill workers must be paid more, not less.

The stronger safety net will provide significant additional protection for vulnerable employees, including young people and workers from a non-English speaking background.

This Bill will reassure Australian workers that when they enter into a workplace agreement, it will be a fair one that has been approved by an independent statutory authority.

This Bill builds on the important employment and workplace relations reforms undertaken by this Government in 1996 and again in 2006.

This Bill is an important part of an employment and workplace relations system that has helped reduce unemployment to a rate of 4.4 per cent and create more 2 million jobs over the past 11 years.

This Bill will help ensure that the Australia's future economic prosperity is bolstered by a flexible and modern workplace relations system.

It was never the intention that it may become the norm for protected award conditions such as penalty rates to be traded off without proper compensation.

There was concern amongst some in the community, however, that the trading off of penalty rates and other loadings, without fair compensation, might occur with adverse consequences for final take home pay.

The introduction of the fairness test is accompanied by the establishment of two independent statutory offices – the Workplace Authority Director and the Workplace Ombudsman - to play pivotal roles in maintaining the safety net.

The Bill will require the Workplace Authority to apply the fairness test to ensure that workplace agreements provide fair compensation in lieu of protected award conditions such as penalty rates.

If an agreement doesn't pass the Fairness Test, it will need to be changed so that it is fair and the employer will have to make up any back pay

The Workplace Ombudsman will ensure that employers comply with their legal obligations in regard to the fairness test.

The Workplace Ombudsman will strengthen the policing role which has been undertaken by the Office of Workplace Services.

The Government is providing significant funding to ensure that these functions are well-resourced.

The legislation will make it clear that employers cannot dismiss an employee because a workplace agreement fails, or may fail, the fairness test.

The legislation will also make it clear that employers cannot coerce existing employees into modifying or removing protected award conditions.

Finally, the legislation will also make it clear that when an employer takes over a business they cannot require an employee to sign an Australian Workplace Agreement as a condition of continued employment.

For outworkers, the prohibition on the reduction of their special protections is retained unchanged.

The changes introduced in this Bill will ensure that the opportunities and flexibilities inherent in the national workplace relations system are used, but not abused.

The national system

The *Workplace Relations Act 1996* provides a national regulatory framework for Australian workplaces. The framework offers flexibility and choice for employees and employers in agreement making.

This choice and flexibility is producing good outcomes for the economy, with sustainable and strong jobs growth and historically low unemployment a dominant feature of the economy.

This choice and flexibility is essential for meeting the work and family needs of working women and men.

Australian working women and men also want a fair and robust safety net of working conditions protected by the law.

And the system provides this, as well as strong, enforceable, protections against discrimination and breaches of freedom of association.

Since the reforms commenced in March 2006, more than 326,000 new jobs have been created – 85 per cent of these full-time.

Significantly, the unemployment rate has dropped to 4.4 per cent in April 2007, its lowest level since November 1974.

Real wages - which have risen by 23.4 per cent over the life of the Coalition Government - have continued to grow and strikes in 2006 reached the lowest level on record.

The fundamentals of the Government's reform remain intact.

The goal of employment and workplace relations reform is to achieve better outcomes for both employers and employees through greater flexibility in employment arrangements in the workplace.

The safety net

Under the *Workplace Relations Act 1996* entitlements such as minimum wages, annual leave, personal and sick leave and maternity and parental leave are set out in the Australian Fair Pay and Conditions Standard.

Agreements must still provide benefits equal to or better than the Australian Fair Pay and Conditions Standard.

That is, the entitlements in the Australian Fair Pay and Conditions Standard cannot be traded off when workplace agreements are entered into.

Protected award conditions are penalty rates (including for working on public holidays and weekends), shift and overtime loadings, monetary allowances, annual leave loadings, public holidays, rest breaks and incentive-based payments or bonuses.

These protected award conditions are not mandated in agreements - because to do so would limit flexibility in agreement making. However, they will not be able to be traded away without fair compensation.

Fairness test

The fairness test will apply to workplace agreements lodged on or after 7 May 2007.

Where an agreement, including an agreement made before 7 May 2007, is varied the whole agreement will be subject to the fairness test if the variation excludes or modifies protected award conditions.

The fairness test will apply to Australian Workplace Agreements covering employees with a gross basic salary of less than \$75,000 per annum who are employed in an industry or occupation in which the terms and conditions are usually regulated by an award, where the agreement excludes or modifies protected award conditions.

There are more than 4000 awards.

In addition, all collective agreements covering employees in an industry or occupation in which the terms and conditions are usually regulated by an award and where the agreement excludes or modifies protected award conditions will be subject to the fairness test.

How will the fairness test be conducted?

As is currently the case, workplace agreements will operate from the day they are lodged with Workplace Authority.

The fairness test will require the Workplace Authority to be satisfied that a workplace agreement provides fair compensation to an employee in lieu of the exclusion or modification of protected award conditions.

Protected award conditions will be drawn from the federal award which binds the employer, or from the transitional instrument based on the relevant state instrument that applied prior to the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005* on 27 March 2006.

If there is no such instrument and the employee is working in an industry or occupation usually regulated by a federal award, the Workplace Authority will be able to designate an appropriate federal award.

In deciding whether a workplace agreement passes, or does not pass, the fairness test, the Workplace Authority may inform itself in any appropriate way. In many cases, it will be able to assess an agreement based on the agreement and information lodged with it.

For example, when the agreement is lodged employees will be able to include information about their personal circumstances, including their family responsibilities and the significance they attach to the particular workplace flexibilities for which they have traded off protected award conditions.

The Authority will also be able to contact the employees and the employer where necessary.

Employees already receive an information statement when they are offered an Australian Workplace Agreement or collective agreement. This requirement is retained and will now also inform employees of their rights in regard to the fairness test.

The fairness test will not involve legalistic hearings. The Workplace Authority will not arbitrate agreement outcomes.

When considering whether a workplace agreement provides fair compensation, the Workplace Authority must first have regard to the monetary and non-monetary compensation that the employee or employees will receive in lieu of the protected award conditions.

The Bill defines non-monetary compensation as compensation for which there is a money-value equivalent, or where a money value can reasonably be assigned, and which confers a benefit or advantage on the employee that is of significant value to the employee.

A meal provided by an employer to an employee who is regularly required to work overtime will not constitute adequate compensation in lieu of penalty rates for overtime.

This means that, contrary to misleading claims that have been made, a slice of pizza will not constitute non-monetary compensation.

In most cases it is expected that a higher rate of pay will be agreed to in lieu of protected award conditions that have been modified or removed.

In establishing what is fair compensation the Workplace Authority must consider the work obligations of the employee or employees under the workplace agreement.

For example, the Workplace Authority would consider whether employees were required to work shift work or on weekends and would otherwise have been entitled to penalty rates.

The Workplace Authority may also have regard to the personal circumstances of employee or employees, in particular, their family responsibilities.

For example, an agreement may well meet the fairness test where a parent wants an Australian Workplace Agreement that enables him or her to leave work one hour early on a weekday to collect his children from school and make up the time on a Saturday morning and be paid the normal hourly rate rather than the higher Saturday rate.

Only in exceptional circumstances, and where the Workplace Authority is satisfied that it is not contrary to the public interest to do so, may the Workplace Authority also have regard to the industry, location or economic circumstances of the employer, and the employment circumstances of the employee or employees in deciding whether fair compensation is provided.

The Workplace Authority may decide it is appropriate to consider the economic circumstances of an employer when a workplace agreement is part of a reasonable strategy to deal with a short-term crisis.

For example, employees working in a canning factory in a regional town negotiate a one year agreement that excludes penalty rates so that the factory can remain competitive where the business is struggling due to the impact of the drought. This will keep the business alive and maintain jobs.

This is similar to the public interest test that applied to workplace agreements prior to the commencement of the *Workplace Relations Amendment (Work Choices) Act 2005*.

The changes I introduce today deliberately limit the circumstances in which agreements that would normally fail the test are able to operate. While it is necessary to allow for the situations where such agreements are appropriate, such agreements should be very much the exception and must not be contrary to the public interest.

In the case of a collective agreement, the Workplace Authority must be satisfied that, on balance, the collective agreement provides fair compensation, in its overall effect on the employees.

This is similar to the way the previous no disadvantage test applied to workplace agreements.

Like the no disadvantage test, where protected award conditions are removed or modified, employees will most often be compensated with a higher rate of pay for each hour worked.

What if an agreement fails the fairness test?

Where an agreement does not pass the fairness test, the Workplace Authority will provide advice to the employer and employee on how the agreement could be changed to make it fair.

The employer and employee will have 14 calendar days to make the agreement fair. Fixing a failed agreement could be done by varying the agreement or making an undertaking, which would be enforceable.

If an agreement is not fixed, it will cease to operate at the end of the 14 day period.

The entitlements of the employee or employees will revert to the arrangements that would have applied to them had they not made the unfair agreement. This could be an earlier workplace agreement or the award.

An employee with a designated award (and where no other workplace agreement is in place) will retain an entitlement to the protected award conditions from the designated award.

Where an agreement initially fails the test, but is satisfactorily rectified, the employee will generally be entitled to compensation or back pay for the period during which the agreement was unfair.

The employer will be expected to make up any back pay from the time the agreement was lodged for any entitlement the employee would otherwise have been entitled to.

Where an agreement does not pass the fairness test and an employer does not compensate the employee or employees, the Workplace Ombudsman will be able to recover any shortfall in entitlements on behalf of the affected employees.

A court may also impose a penalty if compensation is not paid.

Will a proposed or draft agreement meet the fairness test?

The Workplace Authority will offer a pre-lodgement assessment of proposed agreements against the fairness test. Either an employee or an employer can request a pre-lodgement assessment of a proposed agreement.

This process helps people make fair and clear agreements from the start. It helps them to know where they stand in regard to protections, entitlements and obligations. It minimises the risk of a shortfall in payments where an agreement fails the fairness test.

The pre-lodgement assessment of a proposed agreement is an administrative, rather than a legislative process.

This is because the legislative fairness test can only be applied to a properly made and lodged agreement with identifiable parties.

Where a pre-lodgement assessment is requested, the Workplace Authority will provide written advice indicating whether or not the agreement would pass the fairness test.

Provided the circumstances have not changed when the agreement is lodged, pre-lodgement approval will result in consideration of the agreement being fast tracked on lodgement.

The Workplace Authority

The Bill establishes the Workplace Authority Director and Deputy Directors.

The Workplace Authority Director is to be appointed by the Governor-General ensuring the independence of the office.

In addition to conducting the fairness test, the Workplace Authority Director will undertake the functions of the Employment Advocate, such as accepting the lodgement of workplace agreements and providing information about agreement-making.

The Workplace Authority will have particular regard to the needs of workers in disadvantaged bargaining positions, such as young people and workers from a non-English speaking background.

The Workplace Authority will receive extra funding of \$370 million dollars over four years to ensure its increased responsibilities are met.

The Workplace Ombudsman

The Bill establishes the Workplace Ombudsman to be appointed by the Governor-General also ensuring independence of the office.

The Workplace Ombudsman will undertake the functions of the Office of Workplace Services, such as assisting employees and employers in understanding their rights and obligations and promoting, monitoring and investigating compliance matters.

The Bill confers upon the Workplace Ombudsman the function of investigating breaches of the Workplace Relations Act, including in respect of the fairness test. The Workplace Ombudsman will be assisted in discharging his or her functions by having the power to appoint workplace inspectors.

One of the key new roles will be enforcing the prohibitions on employers from dismissing an employee because an agreement has failed the fairness test, or coercing an existing employee to agree to give up their protected award conditions.

The Workplace Ombudsman will focus on ensuring that young working Australians are not being unfairly treated in the workplace and conduct regular random audits to ensure employers are meeting their obligations to young people.

The Workplace Ombudsman will receive extra funding of more than \$60 million dollars over four years to ensure its increased responsibilities are met.

Conclusion

This Government has worked hard to create a balanced workplace relations regulatory framework that encourages job creation and allows Australian businesses to compete and grow.

This Bill provides a stronger safety net to underpin what is already an efficient system for a modern Australian economy.

The flexibility and opportunity created by the Government's workplace relations reforms have played a role in contributing to the growth of our economy and the economic prosperity shared by working Australian families.

The changes I will introduce today build on this strong foundation.

The changes ensure that choice and flexibility remain the fundamental building blocks of successful workplace arrangements.

The changes reassure working Australians that protected award conditions cannot be traded away without fair compensation and the approval of an independent statutory authority.