

Chapter 6

Family First Additional Comments

6.1 Family First is pleased the Government finally acknowledged it needed to fix its flawed Work Choices legislation, which Family First voted against.

6.2 But Family First still has several concerns with the amended legislation, and fears that workers and their families could still be worse off because of inadequate protections.

6.3 Firstly, Family First is concerned that the Government's new fairness test only applies to Australian workers earning up to \$75,000.

6.4 Why doesn't the fairness test apply to all Australian workers?

6.5 Surely the principle of fairness applies to everyone, not just those who earn a particular income, whatever that might be?

6.6 The Government has not adequately explained why this limit has been imposed and Family First is yet to be convinced such a figure is necessary.

6.7 Family First knows of one worker who supports a wife and two young children and earns \$76,000. Doesn't this father-of-two deserve to be protected by the fairness test? Why should he miss out?

6.8 Family First strongly believes ALL Australian workers should be protected by the fairness test, to ensure no Australian worker or their family is worse off under Work Choices.

6.9 It is important to stress that most employers do the right thing, and most workers do the right thing as well.

6.10 But we need to be mindful of those employers and workers who don't play by the rules, and we need to ensure that the rights of workers and employers are protected where there are people trying to abuse the system.

6.11 Every Australian worker deserves protection, as that gives them and their families peace of mind. Sadly, under Work Choices, some lucky workers are protected while others miss out.

6.12 The ACTU is right when it says of the fairness test...

It does not recognise many workers. We are a bit horrified to see that some men, but in particular women, who work part-time and take home much less than \$75,000, but who are in senior positions, will in fact have no access to this protection. We are talking about a range of occupations—senior nurses, finance workers, team leaders or supervisors in many

industries—where women choose to work part-time to marry their work and family responsibilities. They deliberately choose those hours where they can share the care, weekend or nights, and they get additional recognition through penalty arrangements that enable them to pay their bills and invest in their own homes. They potentially take home \$20,000, \$30,000 or \$40,000 but are still excluded. They will lose that extra value that they have put on that choice to work unsocial or family unfriendly hours.¹

6.13 Family First is also concerned about reports that, over time, fewer Australian workers would be protected by the fairness test, due to bracket creep and the fact the \$75,000 threshold is not indexed.

6.14 It was reported that the \$75,000 threshold under which workers are covered by the fairness test would be watered down over time, because it is not indexed.²

6.15 The Australian Industry Group indicated it did not want the amount indexed: 'we think the way the legislation is currently drafted is workable when it stays at \$75,000, but, as we understand it, there is an ability for the minister to review that. So we do not see a need to automatically index it.'³

6.16 It is important to remember that the old no-disadvantage test applied to all Australian workers—not just those under a certain wage.

6.17 Family First is also alarmed by reports that workers could be forced to challenge rulings of the Government's Workplace Authority through the High Court.⁴

6.18 The ACTU complained that the fairness test

... process is secret. It is not transparent; it has no review. We have already pointed out that it is just a very bad joke to suggest that, to get any kind of review, working people would have to go to the High Court. This issue is not only the cost but also the exceptional nature of such an appeal process—and then only probably on legal jurisdiction or process. It is just an appalling thing for any democratic parliament to impose on working people.⁵

6.19 The Shop, Distributive and Allied Employees Association (SDA) said that:

We believe that under the fairness test the likely interpretation will be that one will look at what applies on average across the group, rather than looking at each individual person. That makes it quite different to the old no

1 Ms Burrow, ACTU, Senate Committee Hansard, 8 June 2007, page 37.

2 Ben Packham, Threat to IR fairness test, *Herald Sun*, 29 May 2007, page 2.

3 Mr S Smith, Australian Industry Group, Senate Committee Hansard, 8 June 2007, page 56.

4 Ms Burrow, ACTU, Senate Committee Hansard, 8 June 2007, page 38.

5 Ms Burrow, ACTU, Senate Committee Hansard, 8 June 2007, page 38.

disadvantage test, which obviously looked at the agreement in comparison with the award in its entirety, but then it went on to look at the individual circumstances of each employee, and the fairness test had to be applied and passed for each individual person rather than just for the average. Therefore, it is possible under the fairness test for a minority of employees to be worse off but the collective agreement will still then pass.⁶

6.20 The committee also heard evidence that the fairness test would not prevent another Tristar, where workers lose their redundancy entitlements, if a workplace agreement does not have redundancy provisions.⁷

6.21 Family First's second major concern is that Work Choices gives employers the green light to sack workers under the guise of restructuring.

6.22 In recent times there have been two cases, both in Victoria, that have caused alarm and revealed the urgent need for the Work Choices laws to be tightened.

6.23 In the first case, the Industrial Relations Commission decided that, under Work Choices, a company can sack a worker and readvertise the same job on a much lower salary. The commission revealed that, under Work Choices, it does not have to consider whether a valid reason existed as long as the sacking was for 'operational reasons', which is much broader than the 'operational requirements' which used to apply.

6.24 Priceline had sacked Melbourne dad of two, Andrew Cruickshank, who was his family's sole breadwinner. He was out of work for five months after Priceline dismissed him and readvertised his job with a much lower salary.⁸

6.25 Workplace Relations Minister Joe Hockey has publicly expressed alarm and admitted that this was not the intention of the legislation, but the Government has not done anything about it. Why not?

6.26 In the second case, *The Weekend Australian* reported that the Australian Industrial Relations Commission had ruled that

Businesses have been given the green light to sack workers under the Work Choices laws even if they breach employee contracts, and regardless of how badly a worker is treated when being fired, the nation's industrial tribunal has ruled. A company only needed to prove it had restructured its business and did not have to prove financial difficulty.⁹

6 Mr de Bruyn, Shop, Distributive and Allied Employees Association, Senate Committee Hansard, 8 June 2007, page 31.

7 Ms Bowtell, ACTU, Senate Committee Hansard, 8 June 2007, page 44.

8 Margaret Wenham, Work Choices loopholes worry unions, experts, *Courier Mail*, 25 April 2007, page 5.

9 Susannah Moran, New laws sanction sackings, *The Weekend Australian*, 2 June 2007, page 6.

6.27 It can be argued this second case is even more disturbing because the company was not arguing that it restructured its business due to financial problems.

6.28 All the company needed to do was satisfy the Commission that it had restructured its business.

6.29 Family First shares the SDA's concern about 'how widely operational reasons is being interpreted.'¹⁰

6.30 Family First is distressed by these cases where livelihoods have been destroyed because Work Choices has allowed employers to treat workers in such a shameful way, simply arguing the sackings were for 'operational reasons'.

6.31 Family First raised this matter in the committee, to take up DEWR's offer to respond in writing to issues that arose in the hearings¹¹, but DEWR's written comments to the committee after the hearing failed to address the case.¹²

6.32 The Government has still not got it right. It needs to, as a matter of urgency, tighten its Work Choices laws to ensure Australian employers cannot sack workers under the guise of restructuring.

6.33 Minister Hockey has publicly admitted this is an unintended consequence of the Work Choices legislation. If he means what he says, and if this Government is genuinely concerned about ensuring no Australian worker and their family is worse off, the Government must immediately amend its legislation to plug this loophole and stop more workers being thrown on the scrapheap.

Senator Steve Fielding
FAMILY FIRST Senator
FAMILY FIRST Senator for Victoria

10 Mr de Bruyn, Shop, Distributive and Allied Employees Association, Senate Committee Hansard, 8 June 2007, page 31.

11 Senator Fielding, Senate Committee Hansard, 8 June 2007, page 26.

12 Submission 18a.