

Family First Additional Comments

Family First wants to get the industrial relations balance right, by making sure that workers and their families are not ripped-off, that businesses can be competitive and that the economy can continue to grow.

Back in 2005, Family First was in fact the first political party to expose the holes in the Howard Government's *Work Choices* law¹ because we understood the effect this legislation would have on ordinary Australians and their families. That's why Family First voted against *Work Choices* because it got the balance wrong and workers could be easily ripped-off.

In this inquiry we are considering the Rudd Government's *Transition to Forward with Fairness Bill 2008* and Family First is back on the case again asking the tough questions to ensure this time we get the balance right.

The *Transition to Forward with Fairness Bill 2008* is principally designed to stop new Australian Workplace Agreements (AWAs) being made, but it also sets up the arrangements for moving forward to the Rudd Government's new workplace relations regime.

Family First has some concerns with the structure of the new workplace relations system as it may not adequately protect all workers and it may not adequately protect family time from the ever encroaching demands of work.

Family First has long been concerned that there are not adequate safeguards in place to help protect family time from the time demands of work.

The industrial relations system proposed by the Government sets ten overarching National Employment Standards.² and ten minimum standards that must be included in the proposed modern awards.

But the ten points in the National Employment Standards do not include ensuring workers and their families have a meal break, nor do they include penalty rates for working anti-family hours. Instead, meal breaks and penalty rates are to be included in the ten minimum standards for modern awards.

1 Senator Steve Fielding media release "What about meal breaks and public holidays for workers?", 27 July 2005

2 Department of Education, Employment and Workplace Relations, (2008) *Discussion Paper: National Employment Standards Exposure Draft*. DEEWR, Canberra.
<http://www.workplace.gov.au/workplace/Publications/WorkplaceRelations/DiscussionpaperonNationalEmploymentStandards.htm> (last accessed 15 March 2008)

This means there is a danger that workers and their families not employed under awards will not have their meal breaks and penalty rates protected.

Dr John Buchanan from the University of Sydney said there had been "... identified 10 per cent to 15 per cent outside the award system altogether. We already know there are 10 per cent to 15 per cent on overawards. You are talking between 20 per cent and 30 per cent already outside the system. That is a big issue."³

When asked for an estimate of how many workers earning less than \$100,000 would be outside the award system and therefore could only rely on the proposed ten minimum conditions in the National Employment Standards, Mr Kovacic from the Department of Education, Employment and Workplace Relations, stated "tens of thousands ... and I think 100,000 would be very much the upper limit."⁴

Up to 100,000 people is a significant number to fall through the cracks.

There is doubt that the Government can find a way to fill in these cracks. The Shop Distributive and Allied Employees Association said:

There was a discussion at the ACTU executive meeting earlier this week—and I am quite happy to talk about this—where it was explained that it was the intention of the government that under the modernized awards all the nooks and crannies should be filled. If that can be done that would be good, but one wonders whether it can be done.⁵

Mr Lennon from Unions NSW said:

there are a number of concerns about the National Employment Standards and how they operate and how the award system builds on them. Primarily, our initial position would be that they should be as comprehensive as possible and cover as many workers as possible. I understand that the remit or the request to the AIRC is that, in the award modernisation process, they should ensure that the awards butt up against each other and there are no gaps that people can fall into. But it is never quite possible to do that.⁶

Awards do not cover everybody, and the National Employment Standards are to make sure we have a bare basic protection for working conditions in Australia. Those basic conditions should include meal breaks and penalty rates.

Why would the government not have those two key provisions in the National Employment Standards and therefore applying to everybody, so we are not treating 2am in the morning just the same as 2pm in the afternoon for the purposes of work?

3 Dr Buchanan, *Senate Committee Hansard*, 6 March 2008, page 39.

4 Mr Kovacic, *Senate Committee Hansard*, 11 March 2008, page 6.

5 Mr de Bruyn, *Senate Committee Hansard*, 7 March 2008, page 18.

6 Mr Lennon, *Senate Committee Hansard*, 6 March 2008, page 46.

The National Employment Standards are designed to be a real bare basic safety net. If they were not important, the government would not have suggested them.

Overtime and penalty rates were introduced to help achieve the eight-hour day. They were intended to discourage employers from employing workers for more than eight hours a day. They were not introduced to reward workers for working longer or anti-social hours.

Family First is concerned that conditions such as overtime, penalty rates for working weekends and anti-family hours, along with meal breaks and rest breaks, can be traded away for more money. Penalty rates are about family time, not about money. They were never intended to be traded away for dollars.

Working long hours is good for the market. Working on weekends is good for the market and having temporary work also suits the market. But none of this suits the family, which is why family life is under threat.

Family First is concerned about workers who do not have bargaining power and who may not be covered by awards. Family First is also concerned about the subtle pressures that may convince employees to trade away conditions for money.

Family First was in fact the first political party to expose the holes in the Howard Government's *Work Choices* law⁷ because we understood the effect this legislation would have on ordinary Australian families. Family First voted against *Work Choices* and went a step further and introduced legislation to give back to workers and their families their public holidays, meal breaks, penalty rates and overtime and to protect their redundancy, that the Howard Government had taken away.⁸

There were also questions raised during the inquiry about a key "flexibility clause" that the Government's changes depend on.

The award rationalisation process involves "modern awards" and all modern awards will be required to include a flexibility clause. But no one knows what those flexibility clauses will be and that will not be determined for some months yet.

Mr Stephen Smith from the Australian Industry Group commented that:

... the [flexibility] clause has not been drafted yet, and I am sure there will be very different views between us and the unions, even though there is a lot of goodwill and common understanding about the development of this new award system.⁹

7 Senator Steve Fielding media release "What about meal breaks and public holidays for workers?", 27 July 2005

8 *Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007*, introduced 29 March 2007.

9 Mr Smith, *Senate Committee Hansard*, 6 March 2008, page 9.

Unions New South Wales preferred flexibility clauses were not used at all.¹⁰

Witnesses declined to draft an example flexibility clause because of the complex nature of the task.¹¹

Given the flexibility clauses will not be available for some time, it is difficult to make a decision on the legislation before the Senate without being able to consider the nature of the clause.

These are key issues Family First will consider when voting on the *Transition to Forward with Fairness Bill*.

Senator Steve Fielding
Family First Leader

10 Mr Lennon, *Senate Committee Hansard*, 6 March 2008, page 46.

11 Dr Buchanan, *Senate Committee Hansard*, 6 March 2008, page 39; Mr Grozier, *Senate Committee Hansard*, 6 March 2008, page 54.