

WORKPLACE RELATIONS AMENDMENT (TRANSITION TO FORWARD WITH FAIRNESS) BILL 2008

Second Reading

Speech

Ms GILLARD (Lalor—Minister for Education, Minister for Employment and Workplace Relations and Minister for Social Inclusion) (11.30 a.m.)—I move:

That this bill be now read a second time.

**Introduction**

Almost three months ago the Australian people voted for change.

They voted for a change of government.

And in doing so, they voted for a change to our workplace relations laws.

Today the government begins the process of change by introducing the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008 into this parliament.

With this bill, the government delivers on key election commitments it made to the Australian people; commitments the Australian people endorsed in November.

I want to take one moment to describe just how clear those commitments were.

When the Prime Minister became Leader of the Labor Party and I became Deputy Leader in December 2006, we promised to abolish Australian workplace agreements.

In April last year, we published our workplace relations policy, Forward with Fairness, and confirmed that, if elected, we would abolish Australian workplace agreements.

In August we released our Forward with Fairness policy implementation plan, which reiterated Labor's commitment to abolish Australian workplace agreements while setting out the sensible transitional arrangements a Rudd Labor government would adopt for implementing this key commitment. This policy made it clear that, when Labor's workplace relations system was fully operational, there would be no AWAs and no other statutory individual employment agreements.

All last year, every member now sitting on this side of the House campaigned in electorates all over this country on our commitment to abolish Australian workplace agreements and to introduce Labor's new system.

When the Australian people read our policy documents, or heard the Prime Minister speak, including at our campaign launch, or listened to me debate the previous Minister

for Employment and Workplace Relations they were left without a doubt that central to our workplace relations policy was a commitment to rid Australia of all statutory individual employment agreements.

Labor's policy was not unknown to the Howard government and its members. Indeed, last year the Howard government misused over \$60 million of taxpayers' money campaigning against Labor on workplace relations and against this key commitment to abolish Australian workplace agreements. Every day ministers from the Howard government used to rail in this place about how foolhardy they believed Labor's policy to be.

But despite these attacks from the Howard government, Labor always maintained its belief this country should have a fairer, simpler and more balanced workplace relations system.

We believe all Australian employees are entitled to a safety net of 10 National Employment Standards. We believe employees earning less than \$100,000 are also entitled to an extra safety net provided by modern, simple awards.

We believe that, in such a system, there is no need for AWAs or any statutory individual employment agreement. The essence of such agreements is that they override the safety net. In Labor's view, a modernised safety net means there is no need for individual instruments which can override it. Rather, the only individual agreements that would be necessary are common-law contracts which build on the safety net but can never override it or take it away.

We believe that such a system will be fairer because employees will always have the safety net to rely on. And we believe it will be simpler because employers will no longer have AWAs or statutory individual employment agreements of another nature stuck forever in processing queues. And let's remember that, as at 30 November last year, there were almost 150,000 agreements still waiting final assessment by the Workplace Authority, creating uncertainty and pressure for employers and employees.

And we believe such a system will be better for productivity and therefore better at fighting inflation.

Of course the Howard government, including the current Leader and Deputy Leader of the Opposition, argued furiously against Labor's system. They argued that Work Choices was wonderful, that it was fair even as the evidence of the rip-off of working families came to light. They argued Work Choices was a panacea for the economy, even as interest rates rose again and again.

But this debate had an end point. It was election day. The Australian people voted. The Australian people decided. They decided to endorse Labor's policy including our policy to abolish Australian workplace agreements.

Unbelievably, the opposition, and particularly the opposition spokesperson on workplace relations, are now trying to pretend none of this happened. You would think most politicians would have an election defeat seared into their brains, not the Deputy Leader of the Opposition. 2007? She has forgotten it.

The opposition, or at least sections of it, is trying to pretend that Labor campaigned to roll back Work Choices and to have as its workplace relations policy an earlier version of the Howard government's workplace relations laws. This charade is apparently being engaged in by the opposition, or at least sections of it, to try and justify the continuation of AWAs in the future.

But the unsolvable problem for the opposition's tactic is this: everyone can see through its little game of make-believe.

The government did not campaign on the basis we were going back to anything.

The government campaigned on the promise we would take Australia forward with fairness without Australian workplace agreements.

This bill delivers on that promise.

If the Liberal Party opposes it in this House then their actions can only be read in one way. It is a deliberate decision to deny the Australian people what they voted for. It would be a deliberate decision by the Liberal Party to act with born-to-rule arrogance.

If the opposition uses its numbers in the Senate to unduly delay or reject this bill then that would be a deliberate choice by the Liberal Party to keep Work Choices alive. That would be a deliberate decision by the Liberal Party to treat the Australian people with contempt.

And of course the track record of the Liberal Party in the workplace relations debate is to treat the Australian people with contempt. That is what they did when they introduced Work Choices without a mandate. That's what they did when defending day after day a system that ripped basic working conditions away from hardworking Australians. That is what they did when they misused tens of millions of dollars of taxpayers' money defending Work Choices. It is a truly disgraceful track record.

We all know about that disgraceful track record. The only question we are waiting for the Liberal Party to answer is whether they have learned anything from their election defeat or whether today will be another milestone in their disgraceful track record.

Part of the Liberal Party's arrogant conduct on workplace relations was its refusal to consult or work cooperatively with those who most care about workplace relations.

The approach of the Rudd Labor government is completely different.

## **Transition to Forward With Fairness**

The government understands that, to create our simple, fair, flexible and productive workplace relations system, we must talk with employers and employees and those who will play a role in our new workplace relations system.

We intend to avoid the uncertainty and complexity the previous government created for millions of employers and employees around the country through Work Choices.

To this day there are employers who do not know whether they fall within the federal workplace relations system; there are small businesses struggling to understand the complex rules in the hundreds of pages of workplace law bequeathed by the Liberals and there are employees who do not know why they must lose so many protections and do not know where to turn to for help.

The development and content of this bill reflects the government's commitment to taking an open, measured and consultative approach to workplace relations reform to make sure the laws work for the people who use them.

In the less than three months since being sworn in, I have consulted with key stakeholders on the development and detail of this bill.

I have convened two meetings of the National Workplace Relations Consultative Council—a tripartite body which brings together peak employee and employer organisations. It brings together the likes of ACCI, the Australian Industry Group and the ACTU. It has a specialist subcommittee, the Committee On Industrial Legislation, and that committee discussed the government's proposals for the transition bill, award modernisation and the National Employment Standards.

The enthusiastic and collaborative way in which all of these organisations have come together to assist the government on the development and detail of this bill has been extremely encouraging. I congratulate all employer and union representatives for their valuable contributions towards shaping this bill.

I have also met with state and territory workplace relations ministers, through the Workplace Relations Ministers Council, on both the content of this bill and to commence discussions on, among other things, the development of a uniform workplace relations system for the private sector.

I am pleased to report that the states and territories have wholeheartedly endorsed the key principles outlined in the government's Forward with Fairness policy.

In the coming days I will also announce and chair the inaugural meetings of the government's Business Advisory Group and, with my colleague the Minister for Small Business, Independent Contractors and the Service Economy, I will announce the details of the Small Business Working Group. The creation of these groups was another key part

of the government's election commitments and I look forward to listening to the practical feedback from business on the government's proposed substantive workplace relations reforms.

I will be inviting members of the public to comment on the government's exposure draft of the 10 legislated National Employment Standards, which will be released tomorrow.

This open and consultative approach is in stark contrast to the approach of the previous government to workplace relations matters and it will continue as the government moves towards introducing its more substantial workplace relations reforms later this year.

### **Description of the Bill**

As I have indicated, this bill deals with the following matters as set out in the Forward with Fairness Policy Implementation Plan:

#### **Australian Workplace Agreements**

This bill provides that, from its commencement date, no-one will be able to make a new Australian workplace agreement. AWAs that have already been made will continue until their nominal expiry date and beyond until the parties to the AWA make a decision about how best to manage their employment arrangement. AWAs made before the commencement date must be lodged within 14 days after the commencement date.

It is the intention of the Rudd Labor government to lead by example and today I announce that on and from this date there will be no new Australian workplace agreements entered into in the Australian Public Service.

*Applause from the gallery—*

Continue

Ms GILLARD—That is a seemingly popular announcement in Canberra!

**A government member**—Another one!

Continue

Ms GILLARD—Another one.

#### **Individual Transitional Employment Agreements (ITEAs)**

To provide sensible transitional arrangements for employers who currently use AWAs, the bill will create a special instrument called an individual transitional employment agreement.

ITEAs will only be available to employers who employed an employee on an AWA as at 1 December 2007. These employers may use ITEAs to employ new employees or for existing employees who were employed on AWAs.

ITEAs will give these employers time to transition to the government's new workplace relations system.

ITEAs will have a nominal expiry date of no later than 31 December 2009. On and from 1 January 2010, Labor's new National Employment Standards and modern simple awards will be in operation and there will be no need for any individual statutory employment agreements.

#### New No Disadvantage Test

The former government's so-called 'fairness test', which was simply not fair because it provided no proper protection for some award conditions and no protection at all for others, will not apply to future workplace agreements.

The bill will introduce a new no disadvantage test for all individual and collective workplace agreements that are made after the commencement of the legislation.

The bill will end the compliance nightmare created by the backlog of agreements that has piled up under the so-called fairness test changes.

To pass the new no disadvantage test, ITEAs must not disadvantage an employee against an applicable collective agreement or, where there is no such collective agreement, an applicable award, and the Australian Fair Pay and Conditions Standard. Collective agreements must not disadvantage employees in comparison with an applicable award and the standard.

The new no disadvantage test will also apply to variations to both new and existing agreements.

#### New Commencement Dates for Agreements

Currently, workplace agreements take effect from the date that they are lodged with the Workplace Authority with the result that, where agreements fail the 'fairness test', employers are confronted with complex calculations for expensive compensation payments.

Under this bill, ITEAs for existing employees and new collective agreements will only commence operation after the Workplace Authority Director has approved them on the basis that they pass the no-disadvantage test.

However, to provide certainty for employers and new employees in the transition period, ITEAs for new employees, and employer greenfields or employer and union greenfields

agreements, will commence operation when lodged with the Workplace Authority Director.

Of course, any agreement lodged after the commencement of this bill will cease to operate or will never operate if it fails the no-disadvantage test. For those agreements which have commenced upon lodgement and have subsequently failed the no disadvantage test, compensation may be payable to employees.

### Termination of Agreements

The previous government's Work Choices laws included one-sided provisions that allowed employers to unilaterally terminate a collective workplace agreement which had passed its nominal expiry date and return their employees to only a limited number of minimum standards.

These provisions will be repealed.

To allow them to stand would enable an employer to manipulate the benchmark against which ITEAs must pass a 'no disadvantage test'.

Under the bill, a collective agreement will only be able to be terminated where the parties agree, or by the Australian Industrial Relations Commission in circumstances where termination would not be contrary to the public interest. In making its decision under this provision, the commission would be required to have regard to all the circumstances of the case, including:

- the views of each party bound by the agreement (including the employees subject to it) about whether it should be terminated; and
- the circumstances of each party bound by the agreement, including the likely effect on each party of the termination of the agreement.

When an agreement is terminated, employees will be entitled to whatever award or workplace agreement would have applied to them but for the terminated agreement.

For instance, when an AWA or ITEA is terminated, the employee will be covered by any relevant collective agreement operating in the workplace or the full award if there is no such agreement. This reverses the previous government's unfair rules that resulted in employees being stripped off their workplace agreement and reverting to only a limited number of conditions.

The scope to unilaterally terminate a Work Choices AWA which has passed its nominal expiry date will be retained. This will allow employees to terminate an expired unfair Work Choices AWA where doing so may result in their being covered by a more beneficial instrument.

### AWA/ITEA Employees—Participation in Collective Bargaining

The bill will also reinforce this change by making it clear that an employee on an AWA or ITEA that has passed its nominal expiry date can approve new collective agreements and variations to collective agreements.

This addresses an anomaly under the current act which allows these employees to take part in a secret ballot for protected industrial action but then prevents them from voting on the agreement itself without first terminating their existing arrangement and therefore risking a significant loss of pay and conditions.

#### Workplace Relations Fact Sheet

The bill will also repeal the requirement for employers to provide a copy of the *Workplace Relations Fact Sheet* to their employees. This was a desperate attempt by the previous government to co-opt businesses into their wasteful Work Choices advertising campaign and should be stopped. This will be welcomed by business.

#### Pre-Work Choices Collective Agreements

The bill permits certain pre-Work Choices certified agreements to be extended and varied on application to the Australian Industrial Relations Commission.

The commission will grant the application only if satisfied that the parties genuinely agree and the employees covered by the agreement approve.

To take advantage of this option, the government will require parties to the agreement not to have organised or engaged in industrial action or applied for a protected action ballot in relation to proposed industrial action from tomorrow, the day after the bill has been introduced.

This will avoid the parties to these agreements having to make new workplace arrangements under a transitional framework only to make new agreements once the government's new fair and flexible workplace reforms come into effect.

The mechanism for allowing parties to pre-reform certified agreements to avoid the 'double transition' was one sought by both employer and employee representatives during one of the consultations that occurred with the Committee On Industrial Legislation. It is an example of how timely consultation on workplace relations matters can give rise to practical solutions that work for all stakeholders.

#### **Other matters**

The following additional matters were also raised during the government's consultation with the key employer and employee representative organisations through the National Workplace Relations Consultative Council and the COIL subcommittee.

The government has decided to adopt the following recommendations arising from the parties at these meetings:

- removal of the restriction on referencing other industrial instruments in agreements, which will simplify the drafting of agreements;
- requiring workplace agreements be lodged with signatures attached to protect employees and ensure the correct agreements are lodged for review and approval by the Workplace Authority;
- ensuring that most agreements will take effect from seven days from the date of the notice from the Workplace Authority Director advising an employer that the agreement has passed the no disadvantage test;
- preventing the making of unilateral undertakings when agreements fail the no disadvantage test. If agreements are to be genuine agreements, any variation should have the agreement of both parties. The government has included streamlined approval rules for variations to agreements in these circumstances;
- requiring the Workplace Authority Director to publish reasons where the Workplace Authority Director allows an agreement to pass the no disadvantage test where satisfied that, due to exceptional circumstances, it is not contrary to the public interest to do so (for example to deal with a temporary business crisis);
- requiring the Workplace Authority to consult more widely when designating awards for the purposes of the no disadvantage test; and
- ensuring that the transition period for a number of matters, including the automatic expiry of notional agreements preserving state awards—the so-called NAPSAs—old IR agreements, removal of superannuation as an allowable award matter and the transitional registration of organisations arrangements is extended to the end of the government’s transition period, 31 December 2009, to provide continuity and certainty during the transition period.

If the government had not made those arrangements, then a number of cut-off dates prescribed by Work Choices would have brought these industrial instruments to an end—most particularly would have brought to an end the Notional Agreement Preserving a State Award on which so many employees rely for their industrial protection. It also would have removed superannuation as an allowable award matter. These things, as I indicate, are the product of agreement from representatives of employees and employers working together.

Lastly, the bill will amend the Skilling Australia’s Workforce Act to remove provisions which make funding to TAFE institutions conditional on offering AWAs. This amendment is consistent with the government’s intention to remove similar funding restrictions for universities under the previous government’s higher education workplace relations reform policy, the so-called HEWRRs policy.

### **Award modernisation**

Another key part of the government’s election commitments is the creation of new modern awards as an integral part of a fair minimum safety net for employees.

This bill provides the means for an award modernisation process to commence.

In addition to the amendments to the Workplace Relations Act to facilitate award modernisation, the explanatory memorandum to this bill contains the proposed award modernisation request I will make to the President of the Australian Industrial Relations Commission, the Hon. Justice Geoffrey Giudice, upon the passage of this bill requesting the Australian Industrial Relations Commission create new modern awards during the transition period.

Modern awards will:

- protect 10 important entitlements like penalty rates and overtime;
- provide industry-specific detail on the 10 National Employment Standards;
- ensure a fair safety net for Australian employees, including outworkers;
- ensure minimum award entitlements are relevant to the Australian economy and modern work practices;
- not be overly prescriptive; and
- will allow for flexible work arrangements for employers and employees who rely on awards as well as provide an appropriate benchmark for collective agreement making.

As part of the award modernisation process the Australian Industrial Relations Commission will be required to develop an award flexibility clause for inclusion in all awards. This clause will, in combination with a simple, modern award arrangements enable employers and individual employees to make arrangements to meet their genuine individual needs so long as the employee is not disadvantaged.

It is the government's intention that employees earning above \$100,000 per annum will be free to agree to their own pay and conditions without reference to awards. This will provide greater flexibility for common law agreements which have previously been required to comply with all award provisions, no matter how highly paid the employees.

A simple, modern award system with opportunities for individual flexibilities will remove the need for any individual statutory employment agreements and the associated complexity and bureaucracy attached to those agreements.

To enable the award modernisation process to begin, the bill will insert a new part into the Workplace Relations Act. The bill sets out the award modernisation function of the Australian Industrial Relations Commission and specifies the objectives of award modernisation and requirements for modern awards.

The bill will prohibit certain terms being included in modern awards, including terms that would require or permit conduct contravening the freedom of association provisions or which authorise organisations to enter an employer's premises.

## **National Employment Standards**

Tomorrow I will release an exposure draft of the proposed National Employment Standards which will replace the current Australian Fair Pay and Conditions Standard when the new workplace relations system becomes fully operational in 2010. These standards include minimum entitlements such as hours of work, carer's leave, public holidays and notice of termination. Modern awards may build on these standards with industry specific detail.

From 2010, the National Employment Standards and modern awards will together form the safety net for both employment and collective bargaining.

## **Conclusion**

This bill represents the start of the government meeting a key commitment it made to the Australian people at the last election. This bill represents the start of the government bringing fairness and balance to Australia's workplaces. We promised it; we will deliver it.

The next step, the next commitment to be fulfilled, is the development of our substantive workplace relations laws to create a new, simple, fair and flexible workplace relations system that works for all Australians.

A workplace relations system that works for all Australians should be fair and flexible, simple and productive. It will not jeopardise employment, it will not allow for industry wide strikes or pattern bargaining and it must not place inflationary pressures on the economy. It specifically aims to drive productivity and cooperative workplace arrangements.

Our plan is based on employers and employees working out at the enterprise level what suits them the best. Under our system wage outcomes in one business, or one sector of the economy, cannot automatically flow to another. Where employers and employees can work together to drive productivity increases there will be gains in the enterprise to share.

The Australian people in voting for our policy have emphatically said yes, they want to see fairness and flexibility in their workplaces. They want to see workplace relations policy for the long term, not policy as a political football.

It is now time for members in this place to respect and represent the clear message from the Australian people. No more Work Choices, no more Australian workplace agreements, no more unfairness, complexity and confusion.

And from the Liberal Party no more born-to-rule arrogance, no more contempt for the Australian people.

With this bill the government is delivering for the Australian people and has commenced the process of lasting workplace relations reform. (*Time expired*)

