

NEWS LIMITED

Senate Education Employment and Workplace Relations Committee

Inquiry into Fair Work Bill 2008

January 2009

News Limited welcomes the opportunity to make a submission to the Senate inquiry into the *Fair Work Bill 2008* (the Bill).

News Limited is Australia's largest newspaper publisher with the leading newspaper in every major Australian city, almost 150 newspaper titles across the country and nearly 30 magazine titles. In addition, News Limited's digital division operates major news and information websites under its well known mastheads.

News Limited employs more than 14,000 people across Australia

Introduction

The Fair Work Bill 2008 (the Bill) heralds a major overhaul of Australia's workplace relations regime.

News Limited believes the effect in workplaces of many of the provisions will only become apparent once the laws come into operation and have been in place over time.

Therefore News Limited believes the Government should commit to review the Bill after a period of operation (say three years) to ensure it is operating consistently with its original objectives and has not led to unintended consequences. In particular it should be assessed against the objective stated in its *Forward with Fairness* policy of:

“a new industrial relations system for Australia that gets the balance right in the workplace and achieves both fairness and flexibility”.

News Limited would like to take this opportunity to comment on a small number of specific areas of the Bill where it considers improvements and adjustments could be made.

These areas are:

- flexibility clauses
- good faith bargaining – access to “relevant information”
- transfer of business
- strike pay – “the 4 hour rule”
- right to entry – access to non-union member records

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Flexibility in the workplace

A key factor in News' productivity and performance has been the investment we have made in managing and engaging our staff. Central to this has been the flexibility we have introduced in our award areas using various types of agreements.

Over the past 10 years or so, we have utilised the various agreement options available to us to unshackle the restrictions contained in outdated awards and collective agreements. These options have included Australian Workplace Agreements (AWAs), modernised collective agreements within workplaces where multiple collective agreements are in place, and common law contracts.

While acknowledging that the Government has committed to abolishing AWAs we are strongly of the view that it is essential the new workplace system maintains the ability for employers and employees to have the capacity to reach individual agreements that provide for flexibility and other mutual benefits.

In its *Forward with Fairness* policy document the Government committed to ensuring genuine flexibility for both employers and employees with the introduction of model flexibility clauses in the award system and in enterprise agreements. News strongly supports section 202 of the Bill which requires a flexibility clause to be included in enterprise agreements, allowing an employer and employee to make an individual arrangement.

Given that such a flexible arrangement must meet the minimum standards of the modernised awards and National Employment Standards (NES), employers and employees will be able to agree terms that fit an individual's circumstances without compromising the employee's entitlements.

Even prior to passage of the legislation, we have experienced considerable resistance by unions to flexibility clauses in enterprise agreements. In this context, we are concerned that over time the breadth and effectiveness of these clauses may be diminished either by Fair Work Australia (FWA) or following extensive industrial campaigns and disputation. It is essential that the genuine ability of an employer and employee to reach agreement within the enterprise agreement be maintained.

However, the Bill does not appear to permit an employer and employee to agree to flexible individual arrangements prior to the commencement of employment, despite the protections of the NES and award safety net. If prior arrangements are not permitted, we are concerned this would significantly limit the actual prospect of the employer and employee agreeing to flexibility arrangements on engagement.

We submit that the Bill should be clarified to ensure employers and employees can make flexibility arrangements prior to commencement of employment.

Enterprise Agreements – “good faith bargaining“

News appreciates that the Government is seeking to regulate processes to deal with difficult and protracted bargaining. But it is essential the parties are able to genuinely bargain without excessive regulation and intervention from FWA.

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It is positive that “good faith bargaining” does not mandate the making of agreements as this is best left to the negotiation process. However, the extent to which the new bargaining provisions will be workable will depend on the extent to which FWA becomes involved in the process and how the compulsory recognition of bargaining representatives and the majority support provisions operate in practice.

The Bill sets out five requirements for good faith bargaining. Section 228 (1)(b) provides that a bargaining representative must disclose relevant information (other than confidential or commercially sensitive information) in a timely manner.

News is concerned that the requirement to disclose “relevant information” is an excessively broad obligation which could be interpreted very widely, leading to unreasonable requests for information and ultimately delay and frustrate bargaining processes.

News Limited submits, the clause should be clarified to limit the requirement to only apply to information that is essential to the bargaining process. For example, relevant information should only include information that directly impacts employees the subject of bargaining.

Transfer of business

The Bill introduces new provisions for transfer of instruments where there is a transfer of business.

It is essential transfer of business provisions do not inhibit the movement of employees between different operations within the business and enable businesses to buy and sell businesses and reform businesses into more efficient operations.

Secondly, although News Limited has no plans for changes to the structure of our business that would be adversely affected by the new provisions we are concerned that to efficiently run a modern media business we need to maintain the ability to adapt the structure of our business and workforce in line with changing economic circumstances, the changing media business and our competitors. We should not be faced with unnecessary constraints.

We submit that the existing transfer of business provisions should be maintained.

Strike Pay

The Bill retains the existing rule whereby employees on strike are not paid for a four hour period outside of the bargaining process but abolishes the rule where an authorised strike occurs during the bargaining process.

In our experience the four hour strike pay rule has led to fewer strikes or stoppages and shorter periods of industrial action overall. It has also helped in fostering better relations as it encourages the parties to handle disagreements and utilise dispute resolution processes rather than immediately resorting to industrial action.

We are of the view the rule should be retained in all circumstances to minimise industrial action and encourage discussion between the parties without resorting to stop-work action.

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Right of Entry

The Bill substantially changes the existing right of entry provisions and in particular, gives the right for employee representatives to access the records of non-member employees where a suspected contravention has occurred. In contrast, the current provisions permit access to non-union members with specific approval of the Australian Industrial Relations Commission.

News is concerned this raises issues of confidentiality of records of non-union members who are not connected to the suspected contravention and may lead to unacceptable “fishing expeditions” by employee representatives.

News is of the view the provision should be amended to only apply where it is approved by Fair Work Australia. This is consistent with the text of the Government’s Forward with Fairness policy.

