Chapter 2

Government Senators' Report

2.1 Many of the submitters to the inquiry supported the principles underlying the bill, but for various reasons they considered that the provisions were unlikely to meet the stated objectives of the bill. Many submissions raised concerns about the technical drafting of some of the provisions that would disadvantage employers and/or employees. Employee organisations generally argued that the provisions did not go sufficiently far to restore improvements to the family-work balance for workers. It was also noted that the bill did not effectively amend the Workplace Relations Act to remove provisions, which permitted the exclusion of the provisions of the bill in workplace agreements. Employer groups generally argued that the changes would remove the flexibility necessary to allow family and work obligations to be balanced, impose additional costs and administrative burdens on business, and would not accommodate different industry and employer requirements.

2.2 The committee majority concurs with these criticisms of the bill.

The workplace relations system and the family-work balance

2.3 The family-work balance in workplace agreements has been increasingly important because of the changes inherent in modern work patterns. Increasingly, more households have become either single parent/earner or dual income households, necessitating increased flexibility in the way people are employed.

2.4 The intention of the bill is to restore conditions necessary to enable employees to balance work and family obligations. However, the committee majority considers that such provisions are unnecessary as the primary purpose of the Government's reforms to the workplace relations system has been to enable employers and employees to negotiate a better balance of work and family life. This bill aims at returning workplace arrangements to the former system where there was little or no provision for individual needs, nor the flexibility to negotiate hours of work to accommodate family responsibilities. Standardisation of conditions cannot be made to suit the diverse family responsibilities of millions of employees or the operational requirements of varied businesses.

2.5 As a result of the Government's workplace relations reforms and the increased flexibility it has delivered, fewer people are working unsocial and excessive hours. The number of people working 50 hours or more each week—the most widely used indicator of long hours—during 2006 was 17 per cent. This is a substantial reduction from the levels of 2000 when this constituted 22 per cent of the workforce. Further, most of those working more than 50 hours per week are professionals with high job

satisfaction or self-employed.[1] The enhanced flexibility of Work Choices has facilitated their capacity to exercise choice, enhance their own productivity and that of the business that employs them. The Government's championing of workplace flexibility encourages payment of a higher standard hourly rate of pay, as opposed to penalty rates, and diminishes the pressure some employees may feel to work weekend or other unsocial hours to maximise earnings.

2.6 The Organisation for Economic Cooperation and Development's Economic Survey of Australia 2006 highlighted concerns about Australia's aging population and the long-term effect on the sustainability of productivity and living standards. It underscored the need for continued labour market flexibility and streamlining of industrial relations provisions to maintain productivity growth and workforce participation. It suggested such flexibility was particularly important for providing employment opportunities to single parents, women with families, people with disabilities and older Australians.[2]

2.7 Therefore, the committee considers that such a bill is unnecessary in providing the purported family-work balance, as they are already inherent in the Government's workplace relations system and the provisions of the existing legislation. Further, in addition to imposing unfair costs on businesses, the committee considers that in many respects the bill will act contrary to its intention. This is because it is overly prescriptive and will undermine the flexibility necessary to achieve the balance of work and family responsibilities desired by Australian workers.

Views in the submissions

2.8 Opposition to the bill falls roughly into two categories of argument: first that it is incompatible with the Workplace Relations Act; and second, that the provisions are impractical and disadvantageous to employees and employers.

2.9 The Queensland Council of Unions (QCU) highlighted that it believed the bill does not achieve the stated objective of restoring family time. Professor Andrew Stewart of Flinders University supported the principles of the bill, but argued that many of the protections could be circumvented by provisions in the primary legislation.[3]

2.10 The Shop Distributive and Allied Employees' Association (SDA) also supported the principles of the bill, but believed many of the sought after protections

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1 Caroline Overington, 'Prosper or suffer long at work', 10 March 2007, *Weekend Australian*, p. 4; Mark Wooden, 'Renewed push to regulate overtime is overkill', 13 March 2007, *The Australian*, p. 14.

2 Organisation for Economic Cooperation and Development, *Economic Survey of Australia*, July 2006, www.oecd.org/document/28/0,2340,en_33873108_33873229_37147228_1_1_1_1,00.html (accessed 22 May 2007).

3 Professor Andrew Stewart, *Submission 11*, p. 2.

would not eventuate. It drew the committee's attention to its concern that the establishment of minimum conditions in the workplace relations system can be used to undermine employees' entitlements. Therefore, the SDA recommended that the Australian Fair Pay Conditions Standard be amended in line with new base-lines, as under the bill, to ensure that employers cannot use the base conditions rather than the higher preserved award conditions.[4]

2.11 In its submission to the inquiry, the Australian Chamber of Commerce and Industry (ACCI) maintained that the amendments were unnecessary and any perceived need had been obviated by the Government's own amendments under the Stronger Safety Net bill. It pointed out that the conditions that are the subject of the bill are protected unless removed or varied by explicit agreement. Further, it considered that the additional resources being invested into the Workplace Ombudsman will provide added protection to employees by resulting in more active monitoring of agreements than previously has been the case.[5] ACCI also argued that the bill would function contrary to its intention. In particular, it would make it more difficult for some people to balance work and family life. It cited evidence provided to the 2004/2005 Australian Industrial Relations Commission of an employee who sought to delay the taking of a lunch break to allow caring for school-age children. ACCI also pointed out that other employees may prefer an earlier finishing time than taking a mandated rest break.[6]

2.12 Similarly, the Australian Industry Group (Ai Group) also argued that the balance of work and family responsibilities was dependent on flexibility to negotiate hours of work to accommodate family responsibilities. It maintained that this was already provided in the existing legislation. Further, it argued that the bill would impose 'significant operational difficulties for employers'.[7]

Public holiday provisions

2.13 The National Farmers Federation (NFF) highlighted that the bill would cause problems in the agricultural sector by mandating a higher rate of pay for work on public holidays. It pointed out that such requirements are accepted by both employers and employees as inherent in the nature of the sector. It submitted:

> The operational requirements of a significant proportion of agricultural employers include work on public holidays as an inherent requirement of employment – for example, dairy farms must milk on a daily basis, fruit must be harvested at precisely the correct time, and cattle must be moved and fed when and as required.[8]

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4 The Shop Distributive and Allied Employees' Association, *Submission 8*, pp. 1-2.

5 Australian Chamber of Commerce and Industry, *Submission 6*, pp. 33-34.

6 Australian Chamber of Commerce and Industry, *Submission 6*, p. 35.

7 Australian Industry Group, *Submission* 10, p. 18.

8 National Farmers Federation, *Submission 5*, p. 2.

2.14 The Ai Group also argued that the existing legislation allowed employees to refuse to work on public holidays under reasonable circumstances and that relevant agreements allow for appropriate compensation when workers were required to work on such days. Further, Ai Group argued that certain industries required public holiday work, such as aluminium smelters, airlines, electricity generation, hotels, resorts and restaurants and the bill would be too inflexible for such industries. [9]

2.15 The Australian Council of Trade Unions (ACTU) supported the provisions to ensure employees that work on public holidays receive alternative time off and financial compensation. It recommended strengthening the provision by requiring the day off be taken within a certain period and allow negotiation of an even higher rate of pay in lieu of a day off.[10] But according to the Community and Public Sector Union (CPSU) and the Australian Manufacturing Workers Union (AMWU) the amendments do not go far enough and should restore the rights to take public holidays. The CPSU cited the example of Telstra call centre workers who are unable to take public holidays to spend time with their families, following a change in policy from Telstra. It argued that this was a particular difficulty for regional workers who were being required to work unsocial hours while having limited childcare facilities.[11]

Penalty rates and maximum ordinary hours of work

2.16 The NFF also highlighted the problem of defining maximum ordinary hours for workers in the agricultural sector. It pointed out that many jobs, such as milking at a dairy, require starting times before 6:00 am. The NFF argued that the mandatory imposition of penalty rates would be a costly burden, disadvantaging employers in the sector, as the rates would be required to be paid each day. It maintained that the bill does not account for the benefits that accrue to employees, such as in the case of dairy workers who are able to finish their shifts early. The NFF argued that the bill fails to consider industry standards and operational requirements of businesses.[12]

2.17 The Ai Group also argued that numerous employees in various industries are required to work their ordinary hours between midnight and 6:00 am, such as hotel workers, essential service workers, security guards continuous shift workers in manufacturing facilities. It considered that they were already well remunerated and the increase of penalty rates would be 'unreasonable'.[13]

2.18 ACCI also raised concerns about the imposition of penalty rates under the bill. It suggested compliance would be impractical and argued:

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9 Australian Industry Group, *Submission* 10, p. 23.

10 Australian Council of Trade Unions, *Submission* 4, p. 22.

11 Community and Public Sector Union, *Submission 3*, p. 1.

12 National Farmers Federation, *Submission 5*, p. 3.

13 Australian Industry Group, *Submission* 10, p. 20.

> This would see every manager and professional in Australia paid a penalty rate on their rate of pay…Someone on $300,000 would see their rate of pay go from $150 an hour to $227 per hour…There would be a real risk of employers paying penalties twice.[14]

2.19 The ACTU submission highlighted the confusion of subsection 226(4A)(b) and whether the overtime rate would be applicable to all hours worked at night or only those that exceeded the ordinary hours of work. Further, the ACTU raised its concern that the provisions precluded the parties to an agreement from negotiating more beneficial arrangements, such as double time.[15] Both the ACTU and the AMWU also highlighted that the provision is problematic in that it does not address the allowance in the primary legislation to permit 'reasonable additional hours' to be averaged over 12 months.[16]

Redundancy entitlements

2.20 The ACTU, the AMWU and Professor Stewart argued that the bill does not achieve its objective of protecting redundancy entitlements with the extension of the 12 month preservation period to five years because it fails to take into account broader provisions of the Workplace Relations Act. They pointed out problems including that the Workplace Relations Act allows the formulation of agreements that exclude award provisions for redundancy pay; that new businesses are not bound by awards; that employees of small businesses employed pursuant to federal awards have had redundancy entitlements voided; and that redundancy benefits will be lost to employees under notional agreements preserving a State award (NAPSAs).[17] The AMWU also maintained that redundancy benefits cannot be protected while employers retain the right to 'manufacture' 'arbitrary' reasons for terminating employment under the 'operational reasons' justification provided in the Workplace Relations Act.[18]

Meal breaks

2.21 The Ai Group argued that the provisions regarding enforcing meal breaks were restrictive and many employees support flexibility in these arrangements, such as to allow them to finish work early.[19] The ACTU supported the provision on meal

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14 Australian Chamber of Commerce and Industry, *Submission 6*, p. 36.

15 Australian Council of Trade Unions, *Submission* 4, p. 21.

16 Australian Manufacturing Workers' Union, *Submission 7*, p. 4.

17 Australian Council of Trade Unions, *Submission* 4, pp. 19-20; Australian Manufacturing Workers' Union, *Submission 7*, p. 5; Professor Andrew Stewart, *Submission 11*, p. 2.

18 Australian Manufacturing Workers' Union, *Submission 7*, p. 5.

19 Australian Industry Group, *Submission* 10, p. 21.

breaks provided it was amended to ensure employees could negotiate arrangements that left them better off overall.[20]

2.22 The AMWU brought the committee's attention to technical ambiguities in the text of the provision regarding exactly what an agreement would not be permitted to exclude with respect to meal-breaks. It also argued that the provision did not sufficiently amend the Workplace Relations Act to prevent the requirement for a meal-break being excluded from workplace agreements. The AMWU also raised concerns about the dispute resolution process. Doubt was expressed about whether the Australian Industrial Relations Commission had the power to resolve matters. The AMWU also pointed out that legal proceedings would be costly.[21]

Conclusion

2.23 The committee majority considers that provisions to restore and protect entitlements proposed under the bill would remove important reforms related to increasing the flexibility of workplace relations. There is substantial scope in the existing legislation for these conditions to be a part of workplace agreements if they are appropriate to the workplace and suitable for both employers and employees. But employers and employees should retain the right to trade the entitlements prescribed by the bill off against a higher base salary or other improved working conditions. The Government has recently introduced legislation aimed at providing additional assurance that these conditions cannot be traded away without fair compensation.

2.24 The committee is also opposed to penalty rates and the other mandated conditions prescribed by the bill being required to be included in agreements. They were deliberately excluded from the minimum standards introduced under the Government's 2005 reforms because this would have limited flexibility. Their standardisation could adversely affect productivity and limit jobs growth.

2.25 The bill would also impose an unnecessarily high administrative burden and additional costs to employers that would translate into problems in agreement formulation. When the conditions to be imposed under the bill are not appropriate for a particular workplace environment, they provide barriers to people entering the job market and can impede business profitability.

20 Australian Council of Trade Unions, *Submission* 4, p. 21.

21 Australian Manufacturing Workers' Union, *Submission 7*, p. 3.

Recommendation 1

2.26 The committee recommends that the bill not be passed.

Senator Judith Troeth

Chairman