

Chapter 3

Opposition Senators' Report

The family work balance

3.1 In proposing the bill, Senator Fielding has taken up concerns long held by the Opposition about the adverse effects of Work Choices on family-work balance. The Opposition shares the concern expressed in various submissions made to the inquiry that changes to workplace relations have made many employees more vulnerable, especially those less capable of negotiating their employment conditions. Opposition members of the committee have long advocated an entitlement to public holiday leave, meal breaks, penalty rates, overtime, redundancy pay and a clear definition of ordinary hours of work. These should be considered rights and protected under law, advocated by the bill. If they are to be negotiated away, the compensation should be reflected in pay rates and other forms of entitlement which are at least equal to the value of what has been sacrificed. While this bill seeks to restore some of the conditions stripped away by the Government's policies, it falls well short of the breadth necessary to achieve its aim. The Workplace Relations Act cannot be made fair by any kind of 'tinkering' process, such as this bill represents. It requires comprehensive demolition.

3.2 Opposition senators recognise that the traditional working life pattern of working only on weekdays and between 8 am and 6 pm is past. Many modern day workers find it more difficult to find time with family and friends. The contemporary realities of modern life cannot be resisted, but nor can their effects on the workforce be ignored. It is the view of Opposition senators that individuals required to work unsocial hours should be entitled to adequate compensation for this inconvenience and confident of such compensation over the long-term. This bill makes the right gestures, but much more than that will be required to effect any significant remedy.

The adverse effects of Work Choices

3.3 Research into the effects of Work Choices has highlighted its adverse effects on the family-work balance. The Government was warned of this likely eventuality during the 2005 inquiry into the legislation. At that inquiry, the committee heard from Families Australia that 89 per cent of respondents surveyed indicated their relationships were in trouble because they could not find a suitable work-life balance. It was also informed that these workers experienced increased stress, anxiety, depression, poor physical health and felt isolated from their social networks.¹

3.4 Despite the Government's boasts of the benefits of 'flexible' working conditions under Work Choices, workers have become increasingly vulnerable and disadvantaged in workplace agreements. During the inquiry, the committee heard

1 Families Australia, *Submission 60 to the 2005 Work Choices Inquiry*, pp 2-3.

numerous accounts of employees having conditions stripped from workplace agreements without any compensation, and being forced to work unsocial or excessive hours. The repeal of penalty rates and other entitlements has removed disincentives for employers to require employees to work unsocial hours. Opposition members of the committee also note a recent report by Relationships Forum, which indicated that more than two-thirds of Australians considered too many workers were being required to work excessive hours, with two-thirds of those indicating these work requirements were having an adverse effect on family and personal lives.²

3.5 The Government's attack on penalty rates and other entitlements under Work Choices has been premised on a theory that such conditions are an impediment on flexibility and employment growth. But it has never provided any research to support this theory. In contrast, penalty rates have always functioned as a curb on employees being forced to work excessive and unsocial hours and as an inducement for businesses to employ more staff.

Effects of the provisions of the bill

3.6 Opposition members of the committee support the principles in the provisions to restore public holiday rights, penalty rights and meal breaks. However, we concur with the views expressed during the inquiry that the provisions of the bill are unlikely to meet their stated objectives. Despite some of the claims made during the inquiry, many employees have little capacity to negotiate working on public holidays or unsocial hours. It supports the submissions of the ACTU, the AMWU and the CPSU that the provisions could have been strengthened further to restore additional rights to workers. Opposition senators also highlight the need to ensure the provisions are drafted to ensure sufficient flexibility to allow workers to negotiate even more improved conditions. As was highlighted in several submissions, the fundamental problem with the bill is the existing Workplace Relations legislation that permits 'reasonable additional hours' to be averaged over 12 months, and the right for employers to terminate employment for nebulous 'operational reasons' and various provisions that permit the exclusion of the provisions of the bill from workplace agreements.

Conclusion

3.7 Opposition senators reject the assertions of the majority committee report that amendments proposed under the bill are unnecessary and contrary to the flexibility necessary to allow workers to balance family and work responsibilities. The provisions would impose additional administrative burdens on parties to an agreement, but this is necessary to restore balance to the Coalition's unfair workplace

2 Relationships Forum Australia, *An Unexpected Tragedy: Evidence for the connection between working hours and family breakdown in Australia*, March 2007, p. 34; These findings were also consistent with an earlier study by Barbara Pocock and Sara Charlesworth, "Work and Family beyond 'WorkChoices': Establishing the Partnership", 17 May 2006, Presentation to the Roundtable *Work, Family and Industrial Relations: Making It Work*, p. 7.

relations system in the absence of more radical reform. The Government itself has acknowledged problems with its Work Choices legislation by introducing amendments, although they do not go far enough or provide any kind of genuine safety net.

3.8 Opposition members of the committee support the principles underlying this bill and applaud Senator Fielding for the initiative. However, the bill does not go far enough to restore improvements to the family work balance for workers. In many respects this cannot be achieved by the existing bill, due to the various provisions retained in the Workplace Relations Act that would not allow the amendments to operate. Opposition senators also have doubts about the drafting of some of the provisions that could potentially have the unintended effect of leaving employees worse off. In the view of the Opposition, the only real solution to restoring the family work balance is to completely overhaul the existing workplace relations system.

Recommendation 1

3.9 Opposition members of the committee recommend that the bill be withdrawn by the sponsor so that it may be reviewed and amended to take account of the suggestions made during the inquiry. In particular, it recommends consideration of the suggestions designed to ensure the provisions do not unintentionally leave employees worse off and address the broader nullifying provisions of the *Workplace Relations Act*.

Senator Gavin Marshall
Deputy Chair

