Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the provisions of the Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 and the Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007

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INTRODUCTION

1. The ACTU welcomes the opportunity to contribute to the Committee's consideration of the Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 and the Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007. In our view, in the absence of significant amendment, neither Bill should be supported, as neither Bill will achieve its stated objectives. The Safety Net Bill will not guarantee a strong safety net for working families, and the Family Work Balance Bill does not restore family time.

2. More generally, neither Bill will ensure that legislation that governs Australian workplaces promotes fundamental rights at work, nor ensure decent minimum standards for working people. In our view both Bills tinker at the edge of a scheme for workplace regulation that is fundamentally flawed.

3. With that general comment in mind, the ACTU offers the following comments on the detail of each Bill.

THE WORKPLACE RELATIONS AMENDMENT (A STRONGER SAFETY NET) BILL 2007

THE FAIRNESS TEST

4. The ACTU has always supported a requirement that agreements be subject to robust and transparent scrutiny to ensure that they do not undermine the safety net. This Bill does not do that.

    - The Bill does not protect employees from agreements that undermine the safety net. Employees will remain at risk of being disadvantaged by unfair AWAs or collective agreements The Bill protects only some elements of the remaining award safety net. The Bill protects only

certain classes of employees from disadvantage in agreement – making.

- The application of the test is flawed. The Workplace Authority Director ("the Director") exercises a considerable discretion which is neither transparent nor reviewable. There is significant room for the limited protection offered by the "fairness" test to be avoided by employers.

- The Bill would create an uneven playing field upon which agreement-making takes place. This would provide competitive advantage for those employers which moved to reduce wages and conditions in the period between 27 March 2006 and 7 May 2007.

THE SCOPE OF THE TEST

Excluded agreements made before 7 May 2007

5. The proposed fairness test would apply to AWAs and collective agreements lodged from 7 May 2007 (s.346E(1)(a) and s.346E(2)(a)). Agreements covering an estimated 961,000 workers, including an estimated 342,000 employees on AWAs,[1] lodged between March 27 2006 and 7 May 2007, will continue to lawfully exclude protected award matters without providing any monetary or other compensation.

6. These AWAs and collective agreements may not expire until May 2011. Employees covered by these AWAs and collective agreements will not get the benefit of the test for as long as they remain covered by the AWAs and collective agreements. This is not only unfair for these employees, but

[1] 922,976 employees covered by agreements made to March 2007, plus an estimated 38,000 covered by agreements made in the first 5 weeks of the 2nd quarter of 2007. Includes 306,000 AWAs made to March 2007, plus an estimated 36,000 made in the first 5 weeks of the 2nd quarter of 2007 www.oea.gov.au/graphics.asp?showdoc=/news/researchStatistics.asp.

gives those employers who were early movers in adopting unfair instruments an ongoing competitive advantage for up to five years.

The income exclusion

7. Proposed s.346E(c) would exclude an estimated 1.14 million employees, or 13 per cent of the total number of employees, who earn more than $1400 per week from the application of the "fairness" test[2] if they sign an AWA. Proposed s.346G provides that the $75,000 threshold is applied pro rata to part time employees. This means that AWAs covering many part time employees earning well short of $75,000 will not be subject to the test. The $75,000 cap for the fairness test includes the casual loading, and so would exclude a position which attracts an annual salary of $62,501 FTE if that position were performed on a casual basis.

The requirement that the employee be usually covered by an award

8. Proposed s.246E(1)(b)(i) will require the Director to determine whether an employee is employed in an industry or occupation that is "usually covered by an award". On its face this will exclude at least 1.16 million employees from the test.[3]

9. The Bill would also exclude many employees whose employment was, before 27 March 2006, regulated or underpinned by a State award but who have become covered by an AWA or collective workplace agreement in the 18 months to May 2007. The effect of this provision is that the fairness test would not apply to their next agreements.

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[2] ABS 6310 August 2006. This figure includes total earnings and would overstate the exclusion. Nonetheless, a significant proportion of employees will be excluded from the test by the income threshold.

[3] There is no recent publicly available data that identifies the number of award free employees. A government report in 2000 estimated that under the pre-reform system, 13.3 per cent of non-farm employees were award free. At that time the number of award free employees in the federal system was estimated to be 956,000 employees. There is nothing that has occurred since that estimate that would suggest it overstates the extent to which employees remain award free[3]. If anything, the proportion will have increased as new businesses established since March 2006 have been established as award-free.

10. This is because the reference to being “usually covered by an award” refers to federal awards (see s.4(1)) and so excludes employees in industries and occupations such as retail, education, nursing and local government that have been traditionally regulated at the State level.

11. The Bill deals with this by proposing to amend Schedule 8. However, proposed clause 52AAA of Schedule 8 ensures only that the fairness test applies where, immediately before the workplace agreement is made, the employee was covered by a NAPSA. Employees who have become covered by a workplace agreement since 27 March 2006 do not come within that amendment, and will therefore fall between the two stools for subsequent agreements.

12. The Explanatory Memorandum suggests (at 242) that the fairness test might still apply if a federal award were designated for the purpose of the fairness test. However, this cannot occur where the employees are in an industry that is not “usually” covered by a federal award, because the Director cannot designate an award unless first satisfied that the employee is in the class “usually” covered by a federal award (s.346K(2)(i)).

13. The ACTU recommends that the Bill be amended to ensure that all employees are entitled to the benefit of the fairness test, regardless of their income or the instrument that currently governs their employment.

THE SUBJECT MATTER OF THE TEST

14. Proposed s.346E(1)(d) provides that the test applies only if the agreement modifies or excludes "protected award conditions" as defined in s.354(4). Consequently, the test does not protect employees from being disadvantaged in agreement-making in respect of other non-protected award conditions.

15. Preserved award provisions such as paid maternity leave or long service leave after 10 years could be removed from agreements with no offsetting compensation. Non-monetary award benefits such as notice of roster change are not included in the test.

16. Retrenchment pay, long acknowledged as an essential element of the safety net, is not protected. The Government has previously asserted that the WRA protects employees' entitlements to retrenchment pay. In November 2006, when it announced a series of amendments to the WRA, including s.399A, the Government press statements claimed the amendment would "protect employee redundancy pay entitlements".[4] Patently, the legislation does not protect retrenchment pay because there is no guarantee that retrenchment pay be included in an agreement, and once an agreement is made, award entitlements do not apply and are not resurrected by the termination of the agreement.

17. The ACTU recommends that the test be amended to ensure that all award terms and conditions are considered in determining whether an agreement provides adequate compensation and whether an employee is better off overall under an agreement.

[4] Press Release Minister Andrews 13 November, 2006.

THE WORKPLACE AUTHORITY'S DISCRETION

18. Proposed s346M established the fairness test. This section is flawed in that it does set an objective and measurable benchmark for fairness. Examined properly, the section says an AWA or collective agreement is fair if the Director determines it is fair. Although proposed s.346M sets out the factors that the Director may take into account in determining whether an agreement meets the test, there is no requirement that an AWA or collective agreement provide full compensation for lost conditions, or that the employee's net position be superior than it would have been had they continued to be covered by the award conditions.

19. The decision of the Director is neither transparent, nor reviewable. Parties to agreements or proposed agreements that are determined to pass the test will not be able to ascertain what components of the agreement constituted fair compensation for the exclusion of modification of the protected award conditions.

20. The ACTU recommends that the Bill be amended to require full compensation in lieu of excluded or modified award conditions to ensure a net overall benefit under agreements, that the decision be made in a transparent fashion, and that it be reviewable.

Non-monetary compensation

21. Proposed s347M(7) of the Bill provides a definition of the non-monetary compensation to which the Director can have regard in determining if an AWA or collective agreement passes the test.

22. The ACTU recognises that salary packaging is a feature of employee remuneration in many occupations, and that it can provide benefits to both

employees and employers. However, “payment in kind” can be open to abuse. For example, the ACTU is aware of an instance where, prior to the introduction of Work Choices, the Employment Advocate accepted an employer undertaking to provide one free video hire per week as sufficient additional compensation to satisfy the no disadvantage test. Such “compensation” should not be acceptable in lieu of penalty rates or overtime pay.

23. It is also unclear if the value of non-monetary compensation will be assessed on a post tax basis. The Fringe Benefits Tax implications of non-monetary reward vary from employer to employer. The post tax, post Child Care Benefit value of child care assistance will vary depending on the family income, the number of children and other factors.

24. Provision should also be made to ensure that calculation of the employee’s entitlement under the Superannuation Guarantee is based on the monetary value of the total remuneration, including any non-monetary benefits provided in lieu of penalty rates and other monetary entitlements.

25. If non-monetary compensation is to be included, its value should be regularly assessed to ensure there has not been a significant change in valuation during the life of the agreement.

26. In addition, the benefit to the employee should be regularly confirmed. This is to ensure that changes in an employee’s circumstances have not reduced the value of the non-monetary compensation to the employee. For example, the Explanatory Memorandum suggests that employer-funded childcare could be considered in assessing the value of an agreement. It is unlikely that an employee’s requirements for childcare would remain constant over a period of 5 years.

Personal circumstances

27. Proposed s.346M(3) enables the Director to have regard to the employee's personal circumstances, including the employee's family responsibilities

28. Differential compensation based on an employee's family responsibilities is offensive and discriminatory. Since 1974 the principle of equal pay for work of equal value has underpinned minimum wage fixation, and, since 1994, has been included in the WRA. The ACTU strongly submits that employees should be rewarded on the basis of the value of their work, not their personal circumstances. The ACTU is most concerned that the current Employment Advocate, Mr McIlwain, has been quoted as saying "Without speaking to the employees covered by the AWAs, it is impossible to know the value each places on conditions that provide the flexibility for them to balance their work and family responsibilities."[5] This suggests that the assessment of fair compensation will be judged subjectively, through the eyes of the employee, and not through objective measurement.

29. Shift and weekend penalty rates compensate for the disability associated with working unsocial hours. These hours are equally unsocial for employees with caring responsibilities as those without. Nights and weekends do not become ordinary hours simply because they are the hours that a person is not engaged in primary care-giving and can therefore participate in paid employment.

30. It is completely unacceptable to enshrine in law that an employee would have less or no entitlement to compensation for working outside ordinary time, or a right to meal breaks, simply because that employee's availability to work is restricted or concentrated in the unsocial hours (largely because

[5] Workplace Express, Tuesday 17th April 2007 12:24 pm EST

that is the time when other members of their family can cover the caring load). There is no doubt such a position will have a discriminatory impact.

31. The ACTU submits that s.346M(3) should be deleted.

Exceptional circumstances

32. Proposed s.346M(4) will allow the Director to have regard, in exceptional circumstances and provided it is not contrary to the public interest, to factors such as the industry, location and economic circumstances of the business and the specific employment circumstances or opportunities of the employee.

33. The ACTU opposes this element of the test. It is not correct, as asserted by the Government, that this is consistent with previous legislation. The scope for employers to escape their obligations to comply with the safety net or provide equivalent compensation is significantly wider that under the pre-reform laws.

Employment opportunities

34. The Explanatory Memorandum makes clear that the Director may have regard to the fact that an employee has been long-term unemployed. Presumably, as well as unemployment, other periods out of the labour force including periods associated with disability, illness, parenthood or caring, or being a new entrant straight from school could similarly warrant the application of a modified fairness test.

35. The ACTU is especially opposed to the notion that an employee's employment opportunities could be a factor that might justify the application

of a lower safety net to certain disadvantaged groups, as this undermines the essence of the safety net in providing protection for the disadvantaged.

36. In setting the safety net, both the FPC and the AIRC are required to consider the effect of the new minimum standards on levels of employment. In particular, the FPC takes into account the capacity of the unemployed and low-paid to obtain employment and remain employed when it sets the pay scales from which most award based penalty and overtime rates are now derived.

37. The ACTU has previously argued that the current wage fixing criteria should be amended, and we continue to hold that view. Despite our view on the adequacy of the current system, the minimum wage fixing process, and the process for setting and varying minimum conditions is the appropriate context in which to consider whether the safety net is consistent with high levels of employment. Once set, it should remain the minimum floor of wages and conditions.

38. The ACTU opposes any exemption based on industry or location, on similar grounds. The safety net is set taking into account regional labour markets, and protected award conditions take account of industry-specific issues. If there is a demonstrable need to adjust the safety net to take account of industry-specific factors the more appropriate mechanism is to adjust the relevant award(s).

Economic circumstances of the business

39. Proposed s 346M(4) would also permit the Director to have regard to the economic circumstances of the business.

40. The ACTU acknowledges that there may be a need for exemption, in certain circumstances, where there is a demonstrated incapacity to pay. This has

been a feature of our industrial relations system under the economic incapacity principle. Under this principle, an employer could temporarily be relieved of some of its obligations to comply with the safety net if, on objective and transparent evidence, the employer's business would be genuinely at risk and that a short term partial exemption would save the business, and the employees' jobs.

41. Australian Securities and Investments Commission data indicates that 7737 companies went into some form of external administration during 2006. Productivity Commission research conducted in 2000 estimated 19,000 employees are affected by employer insolvency every year. This estimate does not include the many additional thousands of employees whose employer experiences financial distress falling short of insolvency. It would appear that the Director might be required to consider the economic circumstances of a business reasonably frequently in evaluating AWAs or collective agreements.

42. In such circumstances, the ACTU argues that the onus should be on the employer to prove the economic incapacity, and the affected employees should have the opportunity to challenge the evidence upon which the employer relies. Consistent with current law, financial information about the enterprise concerned might be provided in private (s.839).

43. Further, agreements approved under this process should not be able to run for 5 years, but should be subject to regular review.

THE TIMING OF THE ASSESSMENT

44. The scheme of Bill is to assess AWAs and collective agreements after they have been lodged and begin to operate. No timeframes are established for the assessment to take place.

45. The ACTU submits that a better scheme would require AWAs and collective agreements to satisfy the test before they can operate. This would (subject to other amendments) ensure employees are not employed on AWAs or agreements that strip away award conditions without fair compensation.

46. This would also simplify the legislation. The Bill is complex largely because of the remedial action required when an AWA or agreement fails the test. This includes resurrecting industrial instruments that are otherwise deemed to be incapable of operating. It includes the requirement to back-pay compensation. This complexity could be avoided simply by requiring agreements to pass the test before they become operative.

THE PROCESS FOR EVALUATION OF AGREEMENTS

47. The Bill proposes that the Director must make two decisions: first, whether the agreement is required to be assessed, and second, whether the agreement provides fair compensation. If the agreement is required to be assessed, the Director may be required to designate an award, and will be required to inform him or herself about the work obligations of the employee or employees (s.346M(2)(b)).

48. Each decision will require the provision of information not usually contained within an agreement (some of which may be prohibited content as a matter not pertaining to the employment arrangement).

49. The ACTU has serious concerns regarding the capacity of the WA to perform this task in a timely and consistent manner. Our concern is based upon the experience of our affiliates in the application of s.357(2) of the WRA. Under this subsection the OEA can provide advice to employers (not employees or organisations) as to whether a proposed agreement contains prohibited content.

50. The ACTU is aware that the OEA advises parties that the provision of advice takes around 30 working days or 6 weeks. We are aware of instances of the advice taking as long as 10 weeks.

51. The ACTU is also aware of numerous instances where identical clauses have been the subject of conflicting advice. We are also aware of some patently absurd interpretation of the legislation offered to employers and unions. (see Attachment A). In light of this the ACTU has serious concerns about the quality of decision-making within the OEA.

52. In our view the AIRC would be a more appropriate body to undertake the assessment of agreements. The AIRC, as the body responsible for making awards, is better placed than the Director to consider the scope of awards, and the application of the "protected award conditions" within that industry or sector. Further, public confidence in the test will be undermined by the fact that the Director is subject to the direction of the Minister in the performance of his or her functions (proposed s.150C).

OBTAINING INFORMATION

53. The ACTU is concerned that the WAD may obtain information from either the employer or the employee without verification. This is particularly important where the Director may require additional information regarding

the work obligations of the employee in order to ascertain likely rosters, the predicted amount of overtime and other relevant matters.

54. The ACTU submits that the Bill be amended to require that employees or/or unions as appropriate are advised of, and have the opportunity to verify or refute all information provided to the WAD in relation to an agreement that covers the employee or would bind the union.

WHAT HAPPENS IF AN AGREEMENT FAILS THE TEST?

55. Proposed s.346Y provides that, where an agreement fails the test an employee will no longer be covered by the defective agreement, but will instead be employed on the instrument that "but for" the defective agreement would cover the employee.

56. The ACTU is concerned that in certain circumstances this may leave the employee in a worse position than under the failed agreement. For example, an employee might be covered by a workplace agreement made between 27 March 2006 and 7 May 2007 that removed all protected award conditions for no additional compensation. If a new agreement was lodged in respect of the employee that provided some, but insufficient compensation, the new agreement would fail to operate by virtue of proposed s.346R or s.346W and the employee would revert, by virtue of proposed s.346Y(2)(a) to the less generous workplace agreement.

57. In this example the employee would have no entitlement to compensation, as there is no shortfall as described in proposed s.346ZD(2).

DISMISSAL

58. Proposed s346ZF would make it unlawful to dismiss an employee if the "sole or dominant" purpose is that an agreement does not pass the test. The onus is on the employer to prove the dismissal was for other reasons.

59. While the intention of the Bill might be to discourage employers from sacking employees once they are made aware of their obligations under the fairness test, the drafting is very loose, and leaves employers plenty of "wriggle" room. Current case law suggests that if there is another immediate reason for the dismissal, then the employer will not have breached the WRA.

60. In Greater Dandenong Council[6] Finkelstein J held:

> *If a council, in the course of competitive tendering, accepts a tender which is lower than others because the tenderer has less onerous obligations under an industrial instrument, the mere acceptance of the tender cannot result in a contravention of s 298K. A construction of the section that produces that result would be unacceptable. That is not to deny, however, that there could be a case where the "real" reason for the acceptance of a tender is a prohibited reason. But, speaking generally, where a council is performing its statutory obligation to enter into contracts for the provision of goods and services in respect of 50 per cent of its total expenditure, and the council carries out that obligation strictly in accordance with the relevant statutory provisions (express and implied), it will not contravene s 298K.*

61. On this reasoning, an employer could dismiss an employee immediately upon learning an agreement fails the test, provided that the ground upon which the employer dismissed the employee was that it did not intend to engage staff on the more generous conditions required by the test. Without significant re-drafting this provision offers employees little protection.

RESTRUCTURING THE OEA AND OWS

[6] *Greater Dandenong City Council v Australian Municipal, Clerical and Services* Union [2001] FCA 349 (4 April 2001)

62. The ACTU opposes proposed s.150C and s.166C which leave the restructured Workplace Ombudsman and Workplace Authority under the direction of the Minister in the performance of their functions. The ACTU recommends that agreements be assessed by the AIRC, and that inspection, investigation and prosecution functions should be genuinely independent of government.

OTHER ISSUES

63. The ACTU calls for an amendment to the welfare to work legislation to ensure that recipients of benefits do not lose their entitlement to payments if they do not accept an agreement that would fail the fairness test.

WORKPLACE RELATIONS (RESTORING FAMILY WORK BALANCE) AMENDMENT BILL 2007

64. The ACTU supports the obvious intention behind the Bill, but has significant reservations about the Bill as drafted.

65. The Bill fails to address the substantial failure of the WRA with respect to employee working hours. This is the inadequacy of the safety net underpinning agreement-making, and the promotion of unequal and imbalanced bargaining through individual agreements. Work-family balance is best addressed by ensuring that:

- working long hours is minimised;

- where long hours are unavoidable, there is proper financial compensation or, at the employee's election, a genuine capacity to work reduced hours of work at a mutually convenient time;

- where unsocial hours are worked (night time, weekends, and public holidays) there is proper financial compensation or, at the employee's election, a genuine capacity to work reduced hours of work at a mutually convenient time;

- hours of work should be predictable; and

- as far as is practical having regard to the needs of the business, employees should have a say over their rosters.

PROPOSED SECTION 10A: RETRENCHMENT PAY

66. The WRA, as amended in March 2006, provides that agreements may be terminated either by the AIRC (for pre-reform agreements) or unilaterally by a party 90 days after the nominal expiry date (for post reform agreements).

67. As originally drafted, the Workplace Relations Amendment (WorkChoices) Bill provided that, following termination of an agreement, employees would be entitled to the minimum entitlements contained in the AFPCS. The Bill was amended in the Senate to provided that, upon termination of an agreement, employees' minimum entitlements would include both the AFPCS and certain "protected award matters" as defined.

68. In December 2006 s.399A was inserted into the WRA.

69. This amendment provided that where an agreement is terminated, the employees that were employed under the terms of that agreement are entitled, in addition to the AFPCS and the protected award matters, to the redundancy entitlements contained in the terminated agreement. This entitlement would apply to redundancies occurring for a period of 12 months

following the termination of the agreement, or a shorter period if a new agreement is reached.

70. The provision only applies where the employer initiates the termination of the agreement and where the termination of the employee is on operational grounds or in the case of employer insolvency.

71. This amendment was generally seen to be a legislative response to the Radio Rentals case in South Australia, where the employer successfully applied to the AIRC to terminate an agreement which contained reasonably generous redundancy entitlements. Following the termination the employees were retrenched and were entitled to much lower award redundancy pay, rather than the agreement entitlement. Similar circumstances emerged at Tristar in NSW.

72. While the enactment of proposed s10A would extend the protection from 12 months to 5 years, it does not achieve the stated object of the Bill. The object of the Bill includes the object of ensuring that workers in Australia are guaranteed the preservation of their redundancy entitlements. The Bill fails to secure this objective for a number of reasons:

- Redundancy entitlements in awards are not protected by the WRA. While retrenchment pay for employers employing more than 15 or more employees remains an allowable award matter in both federal awards and NAPSAs, new businesses are not bound by awards.

- The WRA permits the making of agreements that oust the operation of the award with no compensation for redundancy pay;

- Redundancy entitlements for employees of small business that are employed pursuant to federal awards are void and are not restored by the Bill;

- The Bill does nothing to ensure new or start-up businesses are obliged to pay retrenchment pay. Prior to the enactment of the Work Choices legislation, common rule state awards guaranteed retrenchment pay to employees of constitutional corporations that were governed by state industrial laws.

73. The ACTU also finds s10A curiously placed within the WRA.

PROPOSED S226(1AA) AND 226(4)

Overtime pay

74. An object of the Bill is to ensure workers in Australia are guaranteed overtime pay at one and a half times their ordinary rate when they work more than their maximum ordinary hours of work. It does this in two ways:

(1) by inserting a definition of ordinary hours as work between 6 am and midnight; and

(2) requiring a penalty rate of 150 per cent to be paid on additional hours worked between midnight and 6am, or in excess of the ordinary hours specified in the Act.

75. The reference to "additional" hours between midnight and 6am in proposed s226(4A)(b) is confusing. The ACTU is unsure whether this means that the premium rate would be paid on all hours worked at night, or only on hours that exceed the ordinary hours of work.

76. The requirement to pay the premium on hours in excess of the ordinary hours required or requested to be worked is appropriate. However, the provision will be largely unworkable because the definition of ordinary hours is averaged over 12 months. It is unclear whether, if enacted, this provision would impose record keeping obligations in respect of all employees. In the absence of records of hours worked the overtime provision is unenforceable.

77. The penalty is calculated on the employee's rate of remuneration or any other higher applicable rate. The ACTU is unsure to what this refers.

78. The Bill attempts to prevent parties to a workplace agreement from modifying the provision. The ACTU presumes that the intention is not to prevent parties agreeing to make arrangements that are superior to the proposed new safety net. However, the last sentence of proposed subsection 226(4A) would prevent parties from agreeing to superior arrangements, including for example the common provision for double time for overtime worked on Sundays.

Meal breaks

79. The Bill would repeal s.608 of the WRA, and insert a proposed additional sentence into s.607 which would have the effect of prohibiting parties to a workplace agreement from modifying or excluding the right to a meal break from their agreements.

80. The ACTU supports the proposed amendment, with one reservation. The ACTU supports parties to agreements being free to agree alternative regimes for meal breaks that leave employees better off overall. This appears to be impossible under the proposal.

Public holidays

81. The ACTU supports the intention of the amendment, which is to guarantee that employees that work a public holiday are entitled to both some alterative time off and additional financial compensation.

82. The Bill recognises that employees working on a public holiday should be compensated for doing so. It proposes that employees receive compensation in two forms - compensation in time (an alterative day off) and monetary compensation (a fifty per cent loading).

83. The Bill achieves this in an innovative way, by entitling an employee to alternative time off, with that time off to be paid at time and a half.

84. The Bill purports to ensure the employee's entitlement to time off by including a Note requiring the employer to notify the employee of the agreed alternative day off within 14 days of the relevant public holiday.

85. This protection should be strengthened by providing that the day off should be within a certain period. In addition, the Bill should permit agreements to confer a penalty of 250 percent or more for working a public holiday instead of the day off in lieu, if the parties to an agreement mutually agree.