

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into Workplace Relations Amendment (A Stronger Safety Net) Bill 2007**

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## Introduction

The Finance Sector Union of Australia (FSU) welcomes the opportunity to contribute to the Inquiry into the Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 (the Bill).

The FSU represents 60,000 members employed in the finance sector across Australia and exists for the purposes of providing a collective forum for them in pursuing fairness in their employment and improvements to their working conditions. Clearly, to achieve these ends, the FSU has a real interest in the safety net issue.

The FSU submits that the Bill is window dressing for a scheme of workplace regulation that is essentially defective and will not guarantee decent minimum standards for working people in Australia.

Given the extremely short timeframe for the inquiry and the dubious motivation for the proposed legislation, the FSU has focussed on what we perceive to be some of the major flaws in the Bill.

## The Safety Net Test

The new test is to apply to agreements lodged from Monday 7 May 2007. Agreements lodged between March 27 2006 and 7 May 2007 can continue to lawfully exclude protected award matters without any type of compensation. People earning more than \$75,000 will also not be offered any protection by the Bill.

Regardless of whether there are one hundred or one million people in these two categories it is blatantly unfair and bizarre to have a safety net that applies to some people simply by virtue of an arbitrary date or salary level chosen by the Government.

In 2005 we predicted that:

“This removal of the role of awards in the no disadvantage test removes yet another safeguard from the agreement making process and effectively ensures that several (if not all) employees will be disadvantaged by agreements made under the proposed new legislation. Finance sector employees particularly stand to lose with the removal of this safeguard.”<sup>1</sup>

Post *WorkChoices* the Commonwealth Bank of Australia (CBA) embarked on an aggressive roll-out of AWA's that systematically removed numerous protected award conditions. This type of scenario is exactly what was feared by the FSU when *WorkChoices* was introduced – **Attachment 1** contains a table that sets out how the CBA AWA's achieve this comprehensive emasculation of protected award conditions.

We ask the Committee to consider the following real example of how a new CBA Personal Lender was impacted in March 2007.

- CBA *WorkChoices* AWA: Total Remuneration Package offer: **\$49,000**.
- CBA Award/EBA Base Salary: **\$46,366**.

Increased salary between AWA offer and Award/EBA Base salary = **\$2,634**.

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<sup>1</sup> FSU submission to the Inquiry into the Workplace Relations Amendment (*WorkChoices*) Bill 2005

The AWA specifically excluded 42 clauses of the *Commonwealth Bank of Australia Employees Award* pertaining to ‘protected award conditions’.

The monetary value of the following two excluded protected award conditions can be easily calculated.

1. Annual Leave Loading = \$624
2. Incentive Based Payments = \$2,086

**Total = \$2,710**

These two protected award conditions were not traded off with adequate compensation – this simple calculation shows that this worker is immediately worse off without any consideration of the other protected award conditions.

***No matter how the remaining protected award conditions that are excluded in the CBA WorkChoices AWA are valued the employee can only be worse off.***

None of these CBA employees will be helped by the proposed test. However, we submit that even if the test did apply to these CBA employees it is unclear how it would operate.

By virtue of section 346E(1)(d) the proposed test would only apply if an agreement sought to modify or exclude ‘protected award conditions’ as defined in section 354(4). Consequently, provisions such as paid maternity leave and long service leave could be removed with no compensation. Retrenchment pay, which is a crucial part of the safety net, is also not protected. This is inconsistent with the government’s assertion that the Workplace Relations Act protects employees’ entitlements to retrenchment pay.<sup>2</sup>

**The safety net should apply to all employees regardless of when their terms and conditions were negotiated and regardless of their salary.**

**The safety net test should also be strengthened to ensure that all award terms and conditions are measured in assessing whether the agreement provides sufficient compensation for exclusion of the award.**

The proposed test in s.346M sets out what the Workplace Authority Director may assess when determining if an agreement meets the test. The section does not set a benchmark for fairness by using real, objective and measurable factors. The test for fairness appears to be simply if the Workplace Authority Director determines it to be fair.

In addition the decision of the Workplace Authority Director appears to be neither transparent, nor reviewable by anything less than the High Court. People covered by agreements or proposed agreements that pass the test will not necessarily know what parts of the agreement supposedly represented fair compensation for trading off the protected award conditions.

Based on our preliminary reading of the Bill it is also unclear how the safety net can evolve and be updated given that it is linked to the existence of awards that currently cannot be changed by the AIRC except in very limited circumstances.

**We recommend that the test be amended to require a net overall benefit and that the decision be made in a transparent and reviewable fashion.**

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<sup>2</sup> Press Release Minister Andrews 13 November, 2006.

## Attachment 1:

The CBA post-*WorkChoices* AWAs specifically exclude the following provisions of the *Commonwealth Bank of Australia Employees Award 1999*:

Workplace Relations Act 1996 Section 354 Protected Award Conditions	Award conditions excluded in CBA post- <i>WorkChoices</i> AWAs
(a) Rest Breaks	Breaks (clauses 43-45) Meal breaks (clause 46.4, Schedule B4.6) Tea breaks (Schedule B4.5) Minimum breaks (Schedule B5.5)
(b) Incentive-based payments and bonuses	Performance payments (CBA Award clause 17)
(c) Annual leave loadings	Annual leave loading (CBA Award clause 47.5)
(d) Observance days declared by or under a law of a State or Territory to be observed generally within that State or Territory, or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of employees to payment in respect of those days;	Public Holidays (clause 53)
(e) Days to be substituted for, or a procedure for substituting, days referred to in paragraph (d)	Substitution of Public Holidays (clause 53.2)
(f) Monetary allowances for:	
i. Expenses occurred in the course of employment; or	Meal allowance (clause 33, Schedule A3.1) Car allowance (clause 34, Schedule A3.2) Inter-suburban travel allowance (clause 35, Schedule A3.3) Travel between work and home (clause 38.5) Cardigan allowance (Schedule B3.4) Shoe allowance (Schedule B3.5)
ii. Responsibilities or skills that are not taken into account in rates of pay for employees; or	Skill utilisation loading (clause 25, Schedule A2.1) Higher duty (clause 24) First aid allowance (clause 30, Schedule A2.6) Interpreter allowance (clause 31, Schedule A2.7) On Call allowance (clause 29, Schedule A2.5) Telephone allowance – Use of home telephone (clause 36.2) Telephone allowance – On call (clause 36.1, Schedule A2.10)
iii. Disabilities associated with performance of particular tasks for work in particular conditions or locations	Relieving allowance (clause 27, Schedule A2.3) Field staff allowance (clause 28, Schedule A2.4) District allowance (clause 32, Schedule A2.8) Travelling expenses (clause 37.1) Removal expenses (clause 37.2) Temporary accommodation expenses (clause

	<p>37.3)  Transfer expenses (clauses 15.7 &amp; 37.4, A3.4)  Assistance for employees transferred long distances (clause 37.6)  Travel on Bank Business (clause 38)  Travel allowance (clause 38.1, Schedule A3.5)  Domestic travel (clause 38.2)  Home contact (clause 38.3)  Premises renovation allowance (clause 39, Schedule A3.6)  Transport arrangements (clause 46.9)</p> <p>Allowances (Schedule B2) (ancillary or machinery provision)</p>
<b>(g) Loadings for working overtime or for shift work</b>	<p>Payment for working overtime (clause 42.4, Schedule A2.9)  Overtime (clause 46.6, Schedule B5.5)  Weekend and public holidays (clause 46.8, Schedule B5.6)  Shift allowances (clause 46.2, Schedule B5.3)  Meal allowances (clause 46.5)  Payment for working overtime (CBA Award clause 42.3)  Separate attendance (clause 42.5, Schedule B4.8)</p>
<b>(h) penalty rates</b>	<b>As above</b>
<b>(i) Outworker conditions</b>	<b>Not applicable</b>
<b>(j) Any other matters specified in the regulations</b>	