

The Hon Julia Gillard MP

18 March, 2009

Speech

Second Reading Speech - Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009

The Australian Government is determined to deliver its election promises in *Forward with Fairness* in full and on time.

The Fair Work Bill 2008, which the Parliament is now considering, will introduce a workplace relations system with fairer laws which balance the needs of employees and employers.

The new laws will deliver a balanced, modern workplace relations system for Australia that will allow Australia to become more competitive and prosperous without taking away workplace rights and guaranteed minimum standards.

The Fair Work Bill will provide employees with a fair safety net of employment conditions that cannot be stripped away. It will provide a right to challenge a harsh, unjust or unfair dismissal for *all* employees, not just those in the very largest of businesses.

The Australian Government will work as long as it takes and as hard as is necessary to deliver the Fair Work Bill through the Parliament.

I reiterate my call to Liberal Senators and to the Leader of the Opposition to respect the will of the Australian people and pass the Bill.

I know of the strong commitment of the Liberal Party to workplace relations extremism and to Work Choices.

But the Australian people have spoken and the Liberal Party must listen.

Commencement of the new system

In *Forward with Fairness*, the Australian Government committed to the new workplace relations system being fully operational by 1 January 2010.

The Fair Work Bill is intended to commence on 1 July 2009, following its passage through the Parliament. Consistent with our election policy commitments the new safety net of the ten National Employment Standards and modern awards will commence on 1 January 2010.

Transitional and consequential provisions are provided in this Bill to operate with the Fair Work Bill once it is enacted by the Parliament. The transitional and consequential arrangements will take the form of two separate Bills that will transition employees and employers into the new workplace relations system simply and fairly.

The first Bill, which I am introducing here today, is the Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009.

This Bill repeals the current Workplace Relations Act 1996 other than Schedule 1 (which deals with registered organisations) and Schedule 10 (which deals with transitional registered associations). With the abolition of the remainder of that Act, we will see the final removal of the unfair Work Choices system that the Australian electorate rejected at the last election.

The Bill includes sensible and practical transitional provisions for movement into the new system, and covers issues including:

preservation of existing workplace instruments and setting out how these interact with the new system, including the new National Employment Standards and modern awards;
arrangements to enabling bargaining under the new system to commence in an orderly way;
arrangements for the transfer of assets, functions and proceedings from Workplace Relations Act institutions to Fair Work Australia and the Fair Work Ombudsman; and
consequential amendments to other Commonwealth legislation considered essential to the operation of the Fair Work Bill (being the creation of the Fair Work Divisions of the Federal Court of Australia and the Federal Magistrates Court of Australia).

A further Bill will deal with the consequential amendments to all other Commonwealth legislation, which is likely to involve amendments to over 70 Commonwealth Acts.

That further Bill will also deal with amendments consequential on any State referrals of power that have been completed by that time. The intention is to introduce the second Bill into this House in the week commencing 25 May 2009.

This timeframe will provide the Parliament with time to examine both Bills including through a Senate inquiry process. It is anticipated that both Bills could be dealt with together in the Senate.

The arrangements set out in these two Bills will phase in the new workplace relations system and ensure that the transition to the new system occurs in a seamless way.

CONSULTATION

The Government undertook extensive consultation in the course of developing the substantial reforms set out in the Fair Work Bill and has continued this approach in respect of the transitional arrangements set out in this Bill.

There was targeted consultation in respect of certain provisions, including extensive consultation over the form of the new provisions for the making of union representation orders.

The Bill was considered in draft form by representatives of employee and employer organisations and also by officials from the State and Territory governments at a two day meeting held on 26-27 February 2009. Again, the feedback provided by this group was invaluable in getting the legislation right.

The key elements of the legislation are as follows.

Repeal of the Workplace Relations Act

Firstly, the Bill will repeal the current Workplace Relations Act other than Schedule 1 (which deals with registered organisations) and Schedule 10 (which deals with transitionally registered associations).

The Workplace Relations Act will then be renamed the Fair Work (Registered Organisations) Act 2009 to more appropriately reflect its content.

Application of NES to all national system employees including those covered by instruments made before the commencement of the new system

Secondly, the Bill provides for the application of the National Employment Standards and minimum wages to all national system employees from 1 January 2010, including those covered by instruments made before the commencement of the new system.

The National Employment Standards include important entitlements to:

- personal/carer's leave and community service leave;
- for parents of young or disabled children - the right to request flexible working arrangements;
- notice of termination and, for businesses with 15 or more employees, redundancy pay; and

public holidays and long service leave.

In addition, the Bill will provide that employees must receive at least the minimum rate of pay contained in a modern award from 1 January 2010.

This means that from 1 January 2010, Australian employees who were required to make 'take it or leave it' sub-standard Australian Workplace Agreements under Work Choices will receive the benefit of the ten minimum National Employment Standards where their current agreement contains inferior conditions and minimum 'safety net' wages.

Fair Work Australia will have scope to make orders to 'phase in' minimum wages in exceptional circumstances such as where it is satisfied that such measures are necessary to ensure the ongoing viability of a business.

No reduction in take home pay

Thirdly, as I foreshadowed in my second reading speech to the Fair Work Bill, the Bill includes provisions to ensure that employees' take home pay is not reduced as a result of any transition to a modern award from 1 January 2010.

In these circumstances, Fair Work Australia will be able to make a take-home pay order that remedies a reduction in an employee's take home pay that has resulted from award modernisation. An order can be made for an individual employee or for a group and can be made on the application of an organisation representing those employees.

However, Fair Work Australia must not make a take-home pay order where it is satisfied the employee has been adequately compensated for the reduction in other ways.

A take-home pay order will not form part of any future 'better off overall' test for agreement making against the modern award. However, an employee will not lose the benefit of the take-home pay order if an enterprise agreement starts to apply to the employee.

Treatment of existing instruments in the new system

Fourthly, the Bill includes rules in relation to the treatment of existing instruments in the new system, including:

Agreements will continue to operate past their nominal expiry date until terminated in accordance with the current rules for termination or until replaced by a new enterprise agreement made under the new bargaining framework. This means for example that an Australian Workplace Agreement will continue until terminated by agreement of the parties or, after its nominal expiry date, by the giving of 90 days' notice by either party.

- Rules providing for the cessation of award-based instruments (such as un-modernised awards, notional agreements preserving State awards and pay scales) once they are replaced by modern awards.

- A process is provided to allow parties to enterprise awards and notional agreements preserving State awards derived from State enterprise awards to apply to Fair Work Australia to have their enterprise award modernised and integrated into the modern award system. The arrangements include awards that apply to a number of franchisees of the same franchisor to be included within this framework.

- Rules provide for the continuation of Australian Fair Pay and Conditions Standard, including pay scales and minimum wage guarantees and other minimum entitlements (e.g. notice of termination and public holidays), until the National Employment Standards and modern awards commence on 1 January 2010.

Bargaining and agreement-making

Fifthly, the Bill includes transitional bargaining and agreement-making rules. These include provisions with the following effect:

Employees on individual statutory agreements will be able to agree with their employer to enter into a conditional termination agreement to enable them to participate in collective bargaining processes, including voting on a new agreement. If a conditional termination agreement is entered and a new enterprise agreement is approved, then their current individual agreement would automatically terminate.

The new bargaining framework under the Fair Work Bill (including the good faith bargaining requirements) will operate from commencement of the new system. Fair Work Australia will be able to take account of the history of bargaining between the bargaining participants when exercising its functions and discretion under these rules.

Until the National Employment Standards and modern awards are operational on 1 January 2010, the testing of new enterprise agreements against the no-disadvantage test will be undertaken using an appropriate reference instrument (for example, an un-modernised award).

Institutional framework

The Bill also sets out provisions relating to the transition to the new institutional framework.

The Bill abolishes the Workplace Ombudsman from commencement (with these functions to be taken over by the Fair Work Ombudsman). It provides for the continued operation of the Australian Fair Pay Commission, the Workplace Authority, the Australian Industrial Relations Commission and the Australian Industrial Registry for a limited time to finalise existing matters, such as finalising the award modernisation process and extant minimum wage determination processes.

The Bill includes provisions to appoint all existing full-time Australian Industrial Relations Commission members to Fair Work Australia on the same terms and conditions while retaining their current appointments as members of the Commission for a transitional period.

The Bill also amends the *Federal Court Act 1976* and *Federal Magistrates Court 1999* to create the Fair Work Divisions of the Federal Court of Australia and the Federal Magistrates Court of Australia.

I note that the Government is considering the recommendations of a Review conducted in 2008 into the delivery by federal courts of family law services and subsequent consultation on the recommendations. It will make a decision in due course on whether changes are necessary to the structure of federal courts. This will not affect the way in which the Fair Work Divisions will operate.

Compliance

The Bill sets out important transitional compliance provisions.

The Bill provides that existing investigations and compliance proceedings by the Workplace Ombudsman will be taken over by the Fair Work Ombudsman and that Fair Work Inspectors will be able to exercise new compliance powers in relation to breaches that occur before or after 1 July 2009, including compliance notices.

However, inspectors will not be able to issue a compliance notice in relation to a breach of the Workplace Relations Act that occurred prior to 1 July 2009 but will be able to take currently available means of enforcement action.

The Bill applies the new compliance framework to most contraventions that occur after commencement such as contraventions of transitional instruments or provisions of the Workplace Relations Act that have been saved.

Representation orders

The Bill amends the provisions contained in Schedule 1 of the Workplace Relations Act (which deals with registered organisations) and will empower Fair Work Australia to make representation orders in response to union demarcation disputes. Although contained in the transitional bill, these amendments have ongoing effect in the new system.

The Bill provides a process to enable Fair Work Australia to make representation orders dealing with union demarcation issues in a wider range of circumstances than at present, including where this is necessary to preserve demarcations derived from state or federal award coverage.

State-registered organisations

The Bill includes rules to enable state-registered organisations to participate in the new federal workplace relations system.

These provisions would:

- extend the existing transitional registration provisions in Schedule 10 to the Workplace Relations Act for five years; and
- allow state registered associations that meet specified criteria to be recognised in the federal system, while retaining state registration.

TRANSITIONAL ARRANGEMENTS IN MODERN AWARDS

I take this opportunity to explain the elements of the transitional arrangements that relate to modern awards, and which are the second part of the orderly and fair transition to the new Fair Work system.

Modern award transition arrangements

The *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* was passed by the Parliament with the support of the Opposition and commenced on 20 March 2008. This Act allowed the Australian Industrial Relations Commission to commence the important national reform of award modernisation.

In accordance with that Act, I issued my award modernisation request to the Australian Industrial Commission on 2 April 2008, with a revised request on 16 June 2008.

The Act and my award modernisation request together allow for the Commission, after consulting with representatives of employers and employees, to publish new modern awards. Modern awards will reduce the number and complexity of existing awards and will be easy to find, read and apply employment conditions.

Importantly, the Act allows for any differences between current state award conditions and the new federal standard to be phased in over a full five year period. This would mean, for example, that the Commission could make a modern award that sets a national modern award entitlement to a penalty rate for Sunday work at 150 per cent of the base rate. If however, an existing relevant rate in a State award for the same type of work was higher than this new rate (say, two hundred per cent) or lower (say, 125 per cent) the transition provisions enable the Commission to establish phasing in arrangements that would gradually, over a full five year period, bring such outlying state conditions into line with the new national standard.

Such phasing in arrangements will ensure that employers are provided with a lengthy adjustment period to adapt and plan for any such new standard.

Further, the Bill provides for Fair Work Australia to conduct a bedding-down review of modern awards after two years of their operation (that is, from 1 January 2012), ahead of the regular four-yearly review cycle. This will allow any necessary refinements to modern awards to be

made to ensure they are meeting the modern award objectives and are operating effectively without anomalies or technical problems.

This transitional review will complement the four-yearly reviews of modern awards set out in the substantive Fair Work legislation and will allow any operational difficulties to be identified and remedied swiftly.

Award modernisation is remains a critical national reform, regardless of the stage in the economic cycle. A modern Australian economy simply cannot continue to support thousands of overlapping and outmoded industrial instruments. Award modernisation is a reform that has evaded previous Governments and is an important reform this Government intends to deliver.

CONCLUSION

The legislation that I am introducing today sets out essential transitional and consequential changes which will ensure an orderly and fair transition to the new workplace relations system, while providing certainty in employment arrangements.

This Bill will operate with the Fair Work Bill to finally see end of the unfair Work Choices laws that the Australian electorate so resoundingly rejected at the last election.

Instead, Australia will have a modern workplace relations system with guaranteed workplace rights and guaranteed minimum standards.

I commend this Bill.