



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**

**FAIR WORK BILL 2008**

**Second Reading**

**SPEECH**

**Tuesday, 10 March 2009**

BY AUTHORITY OF THE SENATE

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## SPEECH

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**Senator POLLEY** (Tasmania) (3.50 pm)—In continuing my remarks on the Fair Work Bill 2008, I will outline the 10 basic standards that will be included to protect Australian workers. First is the right to work a maximum ordinary week of 38 hours for full-time employees, with appropriate remuneration for overtime. Second is the right to observe all prescribed public holidays and to refuse on reasonable grounds a request to work on these days. Third is the right to request flexible work arrangements for workers with caring responsibilities for children not yet in school, allowing our nation to balance the important demands of family with the needs of paid employment, rather than treating an employee's family responsibilities as a secondary or cumbersome consideration.

Fourth is the right to access up to 24 months of unpaid parental leave upon the birth or adoption of a child, thus allowing families the critical time needed to care for our nation's children without having to sacrifice job security in the process. Fifth is the right to access leave in times of need by uncapping the paid carers leave limit of 10 days, by extending compassionate leave to casual employees, by simplifying and consolidating the rules for leave-taking and by enabling some workers to be paid out for some personal leave whilst always retaining a reasonable balance for future needs.

Sixth is the right to access four weeks a year annual leave for each full-time employee, with the capacity to cash in any part of this leave as long as four weeks leave remains in balance. Seventh is the right to be of service to our community by taking unpaid leave to participate in eligible volunteer work. Eighth is the right to accrue long service leave under nationally consistent guidelines. Ninth is the right to receive written notice and reasonable redundancy provisions upon termination of employment for employees outside of small business. And, finally, 10th is the right to receive from your employer information about your entitlements under the Fair Work Bill through an information sheet that will be a requirement for all new employees.

These standards lay the foundation for security for both employees and employers alike and allow our nation to move forward with certainty—no longer the fear, no longer the imbalance, no longer the powerlessness. These standards ensure that Australian

workers can build lives, purchase homes, raise families and enjoy leisure time without the spectre of Work Choices to leave them feeling vulnerable. Vulnerability can only ever feed instability and instability will only ever cause harm to productivity and growth.

The security reintroduced in the Fair Work Bill is further enhanced in an additional safety net: modern awards that build on and complement the National Employment Standards by enshrining an additional 10 areas of employment. The modernisation of the award system will cover wages and classifications, penalty and overtime rates, work arrangements, leave related matters, superannuation, allowances and dispute resolution. The modern awards will ensure that those earning under \$100,000 per annum, indexed annually, are protected, with certainty and clarity around the conditions of their employment, with those earning over \$100,000 per annum being free to negotiate outside the awards whilst retaining important protections. These awards will be kept relevant and fair through four-yearly reviews. This ensures no award is allowed to become outdated, stagnant or irrelevant to its industry, locking employees into a set of conditions that no longer reflect the reality of their employment.

Another major area where the Fair Work Bill shows a striking movement away from the dark days of Work Choices is through the recognition of the importance of freedom of association. The former Howard Liberal government would have had us believe that the union movement was the death of economic growth and prosperity, that unions brainwashed and controlled everyday Australians and worked with the sole purpose of undermining an employer's viability. Far from this fairytale, the reality is that the right to appoint another person to represent you in agreement negotiations, whether it be a union or even just a colleague, is the surest way of representing the needs of employees whilst balancing them with the needs of employers and is by far the best way of gaining a mutually agreeable, workable and sensible enterprise agreement.

Under the Fair Work Bill, employees will always retain the right to be represented in bargaining discussions. They will always retain the right to have a member of the union meet with them in their workplace during non-work hours, which in turn enables employers to run their businesses without undue interference. Employees will retain the right to

take protected industrial action, whilst employers can operate in an environment of certainty knowing that inappropriate industrial action will not be permitted. And, most importantly, employees never need fear recrimination for their decision to either associate with or not associate with a union. This brings the choice back to the individual, where the choice should always have been.

Let us bring our industrial relations system back to a footing of open, productive and genuine bargaining in enterprise agreements. Let us remove the power and the fear and restore the players to the level playing field, to the unbiased rules and the impartial umpiring. With the Fair Work Bill comes such a playing field for bargaining. Gone is any distinction between union and non-union agreements. So long as a clear majority of employees agree to the proposed enterprise agreement, no judgments should be made about how they have chosen to be represented. The only judgment will be whether an agreement maintains all the necessary, fundamental conditions of employment and has been reached in good faith.

Good faith, a simple, common-sense approach to discussions between two parties, has often been sorely missed in our workplaces in recent times. But not for much longer. The Fair Work Bill sets out the requirement to bargain in good faith. This includes requirements on both sides, such as holding meetings at reasonable times so that people are able to attend and contribute; disclosing relevant information; giving genuine consideration to the proposals of each side; providing valid reasons for refusal; and conducting oneself with fairness. One would hope that such requirements would be the natural habits and inclinations of people when involved in any negotiations. However, such is the case that where one party has much to gain and the other has much to lose, good faith must be ensured through legislation.

I would particularly like to note, in my support for the Fair Work Bill, that the new system will reverse one of the most contentious parts of the old Work Choices: the capacity for employers with fewer than 100 staff to terminate employment on the grounds of 'operational reasons' without proper redress. This highly unpopular move sought to destabilise workplaces all over the nation and saw scores of employees either dismissed or sacked and then offered their old jobs back under new, normally less generous conditions. Under the Fair Work Bill, such controversial power is removed and replaced instead with sensible qualifying periods. An employee in a workplace with fewer than 15 staff can make a claim for unfair dismissal after serving 12 months. For employers with more than 15 staff the qualifying period will be six months. These changes reflect the common-sense approach that after six to

12 months an employer will no doubt know if the employee is suitable and if their business will have the capacity to retain its current staff. Its staff, likewise, are rewarded for their loyalty by being offered a sense of job security.

In addition to the inclusion of qualifying periods, the process for making a claim for unfair dismissal will also be streamlined and simplified, allowing claims to be dealt with in a more informal conference style setting whilst still retaining all the elements of natural justice. This measure, as well as many others in the National Employment Standards and modern awards, is particularly important to securing the role of women in the Australian workplace. The right to access flexible work arrangements, parental leave and more accessible carers leave allows women to build and care for their families without having to compromise their job security and career aspirations. Very importantly, unscrupulous employers would no longer be able to use 'operational reasons' as the basis upon which to remove from the workplace women who are starting a family or who have family commitments. Although, fortunately, this is a situation that does not arise frequently, I have to say from personal experience that it still happens in Australian workplaces today. It is still a reality, but it can now be effectively eliminated under the new measures proposed in this bill.

And now for the umpire—the one who ensures that all sides play by the rules and that integrity is upheld for the sake of all players. Under the Fair Work Bill seven government agencies will be amalgamated into one, simplifying the process of maintaining fair agreements in properly functioning workplaces. Fair Work Australia will be a one-stop-shop for Australian workers, handling minimum wage settings, variation of awards, oversight of bargaining and industrial action, approval of agreements and dispute resolution.

In contrast to Work Choices, Fair Work Australia will be able to exercise its powers in relation to dispute resolution at the request of one party, rather than requiring both parties to agree. It will act as a mediator, conciliator and arbitrator where authorised by the act. Its members will be appointed by merit and extensive bipartisan consultation will be conducted prior to appointment. In addition a fair work division of the Federal Court will act as the judicial arm of Fair Work Australia and will handle all disputes that cannot be settled by the Fair Work Australia process. It will be simple and straightforward. Costs for accessing this service will be affordable, keeping it within reach of all Australian workers, and it will operate in a more informal, common-sense manner so that natural justice is achieved for all.

A Fair Work ombudsman will be engaged as a related but wholly independent statutory agency.

Its focus will be on education, investigation and enforcement, ensuring that not only do workplaces understand the new system but they are able to comply easily and fully with its requirements. Such sensibility in the handling of industrial relations through simplified, streamlined, low-cost and integrated approaches to maintaining cohesive workplace relations will set this legislation apart from its predecessor and restore the Australian industrial relations systems to a position of fairness, honesty and integrity but with improved checks and balances.

I extend my wholehearted support for the Fair Work Bill as the change so warmly needed in the Australian workplace. Gone is the overused and under-scrutinised notion of operational reasons and the possibility of losing one's job without warning. Gone is the trading away of basic employment conditions for next to nothing. Gone is the focus on individual workplace agreements and the power imbalance that can exist when bargaining individually rather than collectively. Gone are the restrictive, inflexible and regimented powers of the old industrial umpire. 'Gone and good riddance,' I say, and so should the Australian workers. Now will be the time for securing basic employment conditions for Australian workers through standards and modern awards. Now will be the opportunity for a truly fair and balanced system where one side gets no more or less than it deserves. Now we will see the embracing of a truly national system with a simplified and balanced approach to monitoring and dispute resolution.

I acknowledge that there are still concerns by some members of the union movement and sections of the business community that the legislation either does not go far enough or, indeed, goes too far. However, I truly believe that the Fair Work Bill 2008 is a vast improvement on the old regime. No system can exist for long in a situation of imbalance. The pendulum will always move naturally back towards the middle and this bill offers that movement. I commend the bill to the Senate.