

**December 2, 2008**

**FAIR WORK BILL 2008**  
**Second Reading**

**Mr SIDEBOTTOM** (Braddon) (5.59 p.m.)—The member for Cook concluded his bluster, which unfortunately lasted for most of his speech, by referring to the *Sydney Morning Herald* and a none too supportive commentator in that newspaper. I would like to start my speech in a similar vein by analysing the article by Phillip Coorey yesterday in the *Sydney Morning Herald*. I think it is very reflective of those opposite and their real approach to the [Fair Work Bill 2008](#).

Mr Coorey's article in the *Sydney Morning Herald* yesterday had a heading 'Libs look back in anger in a new moderate era'. The gist of his argument was that there is currently a real crisis of identity inside the coalition between the old guard—the Right—and a new guard, the moderates. Essentially, the old guard do not accept the moderates' public proclamation that Work Choices is dead. Mr Coorey named some of those who do not accept that Work Choices is dead. There was the member for Mackellar, who apparently rose in the party room and demanded that she be able to register her internal dissent from the moderates' views. He mentioned the member for Bradfield, who was nodding energetically when the minister pointed out those who still supported Work Choices or refused to repudiate Work Choices in this House some days ago.

My good friend the member for Hume did not just give it the thumbs up; he gave it the double thumbs up and his speech yesterday made it clear that he still endorses many of the elements of Work Choices. What I thought was very interesting about the article in the *Sydney Morning Herald* was its conclusion. There is a reason for this conclusion and it has a lot to do with the legislation before this House currently and most of the legislation that we have introduced since the beginning of this parliamentary year. The article concludes:

... the Coalition ends the year more unpopular than it was at the election.

Why is this a fact? Why is it so? The reason it is so is that those opposite refuse to understand the lessons and the message that were passed on by the Australian electorate in November of 2007. One of those fundamental messages was that not only did they not support Work Choices; they did not support the philosophy behind Work Choices and they wanted fairness in their industrial relations systems, just as they wanted fairness in their negotiations and in negotiations between all levels of government. They wanted fairness in the allocation of funds for the provision of health and education services, fairness in the provision of resources and support for the environments in which they live. Indeed, I think it is best summed up at the end of our national anthem, where it says 'Advance Australia fair'!

If we ever had a citizenship values test, we could really centre it around what fairness means in Australia. That is at the heart of our industrial relations policy, which was put out prior to the 2007 election in our policy document, Forward with Fairness. I think that indeed encapsulated what the Australian people wanted. Fairness as a value also complements another value, which is balance. Reasonableness, balance and fairness strike me as very much the Australian way. We are an interesting people: we arrive at a certain point and we generally know when enough is enough. We generally know when we reach that point where, if you go beyond, it is not fair—and the Australian people have reached that point. I do not think I am being melodramatic when I assess it that way. I believe it is true and indeed it is at the heart of the character of this legislation.

What is the essence of this legislation that so riles the other side and that sends some newspaper commentators in this country into a frenzy? This was no better expressed than in the *Australian* newspaper, which is always quick to divide this community. It sees that the sky is about to fall in, that productivity will go through the floor, that there will be division in the workplace and we will be pitting one against the other, that it is too extreme on one side and not enough on the other. But we on this side think Work Choices was about extremity; this legislation is about reintroducing fairness.

What does this legislation intend at its heart? It seeks to create a safety net of minimum employment conditions that cannot be stripped away. The member for Mackellar yesterday said she believed that the taking away of a safety net in Work Choices was unfair and wrong. I did not hear her publicly or in this place express that sentiment. Was it expressed in the caucus room, because others have said it was wrong? Did they express it? I did not hear that publicly or privately. Secondly, the legislation restores a right to good faith enterprise bargaining. Thirdly, there are protections from unfair dismissal for all employees, the right to be represented in the workplace and protection for low-paid workers. It seems to be sending some commentators into a frenzy that we could seek to protect low-paid workers and to allow them to find a balance between work and family life. All of these major principles were set out in *Forward with Fairness* in 2007.

I would like to raise a few areas of comparison and contrast between what was and what we believe will be. Work Choices allowed agreements to slash the safety net. There is ample evidence of that, a clear demonstration in the many examples raised in this place of how people had the safety net slashed from under them. Even the member for Mackellar acknowledged that. Under this bill agreements must leave every employee better off overall than under the applicable award and cannot remove National Employment Standards or the safety net.

So, for the record, what are the National Employment Standards? There are 10: hours of work; the right to request flexible working arrangements; parental leave; personal, carers and compassionate leave; community service leave; annual leave; long service leave; public holidays; a notice of termination and redundancy pay; and a fair work statement. They are the heart of the safety net envisaged in this legislation. It was taken to the Australian people and overwhelmingly endorsed by them in November 2007. Agreements cannot fall below minimum wages at any time and there will be new effective transfer of business provisions to ensure agreements cannot be evaded. It is common sense, fair and balanced.

Under Work Choices, awards were left to wither on the vine. Under this legislation, awards are a fair and decent safety net of conditions which are industry or occupation based. Under this legislation annual wage adjustments are made by Fair Work Australia based on criteria that balance economic and social factors. Awards are reviewed every four years for changes to community standards and awards are easy to find, read and apply. Work Choices gave no effective right to bargain collectively. Under this legislation an employer must bargain collectively where a majority of employees so desire. So there is now a right to bargain collectively.

Fair Work Australia can decide disputes over the proposed scope of the application of the agreement, and good faith bargaining obligations with enforceable orders apply to all parties. Arbitration is available where parties flout good faith bargaining obligations. Multi-employer bargaining is available, including a specially facilitated stream, particularly for the low paid. Employers and employees can make arrangements over a wider range of matters, including the role of the union. Of course, that is at the heart of most of the objections from the other side. Union representation is seen by those opposite as something anathema to what is right, acceptable or the natural order.

Everyone has a right to be a member of a union. This legislation says that if you want that union, and it is appropriate and legal, that union can represent you. And why not? I do not hear the other side equate membership of business chambers of commerce with anything wrong, as anything unnatural.

Work Choices was all about AWAs. They were the heart of it. Under this legislation there will be no individual statutory agreements—none. The focus is on collective bargaining at the enterprise level and arrangements can be made for genuine individual flexibility—for example, flexibility based around family-friendly hours or flat, all-up rates of pay—but with strict protections for employees. That was the element of fairness so missing under Work Choices. For many there was no choice, no choice at all. Common-law contracts are available but must be above the award. It is only fair and reasonable.

Unfair dismissal rights were slashed under Work Choices. Under this legislation unfair dismissal rights exist for the vast majority of employees, including high earners covered by awards. Special provisions for employees of small business with fewer than 15 employees exist and there is a removal of operational reasons as an exemption. Under the proposed laws three million more workers will have access to protection against unfair dismissal. Casual employees will be covered for the first time, and unfair dismissal protection will be available to workers in businesses with fewer than 100 employees, provided they have worked there for six months. Small businesses with 15 or fewer employees will have more protection from claims of unfair dismissals. Workers will have to hold their job for 12 months before they can take legal action over dismissal. Employers will be able to implement genuine redundancies but, as I mentioned just a moment ago, not argue operational reasons for sacking. That is a fair and reasonable balance that I think most Australian employers and employees would accept.

Work Choices deliberately sought to marginalise unions. Under this legislation agreements can deal with the relationship between the employer and the union, and employers must respect employees' rights to be represented. There are enhanced protections for freedom of association, including for a wide range of legitimate union activity—note that I said 'legitimate' union activity. Awards and enterprise agreements provide for employees to be represented in consultation and dispute resolution processes. The right of entry to hold discussions with members and potential members is no longer displaced by non-union agreements.

Work Choices rendered the independent industrial umpire powerless. On the other hand, Fair Work Australia will be able to conciliate, mediate, call compulsory conferences and make recommendations on application by one of the parties. A key role of Fair Work Australia is varying awards and setting minimum wages. It has an important role in assisting parties with bargaining and in supervising industrial action. It has a special new role to facilitate bargaining for the low paid—an excellent facility and role, and so needed for those who are most vulnerable in our workplaces. It provides new grounds for arbitration where bargaining genuinely fails. Work Choices did not create a truly national system. This legislation seeks to do that. The interaction between federal and state laws has been negotiated with the states. Indeed, this has been a long process of negotiation. The Fair Work Bill will create a truly national system for the private sector—and for the state public sector and local government only where the relevant state refers powers—through cooperative means such as referrals or harmonisation.

I am very proud to be able to support this legislation, as I was at the beginning of the year when legislation was introduced and passed to be rid of AWAs. This, like most of the legislation introduced by this government, is the result of a promise and a commitment made before the last election, and is now being carried out. There are many workplaces, employees and employers who are very glad of this legislation. I look

forward to the working out of this Fair Work Bill in this country under the values of fairness, balance and equity.