Workplace Relations Amendment (A Stronger Safety Net) Bill 2007

(Amendment to be moved by Senator Siewert on behalf of Australian Greens in committee of the whole)

(1) Schedule 1, item 1, page 4 (lines 14 to 17), omit all words from and including “346L, and” to and including “section 346L”, substitute “346F”.

(2) Schedule 1, item 1, page 4 (lines 28 and 29), omit the definition of protected award conditions in subsection 346B(1).

(3) Schedule 1, item 1, page 5 (lines 16 to 24), omit the definition of salary in subsection 346B(1).

(4) Schedule 1, item 1, page 5 (lines 25 to 32), omit subsection 346B(2) and the note.

(5) Schedule 1, item 1, page 6 (lines 1 to 20), section 346C, TO BE OPPOSED.

(6) Schedule 1, item 1, page 7 (line 9) to page 8 (line 25), omit section 346E and the note, substitute:

346E Workplace Authority Director must apply the fairness test to all workplace agreements

The Workplace Authority Director must decide under section 346M whether every AWA and collective agreement lodged after 27 March 2006 passes the fairness test.

(7) Schedule 1, item 1, page 8 (line 26) to page 10 (line 2), omit section 346F, substitute:
346F Workplace Authority Director must apply the fairness test to certain workplace agreements as varied

(1) If there is no relevant award in relation to the person or persons to be covered by the agreement, the employer must apply in writing to the Workplace Authority Director for the making of a determination under subsection (2).

(2) On an application under subsection (1), the Workplace Authority Director must determine, and inform the employer in writing, that an award or awards are appropriate for the purpose of deciding whether the agreement passes the fairness test.

(3) For the purposes of subsection (2), the Workplace Authority Director must determine:
   (a) an award or awards under this Act regulating terms or conditions of employment of employees engaged in a similar type of work as that of the person or persons under the agreement; or
   (b) if the Workplace Authority Director is satisfied that there is no such award under this Act—a State award or State awards regulating terms or conditions of employment of employees engaged in a similar type of work as that of the person or persons under the agreement.

[application of fairness test to varied agreements]

(8) Schedule 1, item 1, page 10 (line 3) to page 15 (line 17), omit sections 346G to 346L.

[annual rate of salary, notice etc]

(9) Schedule 1, item 1, page 15 (line 24), omit “protected”.

[protected awards]

(10) Schedule 1, item 1, page 15 (line 25), omit “that apply to the employee”, substitute “in the reference award”.

[reference award]

(11) Schedule 1, item 1, page 15 (lines 27 and 28), omit “, on balance, the collective agreement provides fair compensation, in its overall effect on the employees”, substitute “the collective agreement provides fair compensation to each employee”.

[when an agreement passes fairness test]

(12) Schedule 1, item 1, page 15 (line 31), omit “protected”.

[protected awards]

(13) Schedule 1, item 1, page 15 (lines 31 and 32), omit “that apply to some or all of those employees”, substitute “in the reference award”.

[reference award]

(14) Schedule 1, item 1, page 16 (lines 1 to 29), omit subsections 346M(2) to (5).

[agreements – fairness test]

(15) Schedule 1, item 1, page 16 (after line 35), after subsection 346M(6), insert:

(6A) The employer, the employees and their representatives and the unions party to an agreement must be advised of and have the opportunity to verify or refute information provided to the Workplace Authority Director under subsection (6) in relation to the agreement that covers the employer, employees or would bind the union.
(16) Schedule 1, item 1, page 16 (line 36) to page 17 (line 6), omit subsection 346M(7), substitute:

(7) In this section:

*fair compensation*, in relation to an employee, means the provision of an additional
benefit or advantage that:

(a) is of significant and immediate value (whether financial or otherwise) to the
employee; and

(b) fully compensates the employee for the exclusion or modification of the relevant
conditions.

(17) Schedule 1, item 1, page 17 (after line 6), after section 346M, insert:

346MA  Workplace Authority Director to provide reasons for decisions

(1) If the Workplace Authority Director makes a decision in accordance with section 346M,
the Workplace Authority Director must provide a written statement of reasons for that
decision to:

(a) the employer in relation to the workplace agreement;

(b) if the workplace agreement is an AWA—the employee whose employment is
subject to the AWA;

(c) if the agreement is a union collective agreement or a union greenfields agreement—
the organisation or organisations bound by the agreement.

(2) A party to a workplace agreement which has been subject to a decision made in
accordance with section 346M may appeal to the Federal Magistrates Court for a review
of the decision in accordance with the *Administrative Decisions (Judicial Review) Act*
1977.

(18) Schedule 1, item 1, page 17 (lines 16 to 23), omit paragraphs 346N(3)(a) and (b), substitute:

(a) before the Workplace Authority Director decides whether a workplace agreement
passes the fairness test, a variation was lodged, the Workplace Authority Director is
required to decide whether the workplace agreement as varied passes the test;

(19) Schedule 1, item 1, page 24 (line 17) after “instruments that,”, insert “if not an award, pass the
fairness test and that,”.

(20) Schedule 1, item 1, page 24 (lines 24 and 25), omit “, to the extent that the designated award
contains protected award conditions”.

(21) Schedule 1, item 1, page 25 (line 14), at the end of subsection 346Y(5), add:

; (j) a preserved State agreement;

; (k) a notional agreement preserving a State award.
(22) Schedule 1, item 1, page 26 (lines 18 to 25), omit paragraph 346ZA(2)(b), substitute:
   (b) to continue to be so bound until the time when the employee ceases to be employed
   by the employer.

   [redundancy provisions]

(23) Schedule 1, item 1, page 29 (line 30), after paragraph 346ZF(1)(b), insert:
   or (c) treat an employee any less favourably;

   [no dismissal – failure to pass fairness test]

(24) Schedule 1, item 1, page 29 (lines 31 to 32), omit “the sole or dominant reason for the
   employer dismissing, or threatening to dismiss,”, substitute “one of the reasons for the
   employer dismissing, or threatening to dismiss or treating less favourably.”.

   [no dismissal – failure to pass fairness test]

(25) Schedule 1, item 1, page 30 (lines 7 to 10), omit subsection 346ZF(3).

   [no dismissal – failure to pass fairness test]

(26) Schedule 1, item 1, page 31 (line 11), omit “protected”.

   [protected awards]

(27) Schedule 1, item 1, page 31 (line 16), omit “a protected award condition”, substitute “award
   conditions”.

   [protected awards]

(28) Page 83 (after line 20), at the end of the bill, add:

   Schedule 6—Redundancy and hours of work

   Workplace Relations Act 1996

   Part 1—Redundancy

   1 After Division 6 of Part 7

   Insert:

   Division 6B—Redundancy pay

   316G The guarantee

   If an employer has made a definite decision that the employer no longer wishes the job an
   employee has been doing to be done by anyone, the employer will pay the occupant of
   that job an equitable payment in accordance with this Division.

   316H Definitions

   In this Division:

   a week’s pay means the ordinary time rate of pay for the employee concerned, provided
   that such rate excludes:
   (a) overtime; and
   (b) penalty rates; and
(c) disability allowances; and
(d) shift allowances; and
(e) special rates; and
(f) fares and travelling time allowances; and
(g) bonuses; and
(h) any other ancillary payments of a like nature.

**business** includes trade, process, business or occupation and includes part of any such business.

**redundancy** occurs if an employer has made a definite decision that the employer no longer wishes the job an employee has been doing to be done by anyone and that decision leads to the termination of employment of the employee.

**transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding meaning.

### 316I Transfer to lower paid duties

If an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may, at the employer’s option, make payment in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate of pay for the number of weeks of notice still owing.

### 316J Redundancy pay

(1) An employee, whose employment is terminated by reason of redundancy, is entitled to the following amount of redundancy pay in respect of a period of continuous service:

<table>
<thead>
<tr>
<th>Item</th>
<th>Period of continuous service</th>
<th>Redundancy pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Less than 1 year</td>
<td>Nil</td>
</tr>
<tr>
<td>2</td>
<td>1 year and less than 2 years</td>
<td>4 weeks’ pay*</td>
</tr>
<tr>
<td>3</td>
<td>2 years and less than 3 years</td>
<td>6 weeks’ pay</td>
</tr>
<tr>
<td>4</td>
<td>3 years and less than 4 years</td>
<td>7 weeks’ pay</td>
</tr>
<tr>
<td>5</td>
<td>4 years and less than 5 years</td>
<td>8 weeks’ pay</td>
</tr>
<tr>
<td>6</td>
<td>5 years and less than 6 years</td>
<td>10 weeks’ pay</td>
</tr>
<tr>
<td>7</td>
<td>6 years and less than 7 years</td>
<td>11 weeks’ pay</td>
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<tr>
<td>8</td>
<td>7 years and less than 8 years</td>
<td>13 weeks’ pay</td>
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<td>9</td>
<td>8 years and less than 9 years</td>
<td>14 weeks’ pay</td>
</tr>
<tr>
<td>10</td>
<td>9 years and less than 10 years</td>
<td>16 weeks’ pay</td>
</tr>
<tr>
<td>11</td>
<td>10 years and over</td>
<td>12 weeks’ pay</td>
</tr>
</tbody>
</table>

* a week’s pay is defined in section 316H

(2) Provided that the redundancy pay does not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee’s normal retirement date.

(3) **Continuous service** has the same meaning as in section 228.
316K  Alternative employment

(1) An employer, in a particular redundancy case, may make application to the Commission to vary the amount of redundancy pay if the employer obtains acceptable alternative employment for the employee.

(2) This provision does not apply in circumstances involving transmission of a business as set out in section 316M.

316L  Job search entitlement

(1) During the period of notice of termination given by the employer in accordance with subsection 661(2), an employee must be allowed up to one day off without loss of pay during each week of notice, for the purpose of seeking other employment.

(2) If an employee has been allowed paid leave for more than one day during the notice period, for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview in order to receive payment for the time absent. A statutory declaration is sufficient proof of attendance.

316M  Transmission of business

(1) The preceding provisions of this Division are not applicable if a business is, before or after the commencement of the Workplace Relations Amendment (A Stronger Safety Net) Act 2007, transmitted from an employer (in this subsection called the transmittor) to another employer (in this subsection called the transmittee), in either of the following circumstances:

(a) if the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee; or

(b) if the employee rejects an offer of employment with the transmittee:

(i) in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmittor; and

(ii) which recognises the period of continuous service which the employee had with the transmittor, and any prior transmittor, to be continuous service of the employee with the transmittee.

(2) The Commission may vary the operation of subparagraph (1)(b)(ii) if it is satisfied that the application of that provision would operate unfairly in a particular case.

316N  Employees exempted

This Division does not apply to:

(a) employees terminated as a consequence of serious misconduct that justifies dismissal without notice; or

(b) probationary employees; or

(c) apprentices; or

(d) trainees; or

(e) employees engaged for a specific period of time or for a specified task or tasks; or

(f) casual employees.
316O Incapacity to pay

The Commission may vary the amount of redundancy pay provided for in section 316J on the basis of an employer’s incapacity to pay. An application for variation may be made by an employer or a group of employers.

Part 2—Hours of work

2 Paragraph 226(4)(g)

After “employee’s hours of work”, insert “, including the pattern of hours worked and any shift work.”.

3 At the end of section 226

Add:

Minimum rest periods – breaks

(6) An employer must take all measures necessary to ensure that if the working day is longer than six hours, every employee is entitled to a maximum rest break of at least 30 minutes.

Daily rest period

(7) An employer must take all measures necessary to ensure that in every 24 hour period, every employee is entitled to a minimum daily rest period of 11 consecutive hours.

Weekly rest period

(8) An employer must take all measures necessary to ensure that in each seven day period, every employee is entitled to a minimum rest period, uninterrupted by work for the employer, of 24 hours in addition to the 11 hours daily rest period specified in subsection (7).

(9) Where possible, the minimum weekly rest period provided for in subsection (8) must occur on Sunday.

Additional payment for work during rest periods

(10) If an employee is required by his or her employer to work during the rest periods prescribed in subsections (6) to (8), the employee is to be paid at a rate of two times their ordinary rate of pay for the time worked until a rest period as prescribed in subsections (6) to (8) occurs.