



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**

**PROOF**

**FAIR WORK BILL 2008**

**Second Reading**

**SPEECH**

**Wednesday, 11 March 2009**

BY AUTHORITY OF THE SENATE

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## SPEECH

**Date** Wednesday, 11 March 2009  
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**Questioner**  
**Speaker** Boyce, Sen Sue

**Source** Senate  
**Proof** Yes  
**Responder**  
**Question No.**

**Senator BOYCE** (Queensland) (9.43 am)—I also would like to make some comments on the so-called Fair Work Bill 2008. I can stand here and insist that Senator Farrell, for instance, is the Chesty Bond of the Senate. I can stand here and insist that I am the Nicole Kidman of the Senate. But simply saying it does not make it so. The Fair Work Bill is not about fairness. The Fair Work Bill is not fair. It does not matter how many government members say that it is; saying it does not make it so. Saying it is fair does not make it fair. Amending the bill can make it less unfair, but that is all. In fact, in the form that the government said that the bill absolutely had to be passed—that is, the Fair Work Bill mark I—it was about reintroducing the very worst of adversarial industrial relations to Australia and to Australian workplaces.

Now the demure Deputy Prime Minister is saying—though just saying it does not make it true—that she will accept some amendments to the Fair Work Bill. Of course, she has not yet provided the amendments that she is intending so that they can be scrutinised or checked for unintended consequences. She would just like a blanket approval. We in the coalition, however, are very happy to spell out the amendments that we believe would assist in improving the fairness of the so-called Fair Work Bill. We are seeking amendments to the clauses relating to union access to non-union member records, the expanded right of unions to enter workplaces, compulsory arbitration provisions when enterprise bargaining fails, the right of multitudinous unions to participate in greenfields agreements, and the transition of business provisions and the unfair dismissal provisions that are included in the bill. If our amendments are accepted, some of the more combative, adversarial aspects of the bill will have been removed. Then and only then will the bill begin to approach fair.

Just as pathetic as the word games that the government has been trying to play with the word ‘fair’ have been the attempts of the demure Deputy Prime Minister to play mind games with the word ‘mandate’. Every time the government says mandate, the coalition is supposed to throw up its hands in defeat and accept the bill as though it were holy writ. Even the amendments to the supposedly unchangeable holy writ are supposed to be accepted holus-bolus, without examination, without any forethought. As Senator Humphries so ably explained yesterday, that

was not the attitude that the Labor Party adopted to ‘mandate’ when they were in opposition. Back then, the Labor Party had a bit of a ‘mandate, schmandate’ attitude. They had not yet discovered their reverence for mandates. The Howard government had a mandate for the sale of Telstra, for the introduction of the GST and for the introduction of our unfair dismissal legislation more than once. I am afraid I have to say that back then the Labor Party did not revere the mandate; in fact, they opposed our mandated legislation at every turn. Whenever they could, they even—shocking as this may now seem to the current government members—delayed and blocked legislation that was there because of a mandate.

Could the government please stop playing silly games with this legislation? In any economic climate, the consequences of this dramatic change to the workplace relations landscape would be serious. We have stories in the press today of restaurants that are unlikely to succeed because of the changes that are proposed and of many other small businesses that are likely to fail in the coming months, when we already have enough potential failure around us. Right now, with rising levels of unemployment and increasing numbers of company failures, it is irresponsible and disgusting that the government wants to continue to play games around this legislation. There is no doubt whatsoever that this legislation can be improved, that the Fair Work Bill can do a much better job of approaching fairness. I attended a number of the Senate committee hearings into the bill as a participating member. The evidence of dozens of witnesses was that the bill could be improved, that the bill could be less lopsided and less adversarial. For Australia’s sake, let us make it better.

When the ALP took office, the budget was \$19.7 billion in surplus, the government had no debt and held net assets of \$42.9 billion. Importantly, the economy of Australia was experiencing its 17th year of growth. Gross domestic product was growing at just under four per cent per annum. After just 15 months of the Rudd government, we had had our first quarter of negative growth in 17 years. Economists across Australia are already claiming that we are in recession, yet we have had no recognition from the Minister for Employment and Workplace Relations that Australian employers and Australian workers are even facing difficulty. Newsflash to the government: if you make workplace

relations just another red taped jackboot that you can kick small business with, in the current circumstances a lot of those employers will simply stop employing. They will themselves join the growing queues of the unemployed.

As an indication of what may be to come, we have the ANZ job data for February, which came out yesterday. The data provides proof that job advertisements in newspapers and on the internet fell by 10 per cent in February when compared to January, which is generally one of the slower months. They are down by almost 40 per cent when compared to February 2008. This is the biggest drop in advertisements in the history of the ANZ job advertising survey. It seems that many employers will lay off workers that they currently have. It does not matter how much so-called fairness the government tries to pile onto employers; the bald fact is that, if you make sacking staff too difficult, companies will simply shut up shop.

The latest Dun and Bradstreet National Business Expectations Survey, which came out today, shows that 27 per cent of firms said they plan to cut back staff in the June quarter this year. What is this government doing to assist those people other than putting up wages and creating conditions that make it impossible for employment to continue? The Dun and Bradstreet survey reports that businesses are being prepared for worse times ahead. Clearly, many businesses are looking at the actions of the government and showing no confidence whatsoever that they will be able to employ workers or even retain current workers. In this climate, in the midst of this uncertainty, the government has chosen not to approach this bill with goodwill or with an attitude of negotiating the best outcome. It has stuck resolutely to its election promises—in fact, it has gone past its election promises, stressing its mandate. It has gone much further than the policies that were outlined in *Forward with Fairness*.

Other coalition senators yesterday did an outstanding job of spelling out the amendments that we seek and why it is in Australia's best interests that they be accepted, so I would like to spend a little bit of time looking at the so-called unfair dismissal provisions in this so-called Fair Work Bill. The bill would give businesses with fewer than 15 staff a 12-month exemption from meeting the government's dismissal code when they dismiss a staff member. The Senate hearings that I attended heard evidence that these changes to the unfair dismissal provisions would be a serious disincentive to employment and almost impossible to implement in industries where labour demand is prone to fluctuate or is seasonal. In fact,

even the unions had concerns about the unfair dismissal provisions.

Firstly, the figure of 15 staff includes all workers; it is a head count. It is not just the number of full-time equivalent workers. So you have the crazy situation where a busy sandwich bar with just two full-time staff, for example, would not fit the exemption criteria if they employed 13 part-timers—a very common experience in small businesses which have peak times of busyness and otherwise. The Local Government Association of Queensland noted that our workplace relations system should not discourage employers from increasing their workforce beyond 15 for fear of attracting unfair dismissal claims. Many, many business groups raised concerns about this definition and all manner of suggestions were made, from the very basic suggestion that the number of 15 should at least apply to full-time equivalent staff right through to the idea that the current figure of 100 should be retained.

Let's look at why we have those figures. Where on earth did they come from? What are we trying to achieve with this? The exemption from unfair dismissal for small business was meant to recognise the fact that many smaller businesses simply did not have the resources to check legislation, to see that they had it right, to understand the regulations and to work their way carefully through the provisions—and often this required legal advice. It was meant to be a recognition that without those resources small businesses in particular were fearful of taking on extra staff. Evidence has suggested that the relaxation of the unfair dismissal laws to incorporate the concerns of small business led to an increase of about 7,000 jobs per year—7,000 people became full-time workers when in other circumstances the small business operators may have decided to just work longer hours themselves and not expand their businesses as quickly as they might have. I thought the idea of exempting small business was about accepting that small business simply does not have the same resources as big business.

The question then becomes: when does a company begin to reach critical mass and have the resources to be confident that they understand the regulations and that they understand how to meet them? We are not talking about employers who are sacking for the hell of it. Certainly during the times of high employment that we had under the Howard government no employer in their right mind sacked someone for the hell of it, because they knew how difficult it would be to replace them.

Our definitions of small, medium and large business are certainly something of a mishmash at the moment. The Bureau of Statistics defines a small business as one with fewer than 20 full-time equivalent employees. That is a start, but what the hell has it got to do with the

figure of 15? Absolutely nothing. Where the number 15 was plucked from is still something of a mystery if the objective of this is to assist small business. We need to define small business. By international standards, the figure of 20 in our definition of small business is very, very low. The World Bank, the OECD, the European Union and even the ACTU's favourite organisation, the ILO—which is hardly a bastion of neoliberalism—define a small business as one with fewer than 50 full-time equivalent employees and an annual turnover of less than about A\$20 million.

The coalition leader, Mr Turnbull, has said we will work with the non-government senators—and with the government if they can wake up and pay attention—to arrive at the best possible result for Australian small business in this legislation. I would personally like to encourage the use of the overseas definition of a small business—that is, one with fewer than 50 full-time equivalent employees and a turnover of less than \$20 million—not just because it would be good for international consistency but because it would be good for Australia and for the creation of Australian jobs, which is what one hopes this parliament is all about.

I note that the Deputy Prime Minister this morning claimed that she was not prepared to negotiate on the head count of 15 for exemption from the unfair dismissal laws. You have to ask why—what is she trying to achieve? Is the true agenda here simply to make the number as low as possible so that as many people as possible are caught by this net? It is certainly not about trying to assist small business to go about doing its job of employing Australians in the particularly difficult economic situation we are in. At a time of economic crisis such as we are experiencing, this government should be doing everything to protect the jobs and livelihoods of Australian workers. If the Senate passes the bill in its current state, any job lost as a result of the new system will not be 'fair'; it will be a dark stain on the hands of this government. Any employer who decides that the transaction costs of employing have risen so dramatically that he or she cannot afford to engage new employees and thereby add to the productivity of the economy can rightly lay the blame for that inability at the door of this government. We urge the government to consider our amendments and to negotiate fairly for a fair outcome on a bill that currently is certainly not fair.