

FACTSHEET ON THE GOVERNMENT’S NEW SO CALLED “FAIRNESS TEST”

John Howard crumbled under the pressure of our two year campaign against his IR laws and effectively conceded that they were hurting working families. Faced with unrelenting evidence and public pressure, Mr Howard effectively admitted that the IR laws have led to an alarming loss of penalty rates, overtime pay, public holiday loadings and other formerly protected award conditions.

Sadly, the Government has failed to address major problems with the laws that are hurting working Australians and families:

- There are no new protections from unfair dismissal.
- There are no guarantees of financial compensation for the loss of penalty rates, overtime pay, public holiday loadings and other cuts to workers’ take-home pay.
- There are no limits on the power of employers to control rosters.
- Employers can still insist that workers sign an AWA individual contract and say ‘take it or leave it.’
- Many ordinary union activities remain illegal and individual workers can still be fined up to \$6,000 if the Government decides that a strike is ‘illegal.’
- Employers have no obligation to bargain collectively, even when the majority of employees would prefer to bargain collectively.
- AWAs can still undercut collective agreements and award conditions.

There are major loopholes in so-called ‘Fairness Test’

The Howard Government’s new ‘Fairness Test’ for workplace agreements has major loopholes in it and is fundamentally flawed. It is a significant watering down of the previous ‘no disadvantage test’ which the government axed when it introduced the WorkChoices IR laws in March 2006. Employers will be able to evade the Test and leave many workers worse off.

Major problems with John Howard’s new plan include:

- It does not apply to existing workers on AWA individual contracts. This means that 300,000 workers on AWA individual contracts registered under the new IR laws will not get back penalty rates, shift and overtime loadings, public holidays and public holiday pay, rest breaks, annual leave loadings, allowances, and incentives and bonuses that have been lost under the new laws.
- It does not ensure that workers receive fair pay rises. Pay rises are not included in the ‘Fairness Test’- only award conditions. Government data shows that one in three (33.9%) AWAs provide no wage rise for the life of the contracts - some for up to five years- and a further 42.1% of AWAs only offer a wage rise that is dependent on various criteria being met. This leaves three quarters of AWAs without any guaranteed pay rise - a situation that will not alter.
- It does not ensure workers receive financial compensation for the loss of award conditions. The ‘Fairness Test’ will allow employers to trade-off penalty rates, overtime and other award conditions for ‘non-monetary compensation’. This will allow employers, as it has in the past under the previous so-called ‘no disadvantage test’, to give workers free pizzas or videos or potentially tips in exchange for the loss of entitlements. Even the ability of working parents to work night shift could be regarded as an example of ‘flexibility’ that would constitute ‘non-monetary compensation’ for the loss of penalty rates.
- Young people, unemployed people, sole parents and disabled people wanting work are not protected. Employers are given a broad exemption from providing compensation for the loss of award conditions on the basis of ‘other factors’ such as the ‘specific employment circumstances or opportunities of the employee’.

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- Workers in a range of competitive industries are not protected. Employers are exempt from providing compensation for the loss of award conditions if they can show that to remain competitive in their industry they need to cut the pay and conditions of their workers.
- Any employer that is in difficult ‘economic circumstances’ need not provide compensation. The new ‘Fairness Test’ has a catch-all loophole that allows the new Workplace Authority to take into account the employer’s ‘economic circumstances’ when determining compensation for the loss of award conditions.
- Workers in regional and country areas are not protected under the ‘Fairness Test’. Employers can also seek an exemption from providing compensation for the loss of award conditions on the basis of their ‘location’. This will disadvantage workers in areas where job opportunities are low.
- Workers on incomes over \$75,000 a year are not protected. The Test provides a blanket exemption for employees on wages of \$75,000 a year or more. ABS data shows this will exclude 1.2 million workers.
- Redundancy pay and other key conditions are not protected. The Test does not apply to redundancy pay; Ceremonial leave; Leave to seek alternative employment; and preserved award matters such as long service leave, additional annual leave, sick leave, paid parental leave and so forth.
- There is no obligation for employees to be contacted to verify employer’s claims. The new Workplace Authority can contact the employer or the employee or both to ascertain further information, eg what are the employees’ usual rostered hours. However there is no obligation to confirm information provided by the employer with the employee(s).
- Penalty rates were historically used to compensate workers for working unsociable hours and as a disincentive for employers to cut into family time by rostering on workers out of normal hours. Now, when all you have to do is buy your workers a pizza or give them a car spot, there is no such disincentive, and family time will be further eaten away.

Stripped of the rhetoric, all the fundamental problems with the IR laws remain. There are no new protections from unfair dismissal. John Howard has stripped all protections away from our workplaces. You can still be asked to work whenever the employer likes. And despite these so called “improvements,” unscrupulous employers can still take advantage of the IR laws to drive down pay and get rid of conditions.

All employers have to do now is say penalty rates or leave are all “built in” to your wage. Employers say you’re “compensated” but in fact you’re still missing out. There are no guarantees of financial compensation for the loss of penalty rates, overtime pay, public holiday loadings and other cuts to workers’ take-home pay. Employers could even offer movie tickets, or a free pizza, in return for vital conditions and that would be fine with John Howard!

Worst of all, once you trade away all those entitlements, what then? What about the next five years of your AWA? Many still do not have pay increases factored in for the life of the agreement. There are still no limits on the power of employers to control rosters and working hours. Employers can still insist that workers sign an AWA individual contract and say ‘take it or leave it.’ And the ability of workers to have unions represent them and help them at work is still gravely impeded. The IR laws are rotten to the core, and no amount of tinkering around the edges can save them.

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