

No choice: 38-hour week under threat

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Employers will have greater scope to require employees to work for longer hours without overtime pay, despite a promise by Prime Minister John Howard that the 38-hour ordinary working week would be one of the core employment entitlements given legal protection under the federal government's industrial relations changes.

As rowdy scenes continued in

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parliament over the workplace legislation, employment law experts said the bill included a loophole contradicting Mr Howard's promise that a

38-hour maximum ordinary time working week would be part of the government's new Australian fair pay and conditions standard.

Under a proposed new section on working hours in the Workplace Relations Act, employers will be able to require employees to work 'reasonable additional hours' on top of the basic 38-hour working week with no overtime loadings or penalty rates of pay.

The provisions will be welcomed
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by employers in industries with seasonal patterns of demand or fluctuating operational requirements because they will allow them to negotiate employment agreements with scope for highly variable working hours without triggering overtime or shift penalty entitlements.

But they will be criticised by unions because the federal government has said the 38-hour ordinary-time working week would be one of five basic conditions (the others are minimum wages, annual leave, parental leave and personal leave), which would be legally entrenched as minimum standards for agreements under its legislation.

In other developments yesterday, state Labor governments in NSW, Victoria, South Australia and Western Australia all announced they would join Queensland in mounting a High Court challenge to the new

federal legislation, which overrides the state industrial systems.

The ACTU secretary, Greg Combet, vowed that union officials would go to jail rather than comply with the legislation's strict rules on strikes and other union activities.

Mr Combet said unions would refuse to pay fines imposed under the new legislation and the wider union and labour movement would have to provide financial support to the families of union officials who would be jailed for defying court rulings to pay such fines.

Debate continued on the government's Workplace Relations Amendment (Work Choices) Bill in the House of Representatives with the Opposition Leader, Kim Beazley, saying it would unleash a "nest of termites" that would eat away at the foundations of living standards and security of working families.

"It undermines family life by proposing to give employers the

power to change employees' work hours without reasonable notice," Mr Beazley said.

But the Treasurer, Peter Costello, said the government had presided over a 15 per cent increase in real wages and that far from cutting wages and living standards as Labor was claiming, the industrial

"Unions would refuse to pay fines imposed."

relations reforms would generate further economic growth.

Flinders University law professor Andrew Stewart said yesterday the legislation's 'reasonable additional hours' exception to the basic 38-hour ordinary-time working week meant there would be no legal guarantee to overtime pay under the government's new industrial relations system.

"Out of the five minimum standards, only four are really genuine

minimums. This one is a stunt because it is so full of loopholes," Professor Stewart said.

The government had said previously a 38-hour ordinary pay working week would be one of the five minimum employment entitlements to be written into the legislation as a basic safety net that could not be undercut by agreements.

But a proposed new section 91C of the act provides that an employee must not be required to work more than 38 hours a week, averaged over a period of up to 12 months, plus "reasonable additional hours".

Professor Stewart said the averaging provisions would allow employers to vary the actual ordinary hours each week significantly around the 38-hour average. Employers could then also roster workers for average hours higher than the notionally guaranteed 38-hour ordinary time working week. Employees would incur the expense of any court action.