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THE AGE

Un-fair

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PRU GOWARD has guts, and a good journalist's ability to get to the essence of an issue. When **John Howard** appointed her to head the Office of the Status of Women in 1997, it was seen as a job for the girls. Goward and her husband David Barnett, a former journalist and Howard's biographer, were friends of the PM and his wife Janette. But increasingly Goward, who is now Sex Discrimination Commissioner, has shown she is her own woman, and a tough and feisty one at that.

When she appeared before the Senate inquiry into the **workplace** relations bill on Thursday, she went to the heart of things.

"I have met a lot of people who say, 'A job is better than no job, even if it's not fair,' " she told the committee. "I guess that is what this whole bill is about: the trade-off between having a job at all and having a job with decent conditions or with some certainty."

Indeed, that's what the debate is about for individuals at the bottom of the economic pile, either searching for work or in **employment** but with limited bargaining power. More generally, the argument over the Government's dramatic **industrial** relations changes is coming down to one of "fairness" versus putting in another building block that the Government and employers say will make for a stronger economy.

The "fairness" question is dragging in allegations that people will have less "family" time, work Christmas Day without extra pay, be given take-it-or-leave-it conditions, and face arbitrary sacking. On the other side, the Government rejects claims of unfairness and holds out the prospects of extra jobs and growth.

What eventually happens will depend on how the economic assumptions road test, the way the new Fair Pay Commission operates, and the behaviour of all those employers who'll have a great deal more muscle in dealing with their workers. There'll be winners and losers among workers; some employers will turn latitude into licence, while others will make the greater flexibility work to their own and their workers' mutual advantage.

The Government, in its great haste to get this bill through before Christmas, allowed only five days for hearings by the Senate inquiry. But

there has been enough evidence from other than the usual quarters to canvass some crucial concerns and highlight the point that there isn't sufficient time to properly debate this extremely complex legislation.

Goward, who is not opposed to the bill in toto, bluntly told the senators the duty of the Human Rights and Equal Opportunity Commission, of which she's a part, was "to present to you the worst-case scenario". Far from the work-family balance benefits the Government is spruiking, Goward feared family life could be worsened and vulnerable workers and job seekers would not be adequately protected.

"WorkChoices will enable a greater degree of trade-offs by individual workers than enterprise bargaining or awards have made possible. Many of these trade-offs will benefit employers and employees and may well increase the total amount of work available, especially at the low-skill, declining end of the labour market. But, depending on labour market conditions, it will leave some workers worse off in terms of either wages or conditions . . . that especially includes low-skilled people, mothers returning to the workforce after considerable absences and single parents."

She maintained that the spread of Australian **Workplace** Agreements would "certainly mean the end of employer-funded paid maternity leave" because this had been provided as part of negotiated enterprise agreements or, less often, in awards.

She also warned that paring back minimum conditions could force government to do more. "If . . . the **industrial** relations system is going to judge these matters by only their economic outcomes then . . . there has to be a greater involvement of government in providing other supports and services to families that are no longer available through the **industrial** system."

Another independent and discordant voice - or 151 of them to be precise - came from **industrial** relations, labour market and legal academics. In a scathing submission they said the bill "gives no effective weight to fairness", attacked workers' rights, and was not accompanied by evidence to support the Government's claims that it would bring jobs and productivity growth.

The academics argue that while the Government has extolled the virtues of free negotiation between employers and employees, the bill is very prescriptive about what's allowed and disallowed in bargaining, how bargaining is to be conducted, and unions' activities.

"These constraints are partisan in effect. They constrain the scope of employees and unions to pursue their interests, tightly prescribing activity and imposing severe penalties for any breach. On the other hand, they give great freedom to employers - though even employers are to be prevented from making agreements on 'prohibited' matters such as fair treatment in dismissal. 'Freedom of contract' apparently means a freedom to agree only on terms prescribed by the Government."

The group included 31 professors and 28 associate professors, with people from 26 institutions. While those specialising in the labour market are usually inclined to the existing framework, this is nevertheless a critical mass of expertise and their arguments demand detailed answers. The Government's claim that the group's witnesses attending the inquiry were partisan can hardly be stretched to the whole 151.

The Government excluded the unfair dismissal provisions of the bill from

the Senate's consideration. Its excuse was that the issue had been before the Senate many times before - although the new legislation's exemption of businesses of up to 100 workers is new.

Nevertheless, the committee got onto the subject, which produced some diverting moments about the possible dismissal of a worker for chewing gum. After an official from the **Workplace** Relations Department admitted this could be the case, a deputy secretary of the department, Finn Pratt, hypothesised: "If that is considered something which is not covered by unlawful termination, you could also potentially speculate that someone making too much money for the company is not covered by unlawful termination and they could be terminated for that reason."

Pratt was trying to establish the absurdity of the chewing gum scenario, but Victorian Labor senator Gavin Marshall seized on his words to bolster a claim that employers would in practical terms be able to apply duress (which is unlawful) to workers who won't sign AWAs.

Then there was what has become the iconic issue of Christmas Day. Democrat senator **Andrew Murray** confirmed from assistant secretary David De Silva that without an award or agreement providing special rates, an employee could be stuck working Christmas Day on ordinary rates.

Murray declared he'd move an amendment for anyone who works on a public holiday to be paid penalty rates. The Government could then tell Australians "why they want people to be poorly paid on a public holiday". The Christmas Day issue clearly has a way to run yet.

The Nationals' Barnaby Joyce probed the section covering medical certificates for sick leave, which excuses someone who can't comply for reasons "beyond the employee's control". Assistant secretary David Bohn agreed that "beyond control" would cover the doctor being booked out.

What about, Joyce asked, "if you are too sick to get to the doctor?" Yes, said Bohn, adding, in an explanation that suggests even the officials are getting bamboozled, "for example, if you have been taken to hospital or something like that, you would not be able to attend a doctor and get a medical certificate".

Instead of proper consideration, everything is being done at top speed. Friday, the last day of evidence, was typical of the farce.

West Australian Liberal senator David Johnston burst out in frustration about the lack of an index to the 687-page bill. Pratt told him that it was "not actually a convention to provide an index" although "at some stage" there would be a reproduction of the new act, "typically" with an index.

Johnston wasn't mollified. "I have laboured here for five days now, grappling to come to terms with the various headings, and I have had to put up with some quite false and misleading statements made by various witnesses, only because I could not quickly flick to the appropriate piece of legislation that would reject the contention."

The committee finalises its report tomorrow. Pratt told Murray that "to the extent possible" the department was monitoring the hearings and reading the submissions. It was considering "a range of amendments".

Just before lunch on Friday, discussion turned to how long the bevy of officials from the department would be available.

Pratt suggested "until 2.30 as a maximum". Asked why the hurry, he said: "There is a range of operational reasons why the department has other things that it needs to be doing." The schedule it had been given only went through until 12.45 and "we do not have endless resources to spend here". After lunch, Pratt graciously suggested "we might run through till 3 o'clock".

It wasn't spelt out what was so much more important than explaining the bill to senators soon to debate it. Possibly fixing up some of the glitches that have already been exposed in the legislation - although the Government is immovable on its central features.

Caption :PHOTO: Artwork: JUDY GREEN

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