

# Australian government releases National Employment Standards—a “win for employers”

By Terry Cook  
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The Rudd government last week released its National Employment Standards (NES), a set of 10 standards that will apply to all workers within the federal industrial relations system—about 85 percent of the Australian workforce—from January 2010.

While Prime Minister Kevin Rudd declared, “this is a core building block for the future of a fair and flexible industrial relations system,” the NES forms an essential component of a pro-market agenda fashioned in direct consultation with big business and the mining companies.

The 56-page NES document won fulsome praise from the *Australian Financial Review*, whose front-page headline stated: “Employers win in IR overhaul”. The newspaper noted: “In several pro-business changes to its planned national employment standards, the government has made it easier to knock back staff requests for leave or flexible working arrangements and has blocked a union push for the right to appeal against employers to reject leave.”

The outcome is a further demonstration of the political fraud of the protracted “Your Rights at Work” campaign conducted by the trade union movement last year in the lead-up to the November federal election. The real aim of the campaign was to channel popular hostility to the Howard government’s hated “WorkChoices” workplace laws behind the election of a Labor government.

Far from securing basic rights for workers, the Rudd government has delivered another instalment of its industrial relations platform, *Forward with Fairness*, which retains all the essential features of WorkChoices.

Announcing the NES in parliament, Rudd claimed that the 10 standards “are a real safety net for working Australians, which cannot be stripped away”. When asked, however, to give a guarantee that no worker would be worse off under the new standards than under WorkChoices, Rudd refused. “We’re not in the business of those sorts of irresponsible guarantees,” he replied.

While the NES extends to ten WorkChoices’ five

“guaranteed” conditions—a base 38-hour week, four weeks annual leave, ten days personal leave and 52 weeks unpaid parental leave—the extra five conditions are largely window dressing that distract from the undermining of essential aspects of the working hours and holiday leave provisions.

The NES sets the basic working week at 38 hours but allows these hours to be “averaged out” over a “specified period” to meet production flows. Employers can also “request or require” employees to work “reasonable additional hours” in a week.

Workers may refuse, but only if the extra hours demanded are “unreasonable”. As there is no set limit on additional hours, the safeguard is meaningless. One of the criteria for defining “reasonable” is: “The needs of the workplace or enterprise in which the employee is employed”—in other words, the company’s production requirements.

Workplace Relations Minister Julia Gillard told the media that existing lengthy rosters and arrangements such as the “fly in-fly out” schemes in the mining industry could continue unhampered, as would the longer hours demanded of so-called “high earners”.

Employees needing “flexible” work arrangements—for example, working parents with children under school age—will remain subject to the whims of employers. Labor’s document merely states that employees with 12 months of continuous service “may request” a “change in working arrangements”. As the *Australian Financial Review* article noted, employers have a “wide and undefined scope” to refuse requests on “reasonable business grounds” and workers have no right of appeal.

Employees with 12 months service may apply for 12 months unpaid parental leave for a child’s birth, and the remaining parent may seek a further, but not concurrent, 12 months leave, subject to the employer’s agreement. Because the leave is unpaid, very few couples will be in a position to take it.

Despite Labor’s recent posturing over the shocking plight

of carers, the NES allows them just ten days paid annual leave. Paid compassionate leave, for family deaths or illnesses, remains at just two days.

Labor's "standards" will further undermine the right to annual holiday leave. While maintaining the current four weeks leave, workers can "cash out" the leave. Eight days of public holidays remain, but employees can be required to work them. Facing escalating fuel and food prices, rising mortgage payments and rents, many workers will be under intense pressure to "cash out" leave or work on public holidays.

Severance pay remains a pittance and dependent on period of service, with only four weeks pay for one to two years' service and just 12 weeks for those with at least ten years. With companies continually restructuring and eliminating jobs, workers face unemployment with little to sustain them. Labor only retained severance payments because they have been useful mechanisms for unions and employers to impose "orderly" lay offs and close plants.

Australian Council of Trade Unions secretary Jeff Lawrence welcomed the NES but had difficulty giving credibility to Rudd's claim that it represented a safety net for working people. Lawrence said only that "the government could have gone further" by putting the onus on employers to give "fair consideration" to requests for leave and flexible working arrangements. Any such stipulation, however, would be just as meaningless as the other so-called "safeguards".

The NES is another major instalment of the Rudd government's pro-employer *Forward with Fairness* package. In February, the government refused to backdate legislation introduced to abolish Australian Workplace Agreements (AWAs)—individual work contracts that strip away core conditions such as penalty rates and shift allowances. As a result, existing AWAs are still in force. Moreover, employers can impose "transition" agreements until 2010 and can still use common law contracts to scrap key conditions.

Howard's anti-strike laws have been retained, together with employer-friendly unfair dismissal laws. Howard's construction industry watchdog, the Australian Building and Construction Commission, will continue until 2010, exercising punitive powers to victimise building workers, and the former government's wage-cutting body, the Fair Pay Commission, has been retained for another two years.

The government has also pledged a radical overhaul of national awards over the next two years, in consultation with big business, to further dismantle long-standing working conditions.

While welcoming the NES, the *Australian Financial Review* voiced concerns in financial and corporate circles

about the capacity of the Rudd government and the trade unions to hold back a political and industrial movement of the working class under conditions of worsening inflation.

The newspaper's editorial, headlined "Balancing act must succeed", warned: "[T]he rationalised award system and the substantive reform bill enshrining the Forward with Fairness policy will define workplace relations for years to come if Mr Rudd and Ms Gillard get the balance right. If they get it wrong, of course, it could worsen the intractable inflation problem, cut short their term of office and embolden the coalition to reconsider workplace reforms."

In rationalising awards, the government would require "buckets of political courage," the editorial emphasised, because it would have to disappoint workers "all over again if it is to honour its pledges to business".

The editorial said any improvement in workers' conditions "would clearly be inflationary, which the government can't afford, while ratcheting down would send the unions' resurrected Your Rights at Work campaign into overdrive—against the government it helped to elect. No one has been able to explain to the government how to resolve this conundrum".

With Qantas engineers and other sections of workers already resisting the efforts of the unions to impose so-called wage restraint—real pay cuts compared to soaring prices—on the government's behalf, this "conundrum" is becoming ever more obvious.

Ultimately, the "conundrum" is irresolvable because the fundamental needs of millions of working people are incompatible with the corporate elite's drive for vast profits, which requires the ever-greater exploitation of workers' labour power and the wholesale destruction of social conditions.

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