Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

Submission no: 25

Received: 5/11/2005

Submitter: Mr Laurie Gillespie

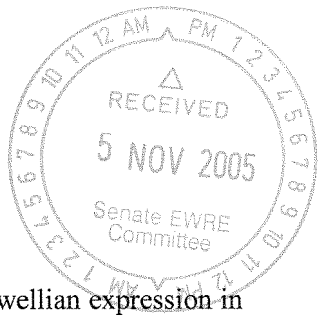
Organisation:

Address:

Phone:

Fax:

Email: Lozza146@bigpond.net.au



"Fair Pay and Conditions"
What of the social consequences?

Howard/Andrews et al have outdone themselves in their capacity for Orwellian expression in coining the term "fair pay and conditions standard" given that the net result of its application will be to ensure the protection of employers from the tiresome obligation of remunerating their employees fairly.

Obviously, a minimum standard of a 38 hour week, 4 weeks' annual leave, 10 days' personal leave and 12 months parental leave plus whatever inferior wage rate the Fair Pay Commission cares to strike, will be immensely attractive to employers seeking to minimise their labour costs, and Howard has set the pattern to promote this process

The so-called "fair pay and conditions standard" will certainly form the basis of the contract offered to young people entering the workforce, and current employees will certainly confront a downward spiral of wages and conditions as their awards and collective agreements are strangled by employer enforced atrophy, sanctioned and supported by government.

All of this has potential for a disastrous social consequence.

Currently a young worker enters industry with the prospect of a sound career supported by a realistic living wage, properly adjusted from time to time either by way of AIRC adjustments or increments set by a properly negotiated agreement.

A prescribed set of conditions as to maximum and minimum hours of work, shifts and rosters, overtime, penalty rates, public holidays, various forms of leave to name but a few, provide certainty as to quality of working life and the means of balancing work and family life.

The law provides protection against unfair dismissal, and security of tenure of employment is assured in return for sound performance.

A sense of security at work enables confident decisions as to personal life, eg, acquisition of real property, marriage, starting a family

The question is – how will such pivotal life-time decisions be influenced in the absence of a realistic living wage and equitable conditions of employment; in the absence of certainty as to quality of working life and how much time work will make available in order to nurture family life? How can a worker who lives constantly under the sword of Damocles, the ever-present threat of dismissal without recourse at the whim of the employer, rely upon security of tenure of employment as a basis to support even a basic family life-style?

The prospect is that such decisions will be influenced in the negative to the great cost of Australian society.

Howard needs to realize that the objective of enhancing the bottom line of the several balance sheets of the employer forces who promote, aid and abet his workchoice agenda may very well come at an horrific social price for which Australian history will not remember him kindly.

HOWARD'S UNITARY IR SYSTEM - A RIP-OFF FOR QUEENSLANDERS

Howard's rationale in imposing, by use of the corporations power, a single national system of industrial relations, is both obvious and singular – to deny workers the opportunity of seeking in the State Industrial Systems, refuge from his draconian federal agenda.

He pursues this intent without regard to the loss of entitlements, disadvantage and hardship which will be occasioned by summarily ripping away from employees the benefits of nearly a century of industrial jurisprudence built up in the State jurisdictions, jurisdictions which in their efficiency, promptness, inexpensiveness and accessibility have earned the universal respect of both sides of the employment equation.

The State industrial jurisdictions have demonstrated no lack of capacity to attend effectively to every facet of industrial practice, be it by way of dispute resolution, unfair dismissal, awards or certified agreements. The State jurisdictions already provide access to non-union agreements and even individual agreements, where parties require such mechanisms.

Howard can identify no operational deficiency in the performance of the State jurisdictions; their sole failing being that their continued existence will inhibit his political agenda.

What will Howard's intrusive agenda rob from Queenslanders?

- A sound system of awards and certified agreements, and
- Statutory protection of basic working conditions

Today more than ever, the Queensland award system is non-adversarial. The system of triennial award review assures employers and employees of a user-friendly system, featuring uniform formatting and, to a significant extent, common conditions of employment achieved essentially by consensus between all concerned.

The Queensland model of certified agreements is such that an agreement presented for certification must demonstrate that it will impose no disadvantage upon employees, not only by reference to the relevant "safety net award' as in the federal system, but also by reference to the agreement which it replaces.

Some 55% of Queensland's workers rely upon Queensland State awards and agreements. (Lee 2005)

The *Industrial Relations Act 1999 (Queensland)* also safeguards basic conditions of employment even for workers who are award free, who comprise about 17% of the Queensland workforce (Lee 2005).

So, in striking down the Queensland Industrial Relations Act, Howard will rip the heart out of the Queensland system of awards by way of reduction of their content to the miserable 16 so called "allowable matters" of the federal jurisdiction, and perhaps more importantly, will deprive 17% of the Queensland workforce of the protection of such basic conditions as:

- Regulated working time (hours per day; hours per week)
- Penalty loadings on afternoon and night shifts, weekend work, public holidays
- Leave loading
- Casual loading
- Notice of termination and redundancy payments
- Long service leave
- Continuity of service where a business changes hands, and eventually,
- The Queensland Minimum Wage

Apart from your natural alarm at an evident violation of States' rights, do you consider all of the foregoing a fair go for the worker?

"As for the State, its whole raison d'etre is the realization of the common good in the temporal order. It cannot, therefore, hold aloof from economic matters. On the contrary, it must do all in its power to promote the production of a sufficient supply of material goods.....It also has the duty to protect the rights of all its people, and particularly of its weaker members, the workers, women and children. It can never be right for the state to shirk its obligation of working actively for the betterment of the conditions of the workingman.

"It is furthermore the duty of the State to ensure that terms of employment are regulated in accordance with justice and equity, and to safeguard the human dignity of workers by making sure that they are not required to work in an environment which may prove harmful to their material and spiritual interests. It was for this reason that the Leonine encyclical enunciated those general principles of rightness and equity which have been assimilated into the social legislation of many a modern state, and which, as Pope Pius XI declared in the encyclical Quadragesimo Anno have made no small contribution to the rise and development of that new branch of jurisprudence called labour law". **(20.21. Mater et Magistra)**

Note that contrary to the assertions of John Howard, there is a Catholic position of the highest authority which is diametrically opposed to his proposal to rip off the basic rights of workers in the Queensland industrial jurisdiction and that of every other Australian State which stands to defend the welfare of its workers.

LABOUR MARKET REFORM

" We therefore consider it our duty to re-affirm that the remuneration of work is not something that can be left to the laws of the marketplace; nor should it be a decision left to the will of the more powerful. It must be determined in accordance with justice and equity; which means that workers must be paid a wage which allows them to lead a truly human life and to fulfil their family obligations in a worthy manner……." **71. Mater et Magistra.**

Treasurer Costello recently emphasised during a television interview the need to get on with ***"labour market reform".***

Prime Minister Howard, according to his website, garners support for his *"Workchoices"* agenda from his assessment that ***"Today, as never before, Australia is a workers' market".***

So, the Government clearly regards the Australian worker and that worker's labour as a commodity, the price of which is determined by market forces.

And the Government's legislative agenda is calculated to influence market forces in favour of capital. This is evident in the minimalist structure of the so-called "fair pay and conditions" standard of a 38 hour week, 4 weeks' annual leave, 10 days personal leave per annum, 52 weeks' parental leave and the fair pay commission's deflated wage rate.

The Industrial Relations Commission is to be stripped of its roles of determining the national wage and of ensuring that agreements meet the "no disadvantage test", which will be abolished, and all that will be required to make agreements legal is lodgement of a document with the office of the so-called "employee advocate".

It is a gross falsehood for Howard to assert that the "employees market" will ensure that employees will be assailed by job offers with optimum conditions – this may be the case for a worker with a special skill or qualification to sell, and of which an employer is in need, but what fate for the less well educated, unskilled worker?

The fair pay and conditions standard of course – the bottom end of Howard's "market"

Neither can Howard justify his agenda by his guarantee that current conditions superior to the "fair pay and conditions standard" will be maintained. Current wages and conditions will lapse into irrelevance, because employers (other than the few of high moral standards) will decline to negotiate equitable replacement agreements in the knowledge of the availability of Howard's "bottom line".

And so the market, the ally of capital and the predator of the worker, comes in to play. What working conditions are you prepared to drop, how much of a pay cut will you offer in order to be assured of regular employment?

Your decision – Your " workchoice" .

UNFAIR OR UNLAWFUL – WHAT'S THE DIFFERENCE?

Industrial law currently provides that a dismissal may be:

- Unfair, or
- Unlawful

An employee may apply to the Australian Industrial Relations Commission for relief in case of an **unfair** (harsh, unjust or unreasonable) dismissal, or to the Federal Court in case of an **unlawful** dismissal.

An **unfair** dismissal might arise from, for example, failing to meet production quotas, lack of punctuality, untidy appearance, inability to meet a new roster.

An **unlawful** dismissal is a direct breach of the law. Employers are expressly prohibited from dismissing an employee on such grounds as, for example, a legitimate absence through illness, union membership, race, colour, sexual preference, age, physical or mental disability, pregnancy or refusing to sign an AWA.

Howard's IR propaganda hastens to assure us that the Government will not take away the **unlawful** dismissal protection, but through some kind of perverted logic, seeks to balance the retention of these laws against the clear intention to deprive the majority of Australian workers of access to a remedy if they are **unfairly** dismissed, because, for example, a new roster cannot be met for family reasons. (A recent ACTU television ad is relevant)

So, if you work for an employer with less than 100 employees, and you happen to get pregnant or decline to sign an AWA, take heart - the employer can't sack you for those reasons. But should you, for example, fail to meet a production quota or be unable to meet a new roster, the new laws will enable the employer to sack you without question. If the employer wants rid of you, that will be achieved, one way or another.

Since that vast majority of Australian businesses are of less than 100 employees, Howard's intent to virtually eliminate unfair dismissal actions is crystal clear, and for employees in this majority category, the remaining **unlawful** dismissal laws will be little more than a legislative ornament.