

Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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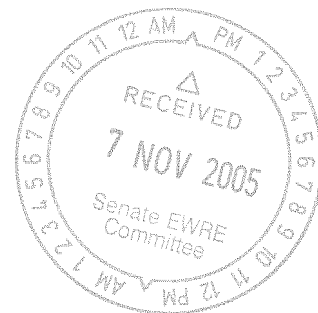
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**Senate Employment, Workplace Relations and Education
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'BOSSCHOICES'

7 November 2005

**Transport Workers Union
New South Wales Branch**



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Organisational Background

The New South Wales of the Transport Workers Union of Australia (TWU) is a registered industrial organization representing employees, owner-drivers, contractors and small business operators in general transport and related industries across New South Wales (NSW) and the ACT.

Due to the pervasive nature of 'transport', the TWU represents employees, owner-drivers and sub-contractors working in general transport, waste, construction, retail, logistics, storage, mining, aviation, public transport, oil, couriers, road-work, taxis, clerks, ambulance paramedics, security, cash in transit and waterfront industries. As such the TWU is diverse organization with members stretching across a number of occupations. Unlike the NSW Road Transport Association's submission, which speaks only for primary contractors and operators, this submission represents the almost 40,000 transport workers and their families affected by the Government's proposals.

Although many of these industries and occupations are nationally based, we believe two factors add to the credibility of this submission: First NSW is a corridor state that oversees the passage of almost 80% of the nation's road freight movements across its highways. Second, a significant number of drivers and workers associated with the long haul trucking industry reside in NSW.

Accordingly the TWU welcomes this inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005 and takes the opportunity to make the following submission:

Introduction

Unfortunately the committee provided no terms of reference provided as to the scope of its' investigation. As such the following submission will attempt to address the areas it perceives to be of greatest concern to the almost 40,000 members the TWU represents.

In examining the changes that the Howard government is in the process of ramming through the Parliament it is difficult to see them for anything other than the insidious attack on workers that they are. The changes cut away any form of safety net underneath the road transport industry exposing road users, pedestrians and truck drivers to an unregulated market that will cost lives. Moreover they have the potential to undermine the already fragile employment relationships in the aviation, waterfront and public transport industries – our front line in our war against terror – making it easier for not only jobs but the integrity of our security systems to be contracted out putting all of us at increased risk. There can be no mistake that these changes that the Howard Government is proposing will increase the risk of more people being killed and injured by an Australian terrorist attack. Last year there were 103 deaths and over 7000 serious injuries in the transport industry, there is no telling what this figure might climb to under Howard's IR changes.

This submission will look at the three areas of greatest concern to our members. The first section looks at the changes to contractors working in the general transport industry. The second section looks at the specific provisions in the 'WorkChoices' bill and its effect on Australian society. It pays specific attention to the safety concerns in the private bus industry and in the aviation and waterfront security industries. The third section looks at the erosion of the States powers and how a 'one size fits all' approach won't work in a country like Australia.

Section One

The Trade Practices Amendment Bill [no. 1] 2005

Although the changes to the legislation governing independent contractors have not been reported on to the same extent as the 'WorkChoices' bill, their severity should not be overlooked. They are far more dangerous, not only to the 'Australian society' in an abstract sense, but also to the health and safety of the individuals who use our roads, live in our cities, use our public transportation system, our aviation industry or who rely on our security sector. This section will discuss in detail the effect of these changes in the road transport industry and on the owner-drivers.

These Changes Will Kill Owner-Drivers

Before the specific changes can be discussed, there needs to be some background given to the industry and the nature of contracting. Contractors occupy the grey area between employees and small businesses. Some commentators have begun using the term 'dependent contractors' too more accurately describe them. They generally work exclusively for one operator (otherwise known as a primary contract holder) however unlike employees they usually provide their own tools, in this case – trucks. Contractors normally begin their careers under a huge cloud of debt, working incredible hours to pay of their arrears and run their trucks. This debt can be anywhere from \$20,000 for a small courier business to \$1.75 Million for a large, specialised steel carrying truck and equipment.

This financial pressure contributes to a higher rate of stimulant drug use among contractors as they force their bodies to work inhumane hours

without rest. It also contributes to greater rate of marriage breakdown and parents who rarely manage to see their children¹.

The current system, whilst far from perfect, provides a safety net to the industry, guaranteeing that that remuneration will be a common factor among all owner-drivers meaning that there won't be a race to the bottom between contractors ultimately compromising safety. If an inferior system replaces the status quo, the level of safety in the industry will be significantly compromised which will ***inevitably result in the deaths of contractors, private road users and pedestrians.***

Driver Testament: Tony Upton

Tony Upton is a contractor in the car carrying industry. He has been an owner-driver for 21 years, before the sector was regulated in any way. He has \$120,000 invested. He is married with three children.

"If you don't have a safety net, you don't know how much you can spend on maintaining your vehicle. Without a safety net you can't figure out how much you're going to earn in a week, so you take every job going, you don't sleep, and you don't stop. You just keep going and that's when things get dangerous."

If these changes are passed, businesses will fold, and hundreds, if not thousands of small business people who have, at times, many hundreds of thousands of dollars invested in their business will lose almost everything.

¹ Quinlan, M., (2001) NSW Motor Accident Authority, Safety Inquiry into the Long Haul Trucking Industry.

Driver Testament: Paul Walsh

Paul Walsh and his wife Gayle have three children. They have over \$80,000 invested in their property freight business. Paul has worked as an owner-driver for sixteen years now.

"The reason I got into this was to allow for flexibility – to have all that washed away, its shithouse."

"If I can't meet my financial commitments my wife will have to go back to work full time and our youngest will have to go into childcare – this change isn't how we wanted to raise our family."

"My family will feel the impact twice, the financial stress and the increased work pressure."

These problems are not an isolated incidence, restricted to a small segment of the workforce. If these changes were introduced there would be added incentive for employers to make all their employees 'independent contractors'. The current system has aimed to reduce the disparity in pay between contractors and employees. This means that employers are not able to circumvent their obligations to their employees in regards to superannuation, workers compensation or wages. Under the federal system there is no obligation on the employer to fulfil even their most basic duties, indeed there becomes added incentive to pursue a workforce constituted by contractors. The effects of the changes have already begun to emerge. This was the case in Victoria recently when 'Kemalex Plastics' forced their entire staff, working on a production line, to become independent contractors, and sacrifice among other things, their workers compensation insurance, their superannuation benefits and virtually all their entitlements.

The final area of concern regards the removal of unions as representatives of contractors by the Trade Practices Amendment Bill [No 1] 2005 by stating that bargaining notice given by trade unions will not be considered valid notice. The primary concern about the loss of choice to be represented by a union stems from the marginal status that contractors occupy. The level of debt they are under, and the hours they need to work mean that they are some of the most vulnerable members of the Australian workforce today. Furthermore, it is absolutely absurd to suggest that these workers, labouring under their incredible debt and their unbelievable hours, could negotiate on a level playing field with their primary contractors (their employers). As such it is utterly reprehensible to deprive them of their right to choose representation by a trade union for negotiations.

Not only will they be worse off in their agreements they will also be unable to appeal their disputes or dismissals to the Industrial Relations Commission. They will be forced to pursue their case through the common law courts, costing tens of thousands and keeping them from earning for days.

Driver Testament: Carlos De Leon

Carlos De Leon is a courier with three children. He has been in the industry for 5 years and has around \$20,000 invested in his business.

'I couldn't afford to pay for a lawyer... and take the time it takes to get an answer from court... I couldn't take that much time away from the truck. "

"You'll find most drivers won't even bother pursuing matters. It won't be worth it, they'll have to let stuff go. We'll be just letting the company get away with more stuff all the time... they'll have more power... and we'll lose money."

Section Two

The Specific Provisions in the 'WorkChoices' Bill

This submission is also focused on the immediate provisions contained within the bill itself. Though there are many and varied problems with the legislation this submission has compiled what it perceives to be the five areas of greatest concern:

Only Sixteen Allowable Matters

Firstly, employees who would ordinarily be covered by a comprehensive state award are now covered by a thin, if not patchy, federal award. The reduction in allowable matters from the Government's own figure of twenty two in 1996 to only sixteen today has serious ramifications for the quality of life that will be enjoyed by these workers. The fair and level playing field for companies that NSW awards have established will be replaced by a race to the bottom by employers seeking to gain a competitive advantage over their competition through minimising safety and labour costs. The safety net that has sat underneath the industry for decades now will be cut away, allowing employee truck drivers to fall into sweatshop conditions. These sweatshop conditions will result in greater levels of fatigue and stimulant drug abuse, a higher incidence of fatigue related crashes and ultimately a higher fatality rate on our roads.

The End to Job Security – Unfair Dismissal Provisions

The current laws in NSW provide speedy resolutions for cases involving persons who have been dismissed harshly, unfairly or unreasonably. The process is independent, informal, efficient and cost effective. The removal of these laws for companies with 100 staff or less removes the possibility for a cheap and speedy resolution in the industrial relations commission for staff with grievances and requires that staff member to seek redress in the expensive, lengthy and cumbersome common law system.

Furthermore it is not only employees in small businesses that will be effected by these changes. The removal of the unfair dismissal provision also applies to any company – no matter how big – if it is for 'operational requirements'. Because the definition of 'operational requirements' is so broad there is the potential for all workers to be put at risk of dismissal for 'operational requirements' without redress.

Australian Workplace Agreements will Cost Lives

The act is unashamed in its' desire to extend the application of Australian Workplace Agreements (AWAs). This has had the effect of dropping real wages by 11per cent in a two-year period². The new AWAs will not be subject to the same 'no disadvantage test' by the Employment Advocate that these earlier ones were which means employers can unfairly pressure their employees into accepting a worse deal than their current situation.

Despite the Federal Government's claims that public holidays, rest breaks, incentive-based pay, annual leave loading, allowances, penalty rates and

² <http://www.fairgo.nsw.gov.au/>

overtime loading are all protected by law, all of these conditions can be traded away. This leads to the problem of employers exerting undue duress at the best of times on their employees and outright intimidation at the worst.

These changes are again aimed at working Australians harder, for longer for less. This will ultimately damage the health and safety of Australian workers and their families. Take for instance the case of private bus drivers.

Private Bus Drivers Will Pay The Price

Sydney's public transportation system is a hybrid structure of both Government and private transport. Geographically speaking, the overwhelming majority of Sydney is only accessible on public transport through the private companies. These companies overwhelmingly rely on government subsidies for the *carriage of school children to and from school*. Without a doubt *they carry Australia's most precious cargo*. If this bill becomes law, the floor of the industry currently set by a common rule awards of the Industrial Relations Commission will be eroded away. There will be the potential for a race to the bottom as contractors and employees on AWAs or below award conditions are forced to bid for work. Working hours have the very real potential to increase and drivers of our school busses may be forced to take a second job to maintain their living standards. Driver fatigue levels could exponentially increase. In short there is the risk that our school children will be exposed to the same horrors and tragedies that have become common amongst long haul, inter state trucking.

Minimum Wages Will Fall

Many Australians rely on a minimum wage. For these workers the proposed 'Australian Fair Pay Commission' is deeply concerning. It is hard to see the commission as anything other than a thinly veiled attempt by the Government to decrease the minimum wage in real terms. Whilst this will have a long term effect on both the economy and the lives of Australian workers these changes are also jeopardising Australia's national security as seen in the instance of the aviation and port securities industry.

Aviation and Port Security Left Open To Terror Attacks

The terrorist attacks on New York and Washington on September 11th devastated the world as did the recent London bus and train attacks. These terror attacks paved the way for the introduction of a new series of security measures designed to protect Australia from any similar kind of threat. These new laws, the new powers afforded to police and the extra spending on improved security provisions have portrayed a seemingly impenetrable web of defence. These new laws however open up massive loop holes that expose our aviation industries and ports to lax security measures through the following:

Insufficient security checks on personnel

The contractors and casuals who work for the ports and aviation industries will invariably be subjected to a lesser standard of security checks given their higher turnover. With such a high turn over it becomes difficult to keep track of all the staff and ensure they are all properly trained. Moreover, there is a logistical problem of conducting complete and thorough security checks on transient staff.

You get what you pay for

Make no mistake, if these staff are the front line for detecting weapons, explosives or dangerous chemicals they need to be the best in the country. Correspondingly their training and conditions need to reflect this so we can be sure that we have competent staff on the front line of Australia's defence. These laws will provide employers with the tools to contract out their security operations to under skilled, transient workers which are simply not feasible from a security perspective.

Security staff can't afford to be fatigued

The Governments anti-terror advertisements tell us we should be '*alert, not alarmed*'. By eroding terms and conditions of the frontline security staff, they will need to work longer and longer hours to make the similar amounts of money. They will be tired and fatigued at times when they can ill afford it. One slip on their part and there is no way of knowing what weapons or explosives they could let into the country.

Section Three

Removal of the State Based Industrial Relations Systems

It is strange that the Liberal Party, the traditional party of 'State's Rights', now wishes to tear away their autonomy against their will. In doing so they are trying to impose a 'one size fits all' system of regulation to some very different areas. In developing this generic approach Howard has taken the very worst parts of the States systems and combined them into a single system.

The federated nature of the Australia's industrial relations system has served the country well for just over a hundred years now. Far from this being a reason to change, this longevity is the foremost reason to preserve the layered structure. This federated system provides the foundation for the vast majority of industrial relations regulations in NSW. Indeed the distinctiveness of the NSW legislation allows for flexibility based on the understanding that employers and employees in the Pilbara mines might have different working arrangements to those in Sydney's CBD. The flexibility allows for each state government to impress on its industrial relations system its own distinctiveness and character, resulting in a carefully tailored approach fitting the nuances of each region.

The NSW system has proven it works. It is a fair system that employers, employees, contractors and unions all support. It ensures that disputes are resolved quickly and amicably and work resumes as soon as possible. It is a system that has ensured a low level of disputation and high levels of productivity a system that should be protected and in terms of owner-drivers - increased.