Submission to the Australian Senate "WorkChoices" Inquiry November 2005
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My background:

I hold a master's degree in industrial relations and a bachelor's degree in economic history and have been an independent consultant to businesses and organisations since 2000, operating from Mildura, Victoria. Prior to that I was a human resources/industrial relations practitioner and manager in the direct employ of a number public sector agencies. In both sets of roles I have dealt with matters relating to the implementation of awards, unfair and unlawful dismissal, and organisational restructuring entailing redundancy. I have also undertaken the drafting and negotiation of individual employment contracts and enterprise agreements (both union and non-union).

By way of declaring interest:

I have never voluntarily been a member of a union.
I have performed voluntary work for the Liberal Party.
I am presently a member of the Australian Democrats.

My experience with an AWA

In one organisation to which I provided consultancy services in 2000, there was an AWA in effect that had been approved by the Office of the Employment Advocate, which I was required to examine with a view to resolving problems that had arisen in its administration. More specifically, an internal dispute had arisen concerning the interpretation of particular provisions in the document relating to the transition of staff from Award to AWA conditions. In the course of my investigation I found that significant and systematic errors had been made in the assessment and payment of employee entitlements, resulting from errors in the AWA document.

I found the AWA document to be a farrago of errors – typing, grammatical, and in technical content. I learned that the document had in fact originated as a draft provided by a previously engaged consultant who was not provided an opportunity to complete the work. It was astounding to me that a document containing such significant errors could be accepted by the senior management of an organisation or affected staff, and even more astounding that it could be passed as a legally enforceable instrument by an agency of the federal government, under whose charge it had been in operation for some two years.

I made direct enquiries by telephone to the OEA, where an officer informed me that the Office had no powers (and by extension, no inclination) to recommend amendments or corrections to, or evaluate or enforce the practicality of an AWA. I find this situation unsatisfactory, and to my further dissatisfaction see every sign in the latest proposed amendments that such a lax approach to the enforcement of employee rights is likely, in accordance with prevailing Government policy emphasis, to continue.

My experience with unions

It was unsurprising to me to discover that a union had not been involved in the negotiation process for the AWA referred to above. From previous experience in dealing with unions, I had found their contribution in general to be positive and valuable in ensuring at the production of a practicable document, and essential to achieving adequate representation of the positions of all but the most senior staff, in negotiations.

This certainly entails some hard bargaining in the short term, but it also ensures that issues are aired fully such that not only current concerns may be dealt with, but future expectations on the part of employees may be anticipated, providing mutual certainty that enhances the manageability of an organisation.

On an ongoing basis, I have found a majority of union representatives with whom I have dealt to be sympathetic to genuine employee performance problems, and valuable in mediating in situations where an employee may be inarticulate, uncomfortable, or have difficulty understanding the issues being raised. I do not therefore accept that the extent to which unions are marginalised by the proposed legislation, will have a beneficial effect on enterprise productivity.

Requesting protection from unfair dismissal or individual contracts to be unlawful

The provisions within the proposed law providing for fines/imprisonment for individuals requesting on their own behalf, particular assurances regarding their employment which hitherto have been commonplace, are in my view, both inhumane and indefensibly restrictive.

The penalty provisions as they affect unions appear to reflect the assumption, in advance of an examination of the facts in a particular instance, that seeking such assurances amounts to or may be equated with intimidation. This appears to me to be an unfair assumption, and an improper restriction on the capacity of unions to properly represent the desires and interests of their membership.

The sanctions also unreasonably restrict the capacity of employers to offer assurances or benefits to staff that the employers themselves might judge to be beneficial to their business. The measures in short place a burden of fear upon employees in their negotiations, limit both the employer's capacity to set workplace conditions and a union's capacity to properly represent its members, contribute to the erosion of trust between employer and employee, and add nothing of value.

A single industrial relations system

Having dealt in a professional capacity with workplace regulations in four states as well as the federal sector, and being aware that many nations with larger populations successfully operate such regulations on a national basis, I have no difficulty in principle with the proposition of a single national industrial relations system based on an argument for administrative uniformity and simplicity.

However, I object strongly as a citizen with a regard for our democratic conventions and responsible government, to such a system being imposed without the active cooperation of the constituent States of the Federation, or a system being put in place which is disproportionately weighted in favour of, or against, any of the historical parties to industrial relations processes in this nation. Nor do I accept that changes may reasonably be made that are of such a contentious and radical nature as the present plan, without a case based on strong evidence being produced for thorough public scrutiny or without broad consensus support and following genuine and cautious consultation. Unfortunately, the course of the WorkChoices Bill fails all these expectations.

Fairness

It is clear that the overwhelming intention of the legislation is to provide employers with more scope within which they may act with impunity, and to reformulate a "safety net" for employees that is set at a considerably lower standard, and which contains very much larger spaces between protective provisions, than current legislation provides. Additionally it provides a foundation for the rapid extinction of awards and by a variety of measures discourages a continuing and significant role for unions in collective bargaining and employee advocacy.

From the employee perspective the proposed amendments remove an entitlement to fair treatment, a guarantee of a right to bargain collectively, and the security of sets of benefits that have accrued by negotiation and legislative means during the course of decades. While specifying a (radically reduced) set of basic entitlements, the core protective principles of the century-old Harvester judgement are excluded, and while specifying a standard working week of 38 hours, the removal of awards as the default point of reference effectively renders this, and the 150-year old standard of the 8-hour day meaningless and unenforceable.

This liberal rationalist elects not to collaborate

If the proposed amendments become law, I for one shall choose to leave behind me any role in advising employers regarding their rights in the industrial relations sphere, rather than collaborate in the implementation of what I regard as an unjustified, regressive and damaging program.