Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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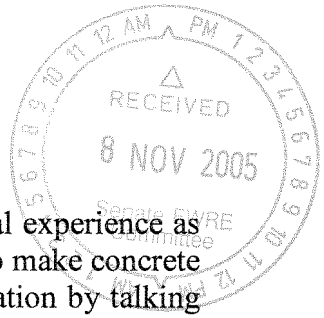

Dear Senators,

This submission on the WorkChoices Bill will draw upon my personal experience as an industrial organiser across a range of industries. It is my intention to make concrete observations about some of the likely impacts of this appalling legislation by talking about real people in today's workforce who I have met in my capacity as an industrial organiser. I would be happy to appear before the Committee and answer questions.

I wish to express my profound objection to the WorkChoices Bill in its entirety, starting with its name, which is surely misleading when considered from the point of view of employees, and finishing with its intent, which is a sophisticated and comprehensive ideological attack upon the union movement, the institution of the Australian Industrial Relations Commission, and the low paid and welfare recipients. I voice my objection to the narrow terms of reference of this inquiry, which has not been empowered to consider the wide range of collective bargaining rights that will be directly attacked by this legislation, or the assault on unfair dismissal protections. Suffice to say this legislation exacerbates Australia's breach of International Labour Organisation Conventions International Labour Organisation Conventions No. 87 (Freedom of Association and the Right to Organise), Nos. 98 and 154 (Collective Bargaining); it will now breach No.158 (Termination of Employment Convention). I voice my objection to the impracticably short timeframe of just five days during which the public can make submissions to this inquiry, and the lack of public hearings in city and regional areas around Australia.

NO CHOICES

The current *Workplace Relations Act 1996* (WRA), already places most, and in some cases all, of the choice of an industrial instrument in the hands of employers rather than employees. New starters can be forced to accept an Australian Workplace Agreement (AWA), which (currently) prevails over the certified agreement to the extent of any inconsistency. This mechanism is already being used by some media outlets to deunionise workplaces by making employment or promotion conditional upon the acceptance of an AWA. Under the proposed legislation this process of deunionisation will be accelerated because an AWA can be entered into at any time to the *exclusion* of an enterprise agreement. For employees with low bargaining power AWAs are highly likely to be substandard because agreements will only be compared against the 'Fair' Pay and Conditions Standard, rather than the relevant Award. Over time many employers, either intentionally or because of their lack of knowledge of industrial relations, will undermine the wages and conditions of their employees.

- ***Example 1.*** After a series of strike and lockout actions a group of suburban journalists won improvements to a union enterprise agreement. Their employer has subsequently employed all new starters on AWAs, and as a result they are approaching their next round of bargaining with a diminished support base.

  Every person who is forced to sign an AWA is one less person who can take protected industrial action with their colleagues in support of wages and conditions. The proposed legislation will provide hostile employers with additional ways of damaging the collective bargaining power of their workforce. They can simply wait for an agreement to expire and request that it be terminated with 90 days notice. At the end of that period their staff will be not only agreement free, but also Award free. All their staff will then be

forced to 'choose' between the 'Fair' Pay and Conditions Standard or an AWA.

- ***Example 2.*** A call-centre ticketing agency entered into AWAs with all new starters in a highly casualised, low paid industry. Each of these AWAs was found to be identical, and paid less and had a lower minimum call than the Award. The employees successfully worked with their union to claim back pay and to improve the AWAs.

  Under the proposed legislation these employees would not have been able to use the no-disadvantage test to argue their case. The Office of the Employment Advocate will no longer be held responsible for scrutinising AWAs and the AIRC will have no jurisdiction to challenge them.

- ***Example 3.*** The Government is forcing universities around Australia to offer every employee an AWA prior to August 2006 or core funding will be withdrawn. Rather than working with one or two main enterprise agreements, human resources departments have to develop multiple template AWAs for different levels of seniority and different modes of employment (fixed term, ongoing, casual). Human resources departments are already struggling under this new burden. If employees actually insist upon their right to negotiate their agreements, human resources departments will be unable to cope with the workload and genuine negotiations are unlikely to occur. Universities will have to expend significant additional resources in order to roll out these agreements with no discernable return. Tens of thousands of people work in the higher education industry, and millions of pieces of paper will be wasted in pursuit of this objective.

  The proposed legislation will ensure that AWAs can prevail over collective agreements at any time. Setting aside the capacity for AWAs to undercut basic pay and conditions, or to cause a bidding war in specialist areas, they are administratively inefficient and could give rise to hundreds, if not thousands, of different pay levels based upon no established principles of wage fixation or fairness.

IN DEFENSE OF UNIONS

Those writing in support of unions have legitimately cast the debate in terms of the relative bargaining power of employees and employers. However, there is a story that has gone untold by both sides of the debate, namely the constructive and often welcome role which unions play within business by:

- Focusing the interests of employees during bargaining so that the process can be efficiently managed;
- Working cooperatively with employers to ensure that agreements are well-drafted, accurate, and lawful;
- Acting as professional associations to defend the interests of an industry;
- Assisting employers and employees to seek solutions to legitimate grievances and disputes;
- Providing advice and assistance to occupational health and safety representatives and equal opportunity contact officers;
- Developing a sense of community within a workplace;
- Training union members to take on workplace leadership roles.

Good union organising practice is grass-roots in its orientation, seeking out the views of members within a workplace, which are then represented in a coherent fashion to management. This is not the 'third party' intervention that the Government would have the Australian public believe. In its attempt to delegitimise unions the Government is undercutting the Principal Object of the current *WRA* (s.3), namely to "...provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia...".

- ***Example 4.*** An employee was allegedly acting in a discriminatory and intimidating manner toward staff within his work area. The union delegates in the work area complained to their organiser and management about the staff member. With the approbation of management, two union officials talked with three shifts of workers about their occupational health and safety responsibilities, and produced a bulletin explaining equal opportunity in the workplace. The union made it clear that it did not condone the behaviour in any way, and eventually negotiated the terms upon which the staff member would leave the workplace when he did not change his behaviour.

  By encouraging employers to view unions as 'third parties' the Government is potentially depriving employers of the positive contribution that unions make to constructive workplace relations.

- ***Example 5.*** A union delegate undertook training through the ACTU Organising Centre, and formed part of a union team in enterprise agreement negotiations in a publicly owned creative arts centre. Her professionalism and high level of personal organisation during negotiations was recognised by management who promoted her from an entry level customer service role to a support staff role within the human resources department.

  The proposed legislation will prohibit the inclusion of trade union training leave in enterprise agreements (fine - $33,000), and the anti-union attitudes being promoted to business are likely to make union members hesitant about stepping forward to become delegates.

- ***Example 6.*** A group of Award employees working in a media-related company were suffering from low morale, low pay and staff were frequently being dismissed or leaving in disgust. Their union took some unfair and unlawful dismissal cases to conciliation in the AIRC, initiated enterprise bargaining negotiations, elected delegates and consulted widely with the workforce. By the time the enterprise agreement was concluded, the staff were happier, management had come to accept the legitimate role of the union, and management had learned the correct procedures for terminating staff. Unfair dismissal claims have all but disappeared, and staff turnover is lower which has cut the company's training costs.

  Unions can have a positive impact upon staff morale because they demand that employees be treated with due process and respect, which means that in the long term there are less grievances and less covert industrial action, such as absenteeism. The proposed legislation will expose many employees to unmediated forms of managerial prerogative, without regard to due process or natural justice; employees may toe the line, but it is likely to be in an unhealthy atmosphere of fear and quiet hostility.

THE AIRC AND DISPUTE RESOLUTION

The Australian Industrial Relations Commission (AIRC) is an important and respected institution whose standing and operations will be severely diminished by the proposed legislation. The AIRC will be required to apply ill-defined Alternative Dispute Resolution (ADR) procedures unless it is specifically empowered in agreements to arbitrate upon disputes.

> ***Example 7.*** A commercial television station made a cameraman compulsorily redundant when one of his colleagues with equivalent skills, ability and experience, and who was close to retirement age and nursing a shoulder injury wanted to go instead. The AIRC arbitrated upon a dispute over the application of the enterprise agreement which led to the reinstatement of one of the cameramen and the voluntary redundancy of the other.
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> *Under the voluntary ADR model it is unclear whether the AIRC will have the power to compel the attendance of witnesses or to request the production of evidence. The switch to voluntary ADR processes within agreement dispute settlement clauses will harm the AIRC's ability to quickly and effectively resolve disputes through conciliation, and as a last resort by arbitration. Conciliation within the AIRC is effective principally because it takes place 'within the shadow of the law.' This fact alone cuts down the number of cases that come to the Commission for determination.*
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> ***Example 8.*** A teacher working for a tertiary education provider made a formal complaint about bullying and harassment against his supervisor. The human resources manager hired a private *ADR* consultant to prepare a report on the matter and to mediate between the individuals concerned. The dispute was acceptably resolved between the two individuals at a cost of approximately $10,000. Senior management subsequently blamed the employee for costing the relevant department so much money. The resolution of this issue would not have been so expensive had a union represented one of the parties.
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> *Senators should be aware that true voluntary ADR processes are notoriously slow and consequently are costly because they are usually undertaken by expensive private providers. The proposed legislation will no doubt be a boon for private ADR providers who will live off disputes between employers and employees (in many cases these will be the true third parties with no investment in the workplace other than taking money out of it!). Most ADR providers will be paid for by employers, potentially compromising their independence. If costs are shared between the parties they are likely to be prohibitive for employees.*

THE RIGHTS OF THE LOW PAID

A Full Bench of the AIRC, comprising of permanent members, will no longer set wages for the low paid through the mechanism of the National Wage Case. Instead, a 'Fair' Pay Commission (FPC), comprising of 5 fixed term appointees, will set wages. Australians can have no confidence whatsoever that any wage outcomes made by the FPC will be fair or equitable. It will be able to hear submissions in private and will have no requirement to meet a public interest test when determining wages. Since the 1907 *Harvester* case, wages in Australia have mostly been set with the needs of the low paid in mind; now they will be set in accordance with legislation that treats

human effort as nothing more than a tradeable commodity. The Government's FPC will be used to hold down wages, to pit the unemployed against the low paid in the labour market, and it will add further disadvantage to disability pensioners. If it follows the American pattern, where there have been no wage rises for the low paid for 8 years, we will quickly see the emergence of a working poor.

- ***Example 9.*** Casual workers in dozens of small country horse racing clubs are entirely dependent upon their Award for their working conditions and pay. Many of these employees are pensioners working to supplement their pensions and to provide activity and interest in their later years. Some are members of 'empty nest' families who work at the races to supplement the income brought in by a principle breadwinner. Others are people who work an event circuit, including football grounds, in order to earn a living.

  People accept work for a range of reasons beyond a simple exchange of labour for money. Where people are not reliant upon wage increases for their upkeep, they are likely to accept lower wages, thus undercutting other workers. The event circuit workers are already paying a small fortune in petrol because of their need to follow events around Victoria for work. If their wages don't at least rise with CPI they will be unable to make a sustainable living in the industry. There are too many country racecourses to realistically pursue enterprise bargaining at each one and if their union pursued a multiple business agreement it would run the risk of contravening the proposed pattern bargaining restrictions.

CONCLUSION

The examples in this submission highlight the difficulties that employees face in the current industrial relations climate. It is almost beyond imagination what the intended and unintended consequences will be of the new industrial relations regime. The Federal Government is smashing at a modern and functional industrial relations system. They are supported by a number of ideologically driven peak employer associations that have failed to make the case for change, who when challenged can only talk of change for change's sake, and who don't even have the support of their constituents. Rather than investing in productivity improvements, training and innovative industries, the Government is seeking to increase company profit margins by reducing real wages and conditions. These laws will affect millions of Australians, and the Government is treating the Australian people with contempt.

Fellow union organisers and I are taking the ACTU campaign against these changes directly into our workplaces, through to union delegates, members and anyone else who we can reach. We are deeply shocked by the damage that the changes will do to the lives of the people we represent, and we will determinedly fight this agenda until such time as this retrograde legislation is wiped off the Statute books. We won't stand by and watch the slow death of the egalitarian ethos and institutions that have underpinned the prosperity and the cohesion of Australian society.

Yours sincerely,

Serena O'Meley
Industrial Organiser