Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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9 November 2005

Committee Secretary
Senate Employment, Workplace Relations
and Education Committee
Department of the Senate
Parliament House
CANBERRA ACT 2600

Dear Sir/Madam

<u>Inquiry into the provisions of the Workplace Relations Amendment</u>
(WorkChoices) Bill 2005

Please find attached a submission from the Australian Nursing Federation to the above inquiry. We would welcome an opportunity to speak to the submission at the public hearings scheduled to commence on 14 November 2005.

Yours sincerely

Nicholas Blake Federal Industrial Officer

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australian nursing federation

Senate inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

November 2005

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WorkChoices

"Under conditions of competition, standards are set by the morally least reputable agent."

John Stuart Mill (1848)

1. Overview

- 1.1 It is the view of the Australian Nursing Federation (ANF) that the Workplace Relations Amendment (WorkChoices) Bill 2005 (the Bill) constitutes an unnecessary and harsh attack on the industrial rights and entitlements of Australian workers.
- 1.2 It is the view of the ANF that the government has failed to justify the Bill on economic or social grounds. Rather the Bill reflects an extreme ideology harboured by the Prime Minister and described by him as "an article of faith".
- 1.3 Given the paucity of coherent Terms of Reference and the severe time constraints imposed on those wishing to make a formal submission to the Inquiry the ANF will address the likely outcomes for working nurses and those contemplating a career in nursing should the Bill become law. While the adverse impacts on nursing and the provision of nursing care are numerous this submission will concentrate on the effects the Bill will have on nursing remuneration, hours of work, the recruitment and retention of nurses, changes to unfair dismissal provisions and the role of the Australian Fair Pay Commission.

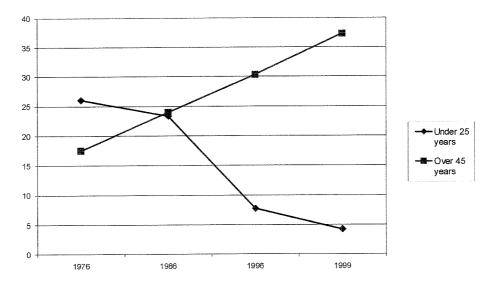
2. Introduction

- 2.1 The ANF welcomes the opportunity to make this submission.
- 2.2 The ANF is the national union for nurses in Australia with branches in each state and territory. The ANF is also the largest professional nursing organisation in Australia. The ANF's core business is the industrial and professional representation of nurses and nursing in Australia.
- 2.3 The ANF's 145,000 members are employed in a wide range of enterprises in urban, rural and remote locations in the public, private and aged care sectors, including hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, offshore territories and industries.
- 2.4 The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veteran's affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.

3. Demographics on the employment of nurses

- 3.1 According to the Australian Institute of Health and Welfare (AIHW) 273,377 nurses were licensed¹ in Australia in 2003. Of these 80% were registered nurses and 20% were enrolled nurses.²
- 3.2 The 2003 data also shows that the largest proportion of nurses was employed in clinical practice (86.5% of registered nurses and 92.4% of enrolled nurses).³ Of these 31.8% were employed in the clinical practice areas of medical and surgical nursing; 14.8% were employed in gerontology; 7.3% in maternity care; 7.9% in operating theatres; 6% in mental health; 11.5% in intensive care; and 5.5% in community health.⁴
- 3.3 Approximately 58.4% of employed nurses work in public and private acute hospitals; 14.3% in residential aged care facilities; 7.3% in a community setting; and 20% in other nursing areas.⁵
- 3.4 Nurses are the largest occupational group in the Australian health workforce representing 54% of the total employed health occupation in 2001.⁵ In 2003 91.4% of the total national nursing workforce were female.⁷
- 3.5 It is now widely accepted that there is a national and international shortage of nurses. The 2005 AIHW Report shows that the number of full-time equivalent (FTE) nurses per 100,000 population in 2003 is 1106 (FTE) nurses per 100,000 population. This compares to a figure of 1031 (FTE) per 100,000 population in 2001. While there has been some improvement in the 2003 (FTE) figure (reversing a downward trend since 1995), it should be noted most of the improvement was the result of additional hours worked by nurses (from 30.7 hours per week in 2001 to 32.5 hours per week in 2003) with only a 3.6% increase in the number of employed nurses.⁶
- 3.6 According to the Department of Employment and Workplace Relations (DEWR) National Skill Shortage Survey, the depth and breadth of the skill shortages in nursing remains the greatest of all occupational groups.⁹
- 3.7 As the chart below demonstrates nurses are getting older and the proportion of older nurses continues to grow. In 2003, the average age for a registered nurse was 43 years and 43.5 years for an enrolled nurse. The proportion of nurses aged 45 years or over increased to 46.5% of the nursing workforce, with 14.3% of that proportion over the age of 55 years.¹⁰
- 3.8 The ageing of the nursing workforce has implications for workforce planning as it is likely that the 46.5% of nurses who will be contemplating retirement over the next 10 to 15 years, will be those with most experience and with specialist qualifications or expertise.

Nursing Workforce 1976-1999



- 3.9 The nursing workforce has a disproportionate high number of part-time employees and this is increasing. In 2003, 50% of nurses worked part-time (48.6% of the registered nurse workforce and 56.1% of the enrolled nurse workforce). The average number of hours worked per week however increased from 30.7 hours in 2003 to 32.5 hours in 2003 (32.8 hours for registered nurses and 31.2 hours for enrolled nurses).¹¹
- 3.10 The foregoing snapshot of the national nursing workforce demonstrates, in part, that the key characteristics of the Australian health care system at present, as least as far as the nursing workforce is concerned, is of a system that is relying heavily on the skills and experience of an increasing number of part-time older women who tend to be in the latter stages of their working life.

4. The role of nurses in our community

- 4.1 Nurses are at the frontline of the provision of health care and provide an important and valuable service to the community. One of the main motivations for people to undertake nursing as a career is a genuine desire to make a positive difference to the health and well being of the people they are caring for.
- 4.2 Nurses are highly regarded by the general community, being voted the most ethical and honest of all occupations for every year they have been included in the annual Morgan Poll (ie. for the past 11 years).
- 4.3 In their role as providers of care nurses often operate in chaotic settings where demands on their skills and time continue to increase.

- 4.4 These increased demands at the workplace coupled with a professional commitment to the care and wellbeing of their clients has resulted in employers and governments exploiting nurses to maintain health services.
- 4.5 In the 1999 ACIRRT report *The Hidden Costs of Understaffing: An Analysis of Contemporary Nurses' Working Conditions in Victoria* it was reported that:
 - less than one in five nurses who worked overtime were paid;
 - over 80% of nurses regularly worked through meal breaks;
 - the amount of unpaid overtime was equivalent to between 300-450 full time nursing positions per week which effectively kept the health system running.¹²
- 4.6 This report and similar studies became the cornerstone of significant improvements to nurses' working conditions via collective agreements and with the support of industrial tribunals playing a central role in setting standards for the nursing labour market.
- 4.7 Should the Bill be enacted there will be nothing to prevent a return to the exploitation of nurses.

5. The industrial regulation of nurses

Awards

- 5.1 Nurses across the country are mainly employed under the awards of the Australian Industrial Relations Commission except for nurses employed in New South Wales and the private sectors of Queensland where awards are available under the state industrial systems.
- 5.2 It is estimated that between 20% and 30% of nurses across the country continue to have their terms and conditions of employment determined exclusively by federal or state safety net awards. Typically such nurses are employed in aged care facilities, general practice medical clinics and other small businesses.
- 5.3 Since the late 1980s federal and state industrial tribunals developed and maintained common national nursing industry rates of pay and conditions of employment. The establishment and maintenance of national nursing conditions was based on the view that nurses should be remunerated on the basis of their skill, education and experience rather than the nursing sector in which they may be employed. During this period federal and state industrial tribunals also supported the inclusion into nursing awards of a comprehensive classification and pay structure designed to offer a relevant career path for clinical nurses to ensure sufficient numbers of skilled and experienced nurses remained at the bedside, as well as an alternative career path to ensure other skilled and experienced nurses moved into nursing management, administration or education.

- 5.4 The simplification of federal nursing awards that commenced in 1996 (which the government claimed at the time would established an appropriate safety net of minimum entitlements) reduced the employment conditions of nurses. The intention now to again simplify and rationalise awards, and in doing so further reduce the safety net, will only encourage poor employment practices and will be a disincentive for employers to bargain with employees.
- 5.5 The Bill proposes that an "Award Review Taskforce" consider the continuation in awards of skill-based career paths. The removal of the career path from nursing awards will have a dramatic effect on the profession and will hasten the decision of many nurses to permanently leave their chosen profession.
- 5.6 It is in the interests of nurses and the community they serve that the existing award safety net be maintained and that the minimal conditions of employment that the many thousands of nurses reliant on awards now receive, are not further undermined.
- 5.7 A comprehensive award safety net does provide a degree of protection and dignity for those dependent on awards and who are consequently often the most vulnerable. The fair pay conditions standards are a grossly inadequate substitute.

Agreements

- 5.8 It is estimated that between 70% and 80% of the nursing profession is covered by collective agreements negotiated on their behalf by the ANF (Federal Office or ANF state and territory branches) and which are certified before the relevant industrial tribunal. Typically such collective agreements are read in conjunction with the relevant federal or state award and by doing so acknowledge the continuing importance of the award system.
- 5.9 Collective agreements negotiated between the ANF and employers reflect the industrial priorities of the nursing profession who see this approach to agreement making as the preferable vehicle for providing fair wages and conditions of employment and manageable workloads.
- 5.10 Since the early 1990's the ANF has worked to address systemic changes to nursing and management employment practices recognising that positive workplace conditions are critical both in encouraging retention and in reducing turnover of nurses.
- 5.11 Examples of these developments include the introduction of workload and skills mix tools; qualification allowances which recognise the attainment of increased educational qualifications; and the development of articulated career pathways.
- 5.12 This important work cannot and will not continue in an industrial environment that gives precedence to individual outcomes and seeks to marginalise the role of industrial representation and industrial tribunals.

- 5.13 The Bill's proposed prohibition on pattern bargaining is of particular concern to the ANF. The ANF has consistently argued that pattern bargaining leading to industry wide multi-employer outcomes should remain a viable option, because they are often regarded by the industrial parties to be appropriate on sound industrial, commercial and public interest grounds.
- 5.14 The Bill's proposals in respect of pattern bargaining are based on the fundamental assumption that pattern bargaining is contrary to the goals of enterprise bargaining. This assumption completely ignores any consideration of the needs of the industry, employers, employees and the community the industrial laws are intended to serve and protect.
- 5.15 Pattern industry wide industrial standards are often preferable to enterprise differences because they benefit employers, particularly small employers and employees and the community generally. In nursing, nationally consistent industrial standards in both wages and wage related conditions of employment have been pursued by the ANF and where successful have resulted in enhanced mobility between speciality areas of nursing practice and between the public and private acute care sectors, as well as the removal of short term distortions in the labour market as a result of technical skills shortages. It has also resulted in significant cost savings for the health sector and promoted industrial harmony.

6. The growing disparity in wages and employment conditions between nurses

- 6.1 There is already a substantial body of evidence concerning the negative effects of significant differentials in nurses wages and conditions arising since the introduction of the Workplace Relations Act 1996 and a greater reliance on agreement making as the primary mechanism for determining wages and conditions.
- 6.2 Nursing awards were traditionally "paid rates awards" that is, they specified the actual rate of pay rather than the minimum rate. Under the Workplace Relations Act 1996, paid rates awards have become minimum rates awards and awards have been stripped back to cover only "allowable matters" serving as a safety net of minimum wages and conditions of employment.
- 6.3 Any improvements in wages and conditions above the award safety net, including much needed workload mechanisms, can only be pursued through the process of enterprise bargaining.* This has resulted in mixed outcomes across the health and community services sector to the detriment of the nursing workforce, specific sectors of nursing and the community in general.

^{*}Except in NSW where nurses are employed under State awards.

- 6.4 This is best illustrated by the growing disparity in wage and conditions between nurses employed in public hospitals and those working in the residential aged care sector. The wages of nurses working in public hospitals determined through enterprise bargaining agreements* between the employer and the ANF Branch are currently 11 to 30 percent higher (depending on the state or territory) than nurses working in the residential aged care sector. While the overall number of enterprise bargaining agreements in the residential aged care sector is growing, the agreements are limited in relation to content and quantum contributing significantly to the recruitment and retention problems of nurses in this area.
- 6.5 Between 1996 and 2001 there was an overall decrease of registered and enrolled nurses nationally of 11.1 percent. This reduction in nursing numbers is exacerbated by an increase in aged care bed numbers occurring at a time when the residents in aged care facilities have become older, more dependent and frailer requiring more complex nursing care.
- 6.6 The total deregulation of wages and conditions encouraged by the new industrial relations legislation will lead to far greater fragmentation and significantly worsen the disparity in wages and conditions of nurses across various sectors, particularly in the aged care sector. This is not in the interests of the residents and their families, nor is it an acceptable basis on which to ensure the fair and equitable delivery of health services to the community in general.
- 6.7 An increase in the disparity in wages and conditions between sectors of the health industry already has serious implications for the supply of nursing staff in areas such as residential aged care. However the proposed legislation and promotion of individual contracts as the primary mechanism of employment will have far greater implications for the supply and stability of the nursing workforce across all sectors.
- 6.8 The mobility of the nursing workforce is well recognised within the health industry. Nurses have a history of "voting with their feet" and will seek employment in the areas they consider will provide fair wages and conditions as well as job satisfaction. This was clearly demonstrated in recent times by the return of over 5000 nurses to the Victorian public sector following the introduction of nursing workload provisions and other improvements in wages and conditions as a result of enterprise bargaining negotiations.

^{*}In NSW nurses employed in public hospitals are covered by a State award varied to give effect to agreements negotiated by the NSWNA.

- 6.9 There are numerous studies relating to the issues affecting the retention of nurses in the workforce. One of the main motivations for people to undertake nursing as a career is a genuine desire to make a positive difference to the health and well being of the people they are caring for. If this becomes no longer possible, nurses will leave the profession, and they do. This is also supported by international research that indicates nurses are attracted to and retained at their work because of opportunities to develop professionally, to gain autonomy and to participate in decision-making, whilst being fairly rewarded. Workplace factors can be critical both in encouraging retention and in causing turnover of nurses.¹³
- 6.10 Offering nurses an individual contract containing lower wages and/or also reducing or removing shift allowances, weekend penalties, meal breaks, public holidays, and reduced annual leave, for example, will not lead to improved patient care; will not increase hospital through-put and will not save the health care facility money. Any so-called savings would be more than offset by the cost and waste of resources of recruiting, replacing and orientating new nursing staff, (currently estimated at \$8000.00 per nurse).
- 6.11 Nurses will not accept a situation where nursing staff with equivalent skills, experience and qualifications, working in the same area or on the same ward caring for the same patients are receiving different wages and conditions.
- 6.12 The employment of nurses based on individual contracts containing differing wages and conditions is counter productive and inimical to a profession grounded in a tradition of common endeavour and teamwork considered essential to the provision of good quality patient care and the delivery of effective health services to the general community.
- 6.13 The fragmentation of wages and conditions to this extent will result in far greater instability in the nursing workforce as more nurses move between jobs and sectors and many eventually out of the profession altogether. Not only will it undermine the provision of quality care, it will be an enormous drain on the limited resources available, particularly in the public sector and aged care sectors which are already under severe financial pressures.

7. The impact on nurses

Loss of entitlements

7.1 As the majority of nurses work for employers who operate their business on a 24 hour a day, 7 days a week basis the remuneration of nurses reflects a requirement that they work on rosters with changing shift patterns and at anti-social periods of the day and night.

7.2 It is calculated that typically nursing remuneration arrangements comprise around 20% of allowances, shift loadings and penalties. The proposals to further strip back awards and decimate the existing 'no disadvantage test' for the certification of agreements will result in nurses losing these additional payments in areas where they are industrially weak. The consequence of this will be that nurses will seek employment with employers who continue to provide such entitlements and consequently this will have an adverse effect on nursing care in some areas.

Increased hours of work

7.3 One of the greatest challenges arising from the growing levels of demand on Australian health services, as a result of the continuing financial restrictions; a system that pushes patients through with decreasing lengths of stay; and the increased workloads and intensity of the work of nurses; is to ensure that there are adequate protections to guard against exploitation of employees and access to jobs that have reasonably attractive hours of work.

However, it appears that the Bill, rather than addressing the core of the problem in a way that protects employees and employers, for example by adopting similar measures to those in Europe through laws which cap overtime and daily and weekly hours of work, simply seek to strengthen an employers direct control over employee's hours of work.

- 7.4 The proposed new Section 91C of the Bill provides that an employee must not be required to work more than 38 hours a week averaged over a period of up to 12 months plus reasonable additional hours. The essence of S91C is the total deregulation of hours of work with little or no opportunity for the employee to have any control over their hours of work. The application of this deregulated model in the health industry would be a complete and utter disaster.
- 7.5 The deregulation of working hours coupled with the potential loss of penalty and overtime payments will result in the exploitation of nurses by requiring them to work unreasonable and dangerous hours, increasing the incidence of adverse outcomes and the burn out of nurses.
- 7.6 It is absolutely imperative that nurses have some control over the hours they work and that they are protected by a system of enforceable provisions protecting their hours of work and financial obligations, to dissuade employers from demanding unreasonable periods of duty.

Recruitment and retention

7.7 The supply of nurses at the present time can best be described as fragile. The national and international shortage of nurses combined with the prospect that nearly 50 percent of nurses will be contemplating retirement over the next 10 to 15 years will have an enormous impact on the numbers, skills and experience of nursing staff.

- 7.8 While much has been achieved through the negotiation of enterprise bargaining agreements and other award mechanisms to address areas of major concern to nurses such as workload and skill mix tools; rostering and improvements in various allowances, workplace factors remain critical to the retention of nurses in the system.
- 7.9 The demands on nurses are greater and the environment they work in is under increasing pressure. Any further pressure arising from a direct threat to existing wages and conditions and career structure will undo much of the work done over the past 10 to 15 years to stem the flow of nurses from nursing. Nurses have and will continue to respond to negative changes in their working environment by either leaving the profession, taking early retirement or reducing their hours.
- 7.10 The Bill can only have a negative impact on the ongoing problems facing nurses across all sectors of the health industry and runs counter to the numerous reports and reviews into nursing labour force issues that promote strategies to ensure there is an increased supply of new nurses adequately educated and supported for entry to the nursing workforce and then retained within the workforce.

Restrictions on access to nurses

- 7.11 The proposed Right of Entry provisions under the new legislation will impose impractical and unrealistic conditions on the ANF and nurses requiring access to industrial and professional information, advice and representation. The health industry operates on a 24 hour 7 day basis and for a number of reasons, including those provided below, access to industrial and/or professional advice and representation is already difficult for many nurses. For example:
 - the nature of the work:
 - the need to accommodate shift arrangements, including rotating shifts, short shifts, morning, afternoon and night shifts;
 - significant numbers of part-time and casual staff;
 - non-standard starting and finishing times;
 - non-standard meal breaks and the requirement to remain on-call;
 - short meal breaks, most commonly of only half an hour; and
 - no designated private areas for staff, with staff for example sharing the use of public cafeteria and eating facilities.
- 7.12 The impossible restrictions placed on rights and times of entry to hold discussions with employees under the new legislation are excessively onerous and restrictive. The provisions apply a "one size fits all approach" which allows little room if any to adjust to the needs of particular workplaces. The proposed changes to the legislation may, if implemented according to the provisions specified, cause more disruption and inconvenience to a significant part of the health industry where standard work arrangements are not the norm. This is yet another example

of the Government blindly imposing excessive regulation to limit the rights of employees and their union representatives while removing or reducing any regulation which may temper the unfettered rights of employers.

Unfair dismissal

- 7.13 It is proposed that all employees employed in businesses with less than 100 employees will lose existing protections against unfair termination.
- 7.14 This is a further example of a major change that has not been justified and that will have a detrimental impact on the employment of nurses and the provision of safe levels of nursing care.
- 7.15 Nurses are the "eyes and ears" of the health system and are often the advocates on behalf of patients and their family members. They undertake this role because it is good nursing practice and consistent with their scope of practice and related responsibilities under state and territory regulation. However, this role may conflict with their responsibility as an employee.
- 7.16 In the future where the employer is able to dismiss an employee without explanation there can be no doubt this will create an environment where it is unlikely that a nurse will risk losing employment by raising important concerns about nursing practice or standards.

8. Australian Fair Pay Commission

- 8.1 As noted earlier in this submission many thousands of nurses rely on the minimum wages available under federal and state awards. Historically, minimum wage levels have been set, reviewed and adjusted by federal and state industrial tribunals acting independently from government, employer organisations or trade unions.
- 8.2 This important responsibility is to be now undertaken by the Australian Fair Pay Commission (AFPC).
- 8.3 The ANF is concerned that decisions of the AFPC will reduce the true value of minimum wage and furthermore that the AFPC will be constrained in its ability to exercise free and independent judgment. We say this for the following reasons:
 - Unlike members of industrial tribunals who are appointed for life AFPC Commissioners are appointed for four years and are reliant on government for their reappointment. This creates obvious issues about independence.
 - AFPC members are able to be employed in other capacities which increases the possibility of conflict and undue influence.

Despite the media hype and associated rhetoric the AFPC is not free to determine minimum wage adjustments as they believe to be appropriate because the legislation parameters promote the suppression of minimum wage levels viz the capacity for the unemployed and the low paid to obtain and remain in employment.

9. Conclusion

- 9.1 Nurses along with all health workers are important human capital. For nursing to remain a viable profession the jobs of nurses must be enhanced and the welfare of nurses must be protected.
- 9.2 The Bill will do nothing to achieve these goals but rather, for the first time in Australian industrial history, will usher in a multi-tiered nursing workforce where the industrially strong and active achieve advances that will be denied to others.
- 9.3 As a consequence patient care standards will decline and communities will suffer.
- 9.4 For its part, the ANF will continue to advocate for outcomes that we consider are in the best interests of our membership and of the nursing profession. We will continue this even in the new regime where our basic rights are denied and in full knowledge of the antipathy the federal government has for trade unions.
- 9.5 And while we understand what the new environment will hold for trade unions, we are surprised and disappointed to learn the extent to which the government holds in contempt all working people, a contempt which is clearly evidenced by this Bill.
- 9.6 We conclude this submission by reproducing hereunder a letter that was published in The Age newspaper on October 27, 2005:

Welcome, the servile state

I operate a part-time business consultancy specialising in the small and medium enterprise sector. I would like to share the views of one company that approached me to consult to it, on the proposed changes to IR.

This company stands out as an example of the way in which workers can be abused by the proposed changes. It imports electronic equipment and parts from Asia and - assembles or rebadges and packs the products for sale through major retailers. It employs 79 permanent staff, of whom 67 work in the plant at an average weekly wage of just over \$700 and are non-unionised.

The company is highly profitable - in excess of \$1.5 million last financial year - and is owned by a brother and sister in their early to mid 30s. Both have MBAs and a background in merchant banking, and inherited the company on the death of their father two years ago.

Despite its profitability, the company is relatively dysfunctional, with low staff morale stemming from a constant comparison of the siblings' management style with that of their late father, and a general "us and them" mentality growing between the proprietors and their staff.

The owners have signalled that when the new IR legislation is passed they will sack all 67 process workers. The sister stated: "This will teach the bastards that do not show us the respect we deserve a lesson."

The company then intends to replace the present workforce with the same number of casual employees on AWAs and pay the absolute minimum wage that they can get away with, plus the basic statutory employment conditions. The higher pay scales, permanency, penalty rates, shift loadings and other benefits now enjoyed by this company's workforce will be converted into profit (not productivity improvements) for the owners. With a degree of glee, I was told that this increase in net profit - again, not productivity - will be more than \$700,000 a year, or \$350,000 to each of the owners.

I asked where were the replacement employees to come from. The answer was the company would list positions with a government Job Network Provider so they could get employees (free of any recruiting change to the company), who would be compelled to take the positions at the minimum wage level offered under the threat of the removal of their welfare payments by Centrelink.

In addition, the brother, correctly, pointed out that in the area near the plant there is a large number of households containing single mothers who will be compelled to work under the changes to single-parent mutual obligation rules. Thus, to use his reasoning the Government's welfare reforms will deliver this company low-cost labour through compulsion.

I made the observation that productivity would fall with the removal of experienced operators, only to be told that the siblings had factored this in and considered the productivity loss irrelevant because they would clear the \$700,000 additional net profit from their new workforce.

I suggest that the thinking of these employers is more widespread than the Howard Government has publicly admitted, and this imposition of pure ideology over common sense will see the Coalition decimated at the next election, even if the ALP remains mute throughout the campaign.

Gary Fallon, Noble Park

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