Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

Submission no: 97

Received: 9/11/2005

Submitter: Mr David Carey
Joint National Secretary

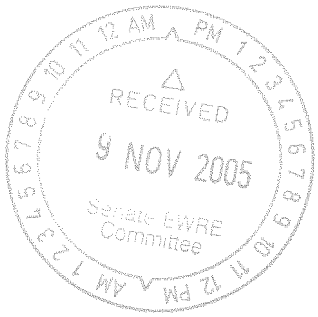
Organisation: Community and Public Sector Union – SPSF Group

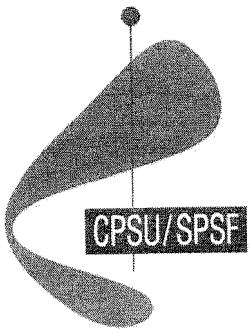
Address: Level 4, 160 Clarence Street
SYDNEY NSW 2000

Phone: 02 9299 5655

Fax: 02 9299 7180

Email: fedsec@spsf.asn.au





Community and Public Sector Union
State Public Services Federation Group

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Submitter: David Carey – Joint National Secretary

Organisation: Community and Public Sector Union – SPSF Group

Address: Level 4, 160 Clarence Street
Sydney, NSW 2000

Phone: 02 9299 5655

Fax: 02 9299 7181

Email: fedsec@spsf.asn.au

CPSU (SPSF Group) Submission to Senate Committee regarding the Workplace Relations Amendment (WorkChoices) Bill 2005

1 INTRODUCTION AND OVERVIEW

1.1 The Community and Public Sector Union – State Public Services Federation (CPSU-SPSF) represents workers in State Public Services. Our members are covered by specific state Public Sector awards and agreements however many are employed in Constitutional Corporations.

1.2 We take the opportunity to make this submission to the Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005. The CPSU-SPSF have in the past made many submissions to parliamentary inquiries on behalf of our members. It is however with great dismay that we must protest at the shortness of the time frame for the conduct of this Inquiry. We submit that the shortness of time from the presentation of the proposed legislation to the House of Representatives, the time allowed for community and parliamentary debate, its presentation to the Senate and obsence speed of the Inquiry itself does not allow for close examination or for open and informed parliamentary and community debate. We submit that as the proposals set out in the Work Choices legislation have such a far reaching effect on the working lives of many Australians and of our members that to act so hurriedly, without proper Inquiry or consultation is a flagrant abuse of the Australian parliamentary democratic process.

1.3 We submit that the Work Choices Bill does not offer Australian workers and our members `choice'. The word choice implies that one has the ability to select what is preferable, the power of the right to choose one from another. It implies that one can freely choose what one desires. This choice is however restricted by what is offered and the dynamics of power in the exchange relationship. In the offer of employment, workers ability to choose is limited by the offer of the employer and the workers need for employment. The power to withhold bread is far greater than the power to withhold labour. The Work choices legislation is underpinned by the fictitious notion that individuals can freely and equally enter into employment relations with employers on an equal basis. That they have the choice to do so. In reality many workers will have little or no choice.

1.4 The Work Choices legislation places workers in a no choice position in an unequal relationship. The Governments campaign is based upon the flawed notion that choices available to employees and that bargains stuck in relation to terms and conditions are fair. In actual fact the Work Choices legislation only removes rights and entitlements from workers. Workers will lose the protections of awards and agreements Their ability

to freely organize and collectively bargain will be stifled.. The Work Choices legislation enhances the `choices' of employers by increasing their bargaining power. Thereby reducing the power of the worker and reducing their `choice'.

1.5 We would also submit that by removing rights and protections built up over time indicates a lack of historical knowledge of why governments, law makers, trade unions and workers have worked to regulate the excesses of unregulated labour markets. Historical knowledge shows us that conditions of work and wages were introduced because of the harsh reality that left to the `free market' many workers are not paid a fair wage, are subject to exploitative practices and are placed in dangerous and unsafe work conditions.

2. UNITARY SYSTEM

2.1. The Government intends to create a national system of industrial relations. It intends to do this based upon the use of the Corporations power in the Australian Constitution. The Australian Constitution sets out the structure of the Australian Federal system. The States were granted power within the Constitution to manage industrial relations, the Federal Parliament under Section 51 (35) was granted power to settle industrial disputes which extended beyond the limits of any one State. State rights were protected in the area of industrial relations. Each State has developed their own form and system of industrial relations.

2.2. The interference by the Federal Government in the mechanisms for the settlement of terms and conditions of employment of State Sector workers displaces the sovereign rights of the State to determine policy prescriptions for the State's own workers. This must damage the ability of the State to function and ultimately affect the manner in which services are delivered to citizens of the various States

2.3. The removal of the ability of the State Governments to determine matters of policy in relation to its own workers is a specific example of how the unilateral imposition of a unitary system undermines the Federal compact of our nation.

2.4. Our organisation represents State public sectors workers, who have until now been covered by various awards and agreements specific to workers in a particular State. Under the WorkChoices proposals State public sector workers who work in constitutional corporations will now be forced into the Federal industrial relations system.

2.5. This will result in public sector workers forced into the Federal system having inferior work entitlements and rights.

2.6. Public sector workers forced into the Federal system will be worse off because:

- They will lose negotiated terms and conditions that are now deemed prohibited in awards and agreements.
- They will lose access to a fair system of unfair dismissal procedures.
- Their union will be impeded in access to their members because of obstructionist right of entry rules.
- Workers may be forced to accept Australian Workplace Agreements.
- Workers will be denied access to trade union training leave.
- Worker's rights to take legitimate industrial action is severely curtailed.
- Workers will be subjected to heavier fines and are at greater risk of common law procedures for taking industrial action.
- They will lose access to more effective equal pay principles. Most States provide more effective legal mechanisms to achieve Equal Remuneration. The Federal provisions of the Act have failed to redress the problem of equal pay.
- If agreements come to an end and a new agreement is not reached within 3 months workers conditions and entitlements could be reduced to the five basic minimum entitlements.
- Negotiated conditions such as paid maternity leave, superior carer's leave and family leave could be reduced to bare minimum standards.
- Classification and wage structure may be compressed in the Award rationalisation process. This will remove career paths for many workers.
- Workers will be denied access to conciliation and arbitration unless both parties agree.
- The long established role of state unions in dispute settlement processes will be displaced.
- The abolition of the No Disadvantage Test will mean that agreements made can undercut collectively negotiated standards in awards and agreements.

2.7. The WorkChoices Bill proposes to make radical changes to the industrial relations system by moving from a system fundamentally based upon collective labour relations to that of an individualist legal regime. The method of achieving this goal is by inhibiting workers rights to freely organize and collectively bargain employment arrangements to one which promotes individual contracts which will be unilaterally imposed by employers through an legal instrument known as Australian Workplace Agreements.

2.8. The current Federal Government have attempted on many occasion to introduce and promote AWAs. Their attempts have been wholly unsuccessful despite vigourous government activity to force workers into these arrangements and funding of the Office of the Employment Advocate. Workers and many employers have rejected the effectiveness of AWAs as a employment regulation instrument.

2.9. There is much argument about the promised benefits of AWAs and we refer the Senator to our submission to the Inquiry into Workplace Agreements, October 2005. We draw Senators to the findings of that inquiry:

2.10. The Senate Inquiry into Workplace Agreements found that:

> *The Committee heard from witnesses who had experienced a much darker side to individual contracts than is otherwise portrayed by the Government and employer groups. There are numerous examples of workers presented with `take it or leave it' and `pattern' AWAs which have been set in stone by employers, and pressured and coerced into moving from collective agreements to signing individual contracts. (Senate Inquiry 2005 p63)*

3. WORKCHOICES AND PRODUCTIVITY

3.1. The stated objective of the Work Choices legislation is to raise productivity and hence living standards. We submit that the case for productivity improvement from this type of industrial relations system is empirically unsubstantiated and is more based upon unfounded ideological dogma.

3.2. We refer the Committee to studies conducted by Prof. David Peetz

3.3. Professor Peetz has studied the effect on national productivity growth of the move to a more individualised system in ***Is Individual Contracting more Productive?*** He finds that in periods under the traditional award system, national productivity was higher than in the period since the introduction of the Workplace Relations Act. (Peetz 2005:p5) Productivity growth has been below the average that applied during the traditional award period.

3.4. New Zealand evidence does not support the argument that individual contracts improve productivity in the workplace. Gilson and Wagar who examined workplaces and organizations at a micro level found that:

we cannot find a single statistically significant or reliable relationship between organisation pursing individual contracts and our exhaustive measures of firm performance. (Peetz 2005:8)

3.5. In fact Tseng and Wooden, who looked at productivity levels in Australian firms, found that the combined effects of union membership and collective agreements produced higher productivity levels than the combined effect of individual contracting and non-unionism. (Peetz 2005 P:8)

3.6. Wooden found that

> *Unions apparently are good for productivity, but only at workplaces where unions are active.*

3.7. A BCA funded study ***The Impact of Enterprise and Workplace Focused Industrial Relations and Employee Attitudes and Enterprise Performance*** found that:

> *There was no negative relationship between unionism and productivity, but collective bargaining coverage was associated with higher levels of self-claimed productivity'* (Peetz 2005)

3.8. Peetz's analysis of Access Economics' report into productivity and flexibility found that industries which had a lower penetration of AWAs had less labour productivity growth than industries with the fewest AWAs (Peetz 2005 p13)

3.9. Peetz argues that

> *In short, there is no compelling evidence presented by or on behalf of the BCA to support the claim that individual contracting leads to higher productivity. In fact, there is barely any evidence at all and what evidence is presented is shallow and dependent on either misrepresentation or failure to use current data that had been available for some time* (Peetz 2005 p15).

3.10. British case studies by Brown show that firms that ceased recognizing unions for collective bargaining and pursued procedural individualization

> *did not gain any advantage in terms of either functional flexibility or temporal flexibility of labour over firms that retained collective bargaining* (Peetz 2005p16)

3.11. Peetz concludes that there is no positive relationship between individual contracting and productivity.... Workplace data shows no gains in terms of productivity for individual contracting over union collective bargaining.

3.12. We submit that while the Government and employer groups often cite the benefits to productivity in New Zealand from a similar industrial relations system as that proposed in Work Choices the empirical evidence shows that this type of system has only resulted in a low wage, low productivity, low skilled labour market. The New Zealand Treasury calculated that between 1992 and 1996 the relative price of labour to capital fell 22 per cent and suggested that this resulted in Capital Shallowness. The Senate Inquiry into Workplace Agreements found that New Zealand had suffered a mixture of falling productivity and rising numbers of the working poor. P64.

3.13. We refer the Committee to its own Report of the Inquiry into Workplace Agreements for a more exhaustive discussion of the myths of enhanced freedom, flexilbity and productivity improvements in the use of AWAs as an employment regulation instrument.

4. WORK CHOICES, MINIMUM WAGES AND EMPLOYMENT

4.1. The Work Choices legislation removes setting of minimum award wages from the Australian Industrial Relations Commission and places it in the hands of a new body the Australian Fair Pay Commission. The primary objective of the AFPC is to promote economic prosperity and job creation for the people of Australia. We find it somewhat perplexing that the objects of the Work Choices legislation makes no reference to the concept of `fair pay' but rather economic prosperity for the people of Australia. These are surely two different objectives, not one and the same.

4.2. We submit that removal of minimum wage setting from the Australian Industrial Relations Commission will over time result in a lowering on minimum wages and political interference in what has until now been a independent means of setting wages and conditions of low paid workers.

4.3. The Government has argued that the Commission has disregarded the employment and price effects of its decisions. This argument is wrong and appears to be made by those unfamiliar with the Commission's reasoning and published decisions. Section 88B of the Workplace Relations Act the Commission must ensure safety net of fair

and minimum wages and conditions of employment is established and maintained having regard to the living standards, economic factors, including inflation, productivity and a high level of employment. The Commission has at all times heard evidence and published decisions which have complied with this direction. While the government might disagree with past decisions it is wrong to claim that these decisions are not informed or mindful of economic issues. The Commission also considered the needs of the low paid, an objective missing from the Work Choices legislation and the inaccurately titled Australian Fair Pay Commission.

4.4. We also submit that arguments that lowering of minimum wage rates will reduce unemployment are unsubstantiated. The relationship between wage increases and labor demand is not predictable and when one considers international experience one finds that there is no relation between minimum wage and high levels of unemployment .

4.5. The table below sets out minimum wages, unemployment and employment levels. It indicates that one cannot draw the conclusion that low minimum wage levels increase employment levels.

MINIMUM WAGE RATIOS. EMPLOYMENT AND UNEMPLOYMENT 2004

	Min Wage Ratio	Unemployment	Employment
Australia	58.8	5.4	70.7
France	56.6	9.9	62.7
NZ	53.6	3.9	75.4
Ireland	51.7	4.4	66.8
Belgium	48.5	7.4	60.8
Greece	47.9	10.2	60.8
Netherlands	46.4	4.2	73.4
UK	43.2	4.6	74.1
Canada	39.5	7.2	73.9
Portugal	38	6.7	72.3
Japan	33.7	4.7	74.3
Spain	30	11	62.4

Note: The wage ratio data are from the Report of the Low Pay Commission for 2005. The data shown are the main estimates, but for 5 countries, including Australia, there are alternative estimates.
The Unemployment and employment data are from the OECD data base.
The data for the Netherlands are for 2003.

4.6. We submit that arguments advanced will not create greater employment opportunities but will only reduce wages of low paid

workers and create a greater class of working poor as manifest in the United States of America.

4.7. We also submit that in order to comply with Australia's international obligations set out in International Labour Organisation Convention 26 and Recommendation 30 minimum wage levels ought to be updated annually. We find that the provisions relating to the adjustment of the Federal Minimum Wage are unclear as to any time frame for this adjustment to occur. While the legislation states that the Australian Fair Pay Commission may adjust the FMW it does not stipulate whether this will be an annual process. According to the WorkChoices information bulletin of October 2005 the Fair Pay Commission will independently determine the timing scope and frequency of wage reviews and the manner in which wage reviews will be conducted. The proposed legislation does not stipulate the process, the frequency or who has power to make the application. For a minimum wage to be effective it must be regularly updated, be set at a realistic level and not be used as an instrument of economic policy. To comply with the spirit of ILO Conventions the minimum must be regularly updated. The Work Choices legislation fails to give this directive.

5. ABOLITION OF THE NO DISADVANTAGE TEST

5.1. The Workchoices Bill abolishes the No Disadvantage Test. This Test ensured workers in the making of their agreements that their agreement could not undercut appropriate award standards. This ensured that some level of decent standard applied and gave some assurance to workers in poor bargaining positions. Workchoices strips this protection from the most vulnerable of workers.

5.2. Furthermore Australian Workplace Agreements can now undermine agreements collectively bargained to cover the workplace. This is very poor industrial relations

5.3. and does little to enhance worker satisfaction and commitment.

6. FAILED EXPERIMENTS

6.1. We draw the committees attention to the experience of our Victorian branch during the Kennett Government's Employee Relations Act. The State Public Sector Federation Victoria in its submission to the Senate Inquiry into Workplace Relations Bill 1996 stated that the effect of the Victorian legislation was an `unmitigated disaster at every level' and that similar proposals `will be the cause of great industrial unrest and simply cannot be in the public interest'. The experience of our members was that the notion of `freedom of choice' in reality is a choice exercisable by the employer only.

6.2. The Government often cites the New Zealand example under the Employment Contracts regime. It is fairly clear from analysis of the New Zealand economy that the Employment Contracts Act did not improve labour productivity. The Act only promoted a low wage, low skill labour market. The Act did not give workers greater freedom and flexibility but resulted in workers being forced into accepting employment conditions unilaterally imposed by employers. The Act also exacerbated gender divisions in the workforce

6.3. The Western Australian Government introduced a similar industrial system in 1993. The outcome for workers was not that of freedom and choice but rather one of individual agreements being used to undercut award conditions, AWAs provided the lowest rates ando pay and a widening of the gender wage gap.

7. CONCLUSION

7.1. Workchoices is a misnomer. Workchoices does not offer any thing to workers but only removes rights and entitlements that have developed overtime to ensure a fair industrial relations system. Workchoices dissolves the core foundation of fairness which has underpinned principles of Australian labour law and industrial relations practice. It undermines international standards of the right of workers to be to organize and be represented to freely negotiate and bargain agreements of their choice. Many of our members will be placed in a far more vulnerable position than members who are not forced into the Federal system.

7.2. The Bill's emasculation of the Australian Industrial Relations Commission and the removal of its power to set minimum wages will only be to the detriment of the most vulnerable sectors of the workforce. The Industrial Commission has been an independent, open and transparent method of determining a fair minimum wage. It has taken and examined evidence from interested parties in an inquisitorial manner and made decisions that the Australian public have accepted as being fair and reasonable and made without Government interference.

7.3. It is a basic human right to share equally in the benefits of society and to have dignity at work. Workchoices displaces the concept of fairness in the Australian working environment. It offers workers and their families no choice by weighing employment arrangements in favour of the employer. It strips away protections for the low paid and most vulnerable sectors of the workforce. It is wholly recognized by Australians in opinion polls that this legislation, which was not presented to voters prior to the last Federal Election, will worsen their

conditions at the workplace. That this legislation is extremely unpopular and unnecessary.

7.4. We ask Senators to consider the damaging effect that such radical change will have on Australian society, workers and their families. We ask the Senate to reject the WorkChoices Bill.