University of Western Sydney Students' Association Inc.

Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

"Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005"

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1. Executive Summary

The University of Western Sydney Students' Association is the representative organisation for all students of the University of Western Sydney. Of the Associations 38,000 members a large proportion, in the order of 70%-80%, come from the local Greater Western Sydney community. The population of Greater Western Sydney is approaching 2 million people of which a high proportion come from low socio-economic backgrounds.

The index of Relative Social Disadvantage[1] indicates that Greater Western Sydney is more disadvantaged than Sydney Statistical Division; additionally the LGAs that have UWS campuses are considered even more disadvantaged than Greater Western Sydney. Students come from areas where a higher proportion of house holds earn less than $400 per week. In this environment students are faced with a continual struggle to assist the family unit to survive, a complex dance between study and work. The governments proposed "Work Choices" industrial legislation would expose the already vulnerable families of students, and students themselves, to even more hardships through the erosion of employment security and entitlements. The flow on affect to UWS students will be a reduction in the 'opportunity factor' as they are expected to contribute more to the household income under an unfair industrial relations system for workers. Without households having income security, entitlements and workplace rights many aspirants to a university education will simply not have the opportunity to persue a higher education degree.

The governments proposed industrial relations legislation would establish a new system full of employer bias, absolute financial and economic conventions, no socio-economic latitude, little transparency, erosion of employee rights, irresponsible ideology, and attacks on minimum safety net entitlements. There are many procedural biases in the legislation that favour the employer in isolating an employee whom will have little protection or recourse.

If the proposed Bill passes in the current form gone are the days of 'a fair go for all', gone are the days of reasonable employee safety net provisions, gone are the days where job security exists. The proposed legislation does nothing in the nations long-term economic interest as uncertainty of employee rights, employee pay and conditions, and job security prevail creating mass uncertainty in the community.

On the supposed economic argument I would simply put to the committee that the biggest enemy of the capitalist system, or free market economy, is uncertainty in the market place and the government is introducing a Bill that will guarantee

[1] The index of relative social disadvantage is based on an index created by the Australian Bureau of Statistics the 1996 census of Population and Housing.

massive uncertainty. How can someone commit to a mortgage when his or her wages, conditions and employment is up in the air day in day out?

The way in which this Bill has been rushed into parliament and deliberately pushed outside due process is fraught with danger for all. With the government seemingly by its actions insisting there be no research, investigation and oversight of such fundamental legislative changes shows nothing but irresponsible contempt for the role of government and the democracy we uphold. The clear outcome of this legislation is that the vulnerable will be taken advantage of, employees will suffer for the sake of businesses profit motives, lack of job security and community insecurity will cut spending that will in time hurt the economy. Management prerogative will now prevail absolutely while employees lose their working rights and conditions.

The government's Bill is ill conceived , irresponsible and dangerous in so many ways that the Bill should be thrown out.

2. Changes to unfair dismissal.

The government is proposing to scrap unfair dismissal laws for businesses with less than 100 employees. The only recourse open to employees who are unfairly dismissed is the courts in pursuit of common law cases. This system does not have the current " harsh, unjust or unreasonable" threshold test applied in the current Industrial Relations System we have in place.

The change from 'Unfair dismissal' to 'unlawful dismissal' will have a profound effect on Australian workers. Greater Western Sydney residents, a high proportion from disadvantaged socio-economic backgrounds, do not have the finances or resources to fund Federal Court cases. By creating a system based on 'unlawful dismissal' the government is doing away with the chance for employee's from disadvantage backgrounds to protect there rights; so much for the Australian 'fair go for all'. The proposed $4,000 grant for disadvantaged workers to fund their court case is an acknowledgement of the unfair nature of the system the government is creating and we all know that the $4,000 grant will be a challenge of criteria assessments to qualify for.

The replacement of 'unfair dismissal' with 'unlawful dismissal' created by the proposed legislation is not limited to businesses of 100 employees or less as stated by the government. The legislation will also exempt employers with more than 100 employees from unfair dismissal laws where an employee has been engaged for less than six months.

Overall around 4 million working Australians will loose all reasonable protection against unfair dismissal by exempting businesses with less than 100 employees alone, if you add the exposure of all new employees under the legislation within

the first six months also being exempt there can be no doubt that the proposed system is heavily weighted in the employers favour. Such a tilt in the balance between employer and employee rights shall have a profound effect on the Australian workplace not for the better but for the worse, the government legislation would hit the most vulnerable hence the great concern our Association has for our members and their families.

It should also be noted that the governments proposals to remove the unfair dismissal protection for employees has only been investigated in the scope of businesses with 20 employees or less as opposed to the current 100 employees or less proposal. This means that there has been no research or investigation into the effect the government's current proposals would have. It is entirely irresponsible for any government to implement such massive changes without proper investigation or vetting, as is the case with this bill.

3. Changing the Employer – Employee relationship

The government has long been an advocate for individual workplace contracts, or Australian Workplace Agreements (AWA), as the standard for the employee and employer relationship. Currently these contracts have been subject of the 'no disadvantage test' that measures the terms of any AWA against the relevant safety net award. The new system in doing away with the no disadvantage test is instead instroducing a declaration of compliance system attesting that the contract was negotiated according to the required obligations. This system of simple submission as apposed to the current system of a formal checking and approval is akin to self-regulation on the employers behalf, systems of self-regulation has by experience been fundamentally flawed in a profit motive environment. To have such a self-regulating system working in the context of an employment relationship is fraught with danger, danger for the employee. It should also be noted that the new legislation does not provide an approval process for the Office of the Employment Advocate within this self-regulating environment further heightening the risk within the proposed system.

With students, and individuals generally, seeking employment having to negotiate an AWA with an employer without systematic protections, with wildly changeable condition, under a self-regulatory process is not a fair to say the least. The only enforcement body in the legislation is the Office of Workplace Services (OWS) that will only have 200 officers responsible for scrutinising the entire national system of compliance, its not even in the same department as the lodgement body. Again very risky and irresponsible on the governments behalf.

The government would have a hard time insisting that AWAs would not take over as the standard employment engagement over time when there are only five safety net provisions for the employee and everything else is up for grabs. Businesses will quickly identify the profit opportunities in the AWA employment engagement and move to extract maximum advantage in negotiations at the expense of the employee or prospective employee. To not recognise this situation is dishonest and a mentality of 'if you don't like it don't take the job' will quickly be installed, this will again expose the most un-empowered and vulnerable in society to exploitation.

4. Minimum Wage and Employee Safety Net Conditions

The government has made clear in the legislation that the safety net awards and award system will be 'rationalised' to comply with the new five point safety net provisions. This will also reduce the number of tailored and specific awards to better suit the new individual contract (AWA) norm the government wants to install. The proposed safety net provisions are a dramatic reduction of the current protections for employees, the five standards proposed are:

1. A minimum hourly rate of $12.75. (this does not apply to trainees, apprentices, juniors or disabled employees that will be classified under a 'special minimum wage')
2. 10 days sick leave
3. 4 weeks annual leave (two weeks of this can be cashed in with no guarantee of loading)
4. Unpaid parental leave
5. 38-hour week.

Everything else is open to negotiation or appropriately put as 'up for grabs'.

With only the five minimum standards required above things such as weekend rates, shift loading, public holidays rates, overtime, redundancy pay, along with many other allowances and entitlements currently guaranteed will be on the chopping block for millions of employees. The current conditions in many Greater Western Sydney households mean the difference between further educational opportunity for family members and having to let go of their aspirations to feed the family. UWS Students' Association wishes to point out that any reduction in entitlements and take home pay has a flow on affect right through the community. In the new construct the government is proposing the 'flow on' will be hugely negative in areas of social disadvantage such as Greater Western Sydney.

The government is proposing to take away the power of the Australian Industrial Relations Commission (AIRC) to set the minimum wage and create a new body called the Australian Fair Pay Commission (AFPC) to take over this responsibility. Currently the AIRC takes into account all arguments and acts

under inclusive terms of reference when setting the minimum wage conditions for working Australians, the AFPC will not operate in the same way. In the governments explanatory memorandum to the Bill the primary purpose of the AFPC is to promote economic prosperity and job creation. This new operational memoranda is a fundamental shift from the AIRC which assesses on a variety of factors, some employee based and some business or economic based, in setting the new minimum wage. The AFPC will on the basis of the government's explanatory memorandum only be considering 'economic factors' in turn substantially favouring employer to the disadvantage of the employee, especially when times are hard.

In setting the minimum wage the AFPC must consider in the context of its economic purpose the following:

1. The capacity of the unemployed and low paid workers to obtain and remain in employment.
2. Employment competitiveness across the economy.
3. Providing a safety net for the low paid.
4. Providing minimum wages for junior employees and employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

On review it is clear that the balanced approach of the AIRC in setting minimum wages will fundamentally shift to a primarily economic assessment. This shift in determining the minimum wage as proposed is not fair or balanced, if the government is truly considering introducing a balanced approach the criteria of assessment needs to expand so as to cover social areas like cost of living, real wage values, and socio-economic composed issues rather than the unbalanced closed terms currently proposed.

The other severely deficient part of the new AFPC system is that in assessing minimum wages and conditions there is no obligation to consult. The AFPC will simply conduct research, hearings, take submissions, undertake consultancy, monitor and evaluate in any way it sees fit. With the terms and context in which the AFPC will operate the 'evaluate as it sees fit' condition of operation is highly questionably and many believe that if the AFPC is set up as proposed it would simply be an extension of the parliamentary executive even though it is established in legislation.

Again the new industrial relations system is found wanting in its new form. If the government is serious about the rights, concerns and well being of millions of Australian workers significant amendments are required. Students entering or re-entering the workforce from the University of Western Sydney will be subject to the decisions of the AFPC operating in an extremely unbalanced and closed way.

The Association is concerned that in the new IR system and AFPC model proposed in its current form would not guarantee any form of wage indexation, not even according to recognised cost of living increases. This would result in a decrease in the real value of wages and see Australia slip into an America style economic assessment system where by the minimum wage has only increased once in 10 years. With increasing HECS debts and increasing socio-economic hardship flowing onto to students in greater Western Sydney the term working poor will quickly become a mainstream reality for many graduates.

It is noted that the minimum wage does not capture trainees, junior employees and employees with disabilities but rather there will be a special minimum wage setting process for these employees. This special minimum wage unlike the standard minimum wage has no set level entering the new system. There is no bench marking or special criteria that can be found in the Bill for the new 'special minimum wage' covering many hundreds of thousands of employees. This is extremely worrying to the Association as our members are either working under such criteria conditions while they study or will when they leave. Even more concerning is when the described system above is put into context with the Prime Minister, John Howard, calling for $3 an hour youth minimum wage -- July 1992, ABC Radio.

5. Regulatory bodies and the new Australia Industrial Relation Commission

The new role of the AIRC is one of a toothless tiger with the exception of industrial action. The new AIRC role is one of a 'voluntary arbitration' or voluntary dispute resolution services. When the AIRC takes the role of an accessible independent umpire there is a clear and equitable process for dispute resolution, that neither favours the employer or employee, and is in the best interest of all. The independent umpire under the proposed legislation will be removed forcing both employers and employees into costly court proceedings for formal resolution. Such an approach is also to be view as a resource battle that will always favour the employer.

The removal of the powers of the AIRC is one that is not in anyone's interest especially the national interest as the sometime adversarial relationship between employer and employee has no easy and accessible resolution forum leading to increased tensions within Australian workplaces.

Strangely the government has chosen to leave, and indeed deliberately strengthen, the AIRC powers to deal with industrial action by employees. The government has in doing so also taken away the commissions ability to resolve disputes in a meritorious way by fashioning the AIRC outcomes via legislation in industrial action matters. The AIRC shall now become the government's battering ram for attacking employee rights to collective action.

This is a blunt ideological attack on Unions and collective action that has no part in valued legislation. The Bills drafting of protected industrial action and unprotected industrial action is blight on the new system, it will do nothing but create conflict throughout workplaces as employee collective rights disappear.