Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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The Progressive Labour Party (PLP) industrial relations policy is one part of an overall policy for sustainable development and social justice. Industrial relations legislation should recognise the dignity of productive work, and facilitate healthy, open and cooperative employment relationships. This means that the unequal bargaining power of employers and workers must be recognised, and legislation must address that imbalance.

The Progressive Labour Party recognises the central role of trade unions in ensuring fairness for working people in Australian industrial relations. We welcome this opportunity to make a submission about the Work Choices Bill, but note that the time available to the public for making submissions is too short to enable a comprehensive commentary on this large, complex and significant Bill.

Recommendation 1:

The Committee should recognise that the time available for reviewing the legislation through the current Inquiry process is woefully inadequate. Therefore, the Committee should recommend to the Senate that the Bill be recommitted to a new Senate Inquiry allowing:

- adequate time for the draft to be read, understood and analysed before time for submissions is closed; and
- a program of public hearings in all states and territories, including in regional centres as well as capital cities;

to enable genuine consideration of community views and a proper attention to the detail of the proposed legislation.

Within the inadequate time available, the PLP makes the following observations about the Bill.

Overview

The Bill should be rejected in its entirety. If passed into law, it would re-write the basics of Australian Industrial Relations, effectively removing the right of workers to be represented through trade unions, and providing employers

with unfettered power to vary working conditions without any concomitant right for workers to exercise any “choice” except losing their jobs.

The resulting tipping of the power balance in workplace bargaining will unleash market forces that will drive a “race to the bottom” for many sectors of Australian industry, and cause stagnation of working conditions for the remainder.

The economic and social consequences of a rapidly expanding class of working poor will be devastating on many levels.

The benefits in the name of which we are asked to risk those consequences – increased productivity and expansion of employment opportunities – will not flow from the changes introduced through the Work Choices Bill. On the contrary, the majority of economic commentators recognise that reduced wages and lower employee bargaining power do not contribute to productivity, while the Government’s predictions of job growth are wildly over-optimistic. In fact, any new jobs are likely to be on lower pay and worse conditions than those jobs being lost through the new rights for employers to dismiss unfairly, including for “operational reasons”.

An examination of the impact of similar policies in New Zealand demonstrates that the Work Choices Bill is an experiment that has already comprehensively failed the test of economic and social responsibility. Australian working people deserve better than to be subjected to failed experiments.

Through this Bill, Australians are asked to risk industrial and social dislocation, lower wages and reduced conditions, and to abandon their right to organise collectively in the workplace, in exchange for unsubstantiated promises based on a neo-liberal economic mantra rather than on any sound economic analysis. Polls indicate that Australians are overwhelmingly saying “No”, and so should the Senate.

Recommendation 2:

The Committee should recommend that the Work Choices Bill be rejected in its entirety.

Australia has a unique system of industrial relations built on fairness, respect for the right of workers (and of employers) to bargain collectively through associations, on the maintenance of a safety net of wages and conditions which, from as long ago as the Harvester judgement, has always included as a consideration the concept that working people should be entitled to a living wage, and access to an independent umpire with arbitral powers. This system has served us well, and continues to do so.

The Work Choices Bill seeks to undermine each of these basic tenets.

Fairness

The fact that the Government trashed the first print run of their propaganda in support of the Bill in order to reprint it with the word "fairness" added to the title indicates a dedication to Orwellian Newspeak, rather than any change in the underlying policy, which is fundamentally unfair.

It abolishes the right for most workers to challenge an unfair dismissal, thus expressly licensing bad employers to dismiss workers unfairly. The limited, slow and expensive processes for challenging an *unlawful* dismissal are no substitute for the current unfair dismissal jurisdiction. There are countless ways in which an employer can be completely unfair in dismissing a worker which do not enliven any course of action under unlawful dismissal. For example, if an employer dismisses someone purely because s/he does not approve of that employee's football allegiance ("I won't have any Collingwood supporters working in this shop!"), no anti-discrimination law will have been breached. It would be completely unfair, but quite lawful.

Recommendation 3:

The proposal to further restrict access to the federal unfair dismissal jurisdiction should be rejected.

A fair safety net

The Work Choices Bill also abolishes any semblance of fairness within the bargaining process at a workplace level. In several ways it is possible for an employer to engineer the end of relevance of any awards to their workplace – eg by restructuring and declaring the workplace to be a "greenfield" site; or by unilaterally cancelling an expired collective agreement; or by insisting all employment is on AWAs which override the award. Arbitrated Awards, both as the prevalent industrial instrument, and more recently as a safety net of relevant conditions underpinning bargaining, are central to the bargaining environment. Under the present federal system, parties are free to bargain for individual or collective agreements, so long as they at least meet the standard set by the award (the "no disadvantage test").

The system proposed by the Work Choices Bill strips away the safety net of the awards, leaving employees in a bargaining context where unless they agree to the employer's terms, they can only rely on the "Fair Pay and Conditions Standard", a laughably low set of conditions. For the employer, of course, the situation is not so bleak. If they fail to agree to the terms proposed by an employee, then they need pay no more than the Fair Pay and Conditions Standard. This means the employer holds all the cards, and can use the threat of drastically reduced pay and entitlements in order to bully employees into accepting their terms.

A few workers will have sufficient market strength, combined with sufficient mobility in their personal lives, to enable them to achieve better terms and conditions in this environment. The vast majority, including all those working

in vulnerable employment sectors, in casual and part time employment, in low skill employment, and most rural workers, will be vulnerable to those employers who seek to gain market advantage by cutting labour costs – not through increased productivity but through cutting wages.

Even good employers who do not wish to go down this path will find market pressures to do so once their competitors begin to take advantage of an industrial relations system which is designed to facilitate wage cutting.

Recommendation 4:

The proposal to replace the current no disadvantage test with the Fair Pay and Conditions Standard should be rejected. The central role of awards should be retained.

Collective Bargaining and the role of trade unions

It is an internationally recognised right for workers to combine in trade unions to advance their industrial interests collectively. This is a basic entitlement reflected in ILO Conventions to which Australia is party. For workers to have anything approaching a fair voice in industrial relations, they need to organise collectively.

The Work Choices Bill is clearly designed to discourage collective organisation and to privilege individual "agreements" over collectively bargained instruments. The ideological purpose of this is clear. It is to undermine the capacity of Australian workers to bargain collectively.

Recommendation 5:

Those aspects of the Bill which remove the primacy of collective industrial instruments over individual, to the extent to which the individual instruments are inferior, should be rejected.

While the Bill continues to protect the right of workers to *join* a trade union, it effectively eliminates their right to join a trade union *for the purpose of collective industrial representation*. Although a worker may join a union, the Bill provides no mechanism by which an employer is compelled to negotiate with them through that union, nor to reach a collective agreement with his/her workforce even if the majority of the workforce are unionised and seek to reach a union collective agreement.

The activity of trade unions in consulting with and servicing their members in the workplace, as well as basic activities such as recruitment and trade union training, are severely limited by the Bill.

The capacity to take industrial action is subject to complex and legalistic technical requirements, limited to narrow circumstances, and liable to be revoked with little effort by the employer.

There is no way that the Bill can be read as anything other than a frontal attack on the right of workers to organise and bargain collectively.

Recommendation 6

Those aspects of the Bill which reduce the role of trade unions, or restrict the right of workers to take industrial action in pursuit of their interests, should be rejected.

An independent umpire with power to arbitrate

The Bill removes the central roles of arbitrating wages and conditions from the Australian Industrial Relations Commission. Its capacity for arbitration of

industrial disputes would also be significantly reduced, effectively to only those disputes where the parties volunteer to be subject to arbitration. No rationale for these changes has been made out.

The AIRC has a strong record of genuine independence, and perhaps it is this that has sparked the Government's ire. The suggestion that it would be better for minimum wages and conditions to be determined by a hand-picked group in favour with the government of the day, and appointed on limited tenure, is transparently unsupportable. Again, this move can only be seen as a deliberate attack on the credibility of the industrial relations system as a whole.

Recommendation 7:

Those aspects of the Bill which remove powers from the AIRC, and those aspects which establish and invest powers in alternative institutions, should be rejected.

Conclusion

The Work Choices Bill is an instrument designed to inflict maximum damage on Australian workers, and on the trade unions which represent them. Each aspect of the Bill is flawed, dangerous and malicious. It is an outrage that it is being rushed through parliament without even time for the Senate to conduct a proper inquiry, or time for the public to read and fully analyse the implications of the many many clauses before making submissions to this Inquiry.

Each and every aspect of the Bill should be rejected. The Bill should be rejected in its entirety.