Submission to the Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005

We have been motivated to make this submission because research shows that the proposed changes are unlikely to meet the social and economic needs of Australia at this point. They do not address the major issues facing employers and employees, will exacerbate inequity in the workplace and broader society and will encourage poor human resource management practices. And, from a practical angle, the lack of consensus will lead to a degree of uncertainty about the operation of the new laws involving protracted court cases. Indeed, the lack of bi-partisan political support for the legislation means that if there is a change of government there is a strong possibility of a change in the IR laws once again, as occurred in Western Australia. This simply creates instability for employers and employees. Nor does the proposed legislation simplify the industrial relations regulatory environment.

Labour market shortages

The focus of the legislation appears to be misplaced, much of it aims at creating opportunities for employers to offer reduced wages and conditions to employees. We would argue that this is the wrong message for the government to be giving to employers at a time when perhaps the most serious labour market issue facing Australian employers today is the shortage of both skilled and unskilled workers. Guidance should be being provided to employers on better management practices to enable attraction and retention particularly of those groups who are under-utilised in the labour market e.g. women with young children and older workers. Australia has one of the lowest labour force participation rates by women (57.1% in May 2005). The proposed Bill will enable employers to reduce wage levels and delete aspects of employment conditions such as penalty rates and overtime payment that will make it less attractive for these people to increase their participation in the labour market. Many of these people on the periphery of the labour market are not receiving welfare payments and therefore exercise choice as to whether it is worth their while to enter the paid workforce, the proposed Bill does nothing to urge employers to make it more attractive for them to seek employment or extend their part-time employment.

Increased inequity

Another major challenge facing Australian society currently is the growth of low-paid precarious employment and the consequent increasing inequity. The Bill, rather than addressing this, creates the potential for increased inequity in Australia as the employment outcomes will be dependent upon raw bargaining power. Research points to the fact that the groups with least bargaining power will be disadvantaged further. For example, the proposed changes in relation to individual agreements, being based on a paltry set of legislated minimum conditions and a minimum wage set ultimately by the government, are not new. The WA Government implemented such a policy in 1993. The outcomes were increased managerial control, decreased labour costs and the exclusion of unions and tribunals from the IR decision making process[1]. Research showed that the pay of some of the most vulnerable groups such as cleaners, security

[1] Todd, P., Caspersz, D. and Sutherland, M. (2004) " 'Out with the individual agreements, in with the collective bargaining…did someone forget to tell the employers?': employers' responses to the changes in Western Australia's regulatory framework" in Barry, M. and Brosnan, P. (eds) *New Economies: New Industrial Relations*, proceedings of the 18th AIRAANZ Conference, Queensland, Australia.

officers, hospitality and retail workers in WA was diminished under the individual agreements[2].

One substantial area of change relates to agreement making. The Bill implies that employers and employees will have 'choice' as to whether to enter into individual or collective agreements but the reality is that many employees will not be able to exercise that 'choice'. For example, employers will be able to offer individual agreements on a 'take it or leave it' basis to job seekers and employers in Greenfield sites (defined very broadly) will be able to register an agreement with themselves without having to negotiate with any potential employee or employee representative. The latter hardly constitutes an 'agreement' given that it only involves one party. The right of employees to choose to bargain collectively and to require employers to recognise this choice is not protected in Australia – unlike in all other OECD nations. Yet research shows that collective agreement-making delivers better wages and working conditions than individual agreements. Again, the most vulnerable components of the workforce have the most to lose from individualisation. The ABS data already shows that women workers end up worse off than men under individualised arrangements so we can anticipate the gender pay gap to increase. For example, in the federal system in 2004, women on registered individual agreements were earning an average of $20 per hour compared with their male counterparts who were earning $25.10. This gap in men's and women's average hourly earnings under individual agreements increased from 12.7% in 2002 to 20.3% in 2004 and while men's average hourly rates had increased from $23.70 to $25.10, women's had actually decreased from $20.70 to $20.00. This increase in the gender pay gap further weakens women's attachment to the labour market (note above) and fuels the conditions for Australia's skilled labour shortage[3].

Ability to bargain collectively

Fundamental to the realisation of equity goals in bargaining processes and outcomes is the effective and vigorous representation of employee voice. Within Australian industrial relations this role has traditionally been assumed by trade unions that, through collective strength, have been able to ensure a relative parity in terms of bargaining power between employers and employees. This recognition of the role of collective bargaining in addressing power imbalances underlies the ILO's Convention 98 (Right To Organise And Collective Bargaining Convention 1949). The proposed *Work Choices* changes will skew this balance in favour of employers by promoting industrial instruments that allow for the avoidance of collective bargaining with or without the involvement of unions. Whilst not removing the ability for employees to engage in collective bargaining, the government's commitment to facilitating the easier use of AWAs and promoting them as a preferred bargaining instrument is clear. Similarly, the increased facilitation of non-union collective agreements further undermines the position of unions to represent employees effectively. The lack of obligation on employers to recognise collective bargaining sets Australia apart from other OECD countries.

Industrial action

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[2] ACIRRT (2002) *A comparison of employment conditions in individual workplace agreements and awards in Western Australia*, produced for the Commissioner of Workplace Agreements, February.
[3] Todd, P. and Eveline, J. (2004) *Report on the Review of the Gender Pay Gap in Western Australia*, a report for the Government of Western Australia, November.

The capacity to engage in industrial action is a recognised aspect of industrial relations in democratic societies. Indeed, the 1996 Workplace Relations Act recognised this principal by allowing for 'protected' industrial action during bargaining periods. Under the *Work Choices* reforms, while these rights will not be formally removed or eliminated, in practice the ability of unions or employees to engage in industrial action will be circumscribed to the point where the exercise of these rights will be highly impractical. For instance, the proposal to require secret ballots before protected action can be taken and the sweeping powers to be given to the Minister to terminate strikes in 'essential services' place severe restrictions upon unions seeking to take industrial action. If unions cannot take effective industrial action to apply pressure or counter-pressure to employers then they will not be able to represent their members effectively, reducing unions to mere 'window dressing', thereby making our workplaces even less democratic than they are now.

Union representation

While not a clearly enunciated goal of the proposed reforms, the changes will significantly curtail existing union capacities in regard to effective representation of members. For instance, the changes proposed to right of entry provisions requiring union officials to pass a test attesting to whether they are a 'fit and proper person' to be granted right of entry to workplaces, the provisions denying right of entry for workplaces where all employees are covered by *Australian Workplace Agreements* (AWAs), and the easing of restrictions on employers seeking to secure a 'conscientious objection' certificate from the Industrial Registrar all limit union attempts to represent employee interests.

Of great significance are the further restrictions placed on a union's ability to represent employees where breaches of an agreement have occurred. Under the changes, union officials will have to provide particulars of a breach that he or she is proposing to investigate and, when seeking to discuss this matter, they will have to abide by the employer's request that the meeting or interview be conducted in a particular room or area and that a specified route should be taken to that venue.

Thus we have grave concerns about the attack this Bill makes on employees' right to collective action and representation. While the Act affirms the right of individuals to choose whether or not they belong to a union, the proposed restrictions on the activities of a union renders the freedom of association clauses almost meaningless.

Unfair dismissal

Another aspect of the proposed legislation that has received much publicity are those provisions relating to unfair dismissal. There is no convincing evidence on the relationship between unfair dismissal provisions and job creation and therefore the rationale for the changes is, at best, dubious. On the other hand, the outcome has potentially serious consequences for business and individual employees as it encourages poor HR management practices and high turnover. It increases job insecurity for employees.

Minimum standards

The reduction in minimum standards for many employees is another matter of major concern. The narrowing of awards and the push to largely eliminate awards from the regulatory system will reduce employees' rights at work. It presumes that such rights

may be renegotiated between employee(s) and employers but again the outcome will be dependent upon bargaining power and the more likely outcome will be that managerial prerogative to determine which conditions will be included in the workplace agreements will prevail. The diminution of awards will particularly impact upon women employees, a higher proportion of whom are dependent upon awards for setting their workplace pay and conditions. The transferral of the determination of minimum wages to the newly-established Australian Fair Pay Commission can only be described as raising many questions of concern. Firstly, many analysts are predicting that the intent is to enable the minimum wage to be reduced relative to average earnings, a point that the government has not refuted. Secondly, the removal of classification structures from awards will potentially challenge career structures within occupations and industries that have been long-determined – what is the rationale for this? What is the government wanting to achieve by doing this? Such debates should occur within the community before the changes are made. In addition, the proposed membership and operation of the *Australian Fair Pay Commission* also does not provide unions with any assurance that union membership interests will be fairly represented, unlike the United Kingdom model on which the AFPC is based.

Work-life balance

The proposed Bill does nothing to address the work-life balance issue that the government has correctly identified as a major issue in today's labour market. It even takes away the effect of important provisions gained in the recent family test case. The provision allowing employers to average working hours across 52 weeks will impact most severely on women, as primary carers, creating potential uncertainty about their working hours and thereby making it impossible for them to arrange appropriate childcare. Overall, employees will be more dependent on managerial discretion to enable them to combine work and family interests and this has not produced satisfactory outcomes in the past; again those with bargaining power achieve access to family friendly provisions and those who lack such power do not.

We conclude with the comment that notions of fairness and equity are at stake in this legislation. It challenges not only the wages and conditions prevalent in workplaces in Australia but the social values we wish to uphold within our community e.g. the level of inequity in wages, the ability of parents to balance their work-life responsibilities and interests, the right to work reasonable hours. Market demands are being prioritised over social values. We argue that it is not acceptable to absolve employers from social responsibility and to refer concerns about low pay outcomes to the tax and welfare systems to be rectified.

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