

# Submission

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

## **Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005**

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**Health Services Union submission to the inquiry into the  
Workplace Relations Amendment (Work Choices) Bill 2005.**

**November 2005**

## **Introduction**

The Health Services Union is the specialist health union in Australia with over 72,000 members working in all areas of public, community, aged and private healthcare.

HSU coverage varies from state to state but in the acute care sector membership includes staff working as junior doctors, nurses, cleaners, cooks, admin and clerical staff, allied health professionals, managers, dental officers and career medical officers.

There is also a significant membership in the aged care, disability, mental health, drug and alcohol and Aboriginal healthcare sectors along with the NSW and Tasmanian ambulance services.

This submission deals with key elements of the Work Choices Bill as they relate to members of the union and the industries they work in.

Despite opposition to all the provisions of the Bill, the submission does not cover some of the areas previously canvassed in other Senate inquiries such as the reform of unfair dismissal arrangements, right of entry provisions, freedom of association, strike pay and secret ballots.

The HSU is an affiliated member of the ACTU and supports the submission it has made to this inquiry.

Should the committee require further information from the HSU or the provision of evidence in a hearing the union would be happy to assist.

## Summary

The HSU is strongly opposed to the Workplace Relations Amendment (Work Choices) Bill 2005 and believes the committee should recommend that it be rejected.

The basic intention of the Bill is clear: a reduction in the rights of working Australians that have been built up over more than 100 years and a radical shift in the power in the workplace to employers.

The Bill has been brought forward not in response to widespread demand for change or with a mandate from the Australian community. Instead it seeks to implement an ideological agenda in which workers and their trade unions are the primary victims.

In the health and community sectors where the HSU has members, the impact of the proposed IR system will be overwhelmingly negative.

Those sectors already face a host of major problems: the rapid increase in demand for services and the consequent workload and funding pressures, critical staff and skill shortages, an ageing workforce and significant pay inequities within professions.

The proposed system will do nothing to alleviate these problems and will worsen many.

The conditions of hundreds of thousands of dedicated health workers will be undermined by the proposed reduction in awards and award conditions and the imposition of a new Fair Pay Standard as the benchmark for agreements in place of the existing no-disadvantage test.

Cutting the powers of the Australian Industrial Relations Commission to deliver annual pay rises for award workers will impact on the lowest paid and most vulnerable members the union represents.

Extending the coverage of the federal IR system will also deprive health workers in most states of the protection of state systems which have more comprehensive awards, better protections from unfair dismissal and industrial commissions with greater conciliation and arbitration powers.

WorkChoices will also restrict choice and create inequality among healthworkers, lead to more protracted disputes which reduce productivity. It will promote individualism in industries where the quality of service is largely dependent on effective teamwork.

Australia's ability to recruit and retain nurses and allied health professionals in the face of international shortages will also be severely undermined by the type of labour market reform proposed.

## Awards

The award system has traditionally been the backbone of Australia's industrial relations system. In health and community care, awards have been critical in establishing and maintaining fair pay and working conditions within and between different occupational structures.

The skills-based classification structures in awards have helped to establish the workforce required for the adequate provision of services. The consistency of that structure across different health services is also maintained through the award safety net.

Among the HSU members it is those with the least bargaining power who are covered by awards, including Aboriginal health workers and sections of the aged care and disability workforce.

Sections of the Bill relating to awards that will have a particularly heavy impact in health include:

- Ending the use of the relevant award when applying the no-disadvantage test for workplace agreements will inevitably lead to the loss of working conditions for thousands of healthworkers;
- Plans to rationalise awards and replace the skills-based classification structures with a convoluted two-tier Australian Pay Classification Scale has the potential to affect the balance and structure of the workforce. Employers will be encouraged to try and reduce the wage costs by employing less skilled staff with broader roles as has happened in aged care. A reduction in the quality of services to the public is the inevitable result;
- Abolishing the Australian Industrial Relations Commission's ability to increase award wages on an annual basis means that the most vulnerable and lowly paid sections of the health and community care workforce will be without guaranteed pay increases;
- Provisions of the Bill relating to the expiry of collective agreements. The fact that employers will be able to terminate an agreement with 90 days notice to the Office of the Employment Advocate and then have staff employed only on the Fair Pay and Conditions Standard (FPCS) and not the award will inevitably result in a substantial loss of pay and conditions for areas of the workforce without strong bargaining power. Conditions in awards such as overtime penalties, shift allowances, holiday and casual loadings, redundancy pay will be lost. It also actively discourages employers from seeking agreement at the workplace with employees and;

- The so-called protection of award conditions in bargaining is illusory. It will take only a few sentences to eliminate all the entitlements in awards that are not included in the Fair Pay and Conditions Standard.

## **Workplace Agreements**

A majority of staff working in health and community care are covered by collective agreements.

They will be substantially disadvantaged by the changes envisaged in WorkChoices which undermine the collective bargaining process and unfairly promote individual agreements as the primary form of employment contract.

The changes will make it harder to maintain the pay and conditions of staff working in health and community services. Staff working in these areas rely heavily on the conditions outside the Fair Pay Commission Standard such as penalties, loadings for shift and overtime and annual leave loading that make up their total take home pay and will be under threat in the new system.

The failure to include a basic right for employees to choose to bargain collectively is indicative of the approach of the Bill.

The HSU has particularly concerns regarding:

- The replacement of the no-disadvantage test as applied by the Commission to the relevant award for agreements. The proposed system in which agreements only have to meet the Fair Pay Conditions Standard will lead to the loss of conditions in sectors of the workforce which do not have significant bargaining power;
- Provisions that allow agreements to become operational without scrutiny even if they are improperly or unlawfully created with the only redress through Federal Court action;
- Further restrictions on the ability of unions to take industrial action, particularly the broad provisions allowing for third party applications to stop industrial action. If healthworkers are prevented from bargaining for decent pay and conditions, problems in the recruitment and retention of staff will be exacerbated, particularly in areas such as nursing and medical practitioners where there are major international shortages;
- Restriction on the content of collective agreements including basic matters such as the prohibition of AWAs, the use of contractors, remedies for unfair dismissal and union involvement in dispute resolution. The exclusion of conditions that are agreed to by the employer and employees makes a mockery of the claims by the

Government of creating a system which enables workplace flexibility and choice;

- Draconian penalties for unions that are deemed to have attempted to insert prohibited content into agreements;
- Restrictions on pattern bargaining. Work Choices would make it almost impossible to maintain common pay rates and conditions across a network of health facilities such as public hospitals. That will lead to differences in the quality of services and problems in the recruitment and retention of staff with an exodus to those offering better wages and conditions. Employers and unions both have long maintained the benefits of common claims in sections of the health industry, allowing for a reduction in workload and disputation and the maintenance of industry standards;
- The provision of lock-outs as a coercive tool against workers;
- The ability of employers to make Greenfields Agreements with themselves upon establishing a new business. The use of such provisions in an area such as aged care where there are already substantial problems maintaining decent wages and conditions will further exacerbate an emerging “race to the bottom” culture in the industry and;
- Provisions covering the transmission of business which will allow companies to shift their workforce into a new entity and employ new staff on rates below that of the applicable collective agreement or award.

## **Australian Workplace Agreements**

The primacy of Australian Workplace Agreements in WorkChoices reflects the ideological foundations of the Bill rather than their suitability as a means of reaching an agreement between employees and employers.

As the Senate Inquiry into Workplace Agreements found there is no hard evidence showing the imposition of AWAs leads to improve productivity, higher wages for non-managerial staff or substantially better conditions for workers.

The HSU has particular concerns regarding:

- The removal of provisions requiring AWAs to meet the no-disadvantage test against the relevant award;

- The primacy of AWAs over other forms of agreements, including the ability of employers to offer AWAs at any time during a collective agreement;
- Provisions allowing for employers to make it mandatory for new employees to accept an AWA and to make it a condition of taking a new position even if a collective agreement is in place. Inevitably in the health sector as elsewhere this will lead to a loss of award conditions for new staff;
- Allowing employees to waive their rights to fair access when making or changing agreements. Large sections of the HSU's membership come from non English-speaking backgrounds and the ability to allow people to waive their rights in this situation will inevitably be exploited by some unscrupulous employers and;
- Provisions allowing AWAs to become legal upon lodgement and the complete lack of scrutiny of them.

## **Australian Industrial Relations Commission**

Employers and unions in the health and community services sectors have long relied on the AIRC and its conciliation and arbitration powers to minimise harmful disputation.

The proposed changes will see the AIRC effectively stripped of all its powers except the power to stop unions taking protected industrial action and to issue orders regarding the bargaining period.

In a dispute its powers are limited to voluntary mediation and it cannot compel either party to do anything, make awards or orders or arbitrate.

The end of arbitration except in the case of workplace determinations is a retrograde step along with the end of the power of the AIRC to make new awards, except where they are the result of award rationalisation.

As mentioned earlier taking away the AIRC's ability to determine award wage rates is likely to have a negative impact on the wages of the lowest-paid and most vulnerable sections of the health and community care workforce.

## **The Myth of the Single IR system**

The WorkChoices rhetoric about a single national IR system ignores the reality clearly set out in the provisions of the Bill that state systems will continue to operate and cover non-constitutional corporations.



In health and community care this is a recipe for chaos and division.

The public health workforce, for example, will be split between the federal and state systems, according to how the government agencies that employ them are constituted.

That will allow for the creation of significant inequities in the rights and working conditions among occupational groups according to the system they operate in, their bargaining power and geographical location.

In professions where there are significant national and international workforce shortages such as nursing, medical practitioners, physiotherapists and radiation therapists, there will be significant incentives to move into areas where the IR system not only provides for award and agreements with more generous entitlements but affords greater protection at work through stronger arbitration and conciliation systems.