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Submission to the:

**Legislative Assembly for the Australian Capital Territory
Select Committee on Working Families in the ACT**

Inquiry into Working Families in the ACT

8th December 2005

Transport Workers Union of NSW, Canberra Sub Branch

Organisational Background

The Transport Workers Union of New South Wales, Canberra Sub Branch (TWU) is a federally registered industrial organization representing employees, owner-drivers, contractors and small business operators in general transport and related industries across the Australian Capital Territory (ACT) and New South Wales (NSW).

Due to the pervasive nature of 'transport', the TWU represents employees, owner-drivers and sub-contractors working in general transport, waste, construction, retail, logistics, storage, mining, aviation, public transport, oil, couriers, taxi, administration, emergency services, cash in transit, and the water front industries. As such the TWU is diverse organization with members stretching across a number of occupations.

Over 2000 TWU members and their families are residents of the ACT. Hundreds more are residents of surrounding areas who are regularly engaged in work in and around the ACT transport and related industries.

As an island territory within NSW, itself a corridor state for over 80% of our countries road freight movements, trends and relationships within the NSW transport and related industries are very often determining influences on developments within the ACT and on ACT transport workers and their families. Indeed, in the past 4 years the TWU has paid particular attention to ensuring comparable terms and conditions for ACT transport workers and their families with their colleagues across the border performing similar work.

Introduction

Welcoming the initiative of the ACT Legislative Assembly and its members in establishing this committee, this initial submission by the TWU aims to highlight some of the greatest concerns of ACT transport workers and their families with the Federal Government's new 'Workchoices' and related industrial relations legislation.

With particular reference to the terms of reference of the committee, this submission will begin with an overview of the impact of the Federal Government's legislation on ACT transport workers and their families. Next it will highlight what some of these changes will mean for ACT transport workers, their families and all members of the ACT community with practical examples. Concluding finally with some initial suggestions for the ACT Parliament to consider as part of it's overall response.

Overview of Impact from 'Workchoices' on ACT Transport Workers and their Families

With the ACT already operating under the Federal industrial relations system in the form of the Workplace Relations Act (1996) the affects of the Governments latest round of legislative change will be felt by ACT workers and their families almost

immediately. Unlike in the other states where the transitional provisions and spectre of a high court challenge may perhaps delay the impact of some of the legislative most regressive provisions, we anticipate that in the ACT workers and their families will begin to be impacted upon from March next year.

Parental leave provisions in existing EBA for example, that currently provide for entitlements beyond the existing Federal standard (including the right to request a return to part time work or an extended period of leave) will immediately be unenforceable. As will dozens of other provisions and entitlements that have been bargained and won in good faith by thousands of ACT transport workers and their families because the Federal Government has now deemed them 'prohibited matters'.

Some of these provisions that will be immediately taken away from ACT workers and their families, include:

- Protection from unfair dismissal for employees with less than 100 employees and potentially any other employee whose employers is subject to operational requirements
- Provisions of paid trade union leave and trade union meetings
- Job security protections from Australian Workplace Agreements
- Job security protections from contracting out and the use of contract labour
- The right to be represented by a union in Dispute Settlement Procedures
- Any other matter that may offend the Minister and is prohibited by regulation

In other words, under the Howard Government's new WorkChoices laws, deals negotiated in the ACT by ACT workers and their families are no longer a deal!

Being denied access to hard won existing rights and entitlements is just the start of the impact of this legislation for ACT transport workers and their families. Taking protections, conditions and entitlements away from workers and their families, however, is what this legislation is all about.

As members of the committee have no doubt being made aware the impact and very intent of the Federal Government's Workchoice's legislation is not just about shamelessly taking away existing rights and protections, but also providing the tools and mechanisms for countless other rights and protections to be eroded away.

This is exactly what the Government intends to do by:

- Removing the award based 'no disadvantage test' as the benchmark for all agreements in favour of a legislated Fair Pay & Conditions Standard (FPCS) of 38 hours per week; four weeks annual leave; 10 days carers/personal leave; 52 weeks

parental leave and the new Federal Minimum Wage to be determined by the legislated Fair Pay Commission;

- Abolishing the role of the Australian Industrial Relations Commission in vetting agreements in favour of certification by lodgement and reducing its functions to be only involved in dispute resolution were the parties agree or are directed by the Minister;
- Making it easier for AWA's to be entered into, for AWA's to be pattern bargained across workplaces and giving AWA's preferred agreement status with the capacity of override any existing and all future agreements, including all existing overtime and penalty rate provisions that often make all the difference for transport workers and their families
- Making it harder to workers and their families who choose to collectively bargaining to continue to do so by increasing the restrictions on union involvement, access, and the fines and penalties for industrial action, including streamlining the access to common law torts;
- Further stripping back the award system to the point of irrelevancy as any form of effective safety net in favour of the new FPCS and moving to abolish alternative State systems covering employees of incorporated entities

In addition for transport workers, the Government has also indicated its intention to introduce a new **Independent Contractors Act** early in the new year and continue to pursue amendments to the **Trade Practices Act** that explicitly exclude the rights of independent small business owner drivers in the road transport industry to be represented by a trade union.

Impact of Workchoices on ACT Transport Workers and their Families

For workers and their families across the ACT transport industry removing the floor of safety net protections from the existing award system, combined with the abolition of the very often determining NSW system (particularly in relation to lorry owner drivers) and the effective reinstatement of the absolute right to hire and fire for the vast number of Australian employers have potentially devastating implications.

Across all sectors of the highly competitive transport industry maintaining and enforcing an effective and viable safety net of sustainable wages and rates, working hours, conditions and returns is all too often the difference between providing a safe, effective and reliable service in line with accepted industry and community standards or not.

While far from perfect, the current system provides this. It provides a decent safety net that ensures the vast majority of transport workers in the ACT are not forced to take up two jobs or work excessive and unsustainable amounts of overtime; that the vast majority of employers who choose to do the right thing by their workforce, their

vehicles, equipment, commuters and the community can; that owner drivers working in the ACT can make a decent living and still maintain safe vehicles and safe and sustainable working hours; and critically, that where sustainable rates, wages, and working conditions are not being maintained it provides mechanism to have this addressed.

Without the protection of an effective and sustainable safety net in the transport industry all of these things are up for grabs – wages, rates, safety, working hours, vehicle maintenance, and service standards just to name a few.

And for evidence, one need only look to the long distance (interstate) sector of our industry which has been operating without an effective safety net or any real protections – apart from those notionally provided by common law – for years now.

In this industry, the realities are that large segments of the industry compete on price alone. Drivers are too often forced to do whatever it takes to get the job done to meet the demands of clients. And employers and operators who are prepared and committed to doing the right thing are too often forced to push their drivers to extremes just to be able to compete and continue to win work.

In short, it is too often a race to the bottom where the cheapest and nastiest who are prepared to do whatever it takes to meet unsustainable client demand regardless of the cost are perpetually dragging the industry down. It's a race where;

- Driver's rates have increased in real terms in the last ten years
- Industry divorce and suicide rates are far higher than the national average (suicide is estimated to be as much as 30% higher)¹
- Last year alone, 102 people were killed in heavy truck crashes on NSW roads
- In the 4 years since 1998, over 742 people were killed in truck accidents on our roads and thousands more seriously injured
- Drivers are legally able to work up to 84 hours a week and are too often forced to work without adequate rest, often days at a time up to well in excess of 100 hours
- 30% of long distance truck drivers have consistently reported being forced to resort to substance abuse just to be able to do their job

Or as TWU owner driver delegate, Tony Upton, a car carrier owner driver who has spent 21 years in the industry and has over \$120,000 invested in his business recently told the Federal Parliamentary Senate Inquiry:

¹ See TWU Superannuation Death Claims Report, 1998

“If you don’t have a safety net, you don’t know how much you can spend on maintaining your vehicle. Without a safety net you can’t figure out how much you’re going to earn in a week, so you take every job going, you don’t sleep, and you don’t stop. You just keep going and that’s when things get dangerous.”

For transport workers and their families across the ACT, the same principles apply. If the NSW system of regulation for owner drivers is successfully abolished, ACT owner drivers face the prospect of unregulated competition without any indicative let alone enforceable market floor. Safety, maintenance and working hours will be back into competition and drivers may be forced over to edge to either get the job done or to continue make a living on our roads.

Similarly, across our industry sector the same applies in the bus industry, taxi industry, waste and recycling industry, ambulance service, airlines, couriers, general transport and distribution.

Even if ACT employers, including Government agencies are committed to maintaining terms and conditions, under Workchoices, if their competitors either choose or are forced by industry clients to start cutting costs and offering AWA’s without penalty rates and weekend overtime, inevitably they will have to either compete and this level of get out of the industry.

If they don’t choose to compete, somebody else will and over time industry safety standards, working conditions, family conditions and service standards will begin to collapse.

And in the transport industry if standards start to collapse and bus drivers are forced to take a second job to put food on the table for example; or a airline worker or ambulance paramedic is forced to work additional shifts to make up overtime and penalty payments that have been eroded away, workers, their families and innocent members of the travelling public can get killed!

Workchoices – A Reality

To assist members of the committee to fully appreciate the legitimacy of the concerns of transport workers and their families, that pressure will be applied on ACT employers and workers to cut cost and utilise the mechanisms in the legislation to erode and take conditions and protections away below are two brief examples of some of the realities already taking place in the ACT transport industry.

Comcar

Unsurprisingly, in negotiations currently underway in the Federal Public Service for over a year now some Comcar drivers have accepted Australian Workplace Agreements including 10 amendments to an existing Enterprising Bargaining Agreements (EBA) for a 3 year 5%x5%x5% wage increase. In contrast workers electing to renegotiate their collective EBA are being offered a 10% wage increase over 3 years for the same 10

amendments, one of which equates to a 9.5% wage decrease for full time drivers (3/4 an hour work per day without pay).

Compass Group

In the airfreight industry drivers performing contract delivery and transport services work for the defence service have also been offered an AWA and where in the process of seeking advice from the union in this regard when last week they received, by text message, advice that unless the agreements were signed they would be forfeiting a 2% wage increase.

What can the ACT Legislative Assembly Do?

If one additional life lost due to a work related incident in the transport industry is the price to pay for the Federal Government's Workchoices legislation, then the TWU is urging members of the ACT parliament to make it clear that one life is far too high a price to pay and to do whatever they can to make sure this doesn't happen.

Accordingly, ACT Transport workers and their families are petitioning members of the ACT Assembly and Government to do whatever they can do ensure critical safety net protections for ACT transport workers and their families are not eroded away. And further that in the interests of transport workers, their families and all members of ACT community who share our roads and use our industry, that everything possible is done to ensure any protections that are eroded by Workchoices are replaced.

In this regard, we believe there are four initial areas that need to be investigated and addressed. These include:

1. road safety licensing laws, training standards and mandatory safety requirements for operators both based in and travelling through the ACT need to be urgently reviewed in consultation with driver and industry representatives.
2. recent amendments to the NSW Occupational Health and Safety Act and the introduction of a Driver Fatigue Regulation that allows for clients of the transport industry to be held accountable for the movement of their freight on our roads need to be urgently introduced into to ACT and extended to all industry operators.
3. model national Chain of Responsibility laws recently introduced in NSW and QLD need to be urgently reviewed in implemented in consultation with drivers and industry representatives.
4. the already introduced Fair Works Contracts legislation that establishes an alternative cost free jurisdiction to offer protections for independent contractors from unfair and exploitative contracts needs to be urgently progressed as indicated by the ACT government prior to last years election.

Conclusion

We trust that the committee and members of the ACT Assembly seriously consider this submission and would welcome the opportunity to make additional supplementary submissions as the impact of Workchoices begins to bite on ACT transport workers and their families.

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