



**SELECT COMMITTEE ON
WORKING FAMILIES IN THE AUSTRALIAN CAPITAL
TERRITORY**

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Supplementary Submission from

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SELECT COMMITTEE ON WORKING FAMILIES IN THE AUSTRALIAN CAPITAL TERRITORY

Terms of Reference:

The Select Committee on Working Families in the Australian Capital Territory is appointed to examine the effect on working families in relation to:

- health costs;
- effects of industrial relations changes;
- adjustments by the Commonwealth Grants Commission and the allocation of funds by the Commonwealth
- impacts on current or potential ACT legislation by the Commonwealth; and
- any other related matter.

CPSU SUBMISSION

Introduction

1. The Community and Public Sector Union (PSU Group) (“CPSU”) welcomes the opportunity to make a supplementary submission to the Select Committee on Working Families in the Australian Capital Territory.
2. CPSU have been dealing with the Coalition Government as the main employer in their area of coverage for more than 11 years. Because these dealings have occurred under the *Workplace Relations Act 1996* since it was first introduced, Work Choices has resulted in incremental rather than dramatic change to employment practices and arrangements in this sector.
3. Since making our submission in November 2005, the Federal Government’s Work Choices laws have come into effect (in March 2006) and continued in operation now for more than a year. This inquiry therefore provides a welcome opportunity to compare our original analysis of the laws with the reality of their impact.
4. As the union representing public sector workers in the Commonwealth, ACT and Northern Territory, CPSU has always sought to work in a professional, efficient and constructive manner in all negotiations. Our members – and non-members – strongly benefit from CPSU’s expertise in bargaining. We take this role very seriously.
5. CPSU has a dedicated bargaining team who between them have many years of experience in these negotiations. The feedback that CPSU receives from public sector workers is that they value this positive and expert role that CPSU plays for them.
6. This puts CPSU members on a collision course with the Coalition Government which through the Work Choices legislation clearly intends to promote individual agreements or AWAs at the expense of collective agreements negotiated with the assistance of a member’s union.
7. At the Federal level, CPSU have been bargaining with the Coalition Government as the employer for more than 11 years. As the union representing public servants, CPSU have only ever sought a level playing field in the industrial relations framework. That is, a ‘neutral’ or apolitical employer with which to negotiate.
8. It is clear that public servants prefer to bargain collectively rather than as individuals.
9. According to DEWR’s most recent statistics, there are 102 agreements (certified and collective) operating in the APS and Parliamentary Service (PS) covering approximately 132,383 employees as at 31 January 2007.

10. A recent DEWR survey indicated there were 17,198 AWAs operating in the APS and PS, covering around 2,372 Senior Executive Service (SES) and equivalent employees and 14,826 non-SES employees as at 31 December 2006.¹

11. Statistics released by the OEA at Senate Estimates² show that the ACT is the second highest State or Territory in terms of the percentage of workers employed on AWAs. According to these statistics, in the ACT there are 28,866 'live' AWAs in force, which is approximately 15.4% of the Canberra workforce.

Collective Agreements vs AWAs

12. CPSU opposes individual statutory contracts such as AWAs as in our experience, workers get a better outcome when they bargain with their employer together as a collective.

13. As a result of the Coalition Government's drive towards individual contracts, many CPSU members are now employed on AWAs.

14. AWAs in CPSU's areas of coverage include those "template" agreements that are used to cut wages and conditions; those that largely build on the collective agreement and provide higher wages largely through performance pay; and those that reflect the collective agreement but transfer many entitlements and allowances into policy.

15. CPSU refutes the Coalition's claim that AWAs are needed to provide for individual flexibility in workplaces. Our experience, as detailed below, is that flexibility can be delivered through a collective agreement. In these situations, the collective agreement operates as the floor to an individual arrangement.

16. Arrangements have been negotiated through collective agreements in a number of organisations that assist employers meet varying operational requirements and labour market demands. These arrangements have come about in both the pre and post Work Choices environments. They demonstrate that the flexibility required by employers can be effectively met through collective bargaining arrangements and are not dependent on a statutory individual contract.

17. The advantage of having these arrangements in collective agreements are that they provide clear and transparent guidelines for both staff and managers, reduce the administrative burden on individual managers in having to design processes and details around the variety of arrangements that may be necessary.

¹ DEWR, Progress in Australian Public Service and Parliamentary Service Agreement Making as at 31 January 2007:

<http://www.workplace.gov.au/workplace/Category/ResearchStats/Agreement/ProgressinAgreementMaking.htm>

² Senate Standing Committee on Employment, Workplace Relations and Education, Estimates Hansard 28 May 2007

<http://www.aph.gov.au/hansard/senate/commtee/S10262.pdf>

18. Some examples are provided below from both pre and post Work Choices agreements:

Example – ACT Public Sector – Special Employment Arrangements (First negotiated pre-Work Choices. Maintained in their current post Work Choices Agreement.)

In the ACT Public Sector, the Stanhope Government was elected in 2001 on a policy of “no AWAs”. The ACT public sector now has collective agreements that allow for Special Employment Arrangements to cater for special or individual employment needs. These SEAs establish a framework which includes monitoring and consultation with the CPSU by which employees or groups of employees can be paid in excess of the rates in the collective agreement, and have different (but not lesser) conditions, in specified circumstances based predominantly on skills and market rates.

Example – CSIRO – Market Related Employment (Current agreement – pre-Work Choices)

The CSIRO agreement allows individual contracts to be paid based on market rates where skills are needed. The contract cannot provide remuneration less than the collective agreement. They can also only differ from the terms of the collective agreement in a small number of defined areas, thereby protecting the collectively agreed conditions whilst giving the employer the capacity to attract the right staff in a tight labour market.

Example – Defence – Building Defence Capability (Post Work choice agreement)

The Defence Agreement allows the payment of a premium of up to 20% above the Agreement rate for some or all of the employees within a specific employment category deemed to be of strategic significance to Defence capability for a period of up to two years. The period of above-Agreement rate can be extended if required. This serves as both a recruitment and retention aid for Defence in staffing key areas.

Example – Dept of Immigration and Citizenship – Variable Working Hours: Department initiated. (Post Work Choices agreement)

The DIAC agreement provides for the employment of staff on a working hours arrangement that allows the employee to work regular hours of duty other than the standard working day or working week. This assists the Department in meeting a variety of operational arrangements in Australian based client servicing and overseas processing areas. The inclusion of this arrangement in a collective agreement provides protection for existing employees in relation to these arrangements, and ensures that new staff engaged on these arrangements still have access to the full range of employee entitlements.

Telstra – Supplementary Workers (Current Agreement, pre-Work Choices)

The Telstra agreement provides for the employment of a group of on-call workers guaranteed a minimum of 500 hours per annum to rosters within an agreed span. These arrangements detail notice periods and a range of mechanisms to protect both the company and employee interests.

19. These examples are just some of the many that demonstrate that the varying needs of employers in meeting their operational requirements can be effectively met through collective bargaining.

Balancing work/life commitments through Collective Agreements

20. The CPSU has a proud history of negotiating innovative and flexible working arrangements in collective agreements that assist workers in achieving a fair work/life balance. Arrangements negotiated include:

- part-time work arrangements at all classification levels
- access to “purchased leave” or “employee funded leave” schemes that enable staff to increase their annual leave by up to four weeks per year
- access to flexitime or rostered day off systems
- an increase in paid maternity leave from the statutory entitlement of 12 weeks up to 14 weeks in a significant number of agencies
- workplace-based facilities for nursing mothers
- paid parental leave up to 12 weeks in a variety of arrangements (as distinct from paid Maternity Leave)
- emergency leave arrangements to deal with unforeseen and urgent personal circumstances.

13. Below are two examples of the arrangements that have been achieved through collective agreements.

Example – Dept of Immigration and Citizenship – Variable Working Hours: Employee initiated

DIAC workers can apply for a variable working hours arrangement that allows the employee to work regular hours of duty other than the standard working day or working. This applies to both full-time and part-time work, and flexitime arrangements still apply around the variable hours span. Applications for variable working hours for up to 12 months, from employees returning from maternity leave, parental leave and adoption leave will be granted. Subsequent applications for variable working hours for parenting purposes (particularly before a child's 5th birthday) will be given due consideration subject to operational requirements and the personal needs of the employee.

Example – CSIRO (Current Agreement, pre-Work Choices)

Up to 18 weeks paid maternity leave is available through using a combination of the agreed 14 weeks paid maternity leave and the 4 weeks paid parental leave. The CSIRO agreement provides for up to 5 years unpaid parental leave and a program to assist staff returning to work after lengthy absences.

AWAs in the public sector

1. AWAs in CPSU's areas of coverage include:

- AWAs that are instruments used to cut wages and conditions;
- AWAs that largely build on the collective agreement in an agency and sometimes provide higher wages, although this is often linked to performance based requirements; and
- AWAs that reflect the pay arrangements in an agency collective agreement but transfer many conditions and entitlements into policy or make them at management discretion.

Balancing work/life commitments – Australian Workplace Agreements

2. The arrangements achieved through collective bargaining that assist workers in meeting their work and life commitments are more likely to ***not*** be included in AWAs, or be included by reference to policy or at management discretion. When arrangements such as these are not included in the body of the AWA they effectively become unenforceable and can be changed at any time without the consent or knowledge of the employee. This is particularly so in individual agreements used since the introduction of Work Choices. Further evidence will be provided of AWAs from Centrelink, DIAC and Telstra. Copies of these are attached.

Work Choices in the Australian Public Service

3. The Coalition Government has made a strong effort to promote AWAs in the public sector to increase the individualisation of employment arrangements and undermine the collective bargaining ethos that exists.

21. Spearheaded by the Department of Employment and Workplace Relations (DEWR), several agencies now require all new starters to the Commonwealth public service to sign an AWA as a condition of employment.

22. These agencies include DEWR itself, the Department of Finance and Administration, the Department of Prime Minister and Cabinet, the Torres Strait Regional Authority and the Department of Human Services.

23. The main instrument of DEWR's promotion of the Coalition's Work Choices legislation in the Australian Public Service (APS) is their "Policy Parameters"³ that set out the guidelines for negotiations for employment arrangements.

24. DEWR's role to implement the Coalition's industrial relations framework amongst its own employees is not controversial. However, the practices that have developed around this policy implementation are questionable, and directly contradict the apolitical philosophy of the public service.

25. For example, DEWR appear to have an obstructionist attitude when it comes to collective agreement-making in the APS. Collective agreements are subject to intense scrutiny and lengthy analysis by DEWR all ostensibly on the grounds of applying Policy Parameters.

26. Despite Government rhetoric that agreement-making should be between the employer and employee without any "third parties" intervening, DEWR itself vigilantly intervenes and frequently rejects agreements that have been negotiated between Agency Heads and their employees.

27. Delays caused by DEWR interference range from 1 day up to 50 days. In one agency, the National Maritime Museum, DEWR has caused a delay of

³ See: <http://www.workplace.gov.au/workplace/Organisation/Government/Federal/AgreementMaking/APS-WorkplaceRelationsPolicyParametersforAgreementMakingintheAustralianPublicServiceApril2006.htm>

almost 12 months. There are many cases of agencies needing to submit and re-submit their agreements to DEWR multiple times.

28. These delays in agreement-making caused by DEWR also mean increased costs for agencies. Many agencies trying to negotiate a new agreement are forced to devote substantial resources over long periods of time to respond to DEWR assessments.

29. In smaller agencies, the capacity to find these additional resources is difficult. In the Torres Strait Regional Authority, an external consultant was employed for this specific purpose and another agency has employed a legal consultant for this work.

30. DEWR routinely rejects negotiated agreements that require agencies to give new employees a choice of the collective agreement or an AWA.

31. DEWR clearly does not trust the government's own Agency Heads to make agreements with their staff. One of the conclusions that can be drawn from this is that the role of DEWR has become more and more politicised under the Howard Government through the administration of the Work Choices legislation.

32. Because of DEWR's political interventionist stance, some agencies have made their agreements with Ministerial consent despite DEWR advice that these agreements were inconsistent with their Policy Parameters.

33. These agencies include: the Australian Tax Office, Department of Defence, Department of Environment & Heritage AusAID and the Department of Immigration and Citizenship.

34. Several other agencies, similarly frustrated by DEWR, are also preparing to directly approach their Ministers for sign off on agreements.

Agreement-stripping

35. Another active strategy to attack the good pay and conditions of Commonwealth Public Servants is DEWR's agreement stripping – that is – actively reducing conditions and allowances from agreements and seeking to move them instead into policy.

36. Based on Policy Parameter 1 that provides for "simple principles based agreements", this policy parameter is designed to achieve agreements that "are not highly prescriptive and detailed". Furthermore, matters relating to certain allowances are required to be covered in guidelines so as to avoid agencies needing to formally vary an agreement during its operation.

37. From our members' perspective, this is highly retrograde as any condition that is transferred into policy can be changed at any time without consultation, and is in effect unenforceable.

38. CPSU vigorously opposes any move to create uncertainty for employees through this measure however, DEWR is increasingly successful with this strategy, particularly in smaller agencies that do not have the capacity or ability to stare DEWR down.

39. Some examples of this include: Torres Strait Regional Authority (advised to remove all allowances including travel, relocation & meal allowances), AIATSIS (advised to remove all allowances), National Maritime Museum (advised to remove clause establishing ability to return from maternity leave to part time work) and Australian Research Council (advised to remove clauses relating to transfer of leave entitlements across the APS).

Prohibited content

40. The Work Choices laws list a range of content that agreements are prohibited from including. Agreements are vetted by the Employment Advocate in order to detect any content that has been negotiated that the Federal Government believes comes within this category.

41. CPSU believes that this prohibition on certain types of content is designed to expressly exclude those negotiated outcomes between an employer and employee group that supports references to the role of the employee's representative union.

42. In recent bargaining in the ACT Public Service, a number of issues were identified by the Employment Advocate that contained so called prohibited content.

43. These included a clause on training that did not sufficiently exclude training provided by a trade union, and a clause that included consultation with relevant trade unions when assessing Special Employment Arrangement criteria.

44. These clauses can hardly be described as controversial or contrary to good industrial practices within ACT Government. Nevertheless, for purely ideological reasons, Work Choices has provided the Federal Government with the mechanism to vet all agreements for anything that either DEWR or the Minister deems to be too "union friendly".

Telstra members & AWAs

45. CPSU members working for Telstra have been in the front line of harsh industrial laws since well before the advent of Work Choices. Telstra's aggressive promotion of AWAs, including making many positions conditional on signing an AWA have lead to their predominance in Telstra as an industrial instrument.

46. Another feature of Telstra's AWAs is that only part of the employee's salary is fixed, with the remainder being tied to a sales incentive scheme.

According to Telstra's evidence to a recent Senate Inquiry⁴ almost 70% of Telstra's AWAs incorporate incentive remuneration.⁵ The sales targets associated with this incentive remuneration are constantly varied and raised, leading to problems for employees due to work intensification and stress.

47. Employees are also disadvantaged by this policy because only the fixed portion of remuneration is used to calculate the employer superannuation amount.

48. It cannot be said that Telstra's AWA policy is popular within Telstra.

49. Recently Telstra CEO Sol Trujillo appeared on CNBC Asia to talk about various issues to do with the company. Of particular interest to CPSU members was what Mr Trujillo had to say about Telstra Australian Workplace Agreements (AWAs).

50. Not surprisingly, he's all for them and reckons everyone on one is too. "Our employees choose to enter into these agreements and they do it voluntarily," Mr Trujillo said.

51. Judging by the many responses received on CPSU's internet blog, a strong majority of workers disagree. The quotes below are a representative sample of the comments received:

"So, Sol thinks everyone on an AWA is happy with their lot? Has he asked every single person on an AWA in Telstra if this is the case? I'm sure some of them are - and good luck to them - but I'm also certain that many of them aren't."

"No way are they voluntary. These are forced for cost cutting exercises."

"We do have a choice – employment under draconian conditions, or unemployment!"

"I selected to go onto an AWA after I was made promises that have never been kept. The grey areas are huge, the goal posts are continuously moved, I am made to feel I am never good enough that I must always do better and better to the point of stress. "

"Voluntarily? Yeah right! More like: 'Your position no longer exists'. Followed by an offer of a new position, on an AWA..."

"I completely reject Sol's statement that employees like AWAs. They are negative devices which are presented as the only option. If the company truly believes they are a good option give the choice to the employee, AWA vs Award, not a lot will take them as they are."

⁴ Senate Employment, Education and Workplace Relations Standing Committee inquiry into the Workplace Relations Amendment (A Stronger Safety Net) bill 2007.

⁵ Ibid, Telstra submission, p2.

Impact on Women

52. CPSU conducted a second major survey of women in 2007 entitled "What Women Want". This survey has proved to be a significant source of information on the views of CPSU's female membership which now makes up more than 50% of CPSU's overall membership, which correlates to the high female employment levels in the public sector.

53. Given the potential impact of the Federal Government's Work Choices legislation on work/family balance and gender pay equity, CPSU this year included a specific section on Work Choices.

54. The results of this survey not surprisingly show a high level of concern amongst CPSU women about the impact of Work Choices. In particular, women are concerned not primarily for themselves, but for the impact on their family.

55. Results of the survey show that 82% of women think that Work Choices will be harmful for their family, with 50% strongly indicating this. 91% of women think that Work Choices is harmful for young people and low paid women (67% strongly think this).

56. The survey shows that a lower percentage (69%, 37% strongly) think that Work Choices will affect "me and my rights". This may in part reflect the security that women feel in public sector employment which is still overwhelmingly dominated by collective bargaining with union representation.

57. Other survey results show that 80% (55% strongly) of women support the role of the independent umpire (the AIRC) which has been sidelined by the Work Choices laws; and 95% (76% strongly) support the role of unions in assisting employees to protect their rights at work.

58. Of concern to CPSU is that over time, the Work Choices laws with their emphasis on individualisation of workplace bargaining, will exacerbate the gender pay gap between men and women.

59. Currently, most of the AWAs in the CPSU's areas of coverage are pre-Work Choices AWAs, negotiated with the Certified Agreement as the base and with the No Disadvantage Test in operation.

60. While AWAs are the minority industrial instrument in an agency and the majority of employees are covered by a collective agreement, in most cases this will be enough to ensure good pay and conditions through negotiations.

61. The impact of Work Choices has been to remove longstanding protections and subject employment conditions to the vagaries of the market. In the current environment of historically low unemployment and a shortage of skilled employees, market conditions favour skilled employees in negotiations.

Occupational Health, Safety, and Welfare in the Workplace

62. In addition to the prohibition on union provided trade union training for OH&S purposes under Work Choices there has been a further diminution of employee rights in relation to OHS&W and compensation through a number of federal legislative changes introduced since the Coalition gained majority control of both houses of the Australian parliament. They are the:

- OHS (Commonwealth Employment) Amendment Bill 2005;
- OHS & SRC Legislation Amendment Bill 2005;
- OHS (CE) Amendment (Promoting Safer Workplaces) Bill 2005;
- DEWR Review OHS (CE) Act 1991;
- OHS (Commonwealth Employment) Amendment Bill 2005

63. These legislative changes employees:

- make it difficult for commonwealth government employees to be represented when health and safety arrangements are developed;
- allow employers - not employees - to control the elections of Health and Safety Representatives;
- end the existing and successful tripartite approach to improving OHS;
- outlaw union provided health and safety training for employees in agreements;
- reduce entitlements in relation to accidents and injuries sustained travelling to and from work and during lunch breaks spent away from the workplace; and
- make the acceptance of claims for psychological injuries sustained through work more difficult.

64. The laws shift the cost of injuries sustained through the course of employment away from the employer and onto the employee under the guise of cost cutting. A Parliamentary Library report⁶ into the changes concluded that the changes will likely result in significant savings to Comcare; but these would occur at the expense of denying genuine claims.

65. These laws were passed despite evidence that Comcare is one of the most cost effective rehabilitation and compensation schemes in the country, with high return to work rates and low premiums.

66. CPSU members remain highly concerned about this derogation of their rights as employees and have responded strongly to the CPSU-led campaign on this issue.

⁶ Australian Parliamentary Library Safety Rehabilitation and Compensation and Other Legislation Amendment Bill 2006, Bills Digest no. 122 2006-07

Work Choices 2007 Anniversary Poll of Members

67. To mark the one year anniversary of the Work Choices legislation in March 2007, CPSU conducted an online poll of members, asking if they were better off under these laws.

68. Nearly 9,000 members responded to this poll and overwhelmingly indicated that they were not better off under the Work Choices laws. Some of the comment made by members include the following observations:

There is no evidence given which links the new laws with any measurable benefits and plenty of anecdotal and statistical information that suggests negative results. The Government has even stopped collecting statistics which would shed light on the use of AWAs."

"What's fair about the employer holding all the cards and calling all the shots?"

"My wife who works in the hospitality sector has been affected by the changes which resulted in her hours been totally rearranged. Her previous conditions were set to work around the kids being at school, or me being at home to look after the kids. After the IR changes she no longer had set hours (was virtually 'on-call')."

"I think John Howard's WorkChoices was a disastrous move for ALL workers and hopefully if the Opposition gets in at the next Federal elections, this will be abolished."

Conclusion

69. Over the last six months, the CPSU has consulted widely with members, delegates and activists about better alternatives to the Government's extreme WorkChoices legislation.

70. The message back from our members is clear and unmistakable. People do care about their rights at work, a fair go and want a system that benefits the employee as well as the employer.

71. CPSU will continue to consult with members both in face-to-face meetings and through phone conversations. CPSU will also continue to support the ACTU's Your Rights at Work campaign to get rid of the utterly unfair WorkChoices.

72. At the same time as CPSU are winning new agreements, we will also be focusing on enforcing existing ones. That's because we now know that under WorkChoices winning a good agreement is only half the battle. Thanks to the Howard Government's IR laws, employers have more opportunity than ever to wriggle out of commitments or undercut collective agreements.