Submission to the

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON WORKING FAMILIES IN THE AUSTRALIAN CAPITAL TERRITORY

Trades and Labor Council of the ACT (Inc.)

Prepared by

Kim Sattler
Secretary

Craig Shannon
Executive Member

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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON WORKING FAMILIES IN THE AUSTRALIAN CAPITAL TERRITORY

The terms of reference for the Select Committee on Working Families in the ACT are:

- **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.**

The Select Committee on Working Families is examining the effects on working families of industrial relations changes including:

- The Workplace Relations Amendment Act 2005 (WorkChoices)
- The Building and Construction Industry Improvement Act 2005

EXECUTIVE SUMMARY

This submission is made by UnionsACT, which is the peak body of trade unions in the ACT & Region. We represent 23 affiliates and 30,000 union members. We lobby both state and federal governments about industrial relations, workforce issues, wages policy, social equity, and the issues facing working people of all ages in our community.

Given the broad scope of the Assembly Terms of Reference on this matter, we have attempted to address as broad a scope as possible of issues impacting on working families in the ACT. Whilst the majority of issues addressed are specific to the Workplace Relations Act, by necessity we have also addressed related matters arising from or associated with Federal Government reforms in this area.

Since the introduction of Work Choices, the Federal Government's new industrial relations legislation UnionsACT has been conducting research, assisting affiliates with advice, conducting forums, producing guides, conducting street stalls, conducting a weekly radio program and fielding calls from both union members and other workers and their friends and family about the impact of the new laws. Overwhelmingly this legislation has impacted working people in the following ways;

- **Loss of penalty rates**
- **Loss of annual leave loading**
- **Annualised annual leave arrangements**
- **Lower hourly rates of pay**
- **Loss of overtime pay**
- **Loss of Safety Net Increases to low paid workers**

- **Locked into longer contracts without pay increases**
- **Loss of flexibility arrangements**
- **Increased core hours**
- **Loss of the Annual Picnic Day holiday**
- **Losses of a range of other award conditions and allowances**
- **Abuse of migrant visa work arrangements**
- **Threat of unfair dismissal for no reason**
- **Loss of redundancy provisions**
- **Cuts in wages and conditions due to "operational reasons"**

And the list continues to grow- one year on! It is notable that the most vulnerable members of the workforce are most affected by these changes ie low skilled, women, young people, people entering the labour market, disabled workers, migrants and non union members.

The new legislation assumes that a worker has the requisite negotiation skills and industrial relations knowledge with which to negotiate their new workplace agreements. Clearly many of the groups mentioned lack both confidence and competence in negotiation and advocacy to achieve a better outcome from their negotiations with their employers. The power differential between these employees and their employers is clearly resulting in a loss of both pay and conditions. The unprecedented attack on union representation and unions has also meant that people are frightened to join unions or seek their representation on the job- this is particularly true of young people and women who may be entering the workforce for the first time.

Another unwanted impact of the Work Choices legislation is a winding back of gender equity pay outcomes as analysed by David Peetz from Griffith University. He has discovered that in the nine months since Work Choices was introduced in March 2006 that women's pay in Australia had suffered a reversal. From 1996 to 2005 women's pay had increased by 5% but since 2006 it had actually lowered by 2.5%. Women's fulltime average earnings for 2004 were only $44,200. Since the advent of the Howard Government, the gap between men and women's wages has widened again.

This submission seeks to review the general issues relating to the Workplace Relations Act provisions codified under the Workchoices amendments and their impact on Working men and women in the ACT. This submission presumes no expert understanding of the Act and is presented as an accessible contribution to understanding of the issues.

By experience, we have had no choice but to address the impacts of AWA's in the market place and this submission takes into account the recent amendments to the Act aimed at mitigating the trade off of terms and conditions. In reality, we see these amendments as having little impact on the issues we identify. The move to permanent statutory individual arrangements under WorkChoices is rejected by UnionsACT and has broad implications for the ACT community if entrenched.

We also warn the ACT Government that this new system of individual and performance based contracting threatens the professional integrity of the public sector and could encourage corrupt practice amongst public officials.

Our conclusion is that this legislation has been harmful especially to the low paid, casual and unskilled workers, new entrants to the labour market and people with disabilities. We strongly recommend that the ACT Government develop some specific policy decisions that will ameliorate the effects of this legislation on their citizens.

Furthermore our advice would be that the extreme and punitive Building & Construction Industry Improvement Act 2005 has compromised workers' safety and reduced competition in the ACT construction industry by favoring large interstate contractors who are on the Federal Government's preferred contractors list due to their slavish support of this legislation and Work Choices. This is clearly evidenced by the continual mishandling of accidents on the Theiss construction site in Civic where 4 workers have been seriously injured in the past 6 months. These workers have all been found fit for light duties immediately following their accidents and prevented from seeking their own medical practitioner and denied access to ACT Workcover. In addition their First Aid Officer was sacked for raising his concerns over safety on this worksite. Construction unions are extremely concerned about the safety of construction workers on ACT building sites with one death already recorded due to the erosion of OH&S legislation governing Federal Government contract sites and major restrictions placed on union right of entry due to the new laws.

RECOMMENDATIONS

The following is a list of recommendations arising from our findings:

1. Develop an industrial advocacy and inspectorate service which can assist ACT workers to maintain, secure and improve their wages and conditions in the new environment
2. ACT Government should produce public education information targeting key groups of workers ie women, migrants and young people who are most adversely affected by Work Choices
3. ACT Government should participate in national research projects such as those conducted by the Workplace Research Centre and John Buchanan which documents the impact and collects valuable data about workforce arrangements.
4. That a review of the Occupational Health & Safety Act and the Workers Compensation Act take into account the impact of Work Choices on individuals and families in the ACT.
5. That the ACT Government assist unions and particularly UnionsACT to disseminate educational material about worker's rights and the right to freedom of association in the workplace.
6. That advice be sought about the danger of corruption of public officials where individual contracting becomes the preferred method of employment.
7. ACT Government explore avenues to exclude the application of the Building & Construction Improvement Act 2005 in the ACT wherever it compromises our own Occupational Health & Safety Act and the Bill of Rights.
8. That this Select Committee publish its findings from this inquiry and produce a booklet for public distribution that directs ACT workers to help and advice in relation to those findings.

9. The ACT Government specifically address the issues of public sector impacts from the Workchoices provisions on the maintenance of an integrity based a corruption free environment.

10. The Legislative Assembly establish a specific enquiry into the recent Federal Government changes to the Workers Compensation system, their impacts on CTP insurance, ACT Workers entitlements to Journey Cover and other protections and any mechanisms that may be necessary for the ACT Government to enact a new safety net for ACT Workers.

11. The ACT Government seek to establish an independent statutory scrutiny of the Impacts of WorkChoices in similar terms to the Victorian Government "JOBWATCH". That the ACT Government note the developments in Victoria and the Northern Territory with the formation of Job Watch and the Industrial Advocate which are excellent policy developments which assist those jurisdictions most affected by Work Choices.

12. That the recommendations of the ACT Youth Coalition in their submission be endorsed by the Select Committee

INTRODUCTION

In December 2005 the Federal Government passed its radical industrial relations legislation, the *Workplace Relations (Work Choices) Act 2005*. This Act dramatically changes the way industrial relations is regulated in the country with limitations on the capacity of employees to stand up for basic industrial rights and barriers placed in the way of collective solutions to collective problems. The Bill, whilst primarily aimed at lowering the minimum wage, will have far reaching and significant impacts to all employees.

The Trades and Labor Council of the ACT (UnionsACT) submission to this Committee examines the impacts of the Workchoices legislation on ACT Working families and the broader community, with a particular emphasis on the dangers of promoting secretive, individual bargaining arrangements over open, collective arrangements in a public sector environment.

We believe the emphasis in the legislation on such secretive arrangements while questionable in any environment have particular public policy implications in an environment that wishes to be seen as free from corrupt intent. The use of these arrangements with their lack of genuine, independent scrutiny conflicts with the findings of the United Nations General Resolution into Corruption of Officials.

We also believe that all employees should retain the right to freedom of association as an internationally recognized protection of your rights at work. This should apply irrespective of whether an employee is domestically or internationally deployed by an Australian employer.

Apart from directly looking after our affiliated members' interests UNIONSACT has a commitment to making sure everyone in society is treated with dignity and respect. We believe that society exists to protect its weakest members and to allow people to live their lives to the fullest by combining our collective resources and capabilities.

It follows that there are some basic principles that we, as human beings, should abide by, including that workers should not be just seen as an expendable unit in the production process, public or private, but as human beings attempting to improve our positions, and that of our families, in the world.

Some of these principles have been enshrined in international law such as those developed by the United Nations International Labor Organisation.

UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948; ARTICLE 23.

3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary by other means of social protection.

4. Everyone has the right to form and join trade unions for the protection of his interests.

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966; ARTICLE 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

International Covenant on Economic, Social and Cultural Rights; Article 8, 1

The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion of his economic and social interests.

OUR INDUSTRIAL HISTORY

Australia's industrial relations system and its labour laws were originally introduced to protect our dignity. These laws have been the envy of people in many other countries because of the system that we, as a society, introduced over a hundred years ago.

Central to the system was a strong independent Australian Industrial Relations Commission (AIRC) to hear from employees and employers when they were in dispute with each other, so as to resolve the disputes.

The AIRC promoted and encouraged the right of everyone to form and join trade unions to protect their interests. The AIRC also assisted in the setting of just and favorable pay for employees with consideration for their human dignity and the requirements of their families. Employees were not to be used merely as economic robots.

Unfortunately today, this sometimes gets a bit lost in the scramble for the dollar, as people lose sight of the fact that we live in a society and not in an economy.

It is for this reason – protecting the dignity of employees within a society – that it is important that governments make sure that there is a way of legally enforcing people's genuine human rights. It is a responsibility to the society that they were voted to represent.

But some of the key changes in the Act go against these internationally recognised rights.

REDUCING THE POWERS OF THE INDEPENDENT UMPIRE

The AIRC is an independent tribunal made up of people with experience in unions, employer bodies and government. For more than a hundred years the AIRC - the independent umpire – has been helping employees and employers resolve their disputes.

Historically the AIRC has had the power, after hearing from both sides, to make a decision on how to settle a dispute. This is a fair process that is subject to appeal and review by both sides.

The new legislation restricts the capacity of the AIRC to make such decisions. The consequence of this reduced capacity is that the outcome of many disputes will not depend on the fairness or justness of either side's argument but rather on their strength. This does not promote the dignity of the employee or the employer, or lead to harmonious workplaces.

It is this sort of fair approach to industrial relations that is under direct threat from this legislation.

CHANGES TO AGREEMENT MAKING

The Act sets out new processes for workplace agreements, which remove a number of the basic protections underpinning workplace agreements and past and future content. These changes include:

- ***The no disadvantage test is removed;***
- ***Agreements are 'approved' once they are signed;***
- ***Agreements apply immediately upon lodgment with the Office of the Employment Advocate;***
- ***The capacity for employers to make agreements with themselves in so-called "greenfields" circumstances;***
- ***The capacity to remove award conditions in agreements with a simple exclusion; and***
- ***Removal of the requirement for genuine consent.***

Agreements may also be able to be terminated unilaterally by any party after they have nominally expired and 90 days notice has been provided. When an agreement is terminated and not replaced by another agreement the minimum terms and conditions that will apply to employees are likely those to be in the new Australian Fair Pay and Conditions Standard.

This standard includes only 5 minimum conditions along with a rate of pay based on award rather than existing agreement rates. This is a set of conditions well below existing award and agreement entitlements.

This approach allows employers to simply reset pay and conditions to minimum levels at will particularly where union membership is low, or people are not represented by a union or are forced to negotiate on their own behalf.

The Act also provides that some matters will constitute 'prohibited content' for the purposes of agreement making. Whilst some is prescribed, we never know what 'prohibited content' may be, because, it can be specified later by the Federal Minister, by way of regulation.

A consequence of this approach is that matters genuinely agreed to by employees and employers could be rendered void by Government regulation. So much for bargaining in good faith! It should also be noted that the 300,000 Australian Workplace Agreements that have been struck unfairly are not able to dissolved or re-negotiated under Work Choices to reinstate lost pay and conditions.

CHANGING THE WAY MINIMUM WAGES ARE SET

Historically, every year, the AIRC heard an argument for minimum wage increases for employees under industrial awards and granted what it saw as a just and reasonable pay rise giving consideration to the state of the economy.

This role in determining the "social wage" has been a key part of the AIRC's role for close to 100 years. This process has meant that all employees, even those in a poor bargaining position, have had some access to pay rises to keep pace with the ever-increasing cost of living.

The Act removed this capacity of wage determination from the AIRC and moved it to a politically appointed panel headed by friends of the Howard Government. The so-called Fair Pay Commission does not have to consider "fairness" as an objective and can determine the timing and processes of its determinations. Even employers have complained about the success to date of the Commission meeting its obligations in issuing pay schedules across a range of sectors.

There is now no publicly accountable and transparently arbitrated basis for setting the minimum wage.

RIGHT OF ENTRY

Right of entry is a longstanding feature of the Australian industrial landscape and is a key to allowing employees to exercise their rights to freedom of association and collectively organize.
In recognition of this, right of entry provisions must be seen as vital mechanisms, which give practical effect to the right to organise.

This means having access to workplaces, but the Act has severely restricted the rights of unions to enter a workplace for recruitment of members. The Act puts heavy administrative and legal barriers in the way of unions having legitimate access to their members.

Unions have no right of entry for discussion purposes where all employees are on AWAs or at workplaces with non-union collective deals.

These restrictions on right of entry are also anecdotally linked to a real impact on workplace safety in the construction industry.

WHY MAKE THESE RADICAL CHANGES?

Its been argued that these radical changes are required to bring about "necessary deregulation" and "greater flexibility" in the workplace. That they will lead to a simpler, fairer system.

There is no robust evidence that the legislative changes will provide economic or social benefits over current arrangements. There is certainly no evidence that workers have been able to incorporate new family friendly arrangements as is often quoted by the Howard Government. Both John Buchanan and David Peetz recognised academics in the field of industrial relations have noted the lack of evidence for this assertion. The government's own released statistics only shows that a majority of AWA's provided for significant losses in pay and conditions particularly for women and casual workers.

The independent umpire, the AIRC, as well as the majority of respected labour market academics have rejected attempts to link these changes to employment levels and economic growth.

What it really means is reduced job security, less predictability of working hours, and lower "real" wages – all because of a serious reduction in the bargaining power of employees.

This just doesn't add up to dignity and respect for workers. It changes the whole balance of society to "every man for themselves"- completely contrary to what every society should be about.

IMPACTS AND THE TRUTH

The debate about the economic benefits of these changes saw no significant economic modeling or evidence to support it. There is no doubt that at the bottom of the spectrum (services sector, hospitality etc) there is already a re-distribution of income from wages to profit. To date, with Federal Government deliberate suppression of data, we have only limited sources of reliable analysis on the impacts of the WorkChoices provisions.

Of the data available with wide credibility, the best is often from the academic arena. This is best exampled by the attachment A which is a paper prepared by Dr David Peetz.

The results of the study by David Peetz of Griffith University were presented at the 24th conference of the Association of Industrial Relations Academics of Australia & New Zealand in Auckland on 9 February 2007.

This suggests that the 'economic miracle' on which WorkChoices was premised has not materialised. WorkChoices has been associated with a decline in average real wages in the short term, particularly for women, despite a positive economic climate.

The study reveals that under WorkChoices:

- more employees are moving onto AWAs and fewer onto collective agreements, with award coverage declining;

- there has been a substantial loss of conditions for many workers signing AWAs, although this has not been the case in all sectors;

- there has been a loss of conditions in mainly non-union collective agreements; and,

- ❖ minimum wage fixing arrangements have led to a real wage decline for most award-reliant workers.

According to Peetz's study there has been a drop in real and relative earnings for women. In the six months to August 2006, earnings for females in the private sector rose by just 0.5 per cent compared to 1.3 per cent for males.

In real terms female earnings fell by 2 per cent, indicating an increasing inequality between men and women. There have been real wage declines in retail and hospitality, which may be due to the loss of penalty rates.

The report also notes that recent employment growth is more likely to be due to underlying demand in the economy than to restriction of unfair dismissal laws under WorkChoices.

This paper is widely held as credible, and provides some intellectual rigor to the anti WorkChoices critics.

Federal Government deception as to WorkChoices is so cynical that the attempts to create a smoke screen have often been undermined by the business beneficiaries of the legislation.

An example of this is seen at attachment B., A series of documents, now apparently removed from the internet by their author after media scrutiny. Whilst we have the Federal Government attempting to use Orwellian tactics to claim that WorkChoices protects people and is about improving wages, the attached document clearly show how business is exploiting the provisions to their fullest effect.

The documents relating to Enterprise Initiatives and its cynical promotion of Workchoices, manifestly undermine the Federal Government's marketing of their industrial laws. As some case examples, Enterprise Initiatives boasts about their success is slashing rates of pay for employees in retail and hospitality, and sadly enough use an ACT businesses as one of their success stories.

These examples we have attached show how the floor in retail and hospitality is dropping across all categories of worker as smaller sized businesses shift wages to profit margin and an edge against their competitors.

Sadly, for the first time the small business sector and other sectors are actually having to compete on cost of labour. Previously the award system set a common minimum from industry to industry, with that largely now emaciated and designed to disappear, the business sector needs to commodify labour for the first time. This will impact greatly in the market place and hurt working families.

Multiplier effects from this will impact on the quality of staffing, absenteeism and lost days, Health and safety standards and more generally the strive for competition between businesses on a quality of service basis will be replaced by a competition on net labour unit costs, most particularly in the unskilled sector.

These changes kill the past twenty years of skill and competency based wage relativities and recognition. There is a structural objective to cut all employees free from a common transparent salary structure based on competency advancement and remuneration. Employers are also encouraged to opt for five-year secret and largely salary-based agreements for each individual. Across the public sector this throws merit and public interest driven transparency out the door.

The question remains, to what benefit? The public sector has strived to keep promotion/advancement merit based, transparent and reviewable. The AWA model will allow cronyism, nepotism, and favoritism to be secretly introduced by those managers who seek to breach integrity based values.

SUMMARY OF SOME KEY WORKCHOICES PROVISIONS

The following is a summary of some of the provisions of the WorkChoices legislation. These provisions highlight the concerns of the UNIONSACT in regards to this legislation.

FAIRNESS, PUBLIC INTEREST TESTS AND DUE PROCESS REMOVED FROM AGREEMENT MAKING

The Federal Workplace Relations Act, now sets out new processes for workplace agreements, which removed the already limited tests previously applied. These include:

- Removal of the no disadvantage test;
- Agreements are 'approved' once they are signed;
- Agreements apply upon lodgement with the OEA;
- Termination of agreements apply immediately on lodgment with the OEA
- The AIRC's transparent role in certifying agreements, applying the no disadvantage test, and varying/terminating agreements has ceased. Gone too is the AIRC's power and processes to decide whether or not a particular clause is permitted.

Other changes to the bargaining process include:

- ❒ The reduction of the consideration period for all agreements for existing employees to seven days;
- ❒ Removal of the requirement for genuine consent;
- ❒ The capacity to remove award conditions in agreements;
- ❒ Agreements extended to five year maximum.

The major change under the Act is that agreements no longer have to pass a no disadvantage test, where the independent tribunal, the AIRC, compares the proposed agreement with the employee's entitlements under their award and ensure there is no overall disadvantage, before approving the agreement.

Only this week the Howard Government has amended their legislation to reintroduce a no disadvantage clause to declare that workers do not have to sign away conditions without compensation .

This is a hollow victory however for the workers as it will only apply to workers who earn less than $75,000 pa and the discretion is still left to the employer as there is no requirement for the test to be examined by a third party such as the AIRC as applied under the previous legislation.

PROHIBITED CONTENT

The Act now provides that the regulations may specify that certain matters be 'prohibited content' and will be void if included in a workplace agreement.

It is impossible to know what 'prohibited content' will be because it is specified by regulation. 'Prohibited content' will be what the Minister determines, by regulation.

Prohibited content in an agreement is unenforceable. Under the Act the Employment Advocate may vary workplace agreements to remove prohibited content either on its own initiative or on application by any person (whether or not they are party to the agreement).

Seeking to include prohibited content in an agreement or lodging an agreement containing prohibited content are offences and will attract penalties of up to $33,000. This is irrespective of whether there is agreement or support for such terms by the employer. Unions and members face fines of $33,000 and $6,600 if they even ask for these provisions to be included in an agreement.

This is further bolstered by a provision which provides that clauses in any document that deal with membership of an industrial association are void as being 'objectionable provisions'.

The Act allows regulations to be made retrospectively, so content included in agreements may later be determined to be prohibited, with appropriate fines applying.

UNILATERAL TERMINATION OF AGREEMENTS

Any party to the agreement may terminate agreements unilaterally, simply by giving 90 days notice anytime after nominal expiry.

DIFFICULT TO ADDRESS ABUSE OF PROCESS

Regardless of whether the correct processes have been followed by the employer when lodging or terminating an agreement, the lodgment or termination will still have effect. The limited role of the OEA in the lodgment and termination process is highlighted where the Act states:

> **The Employment Advocate is not required to consider or determine whether any of the requirements of this Subdivision … have been met …**

The only remedy is for an affected party or a workplace inspector to initiate court action and seek to have the lodgment or termination annulled.

ESSENTIAL SERVICES

The Act provides the Minister for Employment and Workplace Relations with an unfettered power to terminate a bargaining period.

The Minister may make a written declaration terminating a specified bargaining period if satisfied that the industrial action is adversely affecting employers or employees or poses a threat to the personal safety, health or welfare of the population or where the action is likely to damage the economy.

These grounds are identical to those, which previously gave the AIRC the power to stop the action. The Minister may now use the power in a situation where the AIRC has refused to do so.

The federal Minister has total discretion to determine when to revoke a bargaining period and to make directions specifying actions that must be taken by the negotiating parties, without the scrutiny of an independent umpire. Unlike the capacity for review of AIRC powers in such a case, there will be neither hearing, nor any right of appeal in relations to the exercise of this executive power.

Such powers will drastically limit the ability of employees and their union representatives to take industrial action in support of bargaining claims even where such action is 'protected industrial action' and authorised by secret ballot.

NO EMPLOYER DURESS

Neither workers nor bosses should be put under any duress in connection with an AWA but the laws also state that making an AWA a condition of employment does not constitute duress:

> **"To avoid doubt, an employer does not apply duress to an employee for the purposes of subsection (5) merely because the employer requires the employee to make an AWA with the employer as a condition of employment.".**

In the unskilled market place this makes a mockery of any pretence to equal bargaining power or fairness.

As we are already seeing, the greatest growth in AWA's and non-union collective agreements is in the retail and hospitality areas. Employees in this sector either work a flat rate as presented by an employer or they have no rights in bargaining terms. Given the changes to the safety net, it creates a free fall scenario for an employee facing renewal on substantially lower wages.

The Prime Minister has refused to guarantee that no employee will be worse off under WorkChoices even with his changes to the provisions to prevent employees under $75,000 from losing conditions without compensation. Without even basic detail these changes are hollow in any reassurance they may provide.

CURRENT CONDITIONS ARE NOT BE PROTECTED BY LAW

Under the Federal Government's laws, union officials and employees may be fined up to $33,000 simply for asking an employer to include in an enterprise agreement provision for:

- ❒ Protection from unfair dismissal
- ❒ Union involvement in dispute resolution
- ❒ Allowing employees to attend trade union training
- ❒ Committing the employer to future collective bargaining
- ❒ Protecting job security in the event that people are replaced by labour hire or contractors
- ❒ Any other claim the Minister decides should be illegal.'

FIGHTING CORRUPTION AND THE ROLE OF INDUSTRIAL RELATIONS

The operation of the Conciliation and Arbitration Commission has long provided the structural integrity to the public sector employment market that is fundamental to the establishment of public confidence. The crafting of an industrial system seemingly ignorant of these unique challenges will have potentially enormous impacts on the interests of the broader community.

The significance of this concern is no more manifest than with respect to all members of the public sector who under these laws have diminished rights to bargain collectively, with stronger provisions in the Act to further limit their right to strike and with no alternate merit based arbitration. In fact, employer and employee can't even request the AIRC to arbitrate if they wish to. This limiting of rights on one hand without appropriate relief is a breeding ground for the diminishing of standards of integrity and ethical behavior.

Even in the United States, the Courts have continued to uphold the rights of Government employees to collectively bargain post September 11 as the US Administration has sought to diminish these rights under the cloak of national security.

This subject was addressed in a submission, by the Australian Federal Police Association, to the Senate enquiry into the WorkChoices Bill. The matters addressed in the submission have not been addressed by Government in so far as they raise concern overt the impact of this legislation in the public sector. An extract of this submission is enclosed as attachment C and we urge the Committee to consider the serious issues raised by this submission.

WORKCHOICES NOT THE FIRST CHOICE

With the proposition that the Act provides WorkChoices, we find it indefensible that most of the transactional and representational provisions are clearly discriminatory in that they institute discrimination against unions and union officers in many cases, and in some cases, any employee representative of any description is limited if not denied their capacity to operate. Due process is no longer guaranteed, nor is a right to representation. Many of the provisions are inconsistent with the objects of the Act itself in that they limit what employers and employees may agree upon (either in process or outcome) with respect to the settlement of disputes and content of agreements.

The proposals with respect to Unfair dismissal undermine the capacity for all employees to be assured access to a merit based assessment of their termination should they seek it. Any employer may easily meet the "operational" test on a range of their activities.

The redundancy test for dismissal seems to ignore the difference between voluntary and involuntary redundancy. Strangely, to meet Government objectives it needed only to preclude parties seeking relief under unfair dismissal provisions whilst also receiving payments for redundancy, it in effect now prevents an individual who has been paid involuntary redundancy to effect a termination from having that tested.

In effect the fairness test is now precluded on a payment made and the employer's description, rather than testing the reasonableness of the termination itself.

The Act removes opportunities and incentives for employees to come forward and actively participate in a corruption free work place with

the knowledge of the protection previously afforded by the Workplace Relations Act. Whistleblowers will now have an even greater cause for concern as their review mechanisms may be diminished.

COMMUNITY EDUCATION AND TRAINING ISSUES

As has already been referred to in this submission, the major impacts of this legislation impact on the unskilled, youth, women, migrant and older workers most identifiably. In basic terms, those workers with least bargaining power in any situation will suffer the worst consequences.

The changes to an individually based industrial marketplace most directly effect those employees with least personal capacity to either understand, cope with or even utilise this new "freedom". UnionsACT is most concerned that the Federal Government has failed to implement any significant strategies to assist Australian in these categories and the ACT Government is now left a responsibility to respond.

The ACT Youth Coalition submission to this inquiry addressed the issues in their constituency in some depth. UnionsACT supports the broad scope of their submission and endorses their recommendations to this Select Committee.

In equal measure we believe that similar circumstances prevail in the Seniors, migrant and non-english speaking segments of the ACT population, where education, awareness and training does not exist in this area and has not made generally available.

We believe there is now a manifestly urgent need for government funding of education and training in these areas specifically targeting issues of advocacy, negotiation, and awareness. If this is not

addressed as a serious concern, the exploitation of ACT workers in these categories of employees may well be severe.

As these sectors have historically been served, at least in part, by the now under-funded community sector, it is no longer possible for this problem to be addressed without direct Government intervention at the ACT level.

We also believe that the Grants Commission should be mindful of the entire costs of WorkChoices to the ACT Government as the Federal Government imposes industrial regime change, with no funding to facilitate the transition of the community through the changes.

COMCARE CHANGES – A THIRD WAVE

Recent Federal Government changes to Comcare and Workers Compensation have received little if any broad communication to the public and do have an intersecting relationship with the impacts of WorkChoices.

In effect, the concerns we have already raised in this submission specifically in the areas of Health and Safety, have now only increased in their application with the Changes to the Federal Workers Compensation system and Comcare.

The issues associated with this are significant and broad and beyond the scope of this enquiry. We raise this matter to urge the Legislative Assembly to look at this matter as a discreet exercise in an effort to consider options for insulating the ACT community from their impacts. We have attached the UnionsACT submission to the ACT Government review of Workers Compensation to assist the Committee in considering this matter (Attachment D).

In general terms the variations to and loss of compensation mechanisms to ACT workers in journeys to and from work will now directly impact on CTP insurance in the ACT, sick leave utilization and accumulation issues as employees a required to use sick leave whereas they would have previously been on workers compensation.

These onerous impacts on workers, added to the climate already created by WorkChoices, has produced a third wave of dislocation, cost and stress to employees across sectors. It requires specific consideration by the Legislative Assembly as a matter of urgency.

CONCLUSION

UnionsACT commends this submission to you as an honest appraisal of the impacts on ACT workers arising from the WorkChoices agenda. On a daily basis we receive contacts from employees in the ACT (often not union members) who have been subjected to another form of mistreatment by an employer utilising the new provisions.

Disturbingly a current trend in retail and hospitality seems to be the use of AWA's and "On-the-job" training of young workers to exploit workers into working unpaid and for extended periods of time before individuals actually get paid for the work they perform. The use of arrangements in the Hospitality by previously reputable restaurants such as Pangea and Zefferelli's has now been identified as widespread and yet with little or no investigation or prosecution.

The ACT Government has failed to date to outline any structural response to the impacts on ACT workers of the Federal Government reforms and we believe the thrust of this submission serves as that call to arms. Exploitable non-unionised ACT employees have no other safety net, if the ACT Government does not attempt to provide one. Unions are fully engaged protecting their members and cannot assist

the community at large with this larger task and the Federal Government refuses to assist employees with problems that it denies exist.

We urge the committee to consider our recommendations and act as soon as possible.

ATTACHMENT A

BRAVE NEW WORK CHOICES: WHAT IS THE STORY SO FAR?[1]

David Peetz
Griffith University, Brisbane, Australia
d.peetz@griffith.edu.au

ABSTRACT

This paper uses data from a range of sources, including the Australian Bureau of Statistics, the Department of Employment and Workplace Relation, private surveys, media and web reports, to analyse the experience to date under WorkChoices. Matters considered include the level and distribution of real earnings changes; productivity and economic performance; employment growth; conditions of employment and the content of agreements; dismissal behaviour by employers; and the minimum wage decision by the Australian Fair Pay Commission.

1 INTRODUCTION

The *Workplace Relations (Work Choices) Amendment Act 2005* (hereafter 'WorkChoices') made the most revolutionary changes to Australian industrial relations law in a century. These changes, detailed more extensively elsewhere (Stewart, 2006), included: abolition of the 'no disadvantage' test by which registered individual and collective agreements were assessed and approved, replacing it with five minimum standards; abolition of unfair dismissal protections for workers in firms with less than 101 workers or for whom *part* of the reason for their dismissal was 'operational'; privileging individual contracts ('Australian Workplace Agreements' or AWAs) over collective agreements (CAs), for example by enabling them to override CAs at any time or place and making it illegal to include in CAs 'prohibited content', such as provisions restricting AWAs or enabling union training or unfair dismissal protections; restricting the right to undertake collective action in ways that are unusual or unique by international standards (for example, by prohibiting pattern bargaining or the involvement of non-members in planning or executing industrial action); restricting union entry to workplaces; forcing many employers previously covered by state legislation into the federal jurisdiction through expansive use of the 'corporations' power in the constitution to regulate industrial relations; and removing core functions of the independent Australian Industrial Relations Commission (AIRC), handing them either to specially established government agencies or private corporations. Although many comparisons have correctly been made with the radical New Zealand reforms of 1991, there are also fundamental differences: in particular, while the *Employment Contracts Act* 1991 was a radically deregulatory approach, WorkChoices is a radical interventionist approach, with over 2600 pages of legislation, regulation and explanatory memoranda.

Various claims were made by proponents about the impact WorkChoices would have, including that it would lead to 'more jobs, higher wages [and] a stronger economy', (Australian Government, 2005), would enable workers to 'continue to enjoy the benefits of...low inflation and low interest rates' (Australian Government, 2005), and would generate

[1] Presented to *Diverging Employment Relations in Australia and New Zealand?,* 24th conference of the Association of Industrial Relations Academics of Australia and New Zealand, Auckland, NZ, 9 February 2007. This paper includes data current up to 8 February 2007.

'productivity improvements...driven by the shift of workers reliant on awards to other methods of pay setting such as collective and individual agreements' (Andrews, 2006), while 'employment growth will be stimulated by changes to the unfair dismissal laws which represented a barrier to employment' (Andrews, 2006).

WorkChoices came into force on 27 March 2006 and, according to the advocates, these expectations have been confirmed. The 'successes of Work Choices' include that 'we have seen record high jobs growth across Australia...there has been strong wages growth since the introduction of Work Choices...[and] labour productivity grew by 2.2 per cent in this financial year' (Abetz 2006).

It being less than a year since the laws took effect, any assessment of the impact of WorkChoices can, at this stage, only be preliminary. Assessment is also hampered by the fact that some critical information (in particular, on the content of agreements) has been suppressed (McIlwain, 2006b). This paper aims to assess the impact of WorkChoices on the evidence available to date. The emphasis is on quantitative data that are available, and in each case we shall try to identify the effect, if any, that WorkChoices (WC) appears to have had to date. A separate paper at this conference examines the gender dimensions.

2 COVERAGE

AWA coverage is invariably overstated by the government and its agencies. During 2006 the millionth AWA was signed, but as this included all AWAs signed since January 1997, the majority of those AWAs had expired. The Employment Advocate gave evidence in November 2006 that there were 610,000 'live or operational' AWAs (McIlwain, 2006b). This is unquestionably an overestimate, as it assumes that every AWA signed in the preceding three years is still in force – that is, no employee who has signed an AWA in the past three years has resigned, or been promoted, dismissed or replaced. The last time there was an independent benchmark (the ABS Employee Earnings and Hours survey) the Advocate's methodology overestimated AWA coverage by 60 per cent. Applying that same ratio implies current coverage of about 380,000 employees, though the actual figure is likely to be higher (perhaps 400,000 or so – around 5 per cent of employees) because of the recent policy-induced acceleration in AWA take-up.

Initially, take-up of new agreements under WorkChoices was very slow compared with the pre-WorkChoices period (an average of around 50,000 AWAs per quarter had been signed over the two preceding years). Just 6263 AWAs were lodged in April as the new simplified system took effect. There was a rush to finalise union CAs before WorkChoices took effect, so only 16 union CAs covering 1239 employees were lodged in April. Normally accounting for the majority of employees under agreements, union CAs in April covered only 21 per cent of agreement-covered employees in April. Since then, the rate of take up of all forms of agreement has accelerated, with 76,161 AWAs lodged in September quarter. Overall, in the nine months to 30 September 2006, some 212,000 WorkChoices AWAs were lodged, covering just under 2½ per cent of employees. (The number of people actually on WC AWAs in December 2006 would, of course, be slightly less than this.) Around double that number – 420,000, representing 5 per cent of employees – were covered by new union CAs signed under WorkChoices, while 97,000 (slightly over 1 per cent of employees) were covered by non-union CAs under WorkChoices. In total, then, approximately 750,000 workers (9 per cent of employees) were working under agreements signed under WorkChoices at the end of December (Australian Bureau of Statistics, 6202.0; Office of the Employment Advocate, 2006b).

The number of employees covered by new non-union 'agreements' (including AWAs, greenfields and EGAs) each month has grown by about 27,000, but only a small part of this is due to a drop (of about 8,000) in the number of employees covered by new union agreements. By implication, most of the newly covered employees were previously covered by awards (or had awards underpinning their unregistered individual arrangements). They have, as a result of being covered by WC 'agreements', lost forever their award coverage in that job (except in relation to any 'protected award conditions') (s399).

WorkChoices AWAs were more common in larger than smaller businesses: over three fifths were in businesses with 100 or more workers. But they were in the minority in large firms: amongst businesses with 500 or more employees, union CAs accounted for the majority of WorkChoices agreement-covered workers. In businesses with less than 100 employees, however, AWAs accounted for over three fifths of WorkChoices agreement-covered workers. (Office of the Employment Advocate, 2006b).

Overall, employees under new union CAs represented the majority (56 per cent) of WorkChoices agreement-covered employees. However, this number was lower than the 81 per cent of federal agreement-covered employees working under union CAs recorded in May 2004. Conversely, the share of WorkChoices agreements employees accounted for by new AWAs, at 28 per cent, was higher than AWAs' share in May 2004 (9 per cent). The share of non-union collective agreements was relatively stable, rising from 10 per cent in 2004 to 13 per cent under WorkChoices (calculated from Australian Bureau of Statistics, 6306.0; Department of Employment and Workplace Relations, 2004; Office of the Employment Advocate, 2006b; Peetz, 2006). WorkChoices was aimed at shifting people from collective to individual forms of employment, and it is clearly having some effect in this regard, though perhaps not as much as its proponents would hope.

One factor limiting the effects of WorkChoices is that many organisations have decided against taking advantage of the 'opportunities' it presents. For example, a small business survey found that 62 per cent of respondents said they would retain their present approach to employment, pay and conditions in light of WorkChoices, with only 9 per cent clearly indicating they would not retain their present approach while 18 per cent gave a 'maybe' response (AMR Interactive, 2006). In a web-based survey of 1595 employees with undisclosed sample design, 24 per cent of employees indicated they had noticed a change in their organisation's HR policies since WorkChoices took effect, but the other 76 per cent detected no change (Talent2, 2006). Though the survey did not appear to be representative of occupations, these employee results were broadly consistent with the employer survey above. The tight state of many parts of the labour market is currently an impediment to many employers making use of the 'flexibilities' available.

This in turn is seen by some as likely to blunt the social and political impact of WorkChoices. However, there are large variations in labour market conditions across industries, occupations and regions, and often these are experienced within family or friendship networks. Thus, although only a small minority of employees were working under WorkChoices agreements, some 41 per cent of New South Wales residents said in a Galaxy opinion poll that they knew a friend or family member adversely affected by the reforms (Silmalis, 2006). While the figure might be lower if collected at a national level – as New South Wales (experiencing growth of 0.6 per cent in final demand over the year to September quarter 2006) is not reaping the benefits of the resources boom to the same extent as Western Australia (9.3 per cent) or Queensland (8.0 per cent) (Australian Bureau of Statistics, 5206.0) – the WorkChoices experience is clearly being widely felt. Perhaps because of this, public antagonism to WorkChoices did not soften in the first nine months after WorkChoices took effect (Newspoll, 2007).

In summary, as a result of WorkChoices, more employees are moving onto AWAs than before, and fewer onto union CAs. Award coverage is likely declining. The effects of WorkChoices are being reduced because many firms are not taking advantage of the opportunities it present.

3 UNFAIR DISMISSAL PROVISIONS

No data are available on the extent to which unfair dismissals by employers have increased under WorkChoices, as the only previous information was from administrative collections and the abolition of protections for workers in many firms means data are no longer collectable. Some workers who would previously have pursued a claim in the AIRC under unfair dismissal laws are forced to use the more expensive unlawful termination procedures. Anticipating this, funding for the Human Rights and Equal Opportunities Commission was increased by $2 million over two years to enable it 'to handle the possible increase in complaints' (Ruddock quoted in Schubert, 2006b). However, the shift to the unlawful termination jurisdiction is unlikely to meet the needs of all eligible workers: as Western Australia's Equal Opportunity Commissioner warned, one consequence of WorkChoices is a fear among workers about lodging complaints concerning discrimination (ABC, 2006). There are numerous press reports and anecdotes of unfair dismissals, and of the threat or actuality of dismissals being combined with cuts in pay and conditions (eg Burke, 2006; Cooke, 2006; Humphries, 2006; NSW Nurses Association, 2006; Young Workers Advisory Service, 2006). Without a tribunal process to test those that fall outside of unlawful termination, though, it is impossible to know how extensive has been the change in employer behaviour. In some cases, publicity and union pressure led to workers being reinstated (ABC Radio National, 2006a), demonstrating, as the Chaser team commented, that 'the new IR system guaranteed fair outcomes for workers in all cases where there was national media attention and a huge public outcry' (ABC Chaser Team, 2006).

Anxiety about job security seems to have increased. A Morgan survey showed small movements in perceived job security. The proportion of respondents expecting unemployment to rise over the coming year fell by one percentage point. While in normal circumstances we would expect this to lead to an increase in job security, the proportion of people who thought their job was safe fell by two percentage points, though most respondents remained in this category (Morgan 2006). A more substantial shift is observed when people are directly asked if they feel more insecure: the web survey mentioned earlier, while not representative of occupations, claimed that 39 per cent of clerical administrative workers (and, with small N, 42 per cent of blue collar workers) felt more scared about their job security now than they did before the IR reforms came into effect – while such fears were felt by only 24 per cent of senior managers and 15 per cent of CEOs (Talent2, 2006).

Workplaces which are exempt from the unfair dismissal laws appear to be the site of the greatest employee anxiety. Amongst calls concerning dismissal made to the Victorian Workplace Rights Advocate's Workplace Rights Information Line (WRIL) a disproportionately large number came from workers in small and medium sized workplaces (ie those with less than 100 employees) when compared with the distribution of employees as a whole. Workplaces of this size also appeared to be overrepresented amongst calls concerning other matters (procedural unfairness, underpayment, leave, discrimination, harassment, individual contracts, etc) (Australian Bureau of Statistics, 6310.0; Gahan, 2006).

This suggests that the unfair dismissal changes may be having a broader effect on workplace relations and might be leading to increased anxiety at the workplace.

4 AUSTRALIAN WORKPLACE AGREEMENTS

There are many stories of cuts in pay and conditions through AWAs (Australian, 2006; Office of the Workplace Rights Advocate, 2006; Schubert, 2006a; Workplace Express, 2006d; WorkplaceInfo, 2006a; Young Workers Advisory Service, 2006), but there are only limited quantitative data published by the Office of thee Employment Advocate (OEA), the government agency responsible for collecting and promoting AWAs. The disclosure of information on the loss of 'protected award conditions' (that is, award conditions that were, according to government advertisements, 'protected by law') in a sample of the first batch of AWAs in May 2006 led to considerable public debate. Subsequently, dissemination of such data was terminated, due to the Advocate's 'serious concerns about the methodology' and his view that 'focusing on certain characteristics in isolation, without considering what else the parties may have agreed, had the potential to produce misleading and distorted results' (McIlwain, 2006b). The latter concern should have led to more, not less, information being disseminated. As to the former concern, the sampling method was identical to one which had been used to generate data for the OEA's last major official report to parliament on AWAs, covering the years 2002 and 2003.

In May 2006 *all* AWAs in the OEA's sample removed at least one 'protected' award condition, and 16 per cent excluded *all* protected award conditions. The remaining limited information available on WorkChoices AWAs, and a comparison with pre-WorkChoices AWAs, is shown in Table 1. Several observations stand out. There is a strong focus in AWAs on reducing protected award entitlements. The rate at which conditions are being removed is substantially higher under WorkChoices AWAs than under pre-WorkChoices AWAs. In the case of overtime pay, the rate at which this has been removed through AWAs has doubled, from a quarter of AWAs in 2002-03 to over half of AWAs in 2006. Indeed, overtime and penalty rates are particular targets for removal. Over three fifths of AWAs abolish penalty rates altogether. Over four fifths of AWAs abolish or reduce overtime pay. Majorities of AWAs abolish or reduce meal breaks and public holiday payments. A majority of AWAs abolish shiftwork loading, and large numbers abolish allowances and other conditions. We have no inkling as to how many AWAs reduced or abolished redundancy pay, because it is not a "protected" award condition and the OEA issued no data about unprotected conditions.

Nor, unfortunately, were data ever made available on differences in patterns between industries or occupations. For example, we would expect that AWAs in industries and occupations with tight labour markets (such as mining, where AWAs are common) would have quite different characteristics to those in industries where labour has limited bargaining power (such as retailing and hospitality, where they are also expanding).

In sum, the available data indicate a substantial loss of conditions of employment, for many workers signing AWAs, as a direct result of WorkChoices, though we would not expect this to be the case in all sectors.

Table 1: Reductions or losses of protected award conditions under AWAs, 2002-2003 and April 2006 (%)

	2002-03	2006				2002-03 to 2006
	absorbed (abolished)	abolished	'modified' (reduced but not abolished)	total reduced	un-changed	increase in rate of abolition
overtime pay	25	51	31	82	18	+104%
penalty rates	54	63	na	na	na	+ 17%
annual leave loading	41	64	na	na	na	+ 56%
shiftwork loading	18	52	na	na	na	+189%
rest breaks	na	40	29	69	31	na
public holiday payments	na	46	27	73	27	na
days substituted for public holidays	na	44	na	na	na	na
declared public holidays	na	36	na	na	na	na
incentive based payments/bonuses	na	46	na	na	na	na
allowances (expenses; skills; disabilities)	41	48	na	na	na	+ 17%

na = not available.
Sources (calculated from Department of Employment and Workplace Relations and Office of the Employment Advocate, 2004; McIlwain, 2006a; Office of the Employment Advocate, 2006a)

5 COMPARING AGREEMENTS

In the first Estimates hearing, the duty Minister observed that '33 per cent of collective agreements expressly excluded all protected award matters' (Abetz, 2006), double the rate for AWAs. This was based on data for April 2006, during which most 'collective' agreements were in fact non-union 'employee collective agreements'. It seems likely, then, that non-union CAs were removing protected award conditions at least as rapidly as AWAs. Minister Andrews later claimed on television that one third of *union* CAs 'also had the removal of those conditions' (ABC TV, 2006), but it has proved impossible to verify this. The claim is also inconsistent with evidence from thee Victorian Workplace Industrial Relations Survey, conducted in May-June 2006, which found that workplaces in which collective agreements dominated were over twice as likely to pay penalty rates and overtime rates as workplaces in which individual contracts dominated (Considine, 2006).

Annualised wage increases under new union CAs have averaged about 4.03 per cent in the two quarters since WorkChoices took effect. This is very slightly above the annual rate of inflation (average about 3.95 per cent over the period), and above the rate under non-union employee CAs (3.60 per cent) (Department of Employment and Workplace Relations, 2006). This pattern, whereby union CAs have higher increases than non-union CAs, has been consistent since non-union CAs were effectively introduced under the Workplace Relations Act 1996. (Before then, non-union 'Enterprise Flexibility Agreements' had been possible, but rare.)

Prior to WorkChoices, average wage increases under AWAs had been in the range of 2 – 2½ per cent per annum (ACIRRT, 2001, 2005), well below the rate in union CAs and even non-union CAs. No data have been published, or possibly even collected, on average wage

increases under WorkChoices AWAs. All that is known is that 22 per cent of AWAs contain no provision for a wage increase during the life of the agreement. This is well down on the rate prior to WorkChoices (when 73 per cent contained no mention of a wage increase (ACIRRT, 2001)), though this is probably due to the greater length of AWAs under WorkChoices. They can now last for five years, compared to three years pre-WorkChoices, and it is difficult to imagine many people willingly signing an agreement that provided for no increase over a five year period. There are anecdotes indicating a pattern is for AWAs to contain a reasonable wage increase up front but little or nothing afterwards.

In sum, the data imply a likely loss of conditions in mainly non-union collective agreements under WorkChoices, and a reduction in wages growth in the formal sector as a result of the increased share of instruments that are encouraged by WorkChoices and that provide for relatively low rates of wage increase. However, as with several other areas, more data are required.

6 EMPLOYER GREENFIELDS AGREEMENTS

Employer greenfields 'agreements' (EGAs) are not agreements in any sense of the word. They are unilateral instruments setting pay and conditions, determined solely by management of an organisation before it establishes a new 'project' or 'undertaking' (which appears to include, under WorkChoices, a new branch of a franchise or a business that has been sold in certain circumstances). Workers cannot legally take industrial action for 12 months after an EGA comes into force. EGAs were created by WorkChoices. Prior to WorkChoices, greenfields agreements could only be made with unions, for bona fide new businesses. Since WorkChoices took effect, the number of union greenfields agreements has fallen sharply, and two thirds of greenfields 'agreements' have been EGAs. Average wage increases under EGAs (3.48 per cent) are below those under WorkChoices union greenfields agreements (3.64 per cent) and indeed the lowest of any time of agreement for which data are available (Department of Employment and Workplace Relations, 2006).

Newsletter *Workplace Express* analysed the content of 34 EGAs in November 2006. It found that EGAs fell into three categories: fast food EGAs (the biggest category, which included franchisees of Subway, Hooters, Wok in a Box, Grill'd, Hogs Breath Café and Seaking Seafood) which provided for low wages (typically $13-15 per hour), mostly abolished penalty rates and excluded protected award conditions; finance EGAs (mostly Bank of Queensland franchisees) which provided for low wages but retained most protected conditions and severance pay; and construction EGAs (in roads & mines, in Western Australia and Queensland), which provided for higher wages ($20 or more per hour) due it seems to labour shortages (Workplace Express, 2006b). Stories about EGAs are emerging (Horin, 2006). One particular EGA worth noting was one covering United Petroleum petrol stations in Tasmania. Having bought the stations from another company, the new owner was able to persuade both the OEA and the Office of Workplace Services that it was a 'new undertaking', allowing him to unilaterally establish an EGA covering pay and conditions for existing employees of the stations. Through the abolition of penalty rates and other conditions, their pay was cut by up to $190 per week, and any industrial action in protest at this would have been illegal and attracted fines of $6000 per day (ABC Radio National, 2006b; Paine, 2006; WorkplaceInfo, 2006b).

In sum, WorkChoices has created a new instrument, the EGA, which is associated with the loss of conditions for a significant number of employees, though not all employees covered by EGAs (depending on their position in the labour market).

7 MINIMUM WAGES

The November 2006 decision by the Australian Fair Pay Commission (AFPC), to grant a $27.36 per week increase in award wages for workers on wages of up to $700 per week, and $22.04 per week above that, was seen by many as unexpectedly generous to those reliant on awards. However, it needs to be recognised that the AFPC had little room to manoeuvre. State tribunals had already granted their award workers increases of around $20 over 12 months. When annualised, the AFPC's increase was actually slightly less generous than what most state tribunals had provided. It was the second lowest minimum wage increase in real terms since the Coalition came to office – representing a real wage fall of 0.9 per cent fall on average for award-reliant employees, according to data from the AFPC chair (Workplace Express, 2006c). The AFPC will move its decisions to mid year, enabling it to pre-empt state tribunals and exert more authority over minimum wages. Whether it will be able to overcome the confusion caused by its failure to publish the minimum wage rates that arise from its decisions, and apparent errors in the rates posted by the federal Department, is another matter (AAP, 2006; Workplace Express, 2006a).

In short, the minimum wage fixing arrangements established under WorkChoices have led to a real wage decline for most award-reliant (low wage) workers, but the full effect is yet to be seen.

8 WAGES AND PROFITS

The average weekly earnings (AWE) survey reveals that, during the six months to August 2006, average weekly ordinary-time earnings for full-time adult employees (AWOTE), in real terms (that is, after adjusting for prices), *fell* by 1.1 per cent. Real average weekly total earnings (AWTE) fell by a similar amount (Australian Bureau of Statistics, 6302.0, 6401.0). Another indicator of wages growth, the labour price index, showed a real decline of 0.6 per cent in hourly earnings excluding bonuses in the six months to September quarter 2006.

The only other occasions in recent decades which have seen such a reduction in real wages in the AWE survey were in 2000 (when the GST was introduced) and in the 1980s (when the centralised Accord was in place). In both these other occasions the reductions in real wages were in one form or another explicitly 'offset' through the tax-transfer or social wage systems. However there has been no explicit offsetting for the reduction in real wages that has occurred during the first six months of WorkChoices. Indeed, its existence is denied. We would not expect this reduction in real wages to continue indefinitely, with inflation forecast to fall in the context of changing petrol and fruit prices. Nonetheless, the most notable thing about this reduction in real wages is that it has occurred in the tightest labour market in three decades. Normally tight labour markets are associated with strong growth in real wages. Even stagnation of real wages would be unusual in such circumstances.

Retailing and hospitality (accommodation, cafes and restaurants) are two industries where workers are likely to be especially vulnerable to the effects of WorkChoices. The industries are highly casual, reducing workers' bargaining power. On average, according to the labour price index, since 1997 hourly earnings growth in these two industries has been 17 to 19 per cent lower than earnings growth across all industries. Workers in both industries are reliant on penalty rates for night and weekend work, and these are susceptible to change under WorkChoices. In the two quarters since WorkChoices took effect, hourly earnings growth in these industries (at 1.0 per cent and 0.7 per cent respectively) were 47 per cent and 61 per cent lower than the all-industry average (Australian Bureau of Statistics, 6345.0). This

probably reflects the loss of penalty rates and other conditions of employment, though unfortunately the data to verify this are not published.

Women have been particularly affected. They represent the majority of employees in retailing and hospitality. Nominal AWOTE for females in the private sector rose by only 0.5 per cent in the six months to August 2006, compared to 1.3 per cent for males. In real terms, female AWOTE in the private sector fell by 2.0 per cent in six months to August 2006 (Australian Bureau of Statistics, 6302.0). Again, we would expect the size of the real wage fall to diminish as inflation eases, but the relative movement implies a widening of inequality between men and women.

The wages share of national income was, seasonally adjusted, 53.8 per cent in September quarter 2006, up marginally from 53.5 per cent in March quarter, which had in turn been just 0.1 points above a 35-year low. In trend terms, the wages share of 53.7 per cent was a mere 0.1 percentage points above the 35 year low recorded in March quarter. The profit share, by contrast, has never been stronger. At 27.5 per cent in September quarter 2006 (seasonally adjusted), it was 0.5 points above the previous all-time high of 27 per cent recorded in March quarter. In trend terms, the 27.3 per cent recorded in September quarter was also an all-time high, 0.4 points above the pre-WorkChoices record achieved in March quarter 2006 and over 6 points (that is, nearly 30 per cent) higher than its average over the past 35 years (Australian Bureau of Statistics, 5206.0). There appears, then, to also be a widening inequality between the owners of capital and labour.

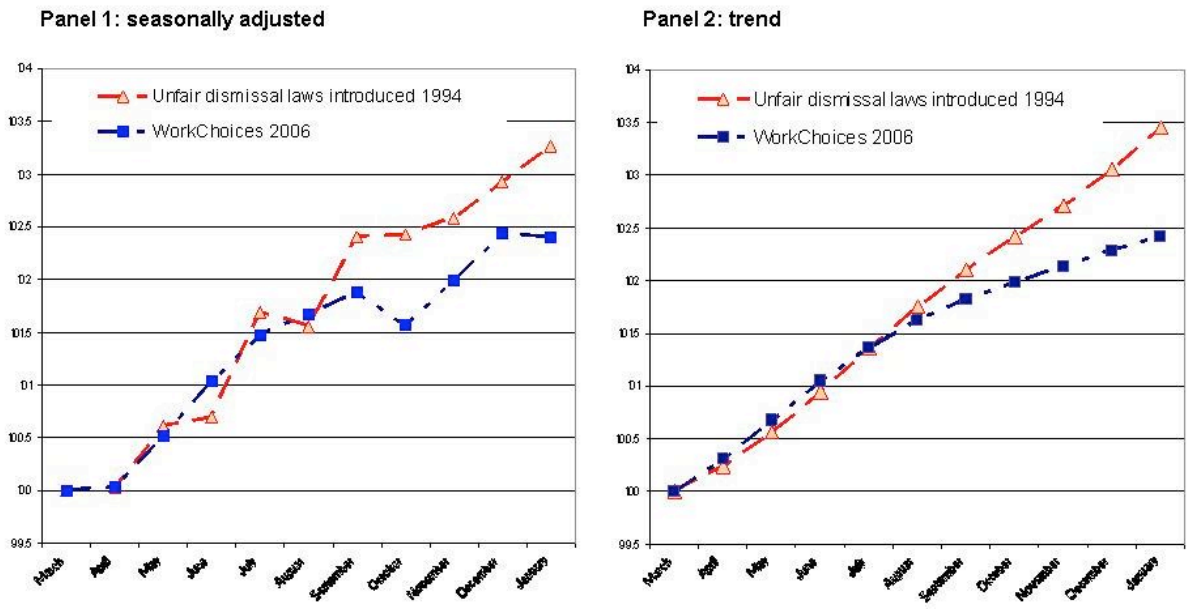
In short, WorkChoices has been associated with a decline in average real wages, at least in the short term, despite the economic boom. It appears to have led to real wage declines in retail and hospitality, probably as a result of the loss of penalty rates in those industries, and in the short term at least a drop in real and relative earnings for women, while profits are at record levels, continuing a trend established under the Workplace Relations Act.

9 EMPLOYMENT

WorkChoices was to deliver substantial employment growth through the partial abolition of the 'job destroying' unfair dismissal laws. A useful benchmark to assess the job creation effect of WorkChoices, then, is to compare employment growth in the period since WorkChoices was introduced with employment growth in the equivalent period after the unfair dismissal laws were introduced at the end of March 1994. The comparison is shown in Figure 1. In seasonally adjusted terms (panel 1), over the eight months from March to November 2006, employment grew by 241,300 or 2.38 per cent. But over the same eight months after the unfair dismissal laws were introduced in 1994, employment grew by 256,400 or 3.25 per cent. In trend terms (panel 2), employment growth of 2.39 per cent under WorkChoices was noticeably weaker than the 3.43 per cent growth after the unfair dismissal laws were introduced. The implication is not that the unfair dismissal laws were more effective job creators than the law that abolished them; rather, the implication is that the strong growth of employment in 2006 is unrelated to the abolition of the unfair dismissal laws, and instead reflects other factors.

In short, the recent employment growth, while strong, appears to owe more to underlying demand in the economy – driven in no small part by the resources boom – than to the introduction of WorkChoices.

Figure 1: Employment growth over ten months from March 1994 (introduction of unfair dismissal laws) and from March 2006 (partial abolition of unfair dismissal laws)



Note: index, March = 100
Source: ABS Cat No 6202.0.

10 ECONOMY AND PRODUCTIVITY

The WorkChoices economic miracle has yet to materialise. The annual rate of inflation rose from 3.0 per cent in the year to March quarter 2006 to 3.9 percent in September quarter 2006, before easing to 3.3 per cent in December quarter (Australian Bureau of Statistics, 6401.0). Interest rates were increased by 0.25 percentage points in each of May, August and November 2006 (Reserve Bank of Australia, 2006). WorkChoices did not create these increases, but nor did it ensure that workers would 'enjoy the benefits of...low interest rates' (Australian Government, 2005).

A more credible target for WorkChoices would be labour productivity. A useful benchmark is the 2.5 per cent annual growth in productivity achieved under the traditional award system of the 1960s and 1970s (Australian Bureau of Statistics, 5204.0; Peetz, 2005), as the alleged inefficiencies of the award system are often derided as the rationale for WorkChoices. But here the story is no better. Labour productivity (GDP per hour worked) fell by 1.6 per cent nationally, in seasonally adjusted terms, between the March and September quarters of 2006. In the market sector, labour productivity fell by 1.7 per cent over the same period (Australian Bureau of Statistics, 5206.0). Labour productivity figures are volatile, but the trend estimates by the ABS also show declines: by 0.7 per cent across the economy as a whole, and 0.4 per cent in the marker sector. (These are figures over the two quarters since WorkChoices took effect – the annualised rates of decline would be double those indicated here.) Labour productivity is best assessed over the course of a complete productivity cycle. That said, two years into this growth cycle, the cumulative productivity growth of just 1.8 per cent to 2005-06 is the second lowest of any comparable period at this stage of the last eight growth cycles (before account is taken of the drop in the September quarter). In trend terms, labour productivity in September quarter 2006 was only 1 per cent higher than it was in March 2004, two and a half years earlier.

Some have suggested that this poor productivity performance is simply the arithmetical result of the entry of semi-skilled and unskilled workers into the workforce as a result of WorkChoices (Pearson 2007). However, at less than 18 per cent, the share of 'unskilled' workers (labourers and elementary clerical sales and service workers) in the workforce has been, during the past three quarters, the lowest average on record (Australian Bureau of Statistics, 6291.0).

We would not expect these declines to continue indefinitely – a rise in productivity must occur sometime soon. But from these data, and from extensive evidence elsewhere (Dalziel, 2002; Peetz, 2005), there is no reason to believe that WorkChoices will be able to generate a significantly higher productivity growth rate than occurred under the traditional award system, or would have occurred anyway.

The Australian Small Business survey, undertaken by MYOB, found that only 12 per cent of small business respondents believe the new WorkChoices legislation will lead to an increase in business productivity. By contrast, 34 per cent disagreed, including 14 per cent who strongly disagreed (AMR Interactive, 2006). Perhaps one reason for this was that 40 per cent of small business respondents considered that the legislation is 'unfair to many employees', compared to just 24 per cent who disagree (AMR Interactive, 2006).

In sum, it is doubtful on the evidence to date that there is any positive impact on labour productivity arising from WorkChoices, and there is a possibility, yet to be confirmed, that its effect may end up negative.

11 INDUSTRIAL DISPUTES

The number of working days lost due to industrial disputes in the June and September quarters 2006 was 53 per cent lower than the equivalent period a year earlier and a record low (Australian Bureau of Statistics, 6321.0.55.001). This reflects in part a medium term trend in Australia (and a number of other countries) of declining overt industrial conflict . Industrial conflict has been falling consistently since 1983 (the beginning of the prices and incomes Accord). Working days lost fell by 75 per cent between 1982 and 1995, and by 58 per cent between 1995 and 2005 (Australian Bureau of Statistics, 6321.0.55.001). However, the recent data also reflect the fact that WorkChoices has introduced a large number of restrictions on industrial action that make most forms of industrial action illegal. It could be argued that the decline in industrial conflict is simply one manifestation of the lower level of power that employees have under WorkChoices.

One possibility, yet to be confirmed, is that the restrictions on industrial action are now so severe that unions will decide to ignore the law, as it is almost impossible to adhere to it. Data on causes of disputes are available for only one quarter, but these indicate that in June quarter 2006, working days lost due to potentially 'legal' industrial action (ie action associated with enterprise bargaining) were 89 per cent lower than the average over the two years to March quarter 2006 (note that the ABS data do not identify whether the disputes were actually legal, only whether they were associated with enterprise bargaining). By comparison for non-enterprise bargaining related disputes (almost certainly all technically illegal) the decline was only 29 per cent (and indeed there was a rise between the March and June quarters 2006). Over the preceding three years, these (illegal) non-bargaining-related disputes accounted for about 48 per cent of working days lost, but in the first quarter of WorkChoices this jumped to 83 per cent. These quarterly figures on cause of dispute are highly volatile, however, and importantly may be influenced by the finalisation of

negotiations for most union CAs before WorkChoices took effect, so more data will be required before provisional inferences can be drawn.

In sum, the first six months of WorkChoices have seen a continuation of the long term trend reduction in industrial disputes, but it is possible (but not yet clear) that WorkChoices has had an effect in separately reducing the level of legal industrial action, mainly by making many previous industrial actions illegal.

12 CONCLUSIONS

This review of the experience under WorkChoices indicates several conclusions. Union agreements still dominate, but more employees are moving onto AWAs than before, and fewer onto union CAs. Award coverage is likely declining. The effects of WorkChoices are being reduced because many firms are not taking advantage of the opportunities it present.

The unfair dismissal changes may be having a broader effect on workplace relations and might be leading to increased anxiety at workplaces, moreso those with less than 100 employees, many of whom are now exempted from unfair dismissal protection.

There has clearly been a substantial loss of conditions of employment, particularly overtime pay and penalty rates, for many workers signing AWAs, as a direct result of WorkChoices, though we would not expect this to be the case in all sectors.

WorkChoices has created a new instrument, the EGA, which is associated with the loss of conditions for a significant number of employees, though not for all employees covered by EGAs (depending on their position in the labour market).

Union CAs are providing the highest wage increases, and EGAs the lowest, though there are no data for AWAs, which might be lower again. The data imply a likely loss of conditions in mainly non-union collective agreements under WorkChoices, and a reduction in wages growth in the formal sector as a result of the increased share of instruments that are encouraged by WorkChoices and that provide for relatively low rates of wage increase.

The minimum wage fixing arrangements established under WorkChoices have led to a real wage decline for most award-reliant (low wage) workers, but the full effect is yet to be seen. WorkChoices has been associated with a decline in average real wages, at least in the short term, despite the economic boom. It appears to have led to real wage declines in retail & hospitality, probably as a result of the loss of penalty rates in those industries, and in the short term at least a drop in real and relative earnings for women. Meanwhile profits are at record levels, continuing a trend established under the Workplace Relations Act.

The recent employment growth, while strong, appears to owe more to underlying demand in the economy – driven in no small part by the resources boom – than to the introduction of WorkChoices.

Inflation and interest rates have risen, but this is not directly attributed to WorkChoices (though it was claimed that WorkChoices would have beneficial effects in these areas). Productivity has fallen; it is doubtful on the evidence to date that there is any positive impact on productivity arising from WorkChoices, and there is a possibility, yet to be confirmed, that its effect may end up negative.

The first six months of WorkChoices have seen a continuation of the long term trend reduction in industrial disputes, but it is possible (but not yet clear) that WorkChoices has had an effect in reducing the level of legal industrial action, mainly by making many previous industrial actions illegal.

In several areas, more data are urgently required, in some cases as a result of the withholding of official information. Nonetheless, these are, in general, the patterns we would expect to see from a transfer of power from employees to corporations.

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ATTACHMENT B

news.com.au

Bosses honour Anzac Day by cutting pay rate

By Joe Hildebrand
April 25, 2007 01:00am Article from: *(http://www.dailytelegraph.news.com.au/?from=ni_story)*

Daily Telegraph

- **Penalty rates stripped from Anzac Day workers**
- **Consultancy boasts of ability to cut wages**
- **ACTU outraged, claims treatment 'un-Australian'**

A LANDMARK hotel in Sydney's west is holding a special celebration to commemorate Anzac Day -- while at the same time slashing employees' pay for the day by up to two thirds.

The owners of Rouse Hill's The Mean Fiddler are among several NSW companies - including Hungry Jacks, Subway, IGA and Bakers Delight franchises - using a North Sydney consultancy to strip penalty rates from their staff under the Government's new workplace laws.

In some cases this robs employees of up to $20 an hour on public holidays such as Anzac Day.

The consultancy, Enterprise Initiatives, boasts about how low wages can be kept using its advice.

In the case of The Mean Fiddler, the company displays a graph on its website showing the old award rate of up to around $33 an hour for public holidays compared to their new collective agreement, which keeps the hourly rate at about $13 or $14.

"The introduction of WorkChoices means the no-disadvantage test has been removed and minimum conditions put in place," the website states.

Enterprise Initiatives managing director Ben Thompson told *The Daily Telegraph* penalty rates were often scrapped in favour of individual bonuses to "incentivise" employees.

"Paying someone double time to turn up on a Sunday doesn't necessarily address that need. We're not about driving costs down," he said.

However his website states one of the "key results" for The Mean Fiddler and other pubs in the Drinx hotel group was "reduced administration and payroll costs through removal of complex loadings from wages".

A key result for another company, Howard's Storage World, was "a pre-WorkChoices Certified Agreement ... without penalties for weekends, late nights, public holidays or allowances, dramatically improving margins".

ACTU secretary Greg Combet said the actions of The Mean Fiddler and Enterprise Initiative were a disgrace.

"This is an outrage," he told *The Daily Telegraph*.

"Cutting people's pay by $20 an hour on Anzac Day is un-Australian and further evidence of how un-Australian John Howard's industrial relations laws are."

While some of the employees at The Mean Fiddler are still on the old award and receive penalty rates, Enterprise Initiatives said the company planned to offer all new employees AWAs.

"Once the new instrument is part of the workplace culture, the (certified agreement) can be introduced to provide a common agreement," it said.

The owners of The Mean Fiddler were asked how new employees fared compared to old employees but they declined to comment.

Director Les Plever would not confirm or deny that the base rate of pay on a public holiday was between $13 and $14.

General manager Russell Reeves said he believed workers were paid an increased hourly rate on regular days to compensate for the penalty cuts but he wasn't sure of the different rates of pay.

Understanding WorkChoices

What is WorkChoices?

WorkChoices is a new, national workplace relations system that received royal assent on 14 December 2005, with the majority of amendments taking effect on 27 March 2006. WorkChoices is characterised by reducing the imbalance of unwanted third party interference and increasing the reliance on making individual and collective agreements directly between Employers and Employees, rather than prescriptive awards and union arrangements.

Who does WorkChoices apply to?

The new legislation draws on a combination of constitutional powers to cover the majority of employees and employers in Australia, including:

- constitutional corporations and their employees
- all employers and employees in Victoria, the ACT and Northern Territory
- the Commonwealth, including its authorities and its employees
- employers in respect of waterside, maritime and flight crew employees employed in connection with interstate, overseas, inter-territory or state-territory trade and commerce

Unincorporated businesses (such as partnerships and trusts) in NSW, South Australia, Western Australia, QLD and Tasmania are not under the jurisdiction of WorkChoices legislation.

Creating workplace agreements under WorkChoices

Under WorkChoices you can now negotiate your own Workplace agreements that legally only have to satisfy the five minimum conditions (known as the Australian Fair Pay and Conditions Standard), which are:

- Maximum 38 hours of work (plus reasonable additional hours)

- Minimum wage rate (adjusted in line with relevant Award) + 20% casual loading
- 4 weeks paid annual leave (5 weeks for continuous shift workers)
- 10 days paid personal/carers' leave per year (cumulative), 2 days unpaid emergency carer's leave per occasion and 2 days paid compassionate leave per occasion
- 12 months unpaid parental leave

This provides employers wishing to engage directly with their employees an outstanding opportunity to improve productivity and negotiate terms and conditions that are important to them. By locking in 5 year agreements which are effective on lodgment, the task of legal compliance can be dramatically simplified. Greater ambit and flexibility is created in order to allow you to reward employees appropriately according to performance, tenure and initiative. Your business as a whole is more productive and motivated.

Minimum pay rates available under WorkChoices Agreements

Below are the indicative legal minimum rates and penalty provisions for the relevant shop/retail awards in Victoria, NSW and Queensland.Comparing this with the corresponding minimum rate under WorkChoices highlights the ease and flexibility available with agreements under WorkChoices.

This simplicity allows additional payments (e.g. employee incentives, bonuses, etc) to be negotiated directly between the employer and employee.

National Fast Food Retail Award 2000				
Grade 1	Permanent Employee		Casual Employee	
	Award	WorkChoices Agreement	Award	WorkChoices Agreement
Monday - Friday	$14.30	$14.30	$17.88	$17.16
Saturday	$17.88		$22.35	
Sunday	$25.03		$25.03	
Public Holidays	$35.75		$44.70	

Shop Employees (State) Award				
Shop Assistant	Permanent Employee		Casual Employee	
	Award	WorkChoices Agreement	Award	WorkChoices Agreement
Monday - Friday	$14.28	$14.28	$17.80	$17.14
Saturday	$17.86		$17.80 (+$5.90)	
Sunday	$21.43		$26.01	
Public Holidays	$35.75		$42.48	

Retail Take-Away Food Award - South-Eastern Division 2003				
F & B Grade 2	Permanent Employee		Casual Employee	
	Award	WorkChoices Agreement	Award	WorkChoices Agreement
Monday - Friday	$13.19	$13.19	$16.22	$15.82
Saturday	$19.78		$16.22	
Sunday	$19.78		$16.22	
Public Holidays	$32.97		$40.56	

Types of workplace agreements

There are a number of workplace agreements that can be implemented by employers according to what suits the business best. These are:

1. *Australian Workplace Agreement* - Individual agreements made between an employer and employee

2. *Employee Collective Agreement* - Non-union collective agreements between an employer and employees

3. *Employer Greenfield Agreement* - Employer Non-union agreements made before employing employees

4. *Multiple Business Agreement* - Non-union agreements made between multiple employers & employees

Transmission of Business

Transmission of business occurs when part of or an entire existing business is sold to another business.Under the WorkChoices legislation, where a business or part of a business transmits to a new employer and existing employees of that business accept employment with the new employer, the industrial instrument (e.g. award, AWA, collective agreement) that applied to the existing employee will transmit to the new employer.

The industrial instrument will apply only to the transmitted employees for a period of 12 months (“transmission period”). After the transmission period, the transmitted employees will be covered by the appropriate industrial instrument that applies to the business unless a new agreement is negotiated.

A new employer who employs “transmitted employees” (existing employees) is required to either:

- Advise the transmitted employees within 28 days following the commencement of their employment with the employer of certain information, including the transmitted instrument that binds the employees and the new employer, and the date on which the transmission period ends; or

- Enter into a new AWA with the employees **within 14 days** of the time of transmission.

Please contact Dominic Stewart at EI Legal Pty Ltd on **(02) 9334 5501** for further information on your obligations relating to Transmission of Business.

Unfair Dismissal

The changes to the unfair dismissal laws are substantial and provide greater protection to most employers. WorkChoices has removed or limited the ability of many employees creating unfair dismissal claims. Employees that are excluded from federal unfair dismissal laws include:

- seasonal workers
- employees of a corporation with less than 100 employees
- employees engaged under a contract of employment for a specified period or a specified task
- employees on qualifying period and trainees
- casual employees engaged for a short period
- employees earning $94,900 or above
- employees dismissed for genuine operational reasons, including economic, technological, structural or similar matters relating to the employer's business.

However, employees are still eligible to apply to the AIRC if they believe their employment was terminated for an unlawful reason, including:

- temporary absence from work because of illness or injury;
- trade union membership or participation in trade union activities;
- non-membership of a trade union;
- seeking office as a representative of employees;
- the filing of a complaint, or the participation in proceedings, against an employer;
- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- refusing to negotiate, sign, extend, vary or terminate an AWA;
- absence from work during maternity leave or other parental leave; and
- temporary absence from work because of the carrying out of a voluntary emergency management activity.

Please contact Dominic Stewart at EI Legal Pty Ltd on **(02) 9334 5501** for further information on your obligations relating to Unfair Dismissal.

Our Clients

Hotels and Pubs

The Mean Fiddler Isish Tavern, Belvedere Hotel, Grand Central Hotel and the Full Moon Hotel.

client Craig Fantom & Sean Williams

company Drinx Group Pty Ltd

location NSW and QLD

industry Hospitality

description Four sites, 300 Employee.

The Mean Fiddler Isish Tavern

The Belvedere Hotel

The Grand Central Hotel

The Full Moon Hotel

Objectives

1 Improve the flexibility of the business

2 Creation of a common set of minimum terms and conditions nationwide.

3 Introduce simple and consistent processes to reduce payroll and administrative costs and direct resources to organisational profitability.

Problem

The Drinx Group has 300 employees working over two different states and four different sites. The award system was affecting flexibility in the workplace through onerous restrictions and complicated conditions it prescribed.

The high variation in conditions and wage rates were confusing and inhibiting organisational productivity. Weekend and public holiday loadings were 'pricing out' available working hours during these periods restricting profit maximisation in the busiest times, and limiting employees access to work.

Two step solution

Step One:

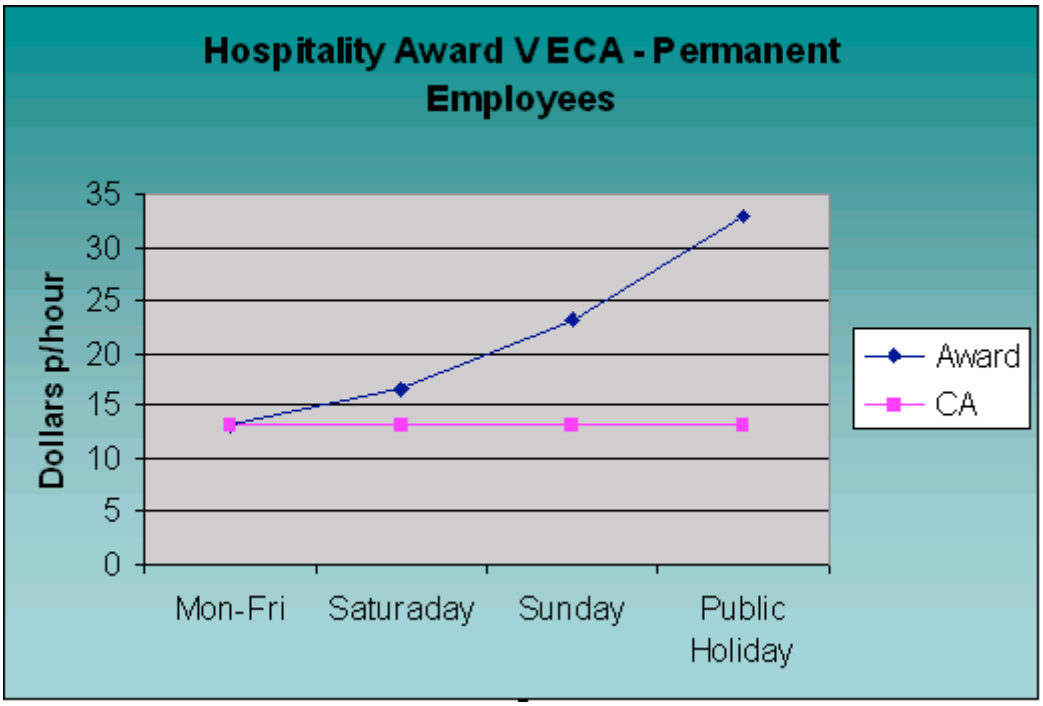
Enterprise Initiatives AWA/ECA combination agreement package for the Mean Fiddler Tavern NSW .The initial AWA gradually implements the changed culture into the workplace offering individual agreements as a condition of employment for new employees so that full benefits of enterprise agreements can be realized. Once the new instrument is forms part of the workplace culture, the ECA can be introduced to provide a common agreement for the site.

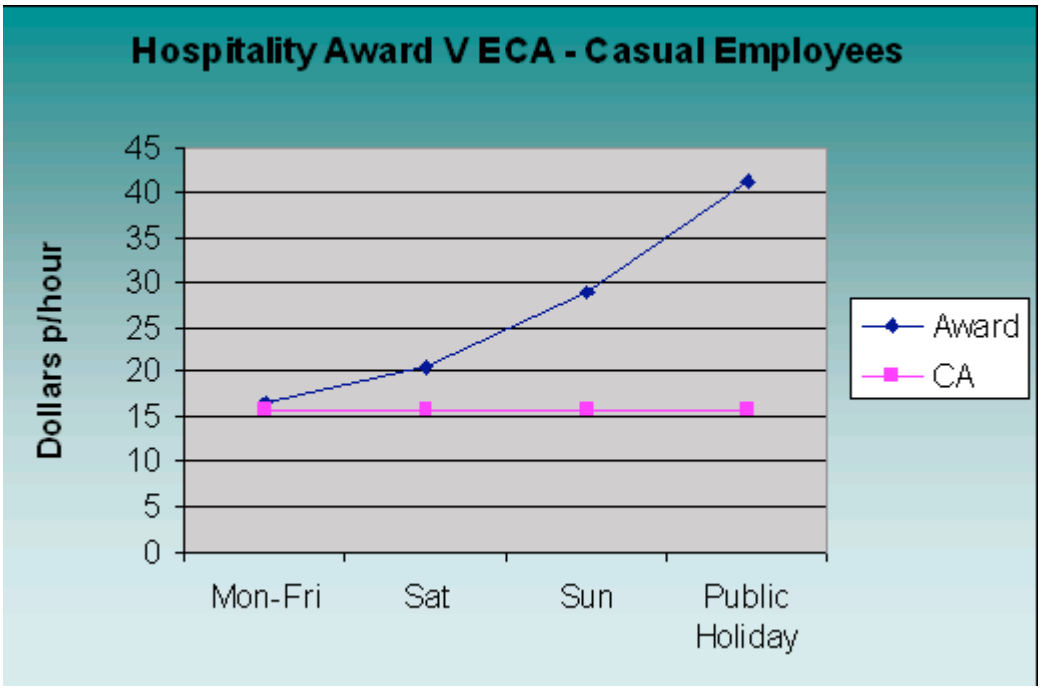
Step Two:

Enterprise Initiatives WorkChoices ECA for QLD sites. Increased organisational productivity realised by the Mean Fiddler prompted implementation of a WorkChoices ECA for the QLD sites. The introduction of WorkChoices means the no-disadvantage test has been removed and minimum conditions put in place. This has enabled the Drinx Group to offer protected employment conditions and wages that reward employee's good performance and are aligned with organisational needs.

Key results

- Improved organisational productivity with the capacity for more employees to work on weekends and public holidays.
- A national, legally compliant industrial instrument that provides consistency across all four sites
- Common terms and conditions that reflect business needs and reward employee's individual performance.
- Reduced administration and payroll costs through removal of complex loadings from wages and the use of simple, national system.





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Our Clients

Morgans Supa IGA

client	**Neal Morgan**	**company**	**Morgan's Supa IGA**
location	**Melton - Victoria**	**industry**	**Retail**
size	**Four sites, 200+ employees**		

SUCCESS STORY

Objectives

1) **Replace onerous Award and Award-type conditions with a simple tailored agreement.**

2) **Maximize eligibility for government traineeships and incentive funding.**

3) **Lock-in improved conditions as a transferable asset of the business.**

4) **Offer more quality employment opportunities in the local community.**

Problem

Onerous conditions (such as penalties) and highly complex award restrictions limited Morgan's Supa IGA in offering quality employment opportunities with traineeships.

Penalties, loadings and other restrictions were eroding margins, particularly on weekends, leading to a reduction in the number of positions available and the overall efficiency and profitability of the business.

Solution

Enterprise Initiatives developed and helped implement a 3-stage strategy for the business:

Stage 1:

the phasing in of Australian Workplace Agreements for eligible trainees and new employees;

Stage 2:
the creation of a non-union Certified Agreement to cover all employees at a new site;

Stage 3:

the creation of one non-union Certified Agreement for all existing sites.

“ Enterprise Initiatives have delivered fully on their promises. They provided professional advice, excellent support and simple solutions. Our Certified Agreement at the new Delahey store puts us in front from day one. I look forward to their continued support. ”

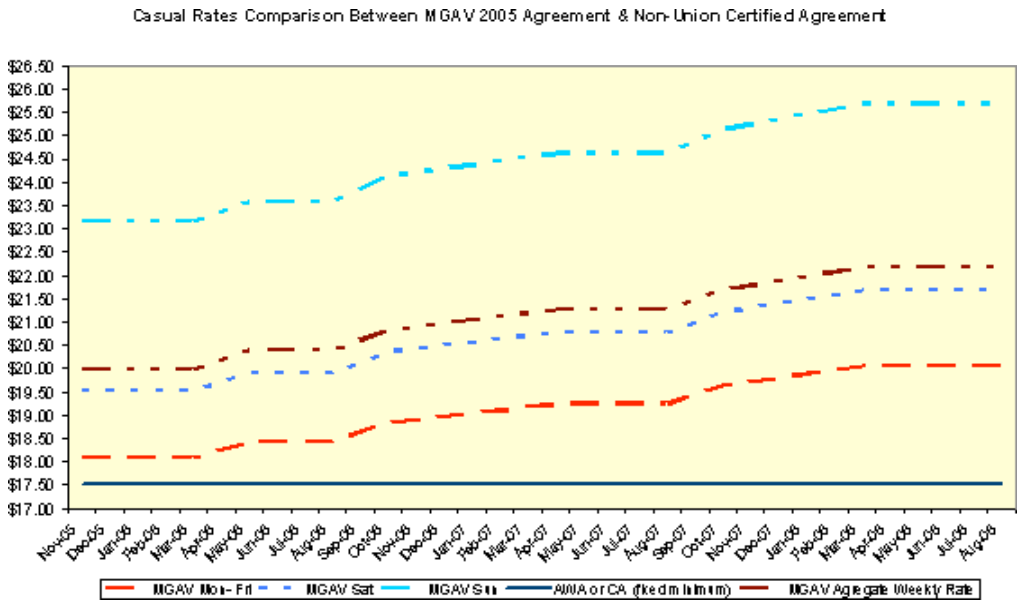
Neal
Morgan

Director of Morgan's

Key Results

- **Dramatically simplified payroll and compliance burdens due to the introduction of a single hourly rate, 7 days per week**
- **Over 60 AWAs were approved by the Office of Employment Advocate (OEA)**
- **Gained access to over $150,000 in federal government training incentives**
- **A non-union Certified Agreement was approved for the Delahey supermarket on the 26 October 2005 without penalties for weekends or late nights**
- **Dramatically improved profit margins on weekends**

- **More quality, permanent positions available.**



The above graph shows the clear choices between the legal minimum rates of pay obtainable under a tailored workplace agreement and those locked into the MGAV SDA Agreement 2005.

Due to the inherent flexibility that a tailored workplace agreement can provide IGA's, employer's like Neal Morgan can afford to give their employees more choice in the number of hours they work each week, giving them more 'room to move'.

All business operators deserve to be informed of their legally available options and be capable of making the best strategic decisions for their business.

Contact us

Please callBen Thompson(Managing Director) or Peter Gardiner(Business Development Manager) at Enterprise Initiatives on:

1300 734 634 (freecall)

to receive further information on how you too can dramatically improve your workplace for you and your employees.

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Our Clients

Dealore IGA ACT

client John Krnc **company** Dealore Pty Ltd

location Lyneham - ACT **industry** Retail

size Three sites, 100+ employees

Problem

Penalties, loadings and other restrictions from the Union Agreement were eroding margins, particularly on weekends, leading to a reduction in the number of positions and hours available to staff members and the overall efficiency of the business.

Solution

Objectives

1) Replace existing 'Union Multiple-Business Certified Agreement' (Union Agreement) with a Non-Union Certified Agreement specifically tailored for employees of Dealore Pty Ltd.

2) Maximize eligibility for apprenticeships, government traineeships and incentive funding.

3) Lock-in improved conditions as a transferable asset of the business.

4) Give the employer more freedom to reward quality staff who perform, rather

To avoid pending negotiations by the union to re-negotiate a Union Agreement, Enterprise Initiatives navigated Lyneham IGA in the implementation of a customized Non-Union Certified Agreement to cover existing, new and future employees.

than rewarding staff according to the day of the week they work.

5) Provide flexibility in rostering of staff.

6) Deal directly with employees at an enterprise level and eliminate unwanted third party interference.

Key results

- **A Non-Union Certified Agreement was approved for Dealore Pty Ltd on the 12 January 2006 without penalties for weekends, late nights, public holidays or allowances**
- **Simplified payroll and more flexible rostering of staff due to the introduction of a single hourly rate, 7 days per week**
- **More quality, permanent positions available**
- **The introduction of a workplace culture based upon staff performance and providing employees with incentives to achieve in their designated role.**

"Our new penalty-free arrangements enable us to trade more profitably at peak times whilst paying key staff higher wages for their contribution to the business."

John Krnc

Director Dealore IGA ACT

7th Feb, 2006

Due to the inherent flexibility that an Enterprise Initiatives workplace agreement can provide an IGA, employer's like John Krnc can introduce a workplace culture based upon staff performance and incentive structures, rather than paying employees according to what day of the week they work. Such a shift in culture has been highly conducive to increased profitability and efficiency of the business and workplace as a whole.

All business operators deserve to be informed of their legally available options and be capable of making the best strategic decisions for their employees and their business.

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ATTACHMENT C

AUSTRALIAN FEDERAL POLICE ASSOCIATION

SUBMISSION

Workplace Relations Amendment (WorkChoices) Bill

"WorkChoices: A clash of Values and Obligations for Police and Law Enforcement"

Prepared by

Craig Shannon
Director
Workplace Relations
AFPA

Ian Phillips
Director
Legal
AFPA

Introduction

The Australian Federal Police Association (AFPA) represents the industrial, social and professional interests of all employees of the Australian Federal Police (AFP). Our membership interests span across Commonwealth law enforcement functions through the wide-ranging dispersment of AFP employees across a range of Commonwealth interests. Our Activities are predominately within the Australian Crime Commission (ACC), Federal Parliamentary Security Service, and the AFP across the entirety of its functions.

The AFPA is the Federal Branch of the Police Federation of Australia and as a long running participant in the Federal Industrial marketplace; we are well situated to advance practitioner's perspectives in respect of the Bill before the Parliament on this matter. The earlier section of this submission will address general issues of concern with the proposals and the latter will address specific recommendations.

We thank the Committee for the time to address these matters. The AFPA notes the increasingly short time being made available to community and other governmental stakeholders to assess and contribute to the development of public policy and the legislation that underpins it within the Parliament. We hope to make further supplementary submission to this document prior to the Committee commencing Public Hearings.

Executive Summary

We have attempted in this submission to address in a substantial and meaningful way our concerns with respect to the Bill under consideration. In terms of context we note that during the period of the 1996 reforms to industrial relations, the Australian Federal Police Association embraced the new Act and in fact welcomed the then Minister Peter Reith as the keynote speaker to the AFPA National Council later in the year after the passing of the new Workplace Relations Act.

We note this, as reference to the fact the AFPA does not adopt a reactionary approach to government reforms. As an outcomes focused organisation, we have embraced AWA's for a number of members where they have benefited both parties. During the establishment phase of the Air Security Officers program, the AFPA worked vigorously with new members to negotiate an AWA to create stability within the program.

It is with some regret that we now feel compelled to strongly criticise these proposals, both in their generality and in some parts in their specificity. Our concerns are predicated under one philosophical oversight in the Bill and its attempt to create criminally enforced secrecy over remuneration and entitlements and remove a due process to underpin rights within the Policing and law enforcement environment.

In an attempt to extend the scope of the industrial system through the Corporations power - driven as it is by its objective to underpin trade, profit and commerce - the question key to our democracy has not been addressed with respect to whether such provisions and application also being similarly imposed on Federal Police employees, Customs Officers, Australian Crime Commission Officers and other government law

enforcement officers in whom the public demands confidence in the conduct of their office, is appropriate. Roles and functions of Government where conduct determined as integral to be free from corrupt intent or profit will be regulated by this Bill as if they were commercial and profit driven relationships.

At its heart, this concern encompasses the broad parameter of our objections to this Bill. The elements of the Bill which most starkly *require amendment* for police and law enforcement personnel are the following provisions of the Bill:

1. **The application of secret remuneration agreements (AWA's) to policing and law enforcement roles, where the independent Officer/Constable can be corruptly influenced without independent scrutiny.**
2. **Re-definition of Duress to allow an employer to impose an AWA as a condition of employment;**
3. **Unilateral rights for an employer to terminate an agreement without a public interest test;**
4. **Use of 6 months prison through criminal sanction as an underpinning provision to facilitate the negotiation of and secrecy of AWA and employee non-union agreements;**
5. **Expansion of termination without rights being made possible through the "operational" provisions of the Bill;**
6. **The imposition of an employers religious beliefs over employees to deny unions a right of entry and therefore a capacity to represent the employees should they desire;**
7. **Overt limitations on the content of existing arrangements, through the Bill providing the Employment Advocate with the capacity to strike out provisions of existing industrial agreements;**
8. **A mechanism for the content of future agreements to be limited by regulation of the Minister;**
9. **The Disputes procedures preventing parties requesting the AIRC to arbitrate and issue orders on disputes, even when they agree;**
10. **The enhanced limitations for Police and essential services employees to a right of protected action in bargaining, with a diminished access to arbitration and the scope of matters that can be arbitrated; and,**
11. **The confused distinction between the rights of representatives between the union and non-union streams of the Bill.**

With respect to this submission, the available timeframe and given the broader issues of the Bill have been identified by other parties, we have concentrated our consideration of the Bill to these above matters

A clash of values with law enforcement and office of Constable

This Bill manifestly and untenably impacts on the AFP Act, The Values enshrined in the AFP and its integrity framework, the Agency itself and its operational and anti-corruption activities. This would unquestionably be the case in other law enforcement agencies as well.

It is also concerning as to the application of this Bill as it stands to other Commonwealth employee roles and agencies wherein they maintain an obligation and adherence to values and accountability in roles of community importance and public office. As the Bill by scope proposes a unitary reach, it is disturbing that it has apparently been crafted in isolation of the many other State and Federal Government interests that will be roped into its provisions.

The Bill as its stands fundamentally dislocates the AFP integrity regime jointly developed with the AFP workforce over ten years. It will demand of the AFP employer, being the Commissioner of the AFP, conduct and processes that repudiate elements of the AFP Act and its Values (attachment 1) and similarly directly conflicts with the INTERPOL Articles on Global standards to combat corruption in police forces/services (attachment 2) to which Australia and the AFP are a party.

Similarly the Bill conflicts with the position endorsed in the United Nations resolution (attachment 3) adopted by the general assembly on the report of the Third Committee (A/51/610)] in resolution 51/59 - Action against corruption, and its Code of Conduct.

Some of the more onerous and bluntly interventionist provisions of the Bill, provide directions and obligations on the AFP Commissioner and other public sector employers. Employers with current obligations to maintain Merit, transparent and integrity based processes, codified by legislation. This scope often, if not always extends to the workforces concerned and the employer/employee relationship.

This quantum shift in law, culture and regulation of the Master Servant relationship to the Corporations power has a clear and manifest impact on the many complex and regulated employment, criminal and contract relationships defined in law and underpinning the day to day operations of the national law enforcement framework.

The philosophical and articulated provisions of many parts of the Bill will inevitably and almost immediately gridlock entire functions within the law enforcement and security communities, as they will demand immediate focus by all employees and employers involved on the industrial frameworks that enable their operational activities to occur.

Employment relationships and the conduct of office

It is seemingly ignored in the public clash of economic virtues that industrial law and culture not only facilitates the terms of trade, commerce and profit for the economy and its commercial stakeholders. Over 100 years the evolution of Industrial law, particularly as it pertains to public sector employees, has embodied the public aspiration for transparency and accountability for decision making in the public sector. This mechanism has been the only ongoing mechanism to counter administrative corruption in Government, open to all and subject to no pecuniary interest.

Both at law and in reality, the last 100 years of federated industrial arrangements and systems have also embedded themselves in the operational environment and in many areas the interests have converged, as in 2000 when the AFPA supported moves by government and the AFP to extract industrial and personnel regulations from the AFP Act, and provide those vehicles to the Australian Industrial Relations Commission for the employer and employees to determine in a transparent, regulated and fair environment. At the time, the environment still provided that the principles of natural justice, and the public interest, were embedded in the Act and its operation. With the passing of this Bill as it stands that will cease. AFP personal are deemed employees under the Workplace Relations Act – this would seem inappropriate given the current amendments.

Police Officers, sworn under the Office of Constable, Special Members, and increasingly as it applies to the many and expanding quasi policing activities of government and unsworn employees, maintain the requirement for the principles of *transparency* and *natural justice* to be applied to their activities.

With respect to the application of employment relationships, these imperatives are not merely the rights of the employee involved, they are fundamental terms in which the public, community and Parliament ensure accountability and combat corruption in the conduct of office of constable

This is a separate pillar of this debate from most of that being argued loudly in the very short, and as a result hyper focused debate, being made available to the Parliament on the generality of this Bill. A fact that concerns the AFPA as equally as any specific content also mentioned in this submission. Whilst the Parliament must determine the parameters of their own concerns with regard to this matter, we urge the Committee members and the Parliament not to be distracted by the *easiest* and *louder issues* presented by the Bill. The matters referred in this debate by this submission and the Police Federation must be addressed as there will be real manifest impacts, apparently unforeseen, from this Bill.

This is not merely a debate on economics. As the Bill in both policy terms and provisions directly interacts with and references the Criminal code, this debate is as much if not more about law enforcement, the Master Servant relationship between public officials and Government, its application to the public interest in the conduct of public officials and at the present time even the broader environmental relationship between this Bill and the proposed terrorism laws.

This is not a philosophical debate about individual terms of employment being struck between employees and employers. The Bill creates a much more significant and onerous concern in this old debate, in that it clearly propositions choice through the prism of the individual needs of the employer, and, largely repudiates collectivist and broader social outcomes derived through the employment relationship. This again would not be an unreasonable view were its application only to an employer with a singular interest in profit under current corporations law. As in governmental terms the people are the employer, a broader balance of priorities is now challenged by the direction of these proposals.

Again, we acknowledge that is not for the AFPA and its members to express a view on Government policy in this regard, in so far as it relates to the private sector, and the commercial interests of the private sector marketplace and the Government.

The Prime Minister stated during debate on the Bill that he had an "ideological obsession" with workplace reform. He is quoted as saying that "I do not seek to Americanise the Australian economy, I seek to modernise the industrial relations system of the Australian economy for the benefit of the men and women of Australia. What we are fashioning is an Australian model for an Australia of 2005"

This inherent Policy position is both noble and supported by possibly a majority of those whom we represent. A constituency that in general terms is very supportive of the Federal Government, its achievements and direction. Unfortunately this objective is seeking expression in the industrial relations system, which has historically recognised the very separate and distinct private and public sector markets within the system for their own circumstance. The Bill steers directly into intervening in the regulation of obligations, practices and procedures that have both evolved, been recognised and integrated into the operational nature of law enforcement and the aspiration of the publics' need for transparency and accountability in this area.

Commercial Confidentiality and Corruption

The Australian Industrial Relations Commission, having evolved based on industry panels with broad scope as to the articulation of terms and conditions of employment, recognised the distinction between Public and Private sector market places and different competing marketplaces of Public service and private endeavour rewarded by profit. In many ways, the system provides a wage and salary environment where both needs could be met independently of each other. The convergence of the interests by predicating the wages system in the 1980's around the Metal Trades, ultimately ensured that both market places would be perceived in public and political terms as the same thing.

In 1996, the introduction of AWA's provided a needed recognition in private market terms, specifically for greater recognition of personal contribution and reward, and the ongoing requirement, in terms of profit and commercial interests, for commercial confidentiality. The AFPA in terms of the private market place expresses no view on this although has generally recognised the principles as appropriate.

This profit motive is now proposed in this Bill as potentially underpinning the nature of the relationship between a Police employee or for that matter other government employees in similar law enforcement roles, with the employer. It is not only contrary to the values that do and must apply in this arena, but is contrary to the public interest, as

has been recognised increasingly in moves to combat corruption and restore confidence in public institutions. All governments have and are making substantial efforts to increase transparency and accountability for the exercise of duty, the expenditure of public monies and attempts to identify and prevent the systemic corruption of relationships in these areas as promoted by individual reward or profit. This priority is not contemplated or addressed in the singular unitary impositions of the current Bill.

The 1996 Workplace Relations Act still provides a general environment where the competing markets and needs are to be met. Alarmingly, not only does this bill repudiate this in its entirety, it uses the criminal code to underpin the commercial nature of the AWA relationship as one between individuals with a protection that recognises the principles of commercial confidentiality. Any penalty, civil or criminal cannot be defended in application to sustaining a commercial, confidential and individual relationship between a public official and the Government.

The Office of Constable has in its underpinning recognition that a Police Officer (defined as a member or special member) must be free from the direction of the Government of the day in their application of their duties, and in fact is an independent statutory officer. This is clearly at odds with the Bills codification and extension of a master servant relationship defined by commercial and profit based considerations. In application it affects a significant number of roles and agencies at the Federal and State level

For example, an individual who inclines to exercises his or her discretion in a way consistent with their supervisors inappropriate prejudices may be very ably rewarded on a high dollar secret deal (at the tax payers expense) that is subject to no independent scrutiny. Nationally, the substantial development of anti corruption and integrity regimes over the last ten years for Police, law enforcement and enforcement officers and associated public servants, has embedded integrity mechanisms designed to provide confidence, due process and accountability.

The independent office of constable demands a consistent and transparent link between ranks/level and remuneration level. In relation to police employees, AWA's may inadvertently provide a tool to conceal corrupt activity.

Unfair Dismissal and the Public Interest

To the extent that administrative corruption has been subject to transparency within the public sector, there is no doubt that the accountability derived from the various industrial systems has met the broader objectives of the community to maintain transparency and accountability over activities and decision making within government. The "by right" conferral of access and process for employees and employers to independent review and direction on personnel practices has provided a forum for the Public interest to be more broadly embodied than just the rewards derived from the employment relationship.

This role of the industrial system is not about holding the executive accountable, as much as it ensures that those tasked to manifest the will and direction the Parliament, in their decision making, relationships and processes are accountable in an open review forum. Protecting the integrity of the individuals' rights and the communities expectations.

The right of a Police Officer, law enforcement officer or police employee to have their dismissal tested should be absolute at any time as recognition that the public interest is not served if that termination served a commercial, unjust, illegal or unreasonable motive (as potentially now provided for in the *Operational provisions*, addressed further on in this submission).

Nor should it be seen as appropriate for such individuals to develop personal/individual relationships with the employer. Relationships predicated on criminally protected secret agreements. The Act clearly provides for a person to serve 6 months jail should they say anything that may assist in the identification of a person subject to an AWA without the express written permission of the employee and the employer (as defined as a person by the Bill being a party to the agreement).

This attack on discourse, free communication and discussion is not only excessive, but to what end is such level of penalty designed to serve the public interest. This proposal by statute creates a greater penalty than is often applied to actions in other areas that manifestly threaten life or property. A drink driver could now have an expectation of more lenient treatment at law than a person in any workplace discussing at the water cooler what the boss pays his staff. On face value, the priorities seem confused here.

This provision is onerous of itself. Sadly the Bill also gives a green light to the employer to effectively apply the now "redefined out of existence" negotiating tactic of duress (up to apparently but not including sacking) to an employee to sign an agreement (AWA or employee non union agreement) that can legally remove current minimum entitlements by definition.

To give effect to the capacity for the Bill to have resonance sooner rather than later, it proposes most of its impacts for new employees. It does not preclude a new employee being as defined, any AFP or government employee who is promoted through merit selection after the Bill is passed, any non-ongoing employee up for renewal and we believe any casual employee employed or otherwise at the time the Act passes. As a casual employee is a *day laborer* by definition, arguably the capacity of any preserved entitlements in the Bill having effect to a casual work will cease the *day after* the Bill is operative. In many industries with average 25% loadings for casual workers, this would mean that the new commencement minimum of 20% could be applied sooner rather than later and against the new duress and mandating provisions, offer little choice but to sign or leave.

This provision introduces new conceptual issues to the debate in and of itself that cannot clearly be addressed by the immediate passing of the Bill in its current form. In terms of AWA's, the AFPA is not only a nominated representative of approximately thirty Australian Crime Commission members in various roles, we represent approximately 99% of the 100 or so Air Security Officers, of whom all work on AWA's.

The Bills sanctions with respect to AWA's will criminalise fair discourse and transparency on activities and relationships. It cultivates an environment for corruption and a culture at odds with values of the AFP and many other law enforcement organisations and would culturally lead these agencies in directions at odds with the public interest.

As there is widespread and increasing use of the office of a special member being conferred on other Commonwealth and state law enforcement roles and employees, this problem is not soley restricted to community police officers. The conferral of broader policing powers on a range of government functions extends the problem across classifications and agencies.

There is no simple solution to this dilemma other than to bring the elements of the Bill referred to into a consistent framework with the concerns raised here. To pass the Bill unamended will have significant consequences almost immediately given it will immerse a large part of the counter terrorism framework into a major distraction on employment issues and the interaction of the Bill with operational regulation and remuneration, whilst their focus is currently dedicated to their duty.

WorkChoices will, when properly understood more broadly, give rise to great public concern over the application of criminal and counter terrorism laws. It is ironical that at the same time as the Parliament considers unprecedented impositions on personal rights in an effort to fight terrorism, we will see a conversion of the Police and the enforcement sector into rigid employment environment where criminal or civil sanctions could be used to sustain the extension of a master servant relationship between law enforcers and the Government.

It is disturbing that at this very time we now face the real prospect of the introduction of employment practices and administrative requirements that clearly contradict international best practice in anti-corruption measures and with respect to the AFP will only be subject to the accountability of the AFP Commissioner as he alone, and without independent oversight, self regulates the application of AFP values.

Fighting Corruption and the Role of Industrial Relations

The operation of the Conciliation and Arbitration Commission has long provided the structural integrity to the public sector employment market that is fundamental to the establishment of public confidence. The crafting of an industrial system seemingly ignorant of these unique challenges will have potentially enormous impacts on the interests of the broader community.

The significance of this concern is no more manifest than with respect to all members of the AFPA who under these proposals will have diminished rights to bargain collectively, with stronger provisions in the Bill to further limit their right to strike and with no alternate merit based arbitration. In fact, employer and employee can't even request the AIRC to arbitrate if they wish to. This limiting of rights on one hand without appropriate relief is a breeding ground for the diminishing of standards of integrity and ethical behaviour.

WorkChoices not the First Choice Operationally

With the proposition that the Bill provides WorkChoices, we find it indefensible that most of the transactional and representational provisions are clearly discriminatory in that they institute discrimination against unions and union officers in many cases, and in some cases, any employee representative of any description is limited if not denied their capacity to operate. Due process is no longer guaranteed, nor is a right to representation. Many of the provisions are inconsistent with the objects of the Act itself in that they

limit what employers and employees may agree upon (either in process or outcome) with respect to the settlement of disputes and content of agreements.

The proposals with respect to Unfair dismissal undermine the capacity for all AFP employees to be assured access to a merit based assessment of their termination should they seek it. In future the AFP may easily meet the "operational" test on a range of their activities given the nature of the work and its responsiveness to environment and government direction. The redundancy test for dismissal in the Bill seems to ignore the difference between voluntary and involuntary redundancy.

Strangely, to meet Government objectives it needed only to preclude parties seeking relief under unfair dismissal provisions whilst also receiving payments for redundancy, it in effect now prevents an individual who has been paid involuntary redundancy to effect a termination from having that tested. In effect the fairness test is now precluded on a payment made and the employer's description, rather than testing the reasonableness of the termination itself.

Lest it be forgotten that the outsourcing of some law enforcement functions (such as criminal records checks) will place the scope of some entire activities further away from active scrutiny. The Bill will remove opportunities and incentives for employees to come forward and actively participate in a corruption free work place with the knowledge of the protection previously afforded by the Workplace Relations Act. Whistleblowers will now have an even greater cause for concern as their review mechanisms may be diminished.

This tectonic shift in culture, sweeping Police and law enforcement employees along with it, goes to such elaborate efforts to preclude the future content of agreements and at the same time alters so call "prohibited" content of existing agreements. We must state with some concern that the Industrial framework developed for ten years, in a co-operative manner with employees, to facilitate operational requirements will be placed in crisis by the provisions of the Bill and unseen regulations.

Through a series of transparent, individual and collective. agreements known as "Part 6 agreements" under the AFP Certified Agreement, the AFPA has assisted members and management to craft some operational environments directly to the need or the circumstance. The Bill will require such processes in future to be under AWA's and their processing model, rather the current in-house and flexible approach being utilized by employees and the AFP today. With the internationalising of the AFP and its "drop it and run" operational status in response to terrorism within the region, it will not and has not been efficient or viable for AWA's to recognise operational situations at short notice.

This has occurred most notably as a flexible mechanism to address the Bali bombings and other counter terrorist activities when urgent need has arisen. This Bill seeks to prohibit this form of collective flexibility outright, and possibly would have precluded us from assisting management and the employees to address the situation. Because the Bill attempts to prefer individual arrangements through AWA's, it also defines as prohibited the nature of these agreements as they approximately apply to over 1600 AFP personnel to give effect to their day-to-day activities. The immediate crisis created by the passing of this provision, across the law enforcement workforce, is a serious question of public concern, given the lack of derived benefit for the community in making this happen at this moment of time.

Where structural change benefits the community or enhances operations we support it. This Bill will demand that each and every employee in law enforcement almost immediately direct their consideration to their work practices, remuneration, access to rights and protection in the conduct of their duty. Employers will also be required to spend time and resources regularizing their activities and framework to comply with the new proposals, and as discussed in this report, in some cases even that won't be viable.

The question must be asked, in the current law enforcement and national security environment, is it appropriate to create massive instability to law enforcement personnel? Is it really the time to demand law enforcement and security practitioners spend time and some considerable effort and resources to address their employment relationships? Their focus is better maintained on front line defence of the community against the threat of terrorism.

AFP and Public Sector Values and Their Relationship with WorkChoices

It is important that the core and fundamental issue of *Integrity* be considered as at the forefront of the Parliaments consideration on this Bill and any amendments.
The Australian Federal Police Association has been a long-term advocate of the expansion and entrenchment of the AFP integrity regime into the AFP and we manifestly support the need the Australian Federal Police organization and its employees to be seen to represent the highest standards of public accountability and transparency.

All Operations of the AFP are governed by three over-arching common principles:

1. To be ethical and to work efficiently as a motivated, talented and flexible team in which each individual has the opportunity to realize his or her potential.

2. To embrace continuous improvement as a work ethic.

3. To work with, and be trusted and respected by our partners and clients in a united effective law enforcement effort.

4. To be transparent in our activities where ever possible and to welcome external scrutiny.

These principles and values guide all aspects of AFP activities and set the standards for conduct in the workplace.

If the AFP is to work with, be trusted by its partners and maintain public confidence, it has to be free from corruption and operate according to the highest professional standards. These standards are only achievable and maintained through a perception of accountability and transparency. The AFPA has supported all initiatives in this area.

In 1989, The Government introduced legislative amendments to the *Australian Federal Police Act* to eradicate and prevent any corrupt practices amongst its personnel.

The amended Act provided for existing and former AFP personnel to lose certain Superannuation rights and benefits and imprisonment for twelve months or greater if convicted of an offence involving corruption or if found guilty of a relevant disciplinary offence and dismissed from the AFP.

Further, in the fight against corruption during 1995-2000 the AFP:

- Introduced random and voluntary illicit drug testing for all personnel to provide an illicit drug-free workforce;

- Introduced a policy covering the inappropriate use and, abuse of pharmaceutical products by AFP personnel;

- Implemented an effective summary dismissal power that allows the Commissioner to expeditiously deal with the unsuitability of personnel separate from criminality and to remove from the organization those people in whom he has lost confidence;

- Introduced measures which will serve as disincentives to corruption: for example – all personnel are required to declare their private interests and are subject to financial auditing of those interests where necessary;

- In 1979, introduced through the *AFP Complaints Act*, a direction that all AFP personnel shall not without reasonable excuse, refuse or fail to furnish information, produce a document or other record or answer any question in relation to any complaint made against them;

- In addition, should any AFP personnel provide any information or make any comment that is knowingly false or misleading they shall be imprisoned for a period of six months;

- Introduced a professional reporting (whistleblower) policy;

- Introduced a mentor and confidants program; and,

- Commissioners Order 6 to allow investigation of allegations from the public relating to "off duty" AFP employees and to allow transparent investigation of allegations made by AFP employees against other AFP employees by mirroring the procedure for Complaints under the AFP (complaints) Act.

- In 2000 the AFP Act was amended to include legislated anti-corruption tools including:
    - S.28 Termination of employment by Commissioner subject to Workplace Relations Act;
    - S 40 K Termination of employment for serious misconduct;
    - S 40 L Submission of financial statements by employees;
    - S 40 M General testing of AFP employees or special members for alcohol and prohibited drugs;
    - S 40 N Testing of AFP employees or special members for alcohol or prohibited drugs after certain incidents;

Given the mobility within this sector of Commonwealth employment and the frequent use of joint task forces operating on a multi-agency basis, it is untenable to assume that the Commonwealths interests in mitigating against corruption or inappropriate behaviour can be encapsulated in limited accountability to one or two agencies alone. We firmly believe that these objectives are best met through a broader comprehensive approach based on role activity as well as agency of employment.

The AFPA recommends that all law enforcement roles with a functionality that may expose the occupants to a clear and present risk of corruption, be subjected to the same Integrity regime as employees engaged under the AFP Act. Commensurately they must also have access to merit based review of all employment decisions (as per the proposed model attached).

The AFPA also seeks clarification on the Bill and how it impacts on the values contained within the AFP Act and how they manifest in application and co-existence with the AFP Act and Public Service values other than as rhetorical statements. What options are available to enforce or question AFP adherence to its legislated values to counteract inappropriate or corrupt use of provisions within the WorkChoices Bill?

Values in Practice and the Fight against Corruption

If the application of these principles is free from a comprehensive approach to review, transparency and accountability, they are in effect meaningless. Anti-corruption measures have to be adopted as a seamless garment in their construct and design. Many of the measures with the Bill must be re-written to meet these objectives before the AFPA or our members could feel they were not being disadvantaged with the imposition of these changes. Most pertinently, we desperately urge the Parliament to remove the provisions allowing an employer to unilaterally terminate an agreement at the end of the nominal term, use an unfair duress based bargaining tactic without relief, and then make an AWA a mandatory condition of employment.

The key defining element of the AFP that is designed to ensure public trust is the obligation to be accountable and transparent, and uniquely the AFP Act and integrity regime applies to every employee, not just the sworn members. The AFPA believes that the only method viable to give substance to this aspiration is to ensure that meaningful review is available to ensure the application of these standards.

Recently in practice, the AFP is acting without a sense of accountability or any attempt to establish the core level of transparency for decision-making activity.

This example has manifested itself with respect to ongoing disputes by members with AFP management over the International Deployment Group and the refusal of the AFP to recognise employee representatives in-situ on offshore deployments or establish a transparent disputes handling procedure for these employees. As the AFP Act precludes the Association using industrial mechanisms to ensure these member's rights are protected, these members are now the potential ghosts of Christmas future presented by this Bill. We have asked how this denial of representation is consistent with AFP values, but we understand from the Attorney-Generals Department that the AFP Commissioner and the agency itself, on an ongoing basis, largely enforces the AFP values itself.

If the AFP is currently only regulated by the AFP Commissioner, and the Senate estimates process, it would seem that the AIRC has been the only other mechanism ensuring endemic or structural corruption does not fester in the AFP's administrative or management culture. Please note that the Federal Law enforcement anti-corruption commission will not address administrative or managerial corruption within its terms of reference.

With the unfair dismissal provisions having further limited opportunities for access, the Bill proposes it largely provide a safety net based around the current skills shortages in the market. As a result, it will only really provide comfort for those that believe they can replace their boss faster than their boss can replace them. As government law enforcement is a monopoly employment market (as it should be), such a commercial mentality creeping into a policing command culture should be seen to be repugnant.

The AFPA believes that for the AFP to retain a culture of the highest level of personal ethics and integrity, the application of its values must operate as a seamless garment within the culture of the AFP and at all levels of its activity. You cannot create a paper wall organizationally between one activity and another as far as the application of the values or the capacity to enforce them.

Having listened to the sophistry of the debate with respect to the illegality of an employer sacking anyone for refusing an AWA, the reality for all is much starker than debates suggest.

The conferral of unilateral powers of termination of an agreement, with a substantial reduction of the safety net that the individual falls to without the offered AWA is severe. Added to the fact that relief is now removed, as the Act creates a definition for duress that frees an employer, there will be no test of good faith or public interest to be applied to the unilateral termination.

This naturally makes any suggestion that they need to sack anyone to sign an AWA ridiculous. Employees will be economically savaged on the way through to acquiescence. As for transparency, provisions are proposed to have a standard notice and consideration periods now being reduced to 7 days and agreements can be registered. In the case of the AFP, an employee would likely not even be aware this had happened until after event due to deployments and operations. And, again, the employment advocate is not required to even ensure that the process was properly followed.

The Need for Independent Scrutiny

Particularly as exemplified by the current situation with the IDG, where-in the AFP has outright refused a formal disputes process or review mechanism for employment decisions, where are the AFP values implemented? More broadly it must be asked is it appropriate to remove the current ongoing role the AIRC has with the Federal Police and other such government employees at time when this may well adversely interact with the proper conduct of law enforcement individuals in the emerging criminal and national security environment

The AFP Value of trust specifically uses the term confidence and yet how is the confidence underpinned? The concept at law is that justice must be seen to be done. The AFP and law enforcement agencies must operationally adhere to this principle, and are in fact subject to detailed scrutiny for these activities. The administrative and personnel activities within the agency should not be free from the same scrutiny on an ongoing basis.

Royal Commission deliberations over many years now have identified the culture of corruption that can develop where no light can be shone on the basis of decision-making or the activity of the organization.

The AFPA is concerned that moves to a non-transparent remunerative model such as across the board secret individual arrangements, erodes and undermines the application of ethical and integrity based obligations on employees It can create an environment where an individual may find their loyalties shift from the organization and its values to meaningful relationships that can be developed within the workplace to impact on personal outcomes.

This circumstance when combined with an environment, which provides no broad review of administrative, and Human Resource based decision-making is counter-intuitive to ongoing developments in enhancing personal and corporate standards of integrity and ethics.

The AFPA believes that for the AFP and other Federal law enforcement agencies to maintain their standing as the most accountable law enforcement agencies in Australia, that a new comprehensive approach to remuneration, discipline, setting of conditions, process for review and accountability must be implemented as soon as possible, in league with a comprehensive and merit based arbitral review of matters as defined in the Interpol Articles.