

Submission
No 30

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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Theme:

Summary

Workchoices and Young Workers:

Future workers under attack.

NSW Young Labor Council Submission



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A. EXECUTIVE SUMMARY

1. New South Wales Young Labor, ("Young Labor") represents the interests of thousands of young people involved in the Australian Labor Party. An objective of the organisation is to provide a voice for young people both within the ALP and the general community. Young Labor represents young members of the ALP aged fifteen to twenty-six. This representation includes addressing serious concerns for the working rights of young people in Australia.
2. Young workers in Australia have increasingly become victims of deregulation of the labour force. The implementation of the Workchoices Amendments can only further aggravate the position of disadvantage for young people in the workforce. Young workers are particularly vulnerable in deregulated work environments and are not afforded sufficient protection under the Workchoices legislation.
3. Under NSW state awards young workers have been afforded a number of protections that assist their transition into the workforce. This submission draws attention to the negligible ability of young people to genuinely bargain for their pay and conditions. Without sufficient protections being afforded to young workers, a secondary labour market has the potential to emerge impacting directly on continuing generations of young Australians.
4. The Workchoices Amendments directly undermines existing award rates of pay, safety training and conditions of employment for young workers. It is in the public interest to afford additional protections to young workers as they can contribute to sustainable youth communities and reduce the likelihood of serious workplace injuries and death through occupational health and safety (OH&S) laws. Young Labor calls on the committee to recognise that more than 500 young deaths have occurred in the workplace in the last ten years. This submission argues that with further education within the school system, young workers may be protected.
5. Young workers require a greater understanding of their rights and responsibilities in order to maneuver themselves in the workplace. Young workers have become a second class

labour force due to their ignorance of their working rights and action needs to be taken in order to deliver reasonable levels of pay and conditions.

6. Benefits arising from the protection of young workers in all industries would include:
 - Well trained and reliable employees with a greater degree of job security and job satisfaction;
 - Adequate levels of pay that support young workers and allow for short-term stability and long-term investment and financial control;
 - Greater union density to represent the needs of young workers, and ensure workplace safety and job security; and
 - Further training to reduce workplace injury and death.

7. Young Labor would argue that young workers, due to their status and transition into the workforce are easily exploited. The Workchoices Amendments affords little protection for young workers in consideration of their special position. This submission draws attention to the impact of this legislation upon young workers, particularly young women and workers in rural communities, as an important consideration for this Committee.

8. NSW Young Labor supports this submission to and particularly supports the recommendation that calls for additional assistance to promote further education on the rights and responsibilities of young workers in a changing working environment. We ask the inquiry to assess the feasibility of protecting young workers in their transition into the workforce, through compulsory training to educate school age students on their working rights.

B. YOUNG LABOR REPRESENTATION OF YOUNG WORKERS

9. NSW Young Labor is the political representative body for young workers. The organisation is comprised of members of the Australian Labor Party between the ages of fifteen and twenty-six.

10. Thirty local Young Labor Associations across NSW meet regularly to address policy concerns for young people. These policies are addressed to the NSW Young Labor Council or Young Labor Policy Conference. NSW Young Labor is the largest youth political organisation in Australia. Affiliations with the Trade Union movement and local representation of Young Labor Associations have established a unique understanding of the personal and working needs of young people.
11. Young Labor is committed to protecting the interests of young workers through supporting the role of Trade Unions in all workplaces. As an organisation, we recognise the effective role that unions play in protecting rights and conditions in the workplace.
12. On behalf of young workers, a core constituency of the ALP, NSW Young Labor makes this submission addressing five terms of reference relating to young workers:
 - The ability for young people to genuinely bargain.
 - The impact of the Workchoices Legislation upon:
 - Wages.
 - Conditions.
 - Job Security.
 - The relationship between Workchoices and OH&S.
 - The impact of Workchoices on young female workers.
 - Impact of Workchoices upon rural communities.

C. STATUS OF YOUNG PEOPLE

13. Young workers face a number of workplace issues that require them to be viewed as a special case. Trends in the workplace towards the use of casual labour have directly impacted on the wellbeing of young workers in Australia. According to ABS Data, over 60 per cent of young workers are employed in casual labour. Casual labour, with fluctuating hours of employment and little long-term job security, directly impacts on the financial wellbeing of young workers. Young workers are a readily available source of labour for exploitation due to their genuine inexperience arising from their transition into the workplace.

14. First-time employment in Australia of young workers is increasingly casual. The transition from fulltime education into the labour force has seen significantly less full time jobs for young people. The report *How Young People are Fairing, Key indicators 2005*, found that the number of full-time jobs available for young workers had not increased from 1995 to 2005.

15. The Workchoices Amendments will further aggravate the precarious position of young people in the labour force. As thousands of young people enter into the workforce, they will be increasingly disempowered by the Workchoices Amendments' stated preference for individual contracts and casual working environments. The current position of young people and the potential expansion of youth exploitation creates a necessity for young people to be considered as a volatile group in the labour force and be afforded additional protections.

ABILITY OF YOUNG WORKERS TO GENUINLY BARGAIN:

16. The Workchoices Amendments encourage the use of Australian Workplace Agreements between individuals and employers. In these employment agreements, employers and employees are expected to bargain for wages and conditions with the minimum standard for the agreement being the low-level Australian Fair Pay and Conditions Standard (AFPCS).

17. The issue raised for young people by promoting this system of agreement-making is that the average young worker is not in a position to genuinely bargain for their terms and conditions. By having agreements that are 'negotiated' one on one, a young person's inability to genuinely bargain places them at a great disadvantage, potentially putting them at risk of exploitation. NSW Young Labor argues that there are several reasons for this: -
 - the hierarchical nature of the education system;
 - a lack of experience in bargaining situations;
 - a lack of accessible information on workplace rights and industrial law;
 - low rates of union membership amongst young people;

- the nature of the labour market in the youth demographic; and
- The financial barriers to legal assistance and representation.

Hierarchical Nature of the Education System

18. In any employment situation, young people (especially those in high school or recently leaving high school such as apprentices) are expected to negotiate their conditions and pay with an adult. The nature of the education system is such that students are expected to pay respect and accept (sometimes unquestioningly) the authority of adults and the information they provide, and more or less do what they are told. The *WorkChoices* amendments create an assumption that the two parties are on relatively level playing fields when in fact young people are at an institutionalised disadvantage.
19. In a one-on-one bargaining situation with an adult presenting an ultimatum that is manifestly unfair to the young worker, there is a high probability that the worker will accept the conditions – especially if the adult has given assurances that their agreement is on par with industry standards for young people. Even with the required consent of parent/caregiver, the choice remains one of either sign or not be employed. Any assertions that real bargaining occurs in such situations is farcical.

Experience and Confidence

20. As alluded to above, there is a significant disadvantage to being placed in a bargaining situation with an adult. Again, the new laws assume an equal playing field but ignore the vast differentials in life experience between an employer and a young worker. Bargaining is a fundamentally adversarial process and young workers, entering negotiations in good faith, who have never been in such a situation, are likely to be unprepared for bargaining techniques and phenomena like bluffing, ultimatums, and misrepresentations.

Accessibility of Information

21. Information on the bargaining process, workplace rights, and minimum acceptable employment standards is not widely available to young people. The Internet has increased the accessibility of such information but there is not one unified, easy to understand guide. Employers by contrast are more likely to have the financial resources, education, and

experience to know about these things. As a result, the potential for exploitation in bargaining situations is apparent. Young workers are unlikely to be aware of their rights or understand the processes surrounding workplace relations, leaving employers with the opportunity to strip them back to the minimum conditions or, without strong government and/or trade union oversight, employ them below these conditions.

Union Membership

22. Employers are also likely to be able to obtain information and resources from employer associations like the Australian Retailers Association. Young people, by contrast, are rarely members of trade unions and have no such comparable advice. There are a number of systemic reasons for this:
- 1) Most young workers seeking their first job have no idea about what industry will employ them, and as such are unlikely to have sought out the union relevant to them.
 - 2) The Workchoices Amendments have marginalised the role of unions in negotiating Enterprise Bargaining Agreements and Australian Workplace Agreements, detracting from a union's relevance to young workers.
 - 3) Most businesses that employ young people do so on a casual basis. Casual workers can already be legally dismissed with one day or one shift's notice. There are no legal means a union can employ to prevent this (unless discrimination or other unlawful circumstances applied).
 - 4) The diversity of workplaces that employ young people makes it difficult for unions to recruit. A union's ability to recruit will likely be hampered by the Workchoices Amendments restrictions to union right of entry into a workplace, giving employers the power to determine whether the official should be allowed into the workplace or not.
23. For those young workers who are unionised, when they are required to bargain for a new agreement they will be further disadvantaged by the new legislative ban on unions bargaining for or assisting their members in the bargaining process.

Labour Market Factors

24. Young people are most likely to be employed in the services sector, in a position requiring a low level of skills. With an unemployment rate of approximately 5%, the number of people prepared to do such jobs works against young people (and indeed all unskilled workers in the services sector) in a bargaining situation. Basic economics dictates that the greater the supply of available workers for any one position, the better the bargaining position of the employer. When fifty applications are received for the one job, an employer is in the position to say to a young worker that they must work for nothing more than the AFPCS.

Legal Assistance and Representation

25. Most young workers are not in a position to pay for legal advice or representation when it comes to negotiating their wages and conditions. Most young workers are either studying at school/TAFE/university or working in low-paying jobs. Many employers, on the other hand (especially large firms like Coles Myer), are able to pay for high quality advice and representation.

Other Concerns

26. The Workchoices Amendments have made it much easier for employers to register Australian Workplace Agreements. This reduced government oversight of the agreement-making process leaves a significant opportunity for young workers, ignorant of their legal rights, to be exploited.

Conclusion

27. There is a number of systemic factors that impinge on the capacity of young workers to genuinely bargain. The Workchoices Amendments assume a level playing field for Australian Workplace Agreement negotiations whereas the factors discussed above overwhelmingly tip the balance in favor of employers.

IMPACT OF WORKCHOICES:

WAGES:

28. Workchoices allows more avenues than ever before for youth wages to decline. Australian Workplace Agreements do not provide equal bargaining positions for young people. Without state awards, young people are disempowered and divided upon entry into the workforce. Whilst NSW Young Labor is opposed to graduating youth wages according to age, the Workchoices amendments do not improve the earning capacity for young people and thus their capacity to support themselves.

"A northern beaches schoolgirl lost her weekend job when she refused to sign a new contract that would have slashed her Sunday pay by 35 per cent. Isabella Buda, 15, sold gelato at Gelatissimo in Manly until a new owner demanded that she sign a new contract..."

- Sydney Morning Herald, April 25th 2006

29. Whilst young workers under the age of 18 will not be able to sign an AWA without the consent of their parents, the job is not available unless the contract is signed. The potential for young people to have rates of pay decrease is currently occurring within the retail trade industry with the use of AWA's. Young workers are disempowered in the individual enterprise bargaining process. Correspondingly, rates of pay shall continue to decline.

CONDITIONS:

30. The Workchoices Amendments disempower young workers. This disempowerment leads to an inability to fully understand or expect reasonable conditions in the workplace. Young workers, with no prior knowledge of workplace practices are inclined to accept the working environment they enter into.
31. Working environments have become increasingly casual and irregular for young workers. 25% of young working respondents in *Young People and Work Survey 2005*, (acirrt, University of Sydney, pp 2) could not determine their employment as casual or permanent. General ignorance of the working conditions was coupled with a lack of documentation in the form of a pay slip (48.5%). In addition to this a number of young respondents worked

additional shifts and training sessions without pay. Young workers are increasingly ignorant of reasonable working conditions and the Federal Government has done nothing to educate young workers about their rights as workers.

JOB SECURITY:

32. Job security for young workers is particularly undermined under the Workchoices Amendments. The working status of young people is increasingly casual. With casual work, young workers are under continual pressure to perform in order to maintain regular shifts. To some extent, casual workers are constant victims of job insecurity. Changes to unfair dismissal laws mean that the tenure of young workers in all types of employment, casual and permanent, is at risk. A large proportion of young workers, employed in small to medium sized businesses with less than one hundred employees can be dismissed for "operational reasons". The employer is not required to state what these reasons are and the worker has no opportunity to test their case. Young workers often struggle to balance the pressures of establishing economic independence and study. Under the changes implemented by the Workchoices Amendments, young workers are increasingly victims of job insecurity.

IMPACT OF WORKCHOICES ON YOUNG FEMALE WORKERS

- NSW Young Labor Women's Network

33. NSW Young Labor Women's Network has concerns for the equality of young women in the workplace under the Workchoices Act. The equality of young women in the workforce will be under significant threat.
34. A significant proportion of women in the workforce under the Workchoices Act will be under further jeopardy because unions will no longer be able to access the workplace nor represent young women when workplaces move from award rates to AWAs. Young women are already in an unequal position in the workforce because they have limited negotiation powers compared to men, demonstrated by the fact that women earn 85% of

male average weekly earnings.¹ A young woman is in an even worse position because of her lack of experience in the workforce. This negotiation power will only further decrease under the Workchoices Amendments. At May 2004, 24.4% of all women's pay was set using awards, compared to 15.7% for men. Further, the number of registered collective agreements for women was at 41.4% compared to 35.2% for men.² Therefore, under Workchoices the restricted right of entry of unions will mean that a woman's negotiation power will only further decrease. This will significantly impact upon women because the majority of women are under employment agreements requiring direct negotiation with the employer.

35. Not only is the negotiation of work rights under jeopardy for young women but the Workchoices Amendments will significantly disadvantage part-time and casual workers. This sort of employment is predominantly comprised of women and young people because it provides the most flexibility for family responsibilities and study. However, when the award system is no longer available to women and they have to rely on the conditions in an AWA, 30% of women will be disadvantaged (that is 30% of women are engaged in casual work and overall 71% of women make up part-time work). There are more women who do not receive paid entitlements (26%) compared to men (16%)³, this will only increase under the Workchoices Amendments as women are forced to give up pay for flexibility such as carers leave or half days. In the workplace 8% of women find their hours are unsuitable compared to 4% of men⁴ and women find there are difficulties with childcare and other family responsibilities (5% compared to 2% for men)⁵. All these issues that are at the core of family well-being will suffer even more because of the way the Workchoices Amendments will reshape the workplace for women, giving the employer more power in negotiation and reducing workers rights and entitlements.

36. Young woman will be severely disadvantaged in the workplace because of the lack of possible union representation when moving from awards to AWAs. Further, employers can

¹ Australian Bureau of Statistics (ABS) Year Book Australia , 2006 (1301.0) 184

² ibid 187

³ ibid 161

⁴ ibid 175

⁵ ibid 175

place conditions on woman that will remove the flexibility of casual and part-time work, putting more strain on families and care provision.

YOUNG WORKERS IN RURAL AND REGIONAL AREAS:

37. Young workers in regional areas, where there is less employment opportunity are disadvantaged by the Workchoices Amendments. In regional areas, there is greater dependence by young workers on their job. Workchoices implies that if a young employee does not like the pay and conditions offered, then they are able to go to another employer and see what is available there. Young country workers do not have this choice and are more likely to take the first available job to provide a stable income that supports their lifestyle. Young Labor calls on the Committee to recognise the lack of employment opportunities that exist for young people and that this inhibits their ability, under the Workchoices Amendments, to choose an appropriate agreement to support their needs.

YOUNG WORKERS AND OH&S

Casual employment and safety training:

“Australia does not count those injured and killed in the workplace accurately and the true death toll is probably two to three times the count of 500 aged under 25 who have died in the last decade...”

- Sydney Morning Herald, April 24th 2006

38. Occupational health and safety concerns bear direct correlation to increased casualisation of the work force. The Workchoices Amendment has serious potential to impact on the safety and conditions of young people in the workplace. Young workers in casual jobs are less likely to receive adequate training in occupational health and safety. A survey of young workers reported “8.7% of working respondents reported that they worked in dangerous jobs; defined as feeling in danger of being hurt or injury very often at work.” High turn over of employment and inexperienced young workers increases the incidence of

injury and death in the workplace. Workchoices encourages young people to enter into the workplace in casual agreements, which have a greater degree of accident and injury.

- Kenneth Johnston, a 17-year-old farmhand died, attempting to inflate a tire and rim assembly, from an agricultural machine in 2003. Chief Industrial Magistrate George Miller ruled that insufficient safety precautions were taken, and “did not take into account the inadvertence or carelessness on the part of the employee.”

-Sydney Morning Herald, April 29th 2006

39. Further protection for young workers, largely casual, needs to be provided to protect young workers against industrial manslaughter or death due to negligence of safety requirements. Greater penalties need to be enforced upon workplaces that are negligent of OH&S standards for all employees, permanent, part-time and casual. NSW Young Labor believes that young workers should be guaranteed safe environments in which to work.

Reduction in Union OH&S Training:

40. State awards preserved the right for trade unions to conduct regular paid training of union members on occupational, health and safety training. Young workers are significantly overrepresented in the number of deaths and injuries in the workplace. The Workchoices amendment is likely to increase the incidence of individualized bargaining that does not encourage recognition of workplace safety. There is also little protection for young people who fear the loss of their job from reporting unsafe workplace practices.
41. This submission recognises the important role that trade unions play in supporting OH&S issues in the workplace. Without the role of trade unions in training and enforcing standards of occupational health and safety, young people will be increasingly the victims of unsafe workplaces.
42. Young people are victimized in the workplace. A survey of young people (*Young People and Work Survey, 2005*, Sydney University, pp 3) found that 22.9% of working

respondents reported being bullied by their boss, supervisor, workmates or customers. Females are more likely to be victims of such bullying. Workchoices fails to address the intimidation of young workers and how this impacts on OH&S. We have recognized that young workers are not often conscious of their rights and have a lessened position of power in relation to employers. Without the ability to openly consult a trade union, with full access to all workers, young workers will continue to become victims of unsafe and unsupportive workplaces.

CONCLUSIONS:

43. NSW Young Labor is concerned over the impact of the Workchoices amendment on young workers. This submission illustrates that young workers are a particularly volatile group within the workforce. NSW Young Labor believes that young people are going to be substantially effected by the legislation. Negative impacts upon young people include lower rates of pay, increased casualisation, lack of economic independence and serious safety concerns. Young Labor notes with concern the lack of protection for young people considered by the Federal Government. This submission calls for action to protect young workers in the troubled transition into the workforce.

NSW YOUNG LABOR RECOMMENDATIONS:

Promotion of working rights and responsibilities for young workers:

44. Young people are easily exploitable due to their inexperience in the workplace environment. The troubled transition from education to the workplace needs to be improved. A greater understanding of the rights and responsibilities for young workers is essential in the current workplace environment. Youth education on rights and responsibilities should be a priority in order to protect young workers income, and improve safety.

45. NSW Young Labor strongly recommends that young people be protected by an educational initiative that promotes knowledge of rights and responsibilities of young people before they make the transition from secondary education into the workplace.

46. Michael Quinlan, professor in the school of organisation and management, UNSW, writes in the Sydney Morning Herald (April 12th, 2006)

“Government should introduce occupational health and safety education into high schools...[to]...promote more effective awareness of the risks confronting young and casual workers.”

47. Educational initiatives should give consideration to reasonable rates of pay, penalty rates and the rights of casual and part-time workers. In addition to this young workers are to be informed on their role in the occupational health and safety process in their workplace. Young people are also to be informed on their right to union membership, and how this right provides protection and greater support in the workplace.

48. NSW Young Labor believes that such an initiative would assist providing young people with the protections they require. As the Workchoices Amendment fails to provide protections from exploitation for young workers, the NSW Government is enabled to respond with necessary protections for new workers. The status of young people and under this legislation calls for action to protect the working rights of young workers.

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