Submission
No 34

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

Organisation: New South Wales Nurses' Association

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Theme:

Summary

NEW SOUTH WALES NURSES' ASSOCIATION
In association with the Australian Nursing Federation

ABN 63 398 164 405

In reply please quote: BH:KS

2 June 2006

The Director
Social Issues Committee
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Director

**NEW SOUTH WALES NURSES' ASSOCIATION SUBMISSION
INQUIRY INTO THE IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION**

Enclosed is our submission. I thank you for the opportunity to make comment on this extremely important matter.

I believe that this regressive legislation threatens the rights and living standards and job security of not only nurses but all Australian workers.

I trust that your Inquiry will find that the *WorkChoices* legislation will have impacts which are unfair, unnecessary and undesirable. To further discuss the points made in the submission, please contact Kathryn Sullivan, Government and Community Relations on tel: (02) 8595 2154 or mobile: 0414 550 332 or, email: ksullivan@nswnurses.asn.au

Yours sincerely

Brett Holmes

BRETT HOLMES
General Secretary

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NEW SOUTH WALES LEGISLATIVE COUNCIL

INQUIRY INTO THE IMPACT OF THE COMMONWEALTH WORKCHOICES LEGISLATION

Submission by NSW Nurses' Association

June 2006

BACKGROUND

The New South Wales Nurses' Association (NSWNA) is a state registered union with 52,000 financial members. The NSWNA has historically covered nursing employment in all health sectors in New South Wales under awards of the New South Wales Industrial Relations Commission.

Following the introduction of the new federal Industrial Relations legislation (Work Choices) the Association has obtained transitional federal registration.

Public sector nurses' pay and conditions awards are currently protected from the new Industrial Relations (IR) changes due to action by the Iemma government. However, should a change in government be effected at the next State election in 2007, that protection will disappear. The Leader of the Opposition, the Hon Peter Debnam, has stated publicly that should his party be elected, IR powers will be handed over to the Federal jurisdiction.

Nonetheless, as from March 2006, a substantial section of the nursing workforce in this state has been transferred to the federal jurisdiction.

Our data tells us that 19,462 financial members (as at 31 March 2006) are now covered by the Federal jurisdiction.

This workforce is engaged in the provision of health services generally through; Private Hospitals, Aged Care services, Day Procedure Centres, Occupational

Health Services and some Schools. This list is not exhaustive, but does nominate the major employers of nurses in the private sector. For example, nationally, the Aged Care sector is Australia's fifth largest employer and New South Wales is well represented in that number.

In New South Wales, the Federal government funds 1279[1] services which provide varied levels of aged care; residential care (both Nursing Homes and Hostels) and Community Aged Care Packages (care programmes and services designed to keep frail aged people in their homes for as long as possible, if they desire that.) . Most employers, (about 85%), engage less than 100 employees. More will be said about this under *'Fair Dismissal'* (see below).

What follows is specifically in relation to (a), (b), (c), (d), and (e), of the terms of reference of this Inquiry and to those of our membership now in the federal IR jurisdiction.

[1] Federal Government Aged Care web site-www.health.gov.au:

(a) *the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact on wages, conditions and security of employment.*

In New South Wales, 90% of the nursing workforce is female.

The NSW Industrial Relations Commission (IRC) has been an excellent vehicle for the determination of nurses' award wages and entitlements. Logs of claim have been contested by employer groups and the IRC has been able to assess evidence and invoke arbitral powers to resolve impasses and disputes.

One of the tenets of the IRC is the concept of the Public Interest. This has allowed for the recognition of the necessity for health services in the community and the need to award pay increases and entitlements to those who are engaged in providing them. It has allowed the Commission to take staff shortages, improved aged care standards and the necessity for the industry to attract and retain qualified staff, for example, into account when determining wage and conditions decisions.

As it stands, the Work Choices Amendment Act 2005 to the Workplace Relations Act 1996 which establishes the Australian Fair Pay Commission (AFPC) has no such specific orientation.[2] The AFPC's function is largely

[2] Workplace Relations Amendment (Work Choices) Act 2005, s7G.

concerned with setting minimums for wages. It is expected that there will be a less adversarial role for interested parties replaced by the AFPC consulting the interested parties, if it chooses to do so.

The timing, scope and frequency of it's own functions are at the discretion of the AFPC.

In turn, the Australian Industrial Relations Commission (AIRC) is now charged with recognising the decisions of the AFPC. Other important legislative changes also curtail the former independent umpire role of the AIRC, for example, it is no longer able to make orders in the process of negotiating agreements unless all the parties agree to accept the order. Similarly, the AIRC will no longer be involved in approving agreements. Now agreements need only to be lodged with the Office of the Employment Advocate. The need for a no-disadvantage test has been removed. However, the AFPC standard, as varied from time to time, will be the new minimum.[3]

Accordingly, we can only arrive at the conclusion that a relatively early impact here will be the slowing down of minimum wage increases with a concomitant increase in Australian Workplace Agreements (AWA) in a bid to achieve more than what the minimums prescribe.

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[3] ibid, s89A(2).

We cannot see much scope for women, youths and casual employees to individually bargain when offered employment on the basis of ..."here is your AWA, take it or leave it".

Some employers may offer higher wages in return for a potential employee to sign a AWA but that may also come at the cost of other entitlements and if the employee is unfamiliar with the industry, as the youth generally are on entering the workforce, it is possible to lose more paid leisure time, for example, than what has been gained in wages.

To some extent transitional arrangements protect those currently employed but the Work Choices legislation applies to new employees.

"FAIR DISMISSAL"

Nurses in the aged care sector will be particularly vulnerable to the unfair and arbitrary provisions of the Work Choices termination arrangements. As has been stated, the overwhelming majority of nursing home proprietors employ less than 100 employees. Employers do not terminate nurses on discrimination grounds, they terminate them on other grounds.

The consequence of the Work Choices legislative changes in this area is that a remedy to an employer's conduct that was formerly judged as "harsh, unjust or unreasonable" is no longer available. Access to unlawful

dismissal proceedings, although still available, is beyond the reach of most employees due to the cost and, or, time involved.

This will impact badly on job security.

Moreover, nurses are well recognised as capable and ready to speak up for patients and aged care residents' rights. How can this continue, if there is no real job security and the work atmosphere is one of don't upset the employer or you may lose your job?

(b) *the impact on rural communities*

Nurses in rural communities simply do not have the employment alternatives as their metropolitan counterparts.

The award-stripping that has been flagged under Work Choices will see nurses who perform shift work and overtime lose significant take home pay. Most nurses who work on a rotating roster (a mix of Monday to Friday shifts and evening, night and weekend shifts) earn, on average, an extra 22% on their base salary throughout the year. Under a basic AWA, an 8th year registered nurse applying to work in a Nursing Home would have to negotiate that extra amount; $239.50 per week, or, $12,495.20 per year[4],

[4] This calculation assumes that the current 8th year, registered nurse hourly rate, $28.6447, would be retained. However, under the new laws the minium hourly rate, currently $12.75, need only be paid.

with their employer just to break even on shift premiums should the employer offer an AWA without shift and weekend penalties. If the employer won't negotiate the nurse then has to make the "take it or leave it" decision.

Other allowances (for being "on call" at inconvenient times, $16.89 per 24 hours or part thereof, or $33.78 per 24 hours or part thereof on a day off; $18.94 per shift for being in charge of a nursing home under 100 beds; $6.77 per week for geographical isolation; and specialist education allowances, for example), could also be lost. It is commonplace to see these award allowances paid in rural and regional settings.

It is difficult to calculate an average loss as not all allowances are paid to all nurses. But a registered nurse in charge of a nursing home when the Director of Nursing isn't there, say in Dubbo or Narromine for example, could lose $94.70 per week in that one allowance as well as $239.50 per week in shift penalties.

Nurses with most to lose could lose as much as 33% of their take-home pay.

The Work Choices legislation provides employers an unprecedented opportunity to save on labour costs. The price to be paid for this will be a

reduction in living standards for employees and this, in turn, will impact on the community.

Clearly, minimums are not going to attract or, retain staff which means that services will be compromised. This also will impact on the community.

In addition, our concerns expressed about job insecurity in general are likely to be more acute in the rural communities as has been stated, there simply are not unlimited job alternatives.

It should also be noted that if labour costs are depressed it does not necessarily follow that that profit will stay in the rural community. It is not uncommon for a number of Nursing Homes or Private Hospitals to be part of a group with a head office in Sydney or elsewhere. This applies not only to some privately owned or managed business groups, but also to Church groups. Where the profit goes is a business decision.

Moreover, in relation to Nursing Homes, the Howard government removed the obligation on employers and administrators to return unspent funding for care when it was elected in 1996. The Work Choices legislation now provides further opportunity for savings for employers, in this area.

(c) *the impact on gender equity, including pay gaps*

Sharan Burrow, ACTU President and President of the International Centre for Trade Union Rights, has been quoted as stating that within five years the majority of workers will be covered by AWAs and with women on AWAs earning 11% less than men, the pay inequity will continue[5].

At the present time, in the nursing workforce, there is no gender difference in pay scales. This may change given the preference that the Work Choice legislation gives to individual bargaining. Also, it is likely to widen wage gaps where they already exist, for the same reason.

It is generally known that there is an extensive nursing shortage at the present time. We have noted that this has been easing, especially in the Public Sector, since the achievement of better pay and conditions. Although scarcity is an advantage for some bargaining, we believe that the overall effect of the Work Choices legislation is negative. The legislation will allow pay and conditions to be depressed and nurses will leave the profession in order to work elsewhere; where there are no adverse hours and where they are at less risk of personal injury.

According to a recent newspaper report[6], the Minister for Ageing the Hon Santo Santoro said pay rises for nurses and staff were making it difficult to

[5] A Forum on the Ethics of IR Changes, Australian Stock Exchange, Monday 28 November, 2005.
[6] Courier Mail, (Brisbane), 29 May 2006, p.2.

operate Nursing Homes and that State Industrial Relations Commissions continued to approve large pay rises for nurses within a sector already struggling with staff shortages. The implication here is that if employers pay lower wages they will then employ more workers to overcome shortages. This is at odds with our view. It is also impossible to assess as there are no requirements for staff data returns in the Private Sector.

Moreover, experience shows that when there have been wage gaps between employment Sectors, and even States, there is a shift of staff to the Sector paying better wages and conditions.

(d) *the impact on balancing work and family responsibilities*

We cannot see how Australia will prosper under the Work Choices legislation. Undoubtedly, some small section will, but not the general community. How will employees be able to have a happy and healthy work/life balance and at the same time provide for retirement?

If, as is expected, AWAs drive down take home pay, they will also impact badly on leisure and family time. If employees want to maintain living standards, they will need to work more hours to compensate for pay reductions.

There will also be more pressure for the extra provision of child care places as parents seek to work more hours. Also, there will be more pressure on social security agencies and charities as more people struggle to maintain a living.

(e) *the impact on injured workers*

It is the view of the NSWNA that nurses, as a group of workers, are likely to be in the highest bracket of workers who suffer workplace injuries. Most of these injuries are physical injuries, particularly back injuries, but shoulder, arm and leg injuries are common as well.

Unfortunately, injuries suffered by nurses in the workplace are preventable. They arise from poorly designed workplaces, lack of proper lifting equipment and the like, and little or no workplace training about safe work practices.

Not surprisingly, a significantly large percentage of workplace injuries occur to nurses working in the private sector. Whilst there are many good employers who take workplace safety seriously, there is a greater practice of "cutting corners" to save costs in the private than the public sector. Many buildings, particularly nursing homes, are not designed for modern lifting equipment or there is not enough of that equipment readily available to nurses to safely perform their duties.

Officers of the NSWNA constantly have large case loads of injured nurses who are facing termination as a result of workplace injury. Undoubtedly, some of the success which the NSWNA has had in protecting injured nurses from termination is because of the provisions of Part 7 of Chapter 2 of the *Industrial Relation Act 1996.* These provisions, specially designed to protect injured workers, have been a clear deterrence to employers who wish to terminate injured nurses and have been immensely helpful in negotiating positive outcomes for injured nurses. The fact that there are not a large number of cases run under this part of the Act shows its success in deterring the unfair termination of injured nurses and other workers.

The WorkChoices legislation has no such protection for injured workers. Nurses dismissed for reasons of an injury are likely have available to them as the only option the prospect of running an unlawful termination application, based on the ground of disability arising from the injury.

Nurses will lose the positive provisions contained in the New South Wales legislation being:

- Two years to commence the action;
- The ability to apply for reinstatement to employment to a different position; and

- The presumption that the injured worker was dismissed because of the injury.

Instead, nurses will only have the standard 21 days to commence proceedings, will bear the onus of proof and will have to establish that the termination arose out of a disability. They will only succeed if they can still perform what is referred to as the "inherent requirements" of their position. Typically, legal argument about what is and what is not an inherent requirement of a position is a strongly argued part of these cases – and so, it is time consuming and expensive. If unlawful terminations do not settle at conciliation before the AIRC they are heard in the Federal Court rather than in an expert Industrial Tribunal.

The NSWNA is of the view that the WorkChoices legislation will provide employers who have previously been able to be deterred from terminating injured workers with the opportunity to drop their safety standards and ultimately relegate injured workers to the Social Security queue.

SUMMARY

In summary, our analysis of the Work Choices legislation is that it is regressive legislation. We believe that these IR changes will have impacts which are unfair, unnecessary and undesirable.