

Submission
No 17

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

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Date Received: 26/05/2006

Theme:

Summary

The impact of Commonwealth *WorkChoices* legislation on: women and families.

For more than a century, beginning with Pope Leo XIII's 1891 encyclical, *Rerum Novarum*, the Catholic Church has taken a strong stand on behalf of workers, particularly vulnerable workers. This stance is underpinned by the Church's profound belief in the essential human dignity of each person, concern for human rights and the promotion of social justice. *Rerum Novarum* analyses the situation of poor and vulnerable workers in industrialized countries and spells out the responsibilities of employers, workers, governments and the church. Pope John Paul II reflected on these issues in a more contemporary setting in his encyclicals *Laborem Exercens* and *Centesimus Annus*.

Catholic Social Teaching stresses the importance of work in people's lives, stating that *work affirms the dignity of those that undertake it*, that people cannot be treated as commodities and that labour is more than an economic cog in the wheel of profit. In *Laborem Exercens* (1981) Pope John Paul II states:

We must recall a principle that has always been taught by the Church: the principle of the priority of labour over capital. This principle directly concerns the process of production: in this process labour is always a primary efficient cause, while capital, the whole collection of means of production, remains a mere instrument or instrumental cause. This principle is an evident truth that emerges from the whole of [the human beings's] experience. (#12)

The teachings of the Church require that the importance of work to society and the dignity of the employee should lie at the heart of the regulation of workplace relations and employment law.

In the light of this long tradition of Catholic Social Teaching the Congregational Leaders of Religious Institutes in NSW (CLRI NSW) as employers, teachers, workers and ministers to poor and disadvantaged people have great concerns regarding the particular impact of the Commonwealth *WorkChoices* legislation on women, young people and families.

1. The impact on balancing work and family responsibilities.

In her paper, *Things Fall Apart*, Dr Marian Baird stressed that;

Work and family are irrevocably linked to each other and in the context of the changing social and demographic patterns being experienced by Australia and most advanced market economies, business and public policies must respond to the contexts of, and the connections between the two.¹

- **Job security:**

Families, of necessity, require some stability and continuity in their lives in order to provide a safe secure environment for the bringing up of children and the nurturing of loving and supportive relationships. It is the opinion of CLRI NSW that placing

¹ Dr Marian Baird, *Things Fall Apart*, Issues paper, School of Business, University of Sydney, 2005, p.17

the onus of negotiating terms and conditions of work on the individual leaves low paid workers, the unskilled, young workers and part time workers vulnerable and insecure. This insecurity is heightened if Union entry to the workplace is limited and people are left unsupported and unrepresented. One of our members reported the comments of a Community Development worker in Mt Druitt: *I wouldn't feel confident to negotiate my own terms and conditions and none of the people here that I work with could.*

The seventeen leading academics who wrote a series of papers analysing the *WorkChoices* legislation, *The Federal Government's Industrial Relations Policy: Report Card on the Proposed Changes*, noted in their summary the high levels of casual work in Australia compared with other OECD countries. Women and young people are more likely to have casual employment which is unlikely to provide training, leaves people without security and without the ability to plan for the future such as buying a house, starting a family or going on holidays. The academics concluded: *It is hard to find anyone who welcomes casualisation*²

The increasing use of contracts rather than permanent positions is also an important contribution to the increasing insecurity of employment. In regard to contractual labour the academics noted:

*Many workers hired as independent contractors will find that their incomes are more uncertain, their hours of work less predictable, access to paid leave non-existent and the threat of dismissal ever present. Increasingly workers will have little choice except to accept these forms of employment.*³

An additional factor contributing to employment insecurity is the scrapping of the unfair dismissal laws for businesses with fewer than 100 employees. For workers in these companies there is no longer access to the Australian Industrial Relations Commission (AIRC) for a ruling on the validity of the dismissal. The only option is recourse to the courts. In reality the majority of employees, particularly those most vulnerable to dismissal, will not have the resources to take legal action. As ACCER pointed out, the changes remove the legal requirement upon the employer for the fair treatment of workers and employers can dismiss workers at will.⁴ Such legislation can only exacerbate the insecurity of workers and their families.

- **“Living Wage”**

Justice Higgins in the famous Harvester Case [1907], which was the start of our industrial relations system, said that a fair wage had to allow a worker to function as *a human being in a civilised community.*” The concept of a living wage, sufficient

² May, Campbell and Burgess, *The rise and rise of casual work in Australia: Who benefits, who loses?* (RMIT & Newcastle published University of Sydney School of Business website)

³ See, Elsa Underhill, *Changing Hiring Arrangements: Independent Contractors & Labour Hire Employment* (Deakin University published op.cit.)

⁴ Australian Catholic Commission for Employment Relations (ACCER), *Briefing Paper No1 on the Commonwealth Government's Proposals to Reform Workplace Relations in Australia, 12.9.05*

to cover the needs of the worker and his or her dependents has been fundamental to industrial relations practice for almost a hundred years. ACCER has argued in many award wage reviews that the Federal Minimum Wage (the lowest classification rate in an award) that those in greatest need should be given priority and that *it should be sufficient to enable one parent to be in the paid workforce and the other to work in the home, for them to be able to support two children and to achieve a minimally acceptable standard of living.*⁵ The Australian Fair Pay Commission, established by the *WorkChoices* legislation, has the authority to establish minimum rates of pay based on a single adult employee. CLRI NSW, ACCER and the Australian Bishops have deep concerns that the Australian Fair Pay Commission will base the minimum wage on the lowest rates of pay and will not take into account the need for workers to support their families. Low wage earners are particularly vulnerable in this situation.

- **Family and Community**

The most consistent concern of the participants in the Working NSW Conference (June 2005), which included leaders from the major faiths, was “what (*WorkChoices* legislation) will do to families and communities.”⁶ Among their concerns were the deregulation of the labour market and the increased control of employers over hours and place of work. The removal of penalty rates, and the right of workers to “bargain” away their weekends are in direct contradiction to the concept of a day of rest with opportunities to build up family relationships and contribute to the community.

CLRI NSW shares this concern and also views the legislated possibility of “cashing in” two weeks of annual holidays, public holidays, rest and meal breaks, as contributing to the stress, the exhaustion and the insecurity of many families. We need a Sunday as a time for families to be together, to build community through sport, recreation, cultural and social activities. People require rest, relaxation and relationships to really function at their best. The community needs people with time to coach sporting teams, volunteer for community activities and contribute to not-for-profit organisations.

Irregular working hours, the inability to plan and the lack of support in determining pay and conditions have a huge impact on the security and stability of families and on the capacity of people to contribute to the wider society. If, as the Federal Government frequently reiterates, we are about families and family values then any changes to industrial relations ought to be focussed on supporting families and communities.

In his Family Impact Statement for Unions NSW, Dr Don Edgar said that the *proposed legislation breaks the nexus between family needs and appropriate wage*

⁵ Australian Catholic Commission for Employment Relations, Briefing Paper 1 on Workplace Relations in Australia, September 2005, p.34

⁶ Reported in Dr Marian Baird, *Things Fall Apart...* School of Business, University of Sydney 2005

*rates and potentially undermines the links between decent job conditions and family wellbeing.*⁷

2. The Impact of *WorkChoices* on Women

The changes made by the *WorkChoices* legislation is likely to lower wages and remove many employment rights for women, especially among the low paid.

AWAs

Employers can now force many workers on to individual contracts known as AWAs with only five minimum employment standards. Workers placed on AWAs now risk having all their previous award entitlements reduced to the five minimums. Women are most likely to be at risk of losing existing awards and conditions because they want part time work in order to care for their families and they are most likely to have had their working life interrupted by having and caring for children.

Removal of Unfair Dismissal protection for workplaces with fewer than 100 employees

This broad exemption removes unfair dismissal rights for almost 90% of the private sector workforce. Such changes reduce job security and make the position of women, particularly those in part time work, very vulnerable. Unfair dismissal rights should not be dependent on the size of the employers business.

The following case studies illustrate the effects that the new laws have had already on some women:

Case Studies (Names have been changed for privacy and confidentiality)

1. *Betty is a qualified occupational therapist with a Master's degree in applied science who works part-time in a viable practice. Recently she met with her employer to negotiate a new individual contract. She was surprised to find her new contract was presented to her with a reduced salary. Betty told her employer that it was not acceptable to her and a lively discussion ensued. Eventually her employer agreed to pay her the same as her previous salary, but reduced her hours of employment by one hour.*
"I really didn't mind that so much" Betty explained "as my profession is in big demand and I can find more work quite easily. However, I wonder how people who are in a weaker bargaining position or who haven't my confidence would be able to have a choice."
2. *A group of women working in the nursing industry managed by a private company were offered a new AWA contract that had a lower pay rate than their previous AWA. They were told to sign it or they wouldn't have a job. All but a couple signed.*
3. *On a Wednesday evening, three days after the new workplace laws were passed, Alison, a trained nurse who had worked in this job for six years, was phoned by management of the*

⁷ Dr Don Edgar *Family Impact Statement – On WorkChoices – the proposed new Industrial Relations Regime*, November 2005, p.37

company and told to meet them in a coffee shop the next morning to discuss her future. There she was told to be at her desk the next day by 7.30 am and to remove her belongings and leave the building within one hour or be escorted out by police. She was not given a reason for her dismissal until some weeks after her sacking after she commenced proceedings for unfairness. Alison had complained to management about some break-downs in procedures that had the potential for serious consequences for patients. The private company who have the Government contract to run the business have stated the orders to dismiss Alison came from the Government department rather than from them.

The Government argues that it is giving workers choice, freedom and flexibility. The above cases show it is giving workers the exact opposite. The progress that Australian women have made in their pursuit of equality and rights in the workforce is now at risk. In regard to the position of women under the *WorkChoices* legislation three of the academics who contributed to the *Report Card on the Proposed Changes* concluded: *It is hard to resist the conclusion that these groups (women and students) are poorly treated because their desire for part time work renders them vulnerable.*⁸

⁸ May, Campbell and Burgess, *The rise and rise of casual work in Australia: Who benefits, who loses?* op.cit.