

**Submission
No 42**

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

Organisation: Police Association of New South Wales
Name: Mr Greg Chilvers
Position: Director Research and Resource Centre
Telephone:
Date Received: 16/06/2006

Theme:

Summary



POLICE ASSOCIATION OF NEW SOUTH WALES

A.B.N. 86 047 021 267

P.O. BOX A1097, SYDNEY SOUTH, N.S.W. 1232

PHONE: (02) 9265 6777 FAX: (02) 9265 6789 EAGLENET 57071

To: Jan Burnswoods

Legislative Council
Parliament House
Macquarie St
Sydney, NSW 2000.

LEGISLATIVE COUNCIL
COMMITTEES

16 JUN 2006

RECEIVED

Dear Jan,

Re: Submission from Police Association of N.S.W. regarding "Inquiry into impact of Commonwealth WorkChoices Legislation"

Please find attached a copy of the Police Association's submission regarding the WorkChoices Legislation. If there is anything you wish to discuss, I can be contacted via the following means:

Direct phone line: 9265 6777

Or

Email: sim.tsia@pansw.org.au

Alternatively, my manager Greg Chilvers will also be happy to speak with you. He can be contacted on either of the following:

Direct phone line: 9265 6726

Or

Email: greg.chilvers@pansw.org.au

Yours Sincerely,

for -

A handwritten signature in black ink, appearing to be 'Sim Tsia', written over the typed name.

Sim Tsia
Research & Resource Centre
Police Association of N.S.W.

Inquiry into the Impact of Commonwealth WorkChoices legislation

To quote Bishop Kevin Manning, “Those who have ‘market power’ because they are highly skilled, or because their skills are in high demand, may do well under the new regime, but the concern of the Church is for those who are more vulnerable and powerless”. Historically we have attempted to protect those individuals in the workforce who need protection the most – predominantly those in lower paid occupations. However, the new WorkChoices legislation disallows this. It lays bare those very individuals who need our assistance the most, those who are not necessarily highly educated, who are in lower paid occupations, and who do not necessarily possess the skills by which to negotiate a fair and equitable work contract are to be the first to suffer.

“New Zealand was subject to the most thorough anti worker legislation in the Western world. When they say they’ve never seen anything like it, we’re up for something serious” (Buchanan, J. 2006).

Terms of Reference:

1. That the Standing Committee on Social Issues inquire into and report on the impact of Commonwealth WorkChoices legislation on the people of New South Wales, and in particular:

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

"In reality, few young workers will be in a position to 'bargain' with their employers and they will feel even less confident about raising occupational health and safety concerns for fear of losing their jobs" (Quinlan, M., 2006).

Concerns have been raised that certain groups of workers will be at a distinct disadvantage when attempting to negotiate their individual contracts, as they will most likely be inexperienced in negotiation and may be ignorant of what their conditions and rates of pay should look like and feel intimidated by the negotiation setting.

In particular, age groups or employees in industries where there is a high concentration of casual employees will be at a disadvantage. Certainly since the introduction of the WorkChoices legislation, there has been a push by many employers to take advantage of the new laws by changing the status of employees who were previously permanent full time or permanent part time employees (some of long standing) to that of casual. Casual employees already have less job security than permanent employees. Their rates of pay have traditionally been slightly higher to compensate them for not having sick leave, annual leave, and extended leave. However, with the decrease in levels

of support for unlawful termination claims, casual employees look set to suffer even further. Employers are able to sack employees, with employees having no real recourse. This will not only affect casual employees, but permanent employees as well.

A perfect example of employers rushing to take advantage of the new WorkChoices legislation by putting employees onto AWAs is the recent Spotlight case. New Spotlight employees were being offered AWAs that did not contain any provision for penalty rates, or provision for overtime. Their "incentive" was an extra 2 cents an hour. Under these new arrangements, workers were \$90/week worse off than their colleagues who were on the existing Award (HREF 1).

When the Western Australian Work Agreements were implemented, there was much dissension amongst the ranks. In the W.A. Police Service, Police officers were pitted against police officers and the work agreements created a division in classes of officers who ended up with different pays and different conditions of employment. There was an overall decrease in levels of working conditions and work flexibility, and no "above award" agreements were achieved. "If the West Australian experience provides any lessons, it is that, rather than competition between employers leading to best practice employment outcomes, the race to the bottom begins" (Fransen, M., 2006).

In 1998, Harry Glasbeek wrote an article that discussed the "Consensual Contract Myth". The basis of the concept is that the nature of labour contracts is not completely "consensual" as wealth and power are so unevenly divided. The statistics he gave were that in Australia, the top 1% of wealth holders own 19.7% of the total wealth of the country; the top 10% of people own 55.2% of all its wealth; the top 20% own 72% of all wealth and the top 50% own 98.4% of all the wealth. This essentially leaves the bottom 50% of wealth holders with very little wealth left to share. The bottom 30% of people have no wealth or negative wealth, and in between the top 10% and the bottom 30%, most wealth that is owned by individuals is made up of any equity they may possess in their family homes, or their retirement funds.

Those individuals who are lucky enough to possess capital are able to choose what to invest in. Those individuals who do not possess capital have no choice but to invest in the only resources that they possess – namely, their own bodies. They sell their labour to buyers in order to live, and they form unions in order to collectively bargain and decrease competition between themselves. Therefore, no contract of employment is actually a "free contract of employment". Workers do not have a choice. The employment contract is not a voluntary agreement because it requires one party to obey another. "The contract of employment is a coercive relationship in an unequally divided society". Essentially, one can conclude that the very name "WorkChoices" is rather oxymoronic. For the workers, what "choice" exactly are they getting?

The new legislation also severely restricts the practice of collective bargaining. "There is no mechanism in the Bill to allow a majority of employees at a workplace to insist that they be dealt with collectively" (Professor Ron McCallum, 2005).

One of the government's flawed arguments for the WorkChoices legislation is that they are seeking improvements in productivity levels in the market place, and the WorkChoices legislation is going to assist with that. The Productivity Commission, who are usually pro government, have stated that these reforms are "not worth the effort, and having a bogus unified system is not going to create the efficiencies that are promised" (Buchanan, J. 2006). For support of this statement, we can look to the example that has been set by New Zealand. Since the deregulation of the New Zealand market, the country has experienced a slowing in the growth of efficiency in their economy, because as the cost of labour decreases, employers have a decreased need to improve efficiencies. Therefore, these reforms are most likely going to unfairly disadvantage vast sections of the Australian population, and there is inadequate evidence to support the Government's reasoning for doing so.

(b) *The impact on rural communities;*

Many rural communities have historically had difficulties with higher levels of unemployment. There is concern that this will lead to a flow on effect of an increase in other social problems such as an increase in crime rates, as there is a proven correlation between long term unemployment and a rise in crime rates (Chapman, et al, 2002). This will directly influence the levels of difficulty Police Officers face in N.S.W. in performing their every day work activities, and may in turn lead to an increase in Hurt on Duty injuries in the NSW Police Service. This is not just applicable to rural communities, it is also applicable to metropolitan areas. However, the effect may be more pronounced, especially in the short term future in rural areas.

Rural communities also have a larger prevalence of small businesses (that is, business that employ less than 100 workers) and these small businesses are now exempt from unlawful termination laws. As rural communities typically also have less options for places of employment, workers will be forced to accept particular work agreements which erode entitlements. It will also be harder for collective bargaining to occur – employers will be able to dismiss their employees who campaign for better conditions and pay and rehire. Employers will be spoiled for choice, and conditions will suffer.

(c) *The impact on gender equity, include pay gaps;*

With the push towards making more employees casuals, women are likely to suffer, as they traditionally take the role of carers in domestic situations. They are more likely to be given casual contracts rather than be made permanent full time or permanent part time employees as employers are not obliged to give casual employees paid maternity or paternity leave. It is not improbable that permanent employees who take maternity leave and then want to return to work part time or with flexible work hours are eventually "let go", with the reasons given for their dismissal being unrelated to their requirements for flexible working hours – and with unlawful termination claims very difficult to establish and now also poorly supported, the worker is effectively powerless and unemployed. Speculatively, these workers may be forced to seek alternative employment in positions not as suited to their skill sets as they settle for employment for the sake of having an income, thereby leading to increasing pay gaps.

According to Dr John Buchanan (Associate Director University of Sydney, Workplace Directions), the sectors of the workforce that are the most likely to suffer are working mothers and working students, and he anticipates a growth in the amount of low paid work. Australia has historically had a relatively low level of workers who work and are still poor. This has been around the 14% mark in Australia. The U.K. has between 20-25%. When this is broken down into occupations, 20% of Australian sales workers can be described as being part of the "working poor", in the U.K., it is 40%. When this is broken down

further by gender, in Australia the statistic is 18%, whilst the U.K. and the U.S. have a third. Unfortunately this looks to be a trend that Australia is set to follow as the increase in the levels of the working poor in the U.S., U.K., and New Zealand, can be correlated with the deregulation of their labour markets.

(d) *The impact on balancing work and family responsibilities;*

"Employees are more than just lumps of coal (commodities), they have a role outside the production process as citizens, parents and consumers" (Glover, R., 2005).

With individual work agreements, employers have the power to force workers to give away their entitlements, signing on for less flexible work agreements which do not allow for workers to take time out of their employment to deal with their family responsibilities. Indeed this has been the case in the past for casual employees, and the trend looks set to continue. There is concern that workers will feel pressured to put their work commitments before their family commitments or risk losing their employment. Even for those workers who are employed on a permanent basis and do not work on a casual basis, there may be pressure to work in excess of the hours they are contracted to work per week without receipt of overtime payment.

With the decreased support for unlawful termination claims, and the notorious difficulties in proving a dismissal as being "unfair" employers will have even more power when pitted against workers than ever before.

Police officers are going to find themselves required to police protests where there are groups campaigning against the situations the new IR laws place them in. This is often going to be difficult for Officers on an internal cognitive level as they will quite often agree with the principles being raised by the protesters.

The WorkChoices legislation fails to recognize that workers are not just that. They are people with responsibilities, families, and lives away from their places of employment. Most of us do not live to work, rather, we work to live. With legislation such as this, some workers will fail to have means by which to live adequately, and will no longer be earning a viable, livable wage. An example of supermarket workers in New Zealand following deregulation can be given. Over the past 10 years, the hourly rate of pay for adult workers fell by 30%, and for part time students, the wage fell by 44%. This is a result of the removal of penalty rates, annual leave, and leave loading amongst other conditions. This same symptom of deregulated labour markets is also evident in the U.S., and the U.K..

(e) *The impact on injured workers*

In theory, injured workers will not suffer under the new WorkChoices legislation as they will still be covered under the Workers Compensation Act and they cannot be dismissed within six months of injury, and if they could prove that they were fit for duty within 2 years, they have the right to their former position. However after that six month period, an employer could potentially fire the worker because they are a liability, citing reasons other than the injury. The new WorkChoices legislation with its decreased levels of support for unlawful termination claims leaves workers open to being dismissed and seeking compensation for this will be very difficult as unlawful terminations are very hard to prove, with there often being a case of "your word against mine". Speculatively again, if an employer feels that they will be able to circumvent prosecution for abusing Workers Compensation legislation, this may lead to a decreased level of rehabilitation support for the injured party. It is only fair to recognize that when workers enter into employment, they are selling their skills, knowledge, and labour. They are not selling their bodies, health and wellbeing. Legislation needs to protect workers to ensure that they are not abused and are supported in the event of injury.

Indeed, the new IR legislation will make it much harder for union representatives to attend workplaces in order to ensure that Occupational

Health and Safety regulations are being met. WorkChoices certainly restricts workers from taking part in industrial action.

References

Buchanan, J. (2006) Speech at Police Association of N.S.W. Biennial Conference, Terrigal.

Chapman, B., Weatherburn, D., Kapuscinski, C.A., Chilvers, M., and Roussel, S. (2002) "Unemployment Duration, Schooling, and Property Crime", *Crime and Justice Bulletin, Issue 74*.

Fransen, M. (2006) "The WA Experience"

Glasbeek, H.J. (1998) "Occupational Health and Safety Law: Criminal Law as a Political Tool" *Australian Journal of Labour Law*, 11(2), pp 95-119.

Manning, K. (2006) Speech at Police Association of N.S.W. Biennial Conference, Terrigal.

Hypermedia References

HREF 1: www.labor.net.au/news "Two Cent Offer Spotlights IR Agenda"
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