

WORKCHOICES: HARDLY A NEW AGENDA

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Abstract

The influence of WorkChoices legislation has been felt across a broad spectrum of people in society. Women, young people and families are some of the sections of society which have suffered significantly because of this legislation. All this despite the Howard Government assurance that they would not create a system of industrial relations that would cut the wages of Australian workers. What has emerged in the aftermath of the introduction of WorkChoices is that Australia is following the lead of the US and its deregulated industrial relations model. Evidence of this concerning trend has been revealed as stories have begun to emerge in the Australian community, regarding the effects of WorkChoices on women, families and young people. These groups have experienced worsening pay and conditions solely because the of the WorkChoices legislation, thus setting Australian workers up for potential loss of income, lifestyle and an effective employment relationship.

INTRODUCTION

WorkChoices has proved to be one of the most damaging pieces of legislation introduced in the 20th and 21st centuries in Australia. A ‘bully boy’ approach has been taken to the introduction of WorkChoices requiring cooperation in a bargaining relationship which, for some, is far from equal. The underlying feature of this legislation, is its dependence on those who have little bargaining power and its commitment from those who have no choice, all in the name of ‘sustaining productivity growth’ (Howard 2005).

The influence of this legislation has been felt across a broad spectrum of people in society. Women, young people and families are some of the sections of society which have suffered significantly because of its introduction. All this despite the Howard Government assurance that they would not create a system of industrial relations that would cut the wages of Australian workers (Wright 1997).

In 2005 the Howard Government introduced the WorkChoices legislation to Federal Parliament which went against John Howard’s promise not to cut the wages of Australian workers. Why? Evidently because the Australian tendency to follow US policy has not been to the exclusion of their industrial relations policy. The weakness in this plan is that it leaves particular sectors of the community vulnerable to the same vagaries of the policy as has occurred in the US. This concerning trend has been evidenced, as stories have begun to emerge in the Australian community, of the effects of WorkChoices on women, families and young people. These groups are suffering from decreasing pay and conditions solely as a result of the implications of the WorkChoices legislation. Setting Australian workers up for potential loss of income, lifestyle and an effective employment relationship.

LITERATURE REVIEW

WorkChoices legislation was introduced to Australian workplaces in March 2006. The regulation of labour markets was eased, minimum standards were reduced ‘to a set of five very basic conditions’ (Hall 2005, p. 296) and the Fair Pay Commission was established ‘to determine a single minimum wage’ (Hall 2005, p. 296). The impact was felt by some of the most vulnerable groups in society.

The Howard Government, through the WorkChoices legislation wrested control of most industrial relations responsibilities, using its corporations power to strip much authority from the States. ‘In federations where legislative powers are shared between central and local governments, sharp changes of direction are more difficult to accomplish’ (McCallum 2005, p. 2). However, corporations power was used by the Howard Government to remove most of the control for industrial relations from the States and delivered a detrimental change to the direction of industrial relations, which has aligned the Australian system more closely with US industrial relations policy.

A comparison between the industrial relations system in the USA and Australia show that these countries have devolved the responsibility for the well-being of their workers into the keeping of the employer. Both countries have minimised the amount of collective bargaining (Weiler 1983, Baird, Ellem & Page 2006) in the system and the emphasis on individual bargaining in the US has left workers vulnerable. ‘Any fair-minded review of the trends in this country [USA] in the last twenty years makes it clear that we have opted for some illumination and a great deal of intimidation’ (Weiler 1983, p. 1816). These trends have also been witnessed in employment relationships throughout Australia since the introduction of WorkChoices.

The fear that WorkChoices is just the beginning of the changes which may lead to perpetuating the working poor issues that are occurring in the US. The Sydney Morning Herald reported that 'Mr Howard, who returned from the US last week, referred several times to its lower unemployment and lower minimum wage in comparison to Australia' (Wright 1997). A lower minimum wage just serves to make those who are most vulnerable more dependent on welfare and question in whose interests these changes serve the employment relationship, if not those of the workers.

Common to both Australia and the US since the introduction of WorkChoices is the reduction in pay. Despite stating that 'under no circumstances will a Howard Government create a wages system which causes the wages of Australian workers to be cut ... I give you this rock-solid guarantee. Our policy will not cut your take-home pay' (Wright 1997), it has been found that 40 per cent of employees 'experienced a decrease in their real wages' (van Wanrooy et al 2007, p. 59). And others are working longer hours for the same pay, van Wanrooy et al report that 'the percentage of employees working more than 50 usual hours is more than double those who report being paid for these hours' (2007, p. 61). In the US, unions are seen by some as 'a cartel, controlling the supply of labour in order to raise wages above what they would be in a competitive labour market... thereby reducing the overall productivity of the economy' (Weiler 1983, p. 1824). When in fact the role of unions is to protect the vulnerable from unscrupulous employers who are attempting to improve productivity while neglecting to invest in their own employees. Workplace investment in the training of employees is proving to be an unexpected casualty resulting from the introduction of WorkChoices. Employers who have developed a mindset of minimisation of employee costs have reduced 'their training commitments in response to the competitive advantage of cheap labour' (Standing Committee on Social Issues 2006, p. 62). 'The WorkChoices legislation establishes a new framework for employment regulation in Australia' (Baird, Ellem & Page 2006, p. 1). This unfortunate framework is disadvantaging employees in terms of pay, conditions, opportunities for training and union protection.

Union involvement in the employment relationship has been restricted in the US. Weiler (1983) notes that the decline in unionism has resulted in an increase in employer intimidation of employees. The goal of WorkChoices, was evidently, to fix a flawed industrial relations system in Australia, the Howard Government put forward the notion that the employment relationship was unequal, largely due to the power wielded by unions. In order to remedy this issue WorkChoices was introduced, purporting to improve productivity and lower unemployment in much the same way that the US industrial relations system was supposed to 'cure the ills of the entire system' (Weiler 1983, p. 1787). Exposure of vulnerable workers to unscrupulous employers and the reduction of employees' bargaining power, in both countries, has resulted in a gross imbalance of power which favours employers.

'Not all employees are in a poor bargaining position, when negotiating AWAs or collective agreements' (Standing Committee on Social Issues 2006, p. 49). However, there are segments of the working community who will clearly be disadvantaged where their 'bargaining position depends in part upon their skills and qualification' (Standing Committee on Social Issues 2006, p. 49). Young people, women and families are among the most vulnerable of workers to be effected by WorkChoices legislation. 'On the basis of evidence available, the Committee considers that WorkChoices will further marginalise a range of already disadvantaged groups including women, young people... together with their families' (Standing Committee on Social Issues 2006, p. 139).

METHODOLOGY

WorkChoices was introduced to empower employees, giving them the responsibility to bargain for the best possible pay and conditions. The cases in this paper describe the ways that WorkChoices has disadvantaged Australian workers and the reality that they have lived as a result. 'Case study research fits within the critical realism paradigm and is essentially inductive, theory building research' (Perry 1998, p 791). Realism is an external reality 'consisting of structures that are themselves sets of interrelated objects, and of mechanisms through which those objects interact' (Sobh & Perry 2005, p. 1199). 'The quandary of evaluating the impact or damage done by the WorkChoices legislation, lies in its lack of visual evidence' (Werth 2007). The stories of those who have suffered at the hands of the WorkChoices legislation need to be heard, to assess the damage done by this shocking piece of legislation.

WorkChoices through its disempowerment of unions has taken away from employees their representation and the means by which they could be heard by the wider community. 'On 28 March 2006 the Standing Committee on Social Issues received a reference from the Minister for Industrial Relations... for an inquiry into the impact of the *Workplace Relations Amendment (WorkChoices) Act 2005*' (Standing Committee on Social Issues 2006, p. 1). This inquiry was set up by the NSW Legislative Council in response to concerns about how it would impact on the people of NSW 'and on specific matters of industrial relations for which states and territories are responsible' (Standing Committee on Social Issues 2006, p. 1). The cases used in this paper are taken from the evidence presented at this inquiry. 'Few details are included about respondents because, for this study, what was important was their story, their experience, and their responses' (Vickers 2003, p. 88).

WORKCHOICES AND ITS INFLUENCE ON AUSTRALIAN WORKERS

The introduction of individual workplace agreements has resulted in an unequal bargaining relationship. In theory this is supposed to be good for employees but in reality leaves some groups of people exposed in a work environment which is unnecessarily adversarial and difficult to understand. It isn't only the work environment which is difficult to understand but the 'rules' surrounding the return to work of low-skilled employees, for whatever reason, require job seekers to jump through a variety of hoops. The Howard Government decreed that they will set the wages and the regulations with minimal checks and balances, and the result of this has been a system that exposes those who are so vulnerable to those who have more power, such as unscrupulous employers.

Families

This paper will present cases which reflect the 'lived reality of employment contracts for Australians employed at or since March 2006' (van Wanrooy et al 2007, p. 98). The first of these discusses the experiences of a husband and father, placed in a dreadful situation by the change to the unfair dismissal laws.

Craig is married and has two children below school age. He was working for a major hotel chain in Sydney when he was dismissed in April 2006. Prior to WorkChoices he would have been able to seek remedy for what he believed was unfair dismissal, but now was not able to do so (Standing Committee on Social Issues 2006, p. 97).

He was given no separation certificate for two weeks, during which time his family were not eligible for any Centrelink payments.

He felt he had no choice but to move his family back to Nowra... to live with his wife's parents while he looked for another job... When the separation certificate finally arrived, Centrelink informed Craig that he was not able to register for unemployment benefits for six months because he had moved from an area with a lower unemployment rate to one with a higher unemployment rate, and as such, was considered to have reduced his chances of finding further employment (Standing Committee on Social Issues 2006, p. 97).

It has been argued that 'by moving away from the long held model of a 'living wage' and reducing incomes, WorkChoices will place further stress on already burdened families' (Standing Committee on Social Issues 2006, p. 65). Parents are being forced into working longer hours by individual contracts. 'children who barely know their own parents and siblings because of working round-the-clock rosters' (Hingst 2007, p. 24) are missing out on weekend sport and ultimately on a 'meaningful family life under these stressful and difficult circumstances' (Hingst 2007, p. 24). In the US employers also have the right to terminate the employment of employees without fair reason (McCallum 2005) and further to this, any recourse in the event of an unfair labour practice takes too long to resolve to serve any practical purpose for the employee (Weiler 1983, McCallum 2005). Should Craig's case have occurred in the US, the outcome would very likely have been the same.

Young People

With the introduction of WorkChoices a number of changes have emerged in the Australian industrial relations system and these have been justified by John Howard as being 'in the national interest' (Howard 2005). Among these changes were the need for 'the states, trade unions, and all incorporated private sector employer's... to adapt their practices to accommodate the radical reconfiguration of Australian labour laws brought about by WorkChoices' (Sarina & Riley 2007, p. 346). The speed with which these laws were introduced led to mistakes and mismanagement in some sectors and the complete exposure of those who did not understand what the new system entailed which resulted in a system which, by design or neglect, took advantage of employees.

Amber Oswald is a sixteen year old high school student, who due to a procedural error by her employer was able to 'have her pay restored to her enterprise agreement rates', her employer had previously attempted to reduce her hourly rates and eliminate the shift loading she was paid for working on Sunday. 'However, her employer won't give her any more Sunday shifts because they found it cheaper to roster on employees who are working under the AWA. Her take home pay has declined substantially' (Standing Committee on Social Issues 2006, p. 83).

Amber and other young workers like her have been taken advantage by employers who have little regard for the implications of the purposeful attempts to cut the pay and conditions of their young employees. 'Given the perceived adverse impact that WorkChoices will have on young people, a number of parties called for additional protections for young people from exploitation in the WorkChoices environment' (Standing Committee of Social Issues 2006, p. 85).

Carmen Cindric is an eighteen year old law and journalism student from the western suburbs of Sydney. She used to work weekends as a casual employee in a Penrith homewares store. A colleague gave Carmen an AWA by to sign, without any contact or negotiation with her employer. Carmen did not sign the contract but her co-workers who did...*found themselves over \$100 a week worse off. Under the Agreement, Carmen would only earn \$46 a week, which would barely cover her travel and university costs. Carmen told the Committee, 'To*

come into work and be told suddenly I must go home if I did not sign and agree to the terms was a great shock, especially with no-one there to speak to about it. I am worried that this is how it will be in the future – that employers can treat their workers with such disregard’ (Standing Committee on Social Issues 2006, p. 83).

That young workers need to be protected is obvious from this case, but what is also evident is that employers pressure young employees in these ways and enjoy the support of the law in doing so. Students are made vulnerable by virtue of the fact that they may be in a precarious financial position and changes to their income could jeopardise their ability to continue their studies. The US deregulated Industrial Relations model suffers from lack of statutory limitations on the way employers act under the influence of the labour market forces (McCallum 2005) treating the labour of employees as a commodity without regard for their wellbeing. This is clearly mirrored in the WorkChoices legislation, employers are ‘bargaining’ at will, not only for the labour of their employees but for their way of life. Such bargaining in an unequal employment relationship has resulted in untenable situations for vulnerable employees.

Women

‘Women are not the principal target of the WorkChoices war... but they will suffer collateral damage for several reasons...they are more reliant on awards; they have more to lose from the loss of unionism and from the shift to individual contracts...’ (Peetz 2007, p. 8). Peetz goes on to say that ‘...given a chance through collective organisation, women are just as militant and effective as men... however it is not the same story under individual arrangements’ (Peetz 2007, p. 2). The Australian Award and pluralist industrial relations system provided support for workers and helped to level the bargaining platform. ‘The great gains for women have been made, and are made, through collective action’ (Peetz 2007, p. 3). The following case studies show just how vulnerable women have become under WorkChoices legislation.

Lorissa Stevens was unceremoniously presented with an AWA to sign. She said ‘I had no idea then of what my rights were, and how long I was entitled to take to read over the AWA’ (Standing Committee on Social Issues, 2006, p. 47). Her pay and conditions were dramatically reduced. She said ‘there was also a clause that you had to give 12 hours notice of being sick, and if you didn’t do so you would lose your day’s wages and also lose \$200. I couldn’t believe it. Not only did you miss out on your own wages, you had to pay the boss for being sick’ (Standing Committee on Social Issues, 2006, p. 47). The AWA was discussed in detail at the training session she was attending.

The fellows who worked with other companies didn’t have the same clauses in their contracts, and we couldn’t believe that the terms could be legal. We thought that the AWAs had to be checked by someone before they were approved. We thought that the sick leave might encourage people to come to work and drive heavy equipment even if they are sick (Standing Committee on Social Issues, 2006, p. 47).

As if these conditions weren’t bad enough, when she raised her concerns, her manager attempted to intimidate her into signing the contract. And even went so far as to say ‘I will personally go out of my way to destroy you, and make sure you never enter a Hunter Valley mine site again’ (Standing Committee on Social Issues, 2006, p. 47). Lorissa reports that her manager ‘asked whether I would sign it or not, I told [them] there was no way I would ever sign it. [They] told me that I had wasted everybody’s time and I would not have a job with MES’ (Standing Committee on Social Issues, 2006, p. 47).

Unquestionably those, in the firing line of the 'WorkChoices war... are trade unionism and, to a lesser extent, the independent tribunal' (Peetz 2007, p. 8). But the real dilemma is the impact WorkChoices has had on individuals like Lorissa. Yeatman (1995) provides an important insight between the responsibility to legislate, keeping in mind the rights of the entire population (not just the privileged few) while protecting the vulnerable from that legislation. Yeatman says that 'if [the employees] appeal to [the government] to protect them against the abuse of power by [the employers empowered by government] on whom they are dependent, they remain dependents, as vulnerable as ever to potential abuse of power'. (Yeatman 1995, p. 202-203).

Yeatman goes on to say that 'on this formulation of the problem, the assertion of [the employers] needs to be checked and restrained by a [representative for employees] acting on behalf of the [employees]...' (1995, p. 203). It is obvious that the protections previously afforded employees are no longer available to them under WorkChoices. The case of James and his wife is a prime example of how women have been more vulnerable to unscrupulous employers by WorkChoices.

James is a full-time worker from Werrington in South Western Sydney. He is a father of three young daughters who range in age from eleven to six months old. He and his wife work hard and have a large mortgage to make a comfortable life for their family. However, since James' wife's recent experiences with employers after the introduction of WorkChoices, they are very fearful for their financial future and family (Standing Committee on Social Issues 2006, p. 77).

With her each of her children James' wife applied for and was granted maternity leave and after her leave with the first two children was able to work part-time. However her employer was not prepared to grant her the flexible working conditions she had previously enjoyed, after the birth of her third child (Standing Committee on Social Issues 2006).

James' wife called her employer to find out why her working conditions had been changed, and her employer told her that in their view, they did not have to provide flexibility under the new industrial relations system and she would have to come back as a full-time employee. With James and his wife both having to work long hours, childcare costs would be added to their already substantial mortgage payments (Standing Committee on Social Issues 2006, p. 77).

James' wife had made decisions on the basis of the previous industrial relations legislation, her expectation was that to continue to make life choices on the basis of the legislation and her experience in her workplace would be reasonable. WorkChoices has made her particularly vulnerable because of the speed with which it was introduced and the lack of warning about the change to income and conditions it would bring about.

Women are vulnerable under WorkChoices for a number of reasons. The caring commitments, which often are the responsibility of women as well as their negotiating style, are two of the reasons women have difficulty maintaining the pay and conditions they enjoyed previous to the introduction of WorkChoices. 'Studies have shown that women and men negotiate differently, particularly in relation to money' (Peetz 2007, p. 2). WorkChoices is such a poor piece of legislation that it has resulted in changing the life roles of women who are being forced into working situations not of their choosing.

Olekans (2005) found that even professional women with training in negotiating skills were likely to have a poorer outcome, from the negotiations than men. The problem this highlights

is for women who are in low paid positions and have no training in negotiating. Women are also more likely to make concessions to maintain the employment relationship (Olekans 2005).

The individualisation of employment relations is particularly damaging for women, because it relegates them to a position where their disadvantage in power relations is most acute, where their structural disadvantage is unmitigated and where any disadvantage in confidence can be fully exploited. Only by reclaiming power through collective organisation and pressure is this inequity redressed (Peetz 2007, p. 8).

Consultation and understanding appear to be attributes lacking in the policies associated with the WorkChoices legislation. This has resulted in an unequal employment relationship where the arrogance of some employers is on display. Case after case exhibited in this paper has shown the shame of these employers and the Howard Government who has legislated to allow them to do business in this way. Clearly following the US labour model has been a priority by the Howard Government, reducing the influence of unions, reducing legislative protections for employees, introducing lengthy and largely inaccessible appeal processes and leaving the majority of employees vulnerable to the wilful termination of employment by their employers.

CONCLUSIONS

‘Bob Hawke is right in saying the Americanisation of Australia as gone too far – first foreign policy, now industrial relations, and more besides. Since our mothers and grandmothers danced with its servicemen in World War II, Australia has been enthralled with, and in thrall to, the US’ (Horin 2005). The danger in following the lead of the US lies in the disadvantage that it will lead to for those individuals whose labour is not greatly in demand or is otherwise, easily replaced.

Despite the evidence that has emerged about the detrimental effect that WorkChoices has had John Howard stated prior to their introduction ‘that these are evolutionary, not radical, changes that maintain strong safeguards for workers’ (Howard 2005). The evidence of the damage done is in the stories of those who have suffered since its introduction. These stories need to be heard and remedies enacted to right the wrongs currently taking place in workplaces across Australia. Currently ‘the only remedy now available is for individual workers to make a complaint to the Human Rights and Equal Opportunity Commission (HREOC), which has no powers beyond individual matters, (Standing Committee on Social Issues 2006, p. 73). Surely in a country where human rights should enjoy bipartisan support resorting to HREOC should simply not be necessary. Policies which allow small business to flourish at the expense of their most valuable resource – their people – are retrograde at best.

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