

**21 November 2005: Senator Andrew Murray**

**Australian Democrats Minority Report for the  
Employment Workplace Relations and Education  
Legislation Committee Inquiry into the Workplace  
Relations Amendment (Work Choices) Bill 2005**

## **Australian Democrats' Minority Report**

### **Introduction**

The Australian Democrats on the whole support the concerns addressed in Labor's Minority Report. We regret that we cannot give the complexity and importance of the *Workplace Relations Amendment (Work Choices) Bill 2005* (Work Choices Bill) the response it deserves, but the Coalition have forced a process and timeline on us that have made it very difficult for us.

The Australian Democrats join with Labor in criticising the way the examination of the 678 page Work Choices Bill has been handled. We agree with their statement that:

The decision to hold a one-week inquiry into a bill proposing the biggest legislative change to the law regulating workplace relations in Australia in over a century, is a subversion of the democratic process and effective law making.

The Democrats believe that this critical legislation introduces fundamental changes to the industrial relations system which will have a major impact on Australians and their families, and will transform six systems into one, against the wishes of the states. Unlike other transference of powers to the Commonwealth under corporations and tax law, this is the first time in the history of the federation that we are faced with a hostile takeover of state systems by the Commonwealth.

The Government is wrong when they say the Senate has previously examined many elements of the legislation such as unfair dismissal, secret ballots, right of entry and cooling-off periods. The Senate has not looked at them in terms of how they apply in the context of this Work Choices Bill, how they apply in state systems, and the consequences for business in state sectors. The Senate EWRE Committee has not looked at them with respect to their interaction, and likely effect with the Bill's other provisions.

There were also significant changes to some of the quarantined provisions that the committee could not examine, for example extending the unfair dismissal exemption

to 100 employees; and expansion of the definition of the capacity for employers to lawfully dismiss workers for 'operational reasons', which are defined as economic, technological, or structural in nature.

Whether there is cross-party support for legislation or not, the committee process has always been valuable in identifying mistakes, identifying unintended consequences, and improving flawed legislation.

I note that the Minister for Workplace Relations had said that there was little point in conducting this inquiry, because he knows exactly where the Labor Party stands, yet even before the inquiry ended the Government had conceded that as a result of issues raised during the inquiry they would make amendments.

On the last day of the inquiry, Mr Pratt, the Deputy Secretary, Workplace Relations, Department of Employment and Workplace Relations, summarised the areas where the government is considering amendments to the bill:

Protections for outworkers; when a notice of termination can be given after the nominal expiry date of an agreement; and, as indicated by Senator Abetz at the recent estimates hearing and reiterated during the course of this week, the averaging of hours issue.<sup>1</sup>

There was almost unanimous agreement that the Bill was complex and technical, and that few witnesses, if any, admitted to understanding the legislation in its entirety. The Democrats are concerned that there are other issues, technical mistakes and unintended consequences that the Government and the Senate will miss.

Dr Jill Murray in her submission argued that:

The risk of unintended consequences is very high. We have already pointed to clauses in the Bill which do not reflect the governments stated intentions...No doubt there are more errors not yet identified.<sup>2</sup>

Similar sentiments were stated by Law Professor Andrew Stewart on behalf of 151 academics:

This is extraordinarily complex legislation that is being rushed through parliament before there has been a proper attempt by independent experts to analyse it with anything like the care that it deserves. We understand that the bill is likely to go through. We have attempted in our submission to suggest that it is rushed and, indeed, fundamentally flawed. Nevertheless, recognising the reality that the bill will probably go through parliament in something like its current form and in offering an addition to the formal submission we have put forward, we do want today to highlight some of the more important areas in which the bill might be amended so as to address some of its more serious defects.<sup>3</sup>

---

1 Mr Pratt, *Committee Hansard*, 18 November 2005, p.54

2 Dr Jill Murray, *Submission 65*, p.8

3 Professor Stewart, *Committee Hansard*, 17 November 2005, pp.39-40

The disregard for the Senate as a house of scrutiny may appear remarkable from a Government whose Prime Minister promised to use its numbers wisely and not provocatively. On that basis you would expect executive arrogance or the heady hubris of numbers would not get in the way of good law making. The reality is that the Prime Minister was saying what the Australian public wants to hear, and not what he believes. He intends to use his power decisively and deliberately. He wishes to get it over with precisely because his government is using the power of the state to have their way, to attack the institutional foundations of the workplace, and against ordinary Australians and their way of life.

Once the Work Choices Bill has passed then he can use long political acumen and experience to implement it and to shore up its defence.

### **One good consequence arising from the Work Choices Bill**

If there is one good consequence arising from the Work Choices Bill it is that it will force all political parties to recognise that the Work Choices Bill is a radical change. They cannot go on accepting the status quo, but critiquing elements of it. They will each have to reassess their vision and solution for relationships at work in the 21<sup>st</sup> Century.

This is because with the Work Choices Bill the Liberal and National parties are assaulting the cultural, economic, social, institutional, legal, political and constitutional underpinnings of work arrangements in Australia.

Occasional bitter and protracted fights over the direction and nature of law and regulation governing work and industrial relations in Australia do not contradict the broad social political and governmental consensus there has been in this area. Neither do the many situations where no more than lip-service has been paid to elements of the consensus.

The broad consensus I refer to has been that the standards of an advanced progressive first-world liberal democracy should apply in Australia with respect to wages and conditions and the organisation and management of work.

Much as conservatives and organised capital disliked the movement, there was nevertheless a broad acceptance that the organised collective expression of labour rights through the union movement should be respected and supported.

That broad consensus accepted that our workplace law should reflect the social contract that growing national and individual or entity wealth should be accompanied by rising living standards and a comprehensive safety net for the disadvantaged and powerless in our society. Low or inadequate wages were to be supported by a sufficiently comprehensive welfare system to ensure family stability and sustainability.

Although conservative Australian federal and state Governments have been slippery on these matters, it was expected that our laws should reflect the commitment made as

a result of our ratification of international conventions and treaties governing the rights of the working population.

That broad consensus meant that wages and conditions of work should bear the family more than the individual in mind; that governments and parliaments should determine law and regulation, but that enterprises unions and tribunals should determine the detailed content and decisions of workplace relations; that independent specialist tribunals were preferred for conciliation, arbitration and determination rather than the courts; that collective labour and collective capital had primacy over individual arrangements; that statute was the dominant determinant of collective arrangements at work and common law the dominant determinant of individual arrangements; that industrial relations should be a multiple federal system not a single national system; that it was justifiable to subordinate the economic to the social in the workplace by ensuring the living standards of the worst off should be consciously and deliberately raised; that health and safety and compensation for accidents or negligence should be a primary feature of workplace law.

When I say that with the Work Choices Bill the Liberal and National parties are assaulting the cultural, economic, social, institutional, legal, political and constitutional underpinnings of work arrangements in Australia, I am certain that these two conservative parties are determined to radically alter our work systems and values.

Control of the Senate allows for the exercise of authoritarian conservative power. The Coalition is determined to fundamentally change the Nation. This may not be fully grasped by the backbench but there is no doubt of the Prime Minister's determination.

It is why I have consistently said that this is going to turn into a battle of the Government against the people. In that battle the Prime Minister has the cards heavily stacked in his favour.

He and his Ministers have been successfully using double-speak to conceal the true nature of these changes. 'Small l' liberal words like 'choice', 'flexibility', 'freedom' disguise the heavy authoritarian micro-management and restrictions on collective labour – the unions - and the dismantling of the architecture and infrastructure of our workplace relations system.

They have already shown they will use all the financial and other resources of the state to advertise and 'sell' their policy. Capital – big business and employer organisations in particular – support the heavy re-balancing of a system designed to lift the profit-share at the expense of the wages-share and to give collective capital – the market – primacy. And for those looking for strong media opposition - big business media owners and shareholders have already voiced their support for Mr Howard's proposals.

The counter-argument will need to be put out through advertising, traditional media and other mediums, but in resource terms, opponents of the governments policies are minnows to a shark.

Industrial relations' concepts and law is already complex and not well understood. Australians have grown used to the reality that others translate that complexity into the understood wages and conditions they enjoy. So they do not readily understand that complex statutory changes will have significant and very basic effects on them and their families. It is only when employers start to exercise their new powers detrimentally that full understanding will dawn.

That is not to forecast that everyone will be affected equally or negatively. Labour that is well represented and resourced, or in short supply, will find itself naturally quarantined from negative effects.

The Coalition Government can rely on most Australians not grasping what is happening until long after it has happened. Evidence to the Committee made it clear that the full effects of the legislation will not be felt until after the next election in late 2007. Not only will 25 to 30% of all workers remain under state systems until then, but the transitional arrangements and the continuing validity of many existing agreements that only expire in 2008, means that for large numbers of Australians the effects will only be after the next election. That is what Mr Howard is counting on – that, and the expectation that they will remain in effective control of the Senate for two more elections, after which it will be very difficult for these changes to be reversed.

In a nutshell, the fundamental changes Mr Howard's Government seek to introduce will be the antithesis of many of the previous consensus items that I outlined above. A national system forced onto resistant states; the individual to be fostered over the collective; an individual wage and conditions fostered over the family wage and conditions; disputes going to the courts instead of the tribunals; capital and business given freedom, and labour and unions' rights and freedoms heavily restricted. Unwisely, unprecedented ministerial intervention will replace a sensitively balanced system where politicians were kept at an arms-length from work arrangements and disputes. The safety net shrunk by three-quarters; the withering away of the award; the decline in real terms of the minimum wage; the loss of most statutory conditions.

From hostile Coalition questions to academics and union officials in the Inquiry it has been obvious that there is also a strong political motive in play. The Coalition are fierce political competitors and will do whatever they can to weaken their main competitor – the Australian Labor Party. Consistent references in Parliament make it clear that the Coalition see the union movement as politically synonymous with the Labor Party. Whatever the legitimate criticisms that can be made about the relationship of parts of the union movement with Labor<sup>4</sup> it is immoral to target the interests of working Australians for political gain.

---

4 See for instance the Australian Democrats' Supplementary Remarks to the Joint Standing Committee on Electoral Matters Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto: September 2005.

It is apparent that the Work Choices Bill will disadvantage the ALP, the Coalition's main competitor. There are several elements of the Bill that will ultimately weaken the union movement and quite possibly see a decline in union membership. Given that unions are one of the ALP's largest donors, any reduction in union membership will impact financially on the ALP, as well as negatively affecting their organisational and political campaigning ability.

The startling thing is how economically reckless the Coalition are being. Their economic argument is faith-based but boils down to this – lower wages, many fewer conditions, more power to employers all equal more jobs. That is the mantra, endlessly repeated in various ways, but unsupported by credible empirical evidence.

If it deserves to be taken seriously as a proposition, it needs to be supported by specific evidence. The need for further IR reform might indeed be apparent, in general, but the merits of this specific proposal have not been persuasively argued.

The Australian Democrats have unfavourably contrasted the Coalition's GST and New Tax System with the Coalition's unconvincing workplace relations campaign. The GST was the centrepiece of the 1998 election campaign. In contrast, the Coalition's radical IR agenda was a sideshow in the 2004 election, hidden by the interest-rate smokescreen.

Very detailed Government documents argued the case for the GST and the New Tax System, complete with all the modelling, tables, graphs and cameos that were necessary. In contrast this radical IR assault on Australians working lives got a seven-page announcement in May, and has been lightly amplified since.

The GST was agreed to and supported by the States. This IR package is opposed by them. The GST's economic and financial benefits were credibly contrasted to a failing federal/state funding system. In contrast, the Coalition agrees our present IR system is not broken and that it makes a very positive contribution to Australia's economy and society. The Coalition agree that Australia now has lower unemployment, low interest rates, higher productivity, higher real wages and very significantly lower levels of industrial disputation than in the past. They agree the system works well overall. Yet amazingly, the Government proposes to trash the current *Workplace Relations Act* (WRA). On the evidence before me, the Work Choices Bill is likely to threaten our economy, productivity and society. For what?

### **The Australian Democrats' Vision for Australia's IR system**

The core mission of a political party is to offer an alternative vision to other political parties on key public policy issues. I would be derelict in my duty if I merely criticised the new Coalition policy without offering the Australian Democrats alternative.

In summary, the Australian Democrats believe that, vital as it is, work is not just about economics, productivity, efficiency, and competitiveness – it is a fundamental feature of our nation-state as a society, our way of life, our place among nations.

The Democrats recognise that Australia has to keep reacting to economic, trade, technological, domestic and global realities. We recognise that society, enterprise and work are continually changing. We believe that changes to our system are necessary, but they should be contiguous and in continuity with our social and cultural heritage, and our values. Foremost among those is the 'Fair-Go' principle.

The Democrats workplace vision requires that to make it happen, this vision should be negotiated between commonwealth and state governments, industry, union, and employee representatives.

The Democrats support and propose a workplace relations system as follows:

- a **unitary single national IR system** that is negotiated between the states and federal government, to provide simplicity and common rights and obligations, and to improve efficiency, domestic and international competitiveness, and productivity;
- a well-resourced **national independent workplace relations regulator** to properly regulate and oversee a national unitary system. Other sectors of the economy have regulators like ASIC, APRA, the ACCC – and so should work arrangements;
- a **strong, independent well-resourced and principled tribunal** in the Australian Industrial Relations Commission (AIRC). This umpire must facilitate agreement-making at the enterprise, as well as overseeing the industry-wide award system. It must conciliate, arbitrate and facilitate mediation in specified circumstances; it must settle industrial disputes; it must maintain the minimum wage, and in doing so it must take into account the interests of the unemployed, protect the interests of low paid workers and the disadvantaged, and protect small employers in a weak bargaining position. We believe that the capacity of the AIRC should be improved not weakened;
- the **1996 Workplace Relations Act, as amended to June 30 2005**. We believe that while this Act could be improved, overall it works well and does not need radical change. We believe the federal system as it currently stands should be left intact, with only moderate change as the need arises;
- **genuine bargaining in good faith**;
- a **genuine safety net** underpinned by an award system that can be altered through the AIRC;
- **collective and individual agreements** including AWAs, but AWAs must be underpinned by the safety net of a no-disadvantage test against the award, negotiations must be genuine, and there should be mechanisms to ensure that employees are not coerced. We would support tightening the current AWA system;
- **freedom of association** and the right to join a union or employers' organisation, without duress or compulsion;

- **collective bargaining as an inalienable right**, and the legitimate role of unions in protecting the interests of workers who wish to be represented by them; and,
- **the right for all employees to be protected from (tightly defined) unfair dismissal.**

In trying to quell the genuine concern of the public over these industrial relations changes the Government often draw a comparison with their 2005 plan with their 1996 proposals. They say the strong concerns expressed then were unfounded and that 'Australians clearly benefited with more jobs, higher wages and a stronger economy.' In John Howard's words, 'the sky did not fall in.'

The sky did not fall in because of the intervention of the Australian Democrats. The reason the 1996 reforms worked is because of the Democrats success in moving 176 amendments that ripped the ideology out of that 1996 package, and made the law socially acceptable while keeping it economically effective.

It is a nonsense to suggest (as some do) that IR has stood still since then. No fewer than 18 significant amending bills have passed the Senate since then. We have used our balance of power and our honest broker role over the last 9-plus years, passing sensible law changes, often after moderating the original aggressive proposals. Although we pride ourselves on not being beholden to unions or business, we have been sympathetic to the legitimate and practical needs of both. We have operated on the values and principles of progressive liberal democracy, and those values and principles have stood us in good stead.

As a result the Democrats can rightly claim to have played a key part in ensuring that federal workplace relations law has made a major positive contribution to Australia's economy and importantly, Australia's society. Australia now has lower unemployment, low interest rates, higher productivity, higher real wages and very significantly lower levels of industrial disputation than in the past.

The Democrats are not opposed to IR reform; so long as it is moderate, steady, considered and fair, and that it delivers productivity efficiency and competitive gains that accord with the values and goals of a civilised first-world society.

The Democrats support an industrial relations system that operates within a framework that takes into account social impacts as well as economic considerations. In this context we support a system that provides for the orderly regulation of employment practices in a way that maximises and balances productivity, jobs growth and job security while ensuring fair and just pay and conditions and treatment. We support a system that builds on the strengths of Australian values – the fair go, an egalitarian society, one that fosters equality community and mateship, and one that rewards enterprise and 'having a go'.

The Australian industrial relations system has been built on a foundation of social justice and fairness, centred around a safety net of pay and conditions to protect the most vulnerable in our society. This foundation has fostered our egalitarian society.

The 1907 landmark Harvester case which instituted a basic wage for men, established an industrial relations system in recognition of the need to legislate the welfare of 'family' over profits and productivity. Harvester placed the welfare of the family at the centre of social and economic policy from the beginnings of Federation.

I remain unashamedly of the view that the basic wage and conditions must allow a decent living standard for a family, and that that task must not be left to the welfare system, whose safety net can never fully compensate for a family standing on its own feet through work.

The AIRC has played a critical role in maintaining this philosophy. This sentiment was reflected in the submission by the 151 academics:

Australia's industrial relations system has also had as a central plank an independent umpire with the capacity to weigh up arguments about industrial standards (such as minimum wages, work and family provisions and other general standards) and to arbitrate upon them with due attention to the research evidence and fairness.<sup>5</sup>

In particular the AIRC has played a critical role in protecting the low paid and those with weak bargaining power.

Australia's industrial relations system has been modified overtime to meet new social, technical and economic conditions. However, within these changes the system has maintained the core framework: the provision of a safety net to protect the vulnerable, and that balances community expectations and individual circumstances.

Any reforms must build upon the strengths of the current Australian system. Elsewhere I have written extensively on the subject. Suffice to say here that the Democrats support a unitary single national IR system that is negotiated between the states and federal government, to provide simplicity and common rights and obligations, and to improve efficiency, domestic and international competitiveness, and productivity.

We have a small population, yet we have nine governments and a ridiculous overlap of laws and regulations. We need common human rights across Australia. We need easily administered and understood rules and laws that support efficient, competitive and productive enterprise. We need to end the complexity and confusion of enterprises having to deal with six systems across state borders, or even of one enterprise in one state having two right of entry regimes, two unfair dismissal regimes, two award systems, all in the same business.

But in introducing a single national unitary system we need safeguards that a particular federal government cannot pervert the system for ideological reasons. That

---

5 151 Australian industrial relations academics, *Submission 175*, pp.6-7

is why a unitary system should be created in consultation with the states and by referral of powers to the Commonwealth by the States.<sup>6</sup>

Once again, elsewhere I have written extensively on the subject. Australia needs a well-resourced national independent workplace relations regulator to properly regulate and oversee a national unitary system. Other sectors of the economy have regulators like ASIC, APRA, the ACCC – and so should work arrangements.

The AIRC needs to be complemented by a National Regulator with specific powers of monitoring and enforcement. There needs to be better enforcement of and compliance with the WRA. Unions and employers need help to ensure that people do not defy court and commission orders, and ignore awards and agreements. Like competition law, tax law, finance law, and corporations law - that each have their own national regulator - IR should too.<sup>7</sup>

In IR the existing regulators are federal and state departmental inspectorates, the employment advocate, state and federal taskforces, and so on. These diverse regulators are diffuse, dispersed, under-resourced, ineffective, and importantly, insufficiently independent. One properly resourced national regulator to enforce national workplace law would be a significant improvement on the existing situation. The Office of the Employment Advocate should be abolished and its tribunal-like powers reconstituted in the AIRC and its regulatory powers in a National Regulator.

The Democrats believe in a strong, independent well-resourced and principled tribunal in the AIRC. This umpire must facilitate agreement-making at the enterprise, as well as overseeing the industry-wide award system. It must conciliate, arbitrate and facilitate mediation in specified circumstances; it must settle industrial disputes; it must maintain the minimum wage, and in doing so it must take into account the interests of the unemployed, protect the interests of low paid workers and the disadvantaged, and protect small employers in a weak bargaining position. We believe that the capacity of the AIRC should be improved not weakened.

The capacity of the AIRC needs to be improved, specifically:

- provide the AIRC with powers to make ‘good faith’ or genuine bargaining orders;
- increase its capacity to resolve disputes on its own motion and increase resources to ensure timely resolution of disputes; and,
- remove limits on some of the subject matters on which the AIRC can make determinations.

---

6 Further information on why the Democrats support a national unitary system can be found at [http://www.democrats.org.au/docs/2004/WORKPLACE\\_RELATIONS\\_A\\_Unitary\\_System\\_of\\_Industrial\\_Relations.pdf](http://www.democrats.org.au/docs/2004/WORKPLACE_RELATIONS_A_Unitary_System_of_Industrial_Relations.pdf)

7 See Australian Democrats Minority Report, *Beyond Cole: The future of the construction industry: confrontation or co-operation?*, Employment, Workplace Relations and Education References Committee, June, 2004, pp.203-66

The Australian Democrats strongly believe that a mix of agreement making - collective bargaining (union and non-union), collective awards and individual agreements provides necessary flexibility in a modern economy, but all agreements must be fair to both employees and employers, and there must be an adequate safety net for employees' wages and conditions.

The Democrats' view is that collective agreements and awards under the existing Federal Act are often better for workers overall than individual agreements, but we recognise that individual agreements are a common<sup>8</sup> and necessary part of working life, and statutory provision must be made for them.

The following should be in place to support the agreement making system:

- an awards system that is comprehensive, up to date, simplified and useable, overseen by the AIRC;
- all agreements (collective and individual) be underpinned by awards;
- a national well resourced independent regulator be established to monitor compliance with industrial laws and agreements;
- a requirement for employers and employees to bargain in good faith be included in the Act; and,
- genuine choice is built into the system.

The Democrats support a safety net that reflects and keeps up with community standards. To this end the Democrats support an awards system that is comprehensive, up to date, simplified and useable, overseen by the AIRC.

Underpinning this system is the need to update standards to deal with important evolving issues, including the need to:

- develop a fairer balance between work and family responsibilities;
- properly regulate redundancies and job shedding;
- address the growth in precarious and atypical employment – which has meant that increasingly, legitimate workers are being excluded from conditions such as security of employment, leave entitlements, superannuation and recourse to the unfair dismissal system - by providing a definition of employee in the Act; and,
- ensure reasonable hours and measures that prevent employees working consistently long or unreasonable hours, except in emergency situations.

---

8 A large number of agreements are individual agreements, with 31.2 per cent of all forms of agreement making being unregistered individual agreements and 2.4 per cent being registered individual agreements (AWAs).

The Democrats support the maintenance of the minimum wage and the AIRC to maintain minimum wage decision making. The Democrats also support an increase in the tax-free threshold to at least \$10,000<sup>9</sup> and indexing the minimum wage. This would also take the pressure off the AIRC as having the sole responsibility of increasing the disposable income of the working poor.

The Democrats support work of equal value and would like to see a key role played by the AIRC, and the Commonwealth funding of test cases to identify means of closing the male/female wage gap.

The Democrats support a fair balance between the rights of employers and employees (irrespective of the size of the employer) on unfair dismissal claims, with low cost, non-legalistic and prompt resolution of disputes. We believe that unfair dismissal should be tightly defined and have long been critical of lax state unfair dismissal regimes.<sup>10</sup>

The Democrats support freedom of association and the right to join a union or employers' organisation, without duress or compulsion. We view collective bargaining as an inalienable right, and the legitimate role of unions in protecting the interests of workers who wish to be represented by them. We support the legitimate role of unions in protecting workers, in particular their role in bargaining on behalf of workers, protecting rights and conditions and occupational health and safety.

We believe a strong case can be made out for non-members paying 'fee for service' if they wish to work under conditions negotiated by a union or employers' organisation.

### **Why We Oppose the Work Choice Bill**

It is overly complex, too punitive, one-sided and interventionist.<sup>11</sup>

#### ***No economic justification***

The 151 Australian industrial relations, labour market and legal academics cited lack of evidence as one of their key concerns with the Bill:

The Bill is based on a series of premises about the impact that further individualisation of the employment relationship will have on productivity and, through it, on employment and national welfare. These assumptions, while repeatedly asserted, are not supported by evidence, and are contradicted by much of the empirical evidence that is available. Fundamental changes such as these should not be made simply as a matter

---

9 See Senator Andrew Murray, 'Tax-Free Thresholds – a tax issue we must confront', Opinion Piece, October 2005: <http://www.andrewmurray.org.au/documents/441/Tax-free%20thrshlds%200905.doc>

10 See Senator Andrew Murray, 'Federal Unfair Dismissals: A Briefing Paper', September 2004: <http://www.andrewmurray.org.au/documents/403/UFD%20Briefing%20Note%20Sept%202004.pdf>

11 Dr Cooney, *Committee Hansard*, 18 November 2005, p.8

of faith. Indeed, the available evidence indicates that, if anything, the longer term impact on labour productivity will be perverse.<sup>12</sup>

The Democrats agree with the concerns raised by the academics cited above and by many of the other submissions to this inquiry.

It must be remembered that the sweeping 1993 and 1996 IR reforms occurred at a time when the economy needed picking up. We then had high unemployment, low productivity, high inflation, and high interest rates.

This is not the case now. Australia is doing quite well. In last year's Global Competitiveness Report, Australia was ranked 14<sup>th</sup> of 104 countries. In terms of competitiveness Australia has one of the lowest Government debts in the OECD; we have a relatively low unemployment rate, low interest rates, and low inflation.

The Government argue that Australia's labour market is over regulated and the OECD and IMF have encouraged the federal Government to deregulate the labour market. There is the obvious caution that the chief advisers and suppliers of information to the OECD and IMF organisations on these matters is the Australian Government. However, while the OECD and IMF may make a valid case for continued reform, as indeed do the Australian Democrats, they make a general not specific case.

In any case, Professor Peetz argued that much of the assertions from OECD and IMF are not based on empirical research:

There is reference to evidence from the IMF, the OECD and the Reserve Bank. A lot of the comments from these bodies are not actually based on empirical research, particularly the annual economic surveys that are done by the OECD or the IMF. They are not based upon original empirical work within those bodies, so whatever claims are made in there are really more matters of faith. What happens with those reports is that the OECD officers or the IMF officers come out to Australia and talk to a few people—mainly from Treasury - and then they write a report that is not unlike something that Treasury would be writing if it were not writing under its own name.<sup>13</sup>

It is also worth noting that the February 2005 OECD Economic Survey said that 'OECD studies consistently rank Australia as one of the countries with the least restrictive employment protection legislation.' In other words, Australia's IR system is employment friendly. This is contrary to claims that Australia's market is too highly regulated and needs radical deregulation.

Professor Peetz also argued that many of the other studies cited by Australian Chamber of Commerce (ACCI) in their submission talked about broader labour market reform but did not provide empirical evidence to support particular provisions in the Work Choices Bill.

---

12 151 Australian industrial relations academics, *Submission 175*, p.7

13 Professor Peetz, *Committee Hansard*, 17 November 2005, p.46

The Democrats know about the *assertion*, but what *evidence* has the Government produced to justify radical change to the federal system?

In contrast, the GST had huge documents, graphs, tables, cameos, and substantive arguments offered to justify their case, and a non-Government controlled Senate subjected the New Tax System to five months of rigorous examination, and produced four reports from four committees. As a result the package passed by the Senate was much improved to reflect community needs.

In this case we've got a seven-page announcement in May, a 68 page book of rhetoric in October, a 20 day Senate review process, and the Prime Minister and various other ministers popping up every now and again to beat out bushfires.

Where is the modelling? Where are the cameos, graphs and tables? Where is the empirical evidence that radical change is needed?

The only item of reform that the Coalition have even tried to make an economic link for is the exemption of business with less than 100 employees from unfair dismissal claims. Even this argument is fatally flawed.

We have over 10 million employed, 1.7 million jobs have been created this decade, and there are only 15 000 unfair dismissal applications under the state and federal unfair dismissal regimes. Those 15 000 would reduce by a third if lax state systems were replaced by the tight federal system.

The most comprehensive research undertaken to date by Senior Lecturer Paul Oslington and PhD student Benoit Freyens at the University of NSW School of Business found that ending unfair dismissal laws for employers with fewer than 100 employees would create only 6,000 jobs, not the 77,000 claimed by the Howard Government.

In the 2001 Hamzy case the expert witness for the Federal Government, Professor Mark Wooden, agreed with the statement that "the existence or non-existence of unfair dismissal legislation has very little to do with the growth of employment and that it is dictated by economic factors."

In justifying the IR changes the Government argues that to be competitive we need to be more like the UK, US and NZ. Yet the Government refuses to compare Australia with other OECD nations like the Scandinavian countries.

Of course the values of one country can not easily be transferred to another. Contrast the aggressive anti-union nature of many Australian enterprises. Denmark for instance is heavily unionised. The Confederation of Danish Industries refers to unions as their 'social partners' and are strong supporters of the values represented by that phrase.

The economic evidence shows that the Scandinavian countries are actually out performing the UK, US, Australia and NZ. The Scandinavian countries have higher regulation of IR than Australia, but they are better at creating jobs, are more productive and are wealthier than we are.

On the World Economic Forum's 2005 Global Competitiveness Ranking, Australia is ranked the 10th most competitive country in the world compared to Finland No 1, Sweden No 3, Denmark No 4, Iceland No 7, and Norway No 9.

On average the Scandinavians do better on jobs than Australia. Australia's unemployment rate is 5%, Norway's 4.6%, Sweden's 6.3%, Denmark's 4.8% and Iceland's 3.0%. Norway Iceland and Sweden all have lower long-term unemployment rates than Australia.

If Australia wishes to learn from other countries, or to adopt some of their workplace values, Scandinavia seems a more attractive workplace model than countries like the USA, whose industrial relations policies have contributed to much larger numbers of working poor, higher income inequality, higher levels of crime, and major social problems.

Rather than be of benefit, there is evidence from New Zealand, and the Victorian Kennett and Western Australian Court Governments, to suggest that the similar Work Choices Bill reforms will have a negative impact on disadvantaged Australians and on Australian society overall.

By the end of the 1990s, New Zealand was a less equal society than ever before, in terms of income distribution, it had a lower full-time participation rate, lower real wages, and flatter productivity, with a diaspora of up to a quarter of its population, many of them in Australia earning considerably higher rates of pay than they could at home.<sup>14</sup>

The Victorian Government in their submission argued that the participation rate was likely to decline under the Work Choices Bill:

Victoria's evidence is that workers' wages will decrease steadily over time, as will their living standards. Work and family has been a high priority for the Victorian Government and this submission details the extent to which Work Choices will impose hardship on family life. Without the award protection governing how ordinary hours of work are to be managed including minimum notice periods before changes in hours operate, notice of roster changes etc, working families will be at the mercy of their employers. Instead of responding to the needs of the labour market, these industrial relations changes will lead to declining participation rates. Poor pay and conditions are not incentives for youth, older people capable of working, and women interested in re-entry to join the workforce. Declining wages and conditions are not incentives for workers to stay in the workforce. In a time of increasing need for workforce participation, Work Choices may effectively reduce participation rates.<sup>15</sup>

A number of submissions asserted that productivity would in actual fact decrease as a result of the Bill:

---

14 151 Australian industrial relations academics, *Submission 175*, p.22

15 Victorian Government, *Submission 136*

By reducing the number of allowable matters in awards and by permitting employers to reduce wages and conditions, the Bill will permit cost minimization strategies in which employers are unlikely to invest in firm-specific training or upgrade their capital stock. While labour utilization rates might increase as net unit labour costs fall, productivity is likely to fall as a consequence of reduced capital investment. The Bill thus provides incentives for low wage and low skill employment and an increase in the labour intensity of production. This is the way to reduce productivity growth in the long term.<sup>16</sup>

The Democrats believe that this Bill is based on old ideology, an ancient dislike of unions, and not enough of the proposed changes are based on real evidence or on widespread problems, and in actual fact could have a negative effect on the economy.

### *Philosophically flawed*

Unless an economy is genuinely in dire straits and needs radical surgery, economic reform is not more important than social cohesion. Both are important. Academics have long argued that the preservation of social capital is crucial to economic and social success in the long run.

In their submission the Australian Catholic Commission for Employment Relations in citing a speech from Pope John Paul II, argued that human rights must take precedence over the market:

It would appear that, on the level of individual nations and of international relations, the free market is the most efficient instrument for utilizing resources and effectively responding to needs. But this is true only for those needs which are "solvent", insofar as they are endowed with purchasing power, and for those resources which are "marketable", insofar as they are capable of obtaining a satisfactory price. But there are many human needs which find no place on the market. It is a strict duty of justice and truth not to allow fundamental human needs to remain unsatisfied, and not to allow those burdened by such needs to perish. It is also necessary to help these needy people to acquire expertise, to enter the circle of exchange, and to develop their skills in order to make the best use of their capacities and resources. Even prior to the logic of a fair exchange of goods and the forms of justice appropriate to it, there exists something which is due to man because he is man, by reason of his lofty dignity. Inseparable from that required "something" is the possibility to survive and, at the same time, to make an active contribution to the common good of humanity. (Centesimus Annus, 34).<sup>17</sup>

The Democrats argue that it is important that we balance employee and employer rights. If employers have all the power then what we would see in many cases is a race to the bottom where wages will be driven down, people will be forced to work longer

---

16 151 Australian industrial relations academics, *Submission 175*, p.24

17 Australian Catholic Commission for Employment Relations, *Submission 110*, p.4

for less and job security will be non-existent. The social contract would move from cooperation to opposition and conflict.

Employment, wages and working conditions directly affect the standard of living and quality of life of individuals and their families. Thus, while it is important that labour market arrangements foster the efficient use of labour and promote participation in the workforce, they also need to recognise that labour is a distinctive 'input' to production, and that wider social objectives and relationships are involved - including the relationships between work, leisure and family, providing safe workplaces and the role of workers in society at large.

The mark of a civilized successful first world liberal democracy is surely not just high living standards and equitably shared wealth, but an egalitarian society that respects and protects the working poor, and the disadvantaged, and that has advanced working conditions.

Our nation Australia *is* our people. It is our *people* that count, so the social perspective is the one that really counts - reform that accords with Australian values and has broad community support.

The social perspective suggests that reform that is not seen to produce a 'fair go' and a fair and productive outcome will simply be unwound in time, as has occurred in New Zealand.

On the Economists' world wide quality of life index, which included measures of job security, gender equality, and family relations, Australia is ranked 5<sup>th</sup> out of 111 countries compared to the USA which is ranked 13<sup>th</sup> and New Zealand which is ranked 15<sup>th</sup>.

The more radical components of the Government's IR reform will threaten our standing on measures such as quality of life index. And for this cost, what is the measurable benefit?

The legislation aims to reduce both the role of the independent umpire – the AIRC, and the unions. From a political and social perspective a civilised first-world progressive democracy works best with checks and balances. The Commission and the Unions are a valued part of that mix. These two institutions are an essential part of Australia's socially progressive society.

A number of submissions raised concerns that there are a number of human rights implications in some of the elements of the Bill, including with respect to freedom of association and limitations on the right to strike in contravention of the International Covenant on Economic, Social and Cultural Rights.

At its core the Work Choices Bill is philosophically flawed, it puts labour as the only unit of production at its foundation and ignores the wider social and human rights implications. Rather than building on the strength of the current system it aims to dismantle it. For these reasons we are philosophically opposed to this Bill.

### *Move to unitary system messy, complex and incomplete*

Professor Andrew Stewart in his submission eloquently and comprehensively outlined why the Bill will not create a truly national or unitary system, and adopts the wrong approach in ‘moving towards’ that otherwise desirable objective.<sup>18</sup>

Professor Stewart outlines four areas of concern in his submission:

Firstly, there is no clear and readily ascertainable demarcation between those employers that are to be covered by the new federal system and those that are not. The operation of the new regime, as triggered by the definition of “employer” in proposed s 4AB, primarily hinges (at least outside Victoria and the Territories) on how the courts interpret the term “trading corporation”. On the current view, most incorporated bodies fall within that term. Even not-for-profit bodies such as local councils, universities and a range of community organisations qualify, on the basis that they have “significant” trading activities. But the scope of the new regime is vulnerable here to the High Court choosing at some point to adopt a stricter view of what constitutes a trading corporation. While there is no imminent prospect of that, it cannot be ruled out. It will never then be certain that such bodies are properly subject to federal regulation...

My second area of concern relates to the provisions in proposed s 7C as to the exclusion of State laws in relation to “federal system employers”. These provisions are both ambiguous and arbitrary in their effect. Proposed s 7C sets out the Commonwealth’s intent to have the Workplace Relations Act 1996 operate to the exclusion of certain State or Territory laws, at least so far as they apply to employment relationships covered by the new federal system. The main exclusion is of any “State or Territory industrial law”. This is to be defined in s 4(1) as including five named Acts (the main industrial statutes in each State that still has an arbitration system); plus any other statute that “applies to employment generally” (a term that is itself separately defined) and that has as its “main purpose”, or one of its main purposes, any one of a list of objectives. These include “regulating workplace relations” and “providing for the determination of terms and conditions of employment”. There is also scope for laws to be prescribed by regulation as falling within this category...

It will not be a national regime, because of the employers omitted from its coverage. The government has repeatedly claimed that the expanded federal system would cover at least 85% of the workforce. But it has never revealed the figures on which that estimate is based. By contrast the Queensland Government has published data that suggests total coverage of 75% at best, and less than 60% in States such as Queensland, South Australia and Western Australia...

Nor will the new legislation create a unitary system of regulation for the employers covered by it. They will still be subject to important State and Territory laws in areas such as workers compensation, occupational health and safety and discrimination. Indeed there is a great potential for confusion

---

18 Professor Andrew Stewart, *Submission 174*, pp.2-5















































