

Chapter 1

What Does the WorkChoices Bill Mean for Women?

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During the past 12 months we have seen the beginning of a watershed in Australian workplace relations with the introduction of the Workplace Relations Amendment (WorkChoices) Bill 2005. While the exact content and meaning of these legislative changes is unlikely to become clear for some time yet, the initial shape of change is being examined and debated by governments, industry groups, academics, unions and workers and non-workers alike. This chapter will examine many of the issues that are being raised, with particular attention to the changes confronting women and their implications. These include the possibility of declining pay and erosion of working conditions, increased earning inequalities, greater job insecurity and difficulties associated with managing work-life balance and childcare arrangements.

Government View

According to the federal government, the WorkChoices Bill is designed to modernise our workplace relations system, to ensure that people continue to enjoy increasing real wages, improvements in living standards, low interest rates and economic growth (Howard 2006). The bill is said to unwind complex, confusing and overlapping legislation, enabling employers and employees to reach agreements that are relevant to the needs of their business rather than having to operate under the "one size fits all" award system (Andrews 2006). The government argues that this reform is necessary in order to guarantee future living standards and workplace productivity and to avoid a potential shortfall of 195,000 workers in five years time.

Business Opinion

Similarly, the Australian Chamber of Commerce and Industry (ACCI) states that this legislation will boost productivity, while also increasing growth in real wages and employment (Hendy 2006).

ACCI (2005) argue that the old industrial relations system is not responsive to economic circumstances, lacks economic rigour, encourages disputes and imposes

high transaction costs on employers, employees and society. Furthermore, ACCI (2005) propose that this system is unhelpful in addressing poverty, has a limited effect on inequality and is complex and cumbersome.

The New Legislation

Under the new legislation, minimum and award classification wages will be set by the newly established Australian Fair Pay Commission (AFPC), which will replace functions performed formerly by the Australian Industrial Relations Commission (AIRC). Minimum entitlements such as annual leave, carer's leave, sick leave and parental leave will be protected (Howard 2006). At the same time, restrictions on apprenticeships/traineeships, independent contractors and labour hire workers will be removed from awards. Moreover, allowable matters that can be dealt with in awards will be reduced from 20 to 16. Provisions pertaining to notice of termination, long service leave, superannuation and jury service will be removed.

Impacts

These changes will encourage the formation of individual agreements. Additionally, individual agreements (Australian Workplace Agreements, AWAs) will be easier to make, being approved and taking effect from the date that they are lodged with the Office of the Employment Advocate. By contrast, collective bargaining and union activities will become increasingly restricted. For example, new employees will not have the right to engage in collective bargaining and employers can refuse to hire someone who will not sign an individual contract. Union access to workplaces will be restricted through Right of Entry legislation and protected industrial action will require a secret ballot that can be challenged by employers. The government states that union picnic days, trade union training leave and tallies should not be included in awards. Employers may lock out their workforce with three days notice.

One of the earliest signs of change since the WorkChoices legislation came into effect on 27 March 2006, relates to the altered dismissal laws. From this time, employees of companies with fewer than 100 staff are no longer protected by unfair dismissal laws and can be sacked at any time (Combet 2006). Evidence of such action by employers was reported almost immediately. For example, a female hotel housekeeper on Queensland's Sunshine Coast was sacked from her full-time job and put on the hotel's roster as a casual. The housekeeper's weekly pay of \$495 was substituted by

the offer of \$18.43 per hour with no rights to job security, annual leave or sick leave (Norington 2006). The media also reported similar examples across other sectors.

Added to this, the new legislation enables firms with over 100 employees to sidestep unfair dismissal laws if dismissals are required for economic, technological or structural reasons.

Using these reasons, an abattoir in central New South Wales employing 180 staff, dismissed 29 workers only days after the legislation came into effect. The company then invited the sacked employees to reapply for 20 jobs on rates that cut their pay from \$764 to \$578 per week (Norington 2006). After several days of media coverage regarding the abattoir workers' plight, the government intervened and the dismissals were revoked.

Australian Council of Trade Unions (ACTU) Secretary Greg Combet said that employers would take advantage of the legislation and switch more people from full-time to casual work or offer them work as independent contractors (Norington 2006).

Similar sentiments have been expressed by academics specialising in employment relations. In a submission to the senate's inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005, a group of 151 Australian industrial relations, labour market and legal academics (2005) (hereafter referred to as 151 Australian academics) stated:

...we share grave concerns about the historic and far-reaching changes now proposed for Australia's workplace relations and their potential effects upon Australian workplaces, workers, and our larger society and economy (p. 4).

Among their concerns, the 151 Australian academics highlighted various elements of the bill that pose particular threats to workers, and especially women's, well being.

One such threat relates to pay and conditions of employment. Concerns regarding the likelihood of declining pay and conditions in association with the WorkChoices Bill have also been echoed by the Human Rights and Equal Opportunity Commission (HREOC) (2005), the ACTU (2005), and academics such as Baird and Todd (2005) and Todd (2006). Their concerns stem from the concerted push by the WorkChoices Bill to increase the extent of individual bargaining in Australia.

The ACTU (2005) states that individual agreements will erode overtime rates of pay, weekend and night work rates, work related allowances, annual-leave loadings and redundancy pay.

Compared to union-based collective bargaining, individual bargaining produces poorer pay and conditions, especially for workers in weaker positions in the labour market. Illustrating this, research shows that non-managerial employees on individual contracts (Australian Workplace Agreements (AWAs)) are paid

less per hour than employees on collective agreements and the gap in gender-based wage earnings increases under individual forms of bargaining. A comparison of non-managerial employees' average hourly rates of pay in 2004 revealed a gap of:

- Zero percent between men and women on award only wages (\$16.40).
- 7.7 percent between men and women on unregistered collective agreements (\$22 compared to \$20.30).
- 10.4 percent between men and women on registered collective agreements (\$25.10 compared to \$22.50).
- 11.3 percent between men and women on unregistered individual agreements (\$23.90 compared to \$21.20).
- 20.3 percent between men and women on registered individual agreements (\$25.10 compared to \$20.00) (ABS Cat. No. 6306.0, Baird & Todd 2005).

By contrast, under the traditional award system, Australia displayed a relatively low gender-based pay gap when compared to other countries, which was explained by reliance on centralised wage fixing processes (Gregory et al. 1989, Whitehouse 1992).

Gender-Pay Gap Widening

Decentralisation of bargaining through the introduction of enterprise agreements has exacerbated gender-based pay inequity in Australia (Todd 2006).

Continued decentralisation and the increasing pressure to rely on individual agreements are likely to further exacerbate labour market inequity and erode earnings. Illustrating this, Todd (2006) has shown how the gap between men and women's average

hourly earnings under individual agreements increased from 12.7 percent in 2002 to 20.3 percent in 2004. Moreover, during this period men's average hourly rates increased from \$23.70 to \$25.10 whereas women's decreased from \$20.70 to \$20.00.

According to a number of studies, AWAs focus on reducing the costs incurred by employers by altering the payment for working time through cutting or abolishing penalty rates and/or overtime, widening the spread of "standard" hours or replacing wages with annualised salaries (for example, Cole et al. 2001, Mitchell & Fetter 2003, Van Barneveld 2004).

There is also evidence suggesting that the Office of the Employment Advocate (OEA) has been approving agreements that contain wage provisions that are below award rates (151 Australian academics 2005). Given that these trends have been occurring with the "no disadvantage" test in place, outcomes under the new legislation, in which employer prerogatives will be strengthened, may be far more worrying.

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There is no process by which the employment advocate is required to analyse the provisions of the agreement or to ensure that the agreement complies with any of the minimum standards in the legislation. Equally, the agreements will not be scrutinised for discriminatory provisions or pay inequities (HREOC 2005).

The confidentiality provisions relating to AWAs mean that employees are unable to assess the content of the agreement that they are offered against any other employees in their workplace or through reviews by independent bodies such as the Australian Industrial Relations Commission. According to HREOC (2005), employees rely on comparative shopping in order to assess the worth of their labour.

The individualised nature of bargaining will disadvantage women. Evidence indicates that women have more difficulty in striking strong bargains on pay than men (Niederle & Vesterlund 2005, Olekans 2005).

Olekans (2005) points to research indicating that even professional women trained in negotiation skills perform more poorly than men when negotiating their wages because they set lower initial goals than men.

Similarly, Niederle and Vesterlund (2005) found that women were more averse to competitive environments whereas men were keen to compete, even though there was no gender difference in their performance levels. Men

were also more confident regarding their talent, three quarters believed that they were the best in a group whereas around 40 percent of women believed that they were the best. In the context of individual bargaining, women are highly likely to end up doing the same work for lower pay than men (HREOC 2005).

According to Olekans (2005), women’s lower rates of pay will trigger a cycle that will be difficult to break. Researchers have shown that prospective employers tend to equate wages with ability. Thus, women’s lower salaries over their careers will be perceived as being indicative of their poorer performance. This will restrict their opportunities for advancement. Subsequently, women will suffer an increasing loss of lifetime earnings and reduced retirement savings.

The most negative effects will be experienced by women with the least bargaining power, including casual and part-time workers and single mothers (151 Australian academics 2005).

At present, casual workers on AWAs earn 15 percent less than their counterparts on registered collective agreements, while part-timers on AWAs earn 25 percent less than their counterparts on registered collective agreements (ABS Cat. No. 6306.0). Women form the majority of these casual (60 percent) and part-time (71 percent) workers (ABS Cat. No. 6105.0). HREOC (2005) also highlights anecdotal evidence of women being more likely to negotiate family friendly working conditions

than men and trade off earnings against these conditions.

Even so, existing AWAs are not family friendly. Data indicate that only 12 percent of AWAs registered between 1995 and 2000 contained any work and family provisions. In 2002/2003, 25 percent of AWAs provided family or carer’s leave, while a mere 8 percent provided paid maternity leave and 5 percent provided paid paternity leave (DEWR 2004). Such findings have serious implications for women’s economic security and fertility decisions, especially in single-parent households. According to the 151 academics (2005):

The bill does nothing to encourage and support women to increase their participation in the labour market or to improve the quality of jobs in which they work. It will frustrate those who aspire to a greater sharing of work and family roles and continue to undermine women’s capacity to be economically independent (p. 33-34).

Added to these effects, the wage rates provided by awards are inclined to fall, in real terms. Annual wage adjustments are likely to deteriorate in the hands of the AFPC because increases will occur at a slower rate than

they would under the AIRC (Baird & Todd 2005).

Subsequently, the minimum wage is inclined to fall relative to average earnings (Wooden 2005). The National Pay Equity Coalition (2005) argues that the government will push the minimum wage downwards in order to create a minimum rate that

is approximately 36 percent of average weekly earnings as is the case in the USA. Currently, in Australia it is 65 percent. Such a change would further disadvantage women, as they are over-represented in the low-paid, award-only bargaining stream (Preston 2003, Whitehouse & Frino 2003). Currently, 24.4 percent of women are dependent on the award system for annual wage increases (151 Australian academics 2005).

The 151 academics also express concern with respect to the lack of independence of the AFPC. The AFPC will only have the authority to recommend adjustments to minimum pay, ultimately the government will control the outcome of the recommendation (Baird & Todd 2005). The government will also control appointments to the commission.

In other countries, where minimum pay is set by the state rather than an independent tribunal, wage rates have not kept pace with inflation. For instance, the state-set minimum wage in New Zealand has not kept up with inflation since the introduction of individual contracts in 1991 and the minimum wage of \$5.15 per hour in the United States has not been adjusted for several years (Baird & Todd 2005).

The experience of the British Low Pay Commission, established by the Blair government, has been more positive for those at the bottom of the pay scale (Brown 2002).

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Cost of Care

Declining real wages would further exacerbate the difficulties confronting workers with families and precipitate decline in workforce participation rates. A policy paper submitted to the government by the Taskforce on Care Costs (TOCC) (2005) indicates that one in four workers with caring responsibilities is likely to leave the workforce because the cost of care is too high.

One in four workers with caring responsibilities has already reduced their hours of work because the cost of care is too high (TOCC 2005). If wage rates fall the costs of care will necessarily become an even greater burden.

Already, former government ministers Bronwyn Bishop and Jackie Kelly are warning that the nation's productivity will suffer if childcare costs become so expensive and inaccessible that women choose to opt out of paid work altogether (Karvelas 2006).

Bishop argues that the government should support nannies and other home-based care in order to ease the current problems. Kelly suggests that pre-tax salary sacrifices should be allowed to pay for childcare as well as the expansion of fringe-benefits tax exemptions to all employer-sponsored childcare (Karvelas 2006).

The TOCC recommended to the government that they extend the 30-percent rebate for childcare costs to a more meaningful level and remove the \$4,000 cap.

Additionally, TOCC suggested that the government develop a strategy to improve the accessibility and quality of care.

Indeed, Federal Opposition Leader Kim Beazley has announced that his government would work with state and local governments, schools and childcare operators to establish centres on public land (Karvelas 2006). Labor says that establishing childcare centres at schools would eliminate the double drop-off for parents and increase the number of places available. Labor has also stated that it would scrap the controversial WorkChoices Bill if it won the next federal election.

Conclusion

In sum, the significance of the WorkChoices Bill has overshadowed many of the other issues confronting women in employment in the past year.

While the government and its industry-level supporters argue that the bill is crucial to lifting Australia's competitiveness and productivity they also believe that the legislation will provide very real benefits to women in employment by enhancing choice and addressing poverty and inequality.

In contrast, the opposition, unions and many academics argue that the legislation will threaten the gains that have been achieved by women during the history of their participation in employment. These

groups believe that very few workers will be better off under the new legislation and the majority will be worse off, particularly women. They claim that real wages will be cut, the gender-based pay gap will increase, job security will be threatened and lifetime earnings will decline.

Moreover, family friendly work provisions and childcare arrangements will become even more difficult to secure. These are critical

times in Australian industrial and employment relations; it is essential that the impact of the WorkChoices legislation is carefully monitored and considered.

REFERENCES

- Australian Bureau of Statistics (ABS). 2004. *Employee Earnings and Hours*. Cat. No. 6306.0.
- ABS. 2005. *Australian Labour Market Statistics*. Cat. No. 6105.0.
- Australian Chamber of Commerce and Industry (ACCI). 2005. *The Economic Case for Workplace Relations Reform*. Position Paper. Sydney: ACCI.
- Australian Council of Trade Unions (ACTU). 2005. *Your Rights at Work: Worth Fighting For- Information Pack*. Melbourne: ACTU.
- Baird, M. & Todd, P. 2005. *Government Policy, Women and the New Workplace Regime: A Contradiction in Terms and Policies*. Paper presented at the University of Sydney, 21 June 2005.
- Brown, W. 2002. "The Operation of the Low Pay Commission." *Employee Relations*, 24(6), 595-605.
- Cole, M., Callus, R. & Van Barneveld, K. 2001. *What's in an Agreement? An Approach to Understanding AWAs*. Paper to joint ACIRRT/OEA seminar, University of Sydney, September 2001.
- Combet, G. 2006. "Blind Freddy Can See Laws Will Hurt Working People". *The Sydney Morning Herald*, 27 March 2006, p. 10.
- Department of Employment and Workplace Relations (DEWR). 2004. *Wage Trends in Enterprise Bargaining*. Canberra: DEWR.
- Fraser, A. 2006. "Groves is a Big Player for Little Ones." *The Weekend Australian*, 18-19 March 2006, p. 23.
- Group of 151 Australian Industrial Relations, Labour Market and Legal Academics. 2005. *Research Evidence about the effects of the "WorkChoices" Bill*. A Submission to the Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005.
- Hendy, P. 2006. "Historic Changes Will Benefit Employers and Employees." *The Sydney Morning Herald*, 27 March 2006, p. 10.
- Howard, J. 2006. "Reform Now or Go Backwards." *The Sydney Morning Herald*, 27 March 2006, p. 10.
- Human Rights and Equal Opportunity Commission (HREOC). 2005. *Submission to Senate Employment, Workplace Relations and Education Legislation Committee: Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005*.
- Karvelas, P. 2006. "High Cost of Holding a Baby." *The Weekend Australian*, 18-19 March 2006, p. 23.
- Mitchell, R. & Fetter, S. 2003. "Human Resource Management and Individualisation in Australian Law." *Journal of Industrial Relations*, 45(3), 292-325.
- National Pay Equity Coalition. 2005. *Women and Low Paid*. NSW: NPEC.
- Norington, B. 2006. "Abattoir Job Cuts First in Law." *The Weekend Australian*, 1-2 April 2006, p. 5.
- Norington, B. 2006. "Hotel Housekeeper Forced to go Casual as Workplace Laws Kick in." *The Australian*, 29 March 2006, p. 5.
- Olekans, M. 2005. "Harder for Women on Industrial Front." *The Age*, 7 November 2005, p. 17.

Preston, A. 2003. "Gender, Earnings and Part Time Pay in Australia, 1990-1998." *British Journal of Industrial Relations*, 41(3), 417-433.

Taskforce on Care Costs (TOCC). 2005. *Creating Choice: Employment and the Cost of Caring*. <<http://www.neeopa.org>>

Todd, P. 2006. *Pay Equity and Wage Determination*. Presented at a Consortium for Diversity at Work, University of Western Australia, 7 February 2006.

Van Barneveld, K. 2004. *Equity and Efficiency: The Case of Australian Workplace Agreements*. Doctoral Thesis, University of Newcastle.

Whitehouse, G. & Frino, B. 2003. "Women, Wages and Industrial Agreements." *Australian Journal of Labour Economics*, 6(4), 579-596.

Wooden, M. 2005. "Minimum Wage Setting and the Australian Fair Pay Commission." *Journal of Australian Political Economy*, 56, 22-38.