

“It’s a very scary future...”: A preliminary analysis of employee perceptions of the Work Choices Act 2005

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Amidst much controversy, Australia’s most radical employment regulation as yet known, the Workplace Relations Amendment (Work Choices) Act 2005, received Royal Assent on 14 December 2005 and most of the provisions came into effect on 27 March 2006. Both the federal government and large industry groups argue that the legislation will improve flexibility, productivity, participation rates and work/life balance, reaping positive benefits for all concerned. In contrast, critics such as the Labor party, the Australian Council of Trade Unions and numerous academics argue that the legislation will undermine workers’ democratic rights, disadvantage marginalised individuals and fail to enhance productivity and employment. Yet, the actual experiences of employees and their implications are largely unknown. Using data from the ‘Your Rights at Work’ campaign, this research seeks to extend this debate by empirically analysing employees’ preliminary experiences under the Work Choices legislation.

Keywords: employee relations; industrial relations legislation; unions; Work Choices

The present regulatory changes in Australia are arguably the most radical experienced. *The Workplace Relations Amendment (Work Choices) Act 2005* is intended to enhance flexibility, increase efficiency and productivity and provide a greater work/life balance for employees. It is proposed that this will be achieved through a greater emphasis on individual agreement making (rather than collective, industry-level and workplace level agreements), and the

substitution of industry-level ‘awards’ that enshrine minimum wages and conditions with the Australian Fair Pay and Conditions Standard. These changes parallel key aspects of New Zealand’s former *Employment Contracts Act 1991*. Research examining the implications of the *Employment Contracts Act 1991* illustrated divergent effects. The most worrying changes were experienced by employees with secondary labour market characteristics, who suffered wage suppression, insufficient and unsuitable working hours, loss of entitlements and little bargaining power. In contrast, we know very little of the effects of the *Work Choices Act* in Australia. Subsequently, this preliminarily (in-progress) research seeks to analyse employees’ reactions to and experiences under *Work Choices* by examining data from the ‘Your Rights at Work’ union-funded public campaign run in conjunction with the inception of the new legislation. Although the data used for this analysis has clear limitations because it is drawn from a union-funded website, it provides a valuable snapshot of particular Australian workers’ experiences under *Work Choices* thus far. This information will contribute to the resolution of the fierce debate surrounding *Work Choices* by shedding light on the character of the legislation and its implications for a specific segment of Australian workers.

LITERATURE REVIEW

The Workplace Relations Amendment (Work Choices) Act 2005

Amidst controversy, the *Workplace Relations Amendment (Work Choices) Act 2005* (the *Work Choices Act*) came into effect on 27 March 2006. Most significantly, the Act involves: dismantling the employment relations systems that exist within individual states and transferring all powers to the federal system (creating a single national system); favouring individual agreements over collective agreements; minimising the function of the independent Australian Industrial Relations Commission (AIRC); and eroding industry and occupational awards that enshrine minimum wages and working entitlements and conditions (Alexander 2006, Macken 2006). Determination of the minimum wage becomes the responsibility of the new, government appointed Australian Fair Pay Commission (AFPC), instead of the AIRC, and greater regard will be given to the economic impact of wage

increases on employment (Australian Government 2005). In addition, organisations with fewer than 100 employees will be exempt from unfair dismissal laws.

The federal government and industry groups such as the Australian Chamber of Commerce and Industry (ACCI) argue that the legislation will produce benefits for individual workers and the country by enhancing productivity and economic growth (ACCI 2005, Australian Government 2005). Moreover, they contend that our new workplace relations system will be simpler, more efficient, productive and balanced for all concerned (ACCI 2005, Andrews 2006). The ideological perspective of unitarism runs through much of the government's workplace relations policy doctrine as well as ACCIs supporting policy documents and statements. Expressing great concern for the shared interests of employees and employers, Howard (2005a) has outlined how *Work Choices* will better enable employees to negotiate flexible terms and conditions (at the workplace) that will enhance their ability to balance work and family life. In doing so, he has stressed how unitarism underpins his government's approach:

What unites our enterprise workers, and what has helped lift Australia's economic performance, is an attitude of the mind. They recognise the logic and fairness of workplaces where initiative, performance and reward are linked together.... (Howard 2005b, p. 2).

In contrast, a number of critics debate the wholly positive outcomes of the reforms, which are suggested by the government. The opposition leader argues that employers do not desire the changes contained in the *Work Choices Act* (Franklin 2006). Subsequently, he pledged to restore collective bargaining to the workplace if a majority of employees want to engage in such bargaining (Maiden 2006). A Group of 150 Australian Academics (2005), who lodged a formal submission to the Senate inquiry established to examine the Act prior to its passing, stated that it fails to account for and protect the interests of the least powerful and most vulnerable workers in Australia (Group of 150 Australian Academics 2005). Other academics have also analysed the content of the Act and engaged in speculation with respect to its

implications (Ellem, Baird, Cooper and Lansbury 2005, Guille 2006, Hall 2006, McCallum 2006).

Examining earlier research evidence regarding the impact of regulatory reforms under the Howard government, Ellem et al. (2005) argue that if trends continue along the same trajectory *Work Choices* will undermine employees' rights; increase employer-oriented flexibility; fail to address work-family issues; have little impact on productivity or jobs and disadvantage the most vulnerable workers in Australia. According to Ellem et al. (2005), the "myth-making about policy, work and regulation" (p. 26) on the part of the federal government is completely at odds with the empirical evidence regarding the nature of the *Work Choices* reforms.

Parallels with New Zealand's *Employment Contracts Act 1991*

Australia's current *Work Choices* Act parallels employment relations legislation introduced in New Zealand by a similarly conservative government in the 1990s. The *Employment Contracts Act 1991* (the ECA) overturned compulsory arbitration and the pluralist premises that have underpinned employment relations in New Zealand since the *Industrial Conciliation and Arbitration Act 1894* came into effect (Anderson 1991). The ECA's focus was on the agreement of terms between an employer and employee at the enterprise level as opposed to collective bargaining at the multi-employer level. Subsequently, employers could, on an individual basis, without union involvement, more readily pursue changes to entitlements such as overtime and penalty rates that had been more constrained by the award structure (e.g. Anderson 1991, Geare 2000, Hector, Henning and Hubble 1993).

The limited extant research indicates that the Act led to inequitable outcomes and it received a mixed response from the workforce, largely due to its differential (and divergent) effects. More highly skilled employees within the primary labour market recognised that they were being rewarded and they were quite comfortable with their outcomes under the ECA

(Rasmussen, McLaughlin and Boxall 2000). In contrast, another group of workers experienced little choice in relation to bargaining and representation, often engaging in no negotiations, and having little influence even when negotiations occurred (McLaughlin 2000). These employees were more likely to be part time, in less skilled occupations and on lower incomes (Rasmussen et al. 2000).

In his analysis of the experiences of retail employees, McLaughlin (2000) reported that extended retail hours were impacting negatively on many workers, often leading to the loss of penalties, allowances and overtime. Subsequently, common complaints were that unsociable working hours placed pressure on relationships with partners, created difficulties for childcare, and effectively put an end to quality family and social life. Given that the majority of employees were female, the ECA was said to have done little to enable women to negotiate suitable hours of work, rather it increased the pressure on their dual responsibilities (McLaughlin 2000). Other research similarly suggests that those less skilled and less organised employees within the secondary labour market experienced difficulties protecting their wages and employment rights (e.g. Hammond and Harbridge 1993, Hector et al. 1993, McLaughlin 2000). It is perhaps unsurprising to find that the majority of respondents in McLaughlin's (2000) study felt dissatisfied with their low and reduced pay and the loss of penalty rates. Only two per cent of respondents suggested that there had been no negative outcomes associated with the Act.

Women's lower wage increases and total wages relative to men's were similarly reported by Hammond and Harbridge's (1993) and Harbridge and Street's (1995) research. These outcomes led Geare (2001) to suggest that "those who support a Pluralist industrial relations ideology (Fox 1974) would favour a very different piece of legislation to the EC Act itself" (p. 303). While some academics, unionists and the Labor party have made similar remarks in relation to Australia's legislation, there is a paucity of research examining the actual effects of *Work Choices* as experienced by workers in the Australian labour market. In order to begin to

redress this gap and deepen our understanding of the implications of these changes, this paper will explore employees' experiences under *Work Choices* through an analysis of their written submissions in relation to the Act.

DATA AND METHODS

The data are drawn from the 'Your Rights at Work' public campaign run in conjunction with the introduction of the *Work Choices* legislation in Australia. The campaign was established by the ACTU in order to provide and gather information related specifically to the *Work Choices Act*. This large public campaign has included television and newspaper advertisements, which provide links to an extensive website on the internet. The website is readily accessible to union and non-union members alike and its main purpose is information exchange. As such, the website contains information for employees with respect to the content of the *Work Choices Act* and employees' entitlements. In addition, the website enables employees to 'voice' their experiences under the Act by posting their written responses on the site. It should be borne in mind that the nature of this website is subject to respondent self-selection, it is therefore likely that the results of this study will reflect the reactions and experiences of a specific segment of the labour market. That said, it should be noted that any broader generalisation of the results should be done with some caution at this point. Nevertheless, this research provides us with some of the first (preliminary) findings that reflect Australian workers experiences in relation to this new legislation.

Content analysis of a sample of 133 posted responses was conducted in order to assess the views and experiences of these workers. The sample consisted of all 'posted' responses on the 'Your Rights at Work' website belonging to the 'Your Say' category. While other responses were posted on the website (under different category headings) they related to wider issues such as the purpose of unions and union campaigning and were not relevant to the aims of this research. The data consisted of 60 responses from males, 52 from females and 21 anonymous responses. On average, each response was approximately 120 words in

length and related specifically to the *Work Choices Act* and its implications as perceived by the individuals posting their responses. Analyses focused on identifying the key issues raised by respondents in relation to the legislation.

RESULTS

The content analysis revealed that workers' reactions to *Work Choices* were typically unsupportive, 130 of the 133 responses expressed critical, uncertain or negative reactions. Although the lack of supportive or positive reactions to the legislation (three per cent) is more marked than the results of a recent Newspoll in Australia in which 14 per cent of respondents suggested that they would be "better off" under *Work Choices* (Hannin 2007), it is consistent with the overwhelming lack of enthusiasm expressed by New Zealand employees as reported by McLaughlin (2000); in which only two per cent of respondents in the retail sector believed that the ECA had produced positive outcomes.

The data from 'Your Rights at Work' reflected individuals concerns in relation to general lifestyle and economic factors, inextricably linked with a strong focus on fairness and equity. In general, employees argued that the *Work Choices* legislation is creating deleterious effects and the notion of destruction was common in relation to its effect upon lifestyle, economics, fairness and equity. A second theme running through the data related to the perceived Americanisation of Australian employment relations. It was feared that this would precipitate an underclass of working poor, which was at odds with and threatened individuals' sense of identity, challenging the innate characteristics and values of Australian workers. The findings are discussed in greater depth in the following sections.

Lifestyle, Wages, Fairness and Equity at Risk ?

Quality of working life and work/life balance were frequently raised by individuals as issues being challenged and eroded by the government's legislation. Individuals argued that the reforms "[t]ake away our quality of life..." (voice 1.4) by extending working hours,

increasing the unpredictability and irregularity of working time and creating financial strain for individuals. This was said to be “...destroying the very core of the family structure” (voice 23.6). An illustrative example was provided by an individual working two jobs in order to support his family (in describing the experience he uses omniscient narration):

As the months pass the man finds that this job alone is not going to pay his bills, and reluctantly accepts he has to take on another hob. He needs to have two incomes just to make ends meet, and accepts another below Award contract....the man works Monday to Friday, and Sunday at his respective jobs to provide for his family. Saturday is the only day he gets to spend time with them as he has NO holidays because of the [Australian Workplace Agreement] he's under (voice 8.12).

In several cases, particular attention was afforded to women and young employees. For instance, individuals indicated that the legislation will exacerbate “...long and odd hours... [leading to] little quality time for people, especially women and young people, who would be gravely disadvantaged” (voice 1.9).

Other employees were critical of the nature of the legislative reforms on the basis of occupational health and safety (OH&S) issues. One employee states that the legislative changes have “given bosses...the “green light” to flout OH&S standards and regulations at the workplace and exploit workers with unfair treatment and demands because he knows he can sack you” (voice 19.15). In a similar vein: “losing our protection against unfair dismissal has changed the workplace dramatically...written rules like lunch breaks are thrown out the window and the culture changes to one of “act frantically busy all the time in case the boss takes a dislike to you and sacks you on the spot” ” (voice 4.12).

Financial hardship was a common theme. Evidence of wage cuts, the abolition of penalty rates and other reductions in relation to entitlements was provided, particularly in association with the introduction of individual agreements. Examples indicating that “we don’t have rights to paid overtime or meal breaks anymore” (voice 12.7) were relatively common, suggesting that a range of entitlements were being eroded in particular instances. In addition, several employees referred to the use of individual contracts to reduce wages, citing for

instance that: “The offer of employment hinged on staff being re-hired on individual contracts that cut base rates from \$9.09 down to \$7.17 per hour” (voice 22.2). In another situation an employee discussed accepting an individual contract that “removes all award conditions [including annual leave entitlements] and pays less than the relative award” (voice 14.9). This employee continues by describing how his fellow workers who were paid higher wages under a collective agreement have been replaced by workers on individual contracts the same as his own.

Individual contracts offered by Jetstar were also said to reduce employees’ wages by \$160 per week and Luftasia was cited as cutting wages. Another respondent objected to the introduction of “laws that allow a company to dismiss workers one day and then allow them to offer them their jobs back with reduced conditions” (voice 10.3). Employees often suggested that they had little option but to accept the reduced wages and conditions because employers had a ‘take it or leave it’ attitude. Individuals suggested that: “Business tell you what your contract will be and if you do not agree you will not work....You can choose to sign our agreement or choose not to work” (voice 17.5). The problematic use of contracts was also raised by many respondents in relation to the uncertainty and financial difficulties that such conditions of employment create: “how difficult will it be to get a mortgage loan if your employment is only for the length of a contract !” (voice 22.4)

In another situation, there was evidence to suggest that labour costs were being reduced through the replacement of regular staff with overseas workers. One respondent indicated that storemen who work up to 55 hours per week for \$30 000 per annum were being replaced with overseas workers paid as trainees for approximately \$20 000 per annum. In addition, a number of instances in which workers were engaged as ‘contractors’ further illustrated the tilting of the balance of power in favour of employers and the abolition of basic entitlements. For example, a young beauty therapist was offered work at the rate of \$10 per hour for the first month followed by \$15 per hour thereafter. She was then told that her employment

would be as a contractor and she may be required to work for as little as one hour per day depending on bookings. Similarly, concierge staff working at a prestigious apartment block with set working hours and wearing a company uniform were engaged as ‘sub-contractors’ exempt from receiving annual leave, sick leave and penalty rates; being “paid the same rate for working Christmas day as any other day” (voice 12.4).

Throughout, the notion of destruction imbued individuals’ submissions. Employees expressed perceived threats to or loss of one or more fundamental issues, namely: their employment entitlements; their economic wellbeing or financial welfare; their quality of life, particularly work/life balance; and fairness and equality. Individuals conveyed this sense of destruction in relation to these issues by describing what they believe to be actual and imminent ‘threats’, ‘damage’, ‘removal’ and ‘destruction’. In expressing themselves, employees frequently used divisive terms and distanced themselves from government and business, relying on references to ‘our’ and ‘we’ in relation to employees as opposed to ‘they’, ‘them’ and ‘John Howard’ when referring to government or business. Many also made explicit references to ‘us versus them’. In doing so, the use of unitary and inclusive terms of reference was avoided.

Americanisation versus the Australian way

A belief that Australia was being transformed into a substantially different landscape was ‘voiced’ by many workers who made comments such as “Welcome to the New World” (voice 1.1) and “Australia will never be the same” (voice 5.1), paralleling the theme of destruction, discussed earlier. The perceived transformation of Australia primarily involved that of American corporatisation. This perceived ‘Americanisation’ was not viewed positively by individuals as it was associated with notions of exploitation and widening inequality. In addition, many employees were concerned that ‘Americanisation’ undermined their Australian values and ways of life. Coinciding with this, employees conveyed a strong

feeling of fear and uncertainty with respect to the changes occurring and their implications for Australian workers.

The idea of Americanisation was strongly associated with corporatisation and negative connotations of market dominance: "...we are following the USA into the abyss of corporate greed and corruption" (voice 7.2). This was thought to be occurring in conjunction with the expansion of a low wage sector. Respondents made references to low wages, cheap labour, minimal entitlements and conditions and exploitative employment systems. Several employees suggested that Australia was becoming "...like the US where the low paid have been waiting 8 years for a pay review" (voice 12.3). A number of individuals were worried that they would become reliant on 'tips' and 'handouts' in order to earn a basic income, which they perceived to be American traits that they did not want emulated in Australia. Illustrating this, employees made comments such as: "[we] will see the conditions of the already working poor, eroded, living in poverty, and working for basic minimum wages, such as in the United States" (voice 18.5). Within these arguments, employees often alleged that significant power imbalances were emerging between employers and employees. It was envisaged that "...the corporate sector will run riot over fairness and equity..." (voice 3.1) and "the only people who benefit from [the] reforms will be big business" (voice 29.3) as the legislation is "...heavily geared to business at the expense of the individuals" (voice 29.4).

As such, there was a feeling that Australia is being 'turned into' something quite 'unAustralian'. Comments such as: "it would be sad to see Australia develop into an American-like society..." (voice 5.3) and "are we going the way of America with a slave sub class [?]" (voice 6.1) were common. Subsequently, individuals expressed a sense of imminent destruction of their cultural identity and what it is to be Australian. The expression of 'despair', 'loss' and 'destruction' occurred frequently, depicting the demise of Australian values and principles in relation to both the working environment and a broader social context. For example, workers made comments to the following effect: "I am devastated to

see that the Australian way of life and family tradition are under threat under the [new] work laws... Australia will never be the same” (voice 5.1). Amidst this, support for the legislation was absent and there was little evidence to suggest that workers perceived themselves as part of a team possessing shared goals and unified interests. The harmony and integration associated with unitarism were not detected among the voices analysed.

Uncertainty and fear were also expressed in many of the responses posted. These reactions frequently related to individuals’ personal situations: “What will he [John Howard] do next ? It is extremely frightening” (voice 16.1), “[i]t’s a very scary future....” (voice 22.1). More commonly however, these sentiments were expressed in relation to families. “I’ve never felt FEAR living in Australia until now, I fear for my family, my job, my home and my freedom” (voice 14.2). Similarly, “Work Choices puts families under MORE pressure with LESS certainty, LESS stability and LESS peace of mind by placing all the power in the hands of employers” (voice 23.5). In addition to fears being expressed in respect to families, extreme uncertainty was also being felt by young workers: “young people...ARE FEARFUL and ALARMED ...” (voice 30.6).

DISCUSSION AND CONCLUSIONS

These results contrast starkly with the government’s assertions of a shared purpose and fate that will reap substantial benefits for all concerned. While the government has spoken of trust, evolution, logic, unity and choice, the ‘voices’ of employees are conveying quite a different understanding of the regulatory reforms. Employees’ experiences depict an erosion of wages and entitlements along with work/life balance and fairness and equity. The issue of low pay and the loss of penalty rates, overtime and allowances were raised frequently in workers’ submissions. In addition, employees expressed concerns regarding the threat of Americanisation and the potential loss of identity, which created fear and uncertainty. This alleged transformation was marked by a sense of devolution rather than evolution.

In this respect workers reactions share more in common with the concerns and predictions offered by academics and unionists (Combet 2006, Ellem et al. 2005, Guille 2006, Hall 2006, Sheldon and Junor 2006) than those of the government and business groups (ACCI 2005, Andrews 2006, Howard 2005a, 2005b). The reactions encountered reflect a far more pluralistic perspective, in that they encompass quite different interests and aims than those assumed and promulgated by the government. The negative experiences of employees share much in common with those of their New Zealand counterparts as described by McLaughlin (2000), and others (Hammond and Harbridge 1993, Hector et al. 1993), particularly in relation to the erosion of wages, entitlements and work/life balance and enhanced managerial prerogatives. At the same time, the evidence presented here highlights two additional issues: the use of contractors and overseas workers to reduce wages, and significant challenges in relation to our wider social and cultural norms.

In contrast to the evidence from New Zealand, the findings of this Australian study illustrate that workers have concerns regarding the apparently exploitative use of ‘contractor’ and/or ‘subcontractor’ labour as well as the deployment of overseas workers. Both of these labour utilisation strategies are being used by employers to drive down their labour costs and erode the more traditional employer-employee relationship. Such strategies have the potential to significantly reshape and diversify conventional modes of employment in Australia. These changes are inclined to have substantial implications for workers and their families.

Relatedly, the evidence highlights the perceived challenges to the Australian ‘way of life’, which appears to threaten workers’ values, aspirations and identities.

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