



CHOICE AN ILLUSION IN 'WORKCHOICES' LAWS

Speech by Sean Marshall, CFMEU NSW Industrial Officer
to the Summer Hill / Ashfield Greens

Howard's ideological industrial relations laws will destroy workers' rights and conditions, strip away freedom of association and the right to strike and usher in an area where the employer's reign over the workplace is almost feudal.

Put simply Howard's Industrial Relations is an aggressive assertion of the employers right to rule the workplace in a manner barely evolved from feudalism.

Forget the rhetoric about the need to move forward to the workplace of the 21st century and the constraints of a "horse and buggy" system of industrial relations. This is a stark return to the 1890's era of freedom of contract for employers with an inevitable plunge in the rights of workers onto the five legal minima.

These being \$12.75 per hour, a 38 hour week better described as a 1824 hour year as it can be averaged over 12 months, 4 weeks annual leave no loading with 2 weeks of this to be traded away at the workers "request" (just sign this will you!), 10 days sick leave plus 2 days bereavement leave and 12 months unpaid parental leave.

Essentially the core of the IR system industry awards that workers could rely on for over a hundred years as their safety net will be isolated and marginalised, Awards and the award making power have been the *raison d'être* of the federal industrial relations system exemplified in Justice Higgins' Sunshine Harvester decision of 1907.

Lacking a definition of a fair and reasonable wage he arrived at a figure necessary to satisfy the "*normal needs of the average employee regarded as a human being living in a civilised community*".

He saw this as an irreducible minimum going onto to say:

Unless great multitudes of people are to irretrievably injured in themselves and their families, unless society is to be perpetually in industrial unrest, it is necessary to keep this living wage as a thing sacrosanct beyond the reach of bargaining.

This underpinning concept was fundamentally collective. Higgins' viewed an employer unable to pay award wages as one that ought not to be an employer. He saw that the employing function had itself a collective responsibility to society and the humans employed by it, to pay the award minima or to leave the marketplace.

This was buttressed when Australia adopted the two core International Labour Organisation (ILO) Conventions in 1972. *Convention 87 the "Freedom of Association and protection of the Right to Organise, 1948"* and *Convention 98 the "Right to Organise and Collective Bargaining Convention 1949"*. Article 4 of which states:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

The collective nature of the federal industrial relations system was fulfilling this Article and as the system has evolved to formalise informal enterprise and workplace “over award” bargaining into a formalised enterprise bargaining system, the awards underpinning these bargains have continued to develop at arms’ length from the government.

WorkChoices vitiates the founding basis of the *Harvester* judgement and the core ILO conventions. Not that this is apparent if one reads page 13 of the WorkChoices summary that the government sends to callers of its’ hotline. All the pictures of happy smiling white people plus the copious “*protected by law*” stamps would give the impression that one’s award is safe and protected under this proposal.

Nothing could be further from the truth. It may be technically true as page 13 opines “*Awards will not be abolished*”, as it would be true that someone who beats a person near to death but leaves them still breathing could say “*I did not beat that person to death*”.

What the government deliberately conceals with its’ polished sophistry is that once an agreement - collective or individual - is made there is no going back to the **formerly underpinning award**.

Combining this with the removal of duress as a legal ground to object to the making of an Australian Workplace Agreement (AWA) leaves awards to bleed to death whilst the government walks away declaring its’ innocence of any such crime.

Further heralding the death of the award system is the removal of the AIRC’s general award making and varying power, this power is no longer “*protected by law*”. The ability of unions to bring test cases, work value cases and national wage cases to set the basis of the “*sustained progress*” envisioned in *ILO Convention 87* is no longer “*protected by law*”.

In so doing the workforce has lost its’ democratic right to reasonably and legally seek general improvements for itself through union membership. This fundamental loss of collective voice denies the “*freedom of expression*” in the Australian context that this convention sees as the purpose of unions.

With the removal of any Industrial Relations Commission oversight of the process and outcome of collective agreement making coupled with the removal of the current duress provisions for making AWAs very quickly these will become the new sub-standard for employment.

If you are on the dole you will be unable to knock back any job offer of a crappy AWA without losing your dole so the unemployed will have no choice. Employers will have a huge incentive to get their whole workforce on AWAs as then union will have no right of entry even if they are members.

The Australian Industrial Relations Commission will be left with little more to do than oversee the process of stopping industrial action, taking away union officials rights of entry, arranging for secret ballots on strike action and amalgamating awards.

The so called Fair Pay Commission will be anything but, as it does what Howard thought his handpicked AIRC appointees would do but haven’t, that is reduce the real value of minimum wages overtime dancing to a tune that has been played out for them by countless IMF reports on the Australian economy.

The guarantees of the right to strike to in the glossy brochure is also illusory the minister and any third party affected by your strike will be able to apply to have it terminated. That is after the AIRC has issued an order for a ballot and then the AEC has run the ballot, counted it and announced the result. Effectively giving the boss over a month’s notice to line his customers to take the workers straight back to the AIRC to stop the action.

Unlike in the US there will no recognition of union bargaining rights so even where workers do bargain collectively the boss can immediately start to sign people up on AWAs that override the collective even if they are inferior.

Further, unlike the US, the boss does not have to continue to bargain with the union when the agreement expires. Rather they just give 90 days written notice after agreement expiry and workers don’t go back to their award as they do now but onto the five minimum conditions.

Howard says unlawful termination will still be able to be taken to court neglecting to mention that route is highly expensive it's at least \$1000 just to start the process in the Federal Court and has to satisfy the criminal standard of proof.

The cheap and relatively informal process that takes about 20,000 claims a year will be gone while the expensive and little used process (about half a dozen a year at present) will be all that is left. Any boss will be able to make an unfair dismissal via redundancies that no one regardless of firm size will be able to challenge.

The most insidious aspect of these changes is the illusory nature of the guarantees and the "*protected by law*" stamps that proliferate over the glossy material produced for public consumption. The reality of the impact of these changes on the award system will be in the words of Justice Higgins "*great multitudes of people are to be irretrievably injured in themselves and their families*". The ability of Australians to live in a civilised community will be severely attacked by the cumulative process overtime of workers and their families moving from awards to AWAs.

It's back to the really old days with the divine right of the monarch transformed into the divine right of the employer.

The massive ACTU rally on November 15 must be seen as the beginning of the 2007 election campaign to dismiss Howard summarily and these vicious fascist laws with him.



Authorised by Dick Whitehead, Safety Officer, CFMEU (Construction & General Division) NSW Branch
12 Railway Street, Lidcombe NSW 2141 Ph: (02) 9749 0400
Email: dwhitehead@nsw.cfmeu.asn.au; Web: www.cfmeu-construction-nsw.com
Your Rights At Work website - <http://www.rightsatwork.com.au/>
Tune in to Workers Radio Sydney 88.9FM Weekdays 5:30am – 9:00am