Workchoices: A year in review

Tim Lee, Deputy Secretary, Industrial Relations

Address to CEDA, Melbourne, 30/05/07

Thank you very much and can I start by acknowledging the traditional owners of the land on which we stand. Can I thank CEDA for organising this day, it is a great opportunity to be here and it is a great opportunity to share, to have the podium with these fine people and be able to participate in what I hope will be a good debate about what has actually happened with work choices, over the last years.

If a week is a long time in politics, then the year 2006/07 has been an eternity in industrial relations. We have had high court battles, we have had complete rewrites of the industrial legislation, that many of the people in this room would have work with and have become familiar with, over many years. We are in a brand new place.

It is a great opportunity to be here also, having just come straight from the public accountants and estimates committee of the Victorian Parliament, where my minister has been through a number of questions and not surprisingly, a number of them related to the work choices area.

Just over twelve months ago, the Federal government unveiled sweeping changes to the way we regulate our working lives. Work choices was a controversial, high risk policy then and it is certainly still front and centre now. It lingers as the big barbeque stopper, but the backyard gossip is probably not going on the way that Prime Minister John Howard like it at the moment.

Why, well fingers have been pointed at the ACTU's campaign and I am sure Richard might have something to say about that and criticism of the work choices policy by state governments, like the one I work for and their agencies. But the strength of the communities reaction, I must say, reflected by recent opinion polling, by all the major research companies, the thousands of complaints that are being received by state employment advocates, like the one that we established, the workplace rights advocate in Victoria. Must indicate a deep underlying concern about the policy. Given the level of media interest and the durability of industrial relations, as a key issue, work choices seems certain to be an influential factor in the upcoming Federal election and no doubt why CEDA have attracted so many people to this fine function today. That is surely behind the Howard government's extraordinary move recently to bury work choices as a brand name, after spending more than fifty million dollars on promoting that policy.

As a public servant, I must say, I feel for colleagues in Canberra at the moment, who will be grappling to come to terms with implementing the rapid, recent changes that are occurring in the federal, to federal industrial law.

Opponents of work choices including the Victorian government, they see it as a tricky way of tilting the balance of power away from working Australians and of cutting their pay and conditions. To be clear, by boss, my minister, Rob [Holls] *3:16 feels so strongly about work choices, that he has labelled the policy in his typical flamboyant fashion as a dead skunk. Up until recently, the Prime Minister John Howard, has stead fastly proclaimed work choices to be a constructive response to boosting productivity and employment. But the Prime Minister has been forced to concede that his radical changes might have gone too far in the minds of many working families.

Earlier this month, in what the national media described as a massive back flip, tacitly admitted that parts of work choices were inherently unfair. On the front page of The Age newspaper later week, the work place relations minister, Mr Joe Hockey conceded what the Victorian government has been telling the Federal government for more than a year. That work choices is unfair and that the policy has allowed penalty rates and other protected award conditions to be traded away without adequate compensation and this is a matter that my minister has been consistently pursuing with the Federal government.

Now in term of the recent changes, the introduction of the fairness test. That has been a deliberate move, clearly by the Federal government to amilerierate the policy. There is a couple of things that I wanted to say about the fairness test and it is not quite the barbeque stopper in its own right, but it is certainly gaining a fair amount of attention. They key things that the Victorian government has pointed out about the fairness test are these.

It will have no bearing on 350,000 people, described as the lost tribe, that sign AWA's before May 7th. That is a fact. After May 7th though, the fairness test will apply, the big question and I am sure that something that my colleagues here will debate also here today. Is what effect it is actually going to have. My minister is deeply suspicious of the sudden change of heart, at a time when the Federal government is feeling the pressure electorally. Mr Holls as looked at the test, the fairness test and he believes it is dodgy and he has called it the Claytons test – the test you are having, when you are not having a test.

As I said before, I do genuinely feel for colleagues in Canberra who are trying to implement this most recent change to the industrial legislations. As the state's senior advisor to the industrial relations minister, I obviously have a role in helping to frame legislation applying in the state's jurisdiction, to do with the state's industrial relations. When one is framing legislation, on is looking for certainly and one looks for transparency and clarity in its operation. I would have to say that we are not seeing that in the drafting of this particular piece of legislation, which we have only seen for a very short period of time.

For a start, there is no definition of fair compensation in the bill, against which the test can be administered. As Andrew [Stewart] *6:20 has recently quoted in a Workplace Express has said and I quote, 'the possibility of fair compensation being found, even in the absence of compensation of a monetary value, is still preserved in the legislation'. Stewart also queries whether long service leave as an extra over the legislative minimum, as an example, which they employee might already had, but which is not protect, might also be considered to be fair compensation.

A further query, I would raise it this, in terms of the fairness test. The provision that allows the director of the Workplace Authority to consider personal circumstances and family responsibilities, is of great interest. How will that provision work, it will be interesting to see. For example, if I have family responsibilities, does that mean that I will receive less monetary compensation, than someone who doesn't. I will be very interested to see, if we can how that is actually applied.

The Workplace Authority and I will be interested to hear the views of my colleagues on this, clearly has an incredible amount of power to determine how this particular test will be applied. Again, I feel for the colleagues in Canberra. Someone, like the people who work for me, will be having to right the fairness test handbook. It won't be a matter of handing out the legislation to those who are applying the test, there will have to be a guide, good luck in writing it, we are certainly available to help on that one.

Now I digress briefly in terms of the fairness test. What has happened in the last year? And chair, I think I have three minutes to talk about that. To get to the heart of the matter, Industrial Relations Victoria, commissioned Griffith University to compile a comprehensive, one hundred page report called, The Impact of Work choices, one year on. Perhaps this conference was built around that report. The report evaluates the impact of work choices on Victoria. It assesses the effect of AWA's, but the analysis has been hampered, because critical data, in particular the content on AWA's has been withheld. The report gauges how women are faired and the status of the gender gap. It outlines the impact of the removal of the unfair dismissal protection for employers of lesser than one hundred and one employees. The effect on the economy and productivity and it studies the outcome of work choices on industrial disputes.

Overall, the report the was launched by the Minister, Minister Holls, contends that work choices is not the stimulus for economic growth, that its proponents claim and it is certainly not the recipe for cooperative workplaces. It betrays work choices as a complex and confusing piece of legislation, amounting to more than 2,500 pages of law.

Importantly, the report shows the rate at which conditions are being removed is substantially higher under work choices, AWA's than under pre work choices AWA's. I will give you one case, the case of [Sima Tobin] *9:30, he was seventeen year old student that worked at the surf shop chain in Richmond. She was offered an AWA, which cut her weekend and holiday penalty rates, from about $14:00 and $20:00 an hour respectively, back to the base rate of $9:58 an hour, without any compensation.

We had the case of the workers at a Melbourne call centre, operated for Lufthansa, they were told to sign AWA's which cut their base pay, by between 3% and 10% and it reduced their penalty rates and loadings. The rate at which overtime pay has been cut by AWA's has doubled from a quarter of AWA's in 2002/03, to over half of AWA's in 2006.

In May last year, the federal employment advocate Peter *10:13 told an senate's estimate hearing, that all AWA's sampled in the first month of work choices, removed at least one protected award condition. Since that time, Peter has, according to his evidence to the senate's estimates committee, been unable to release any further AWA's data, because of methodological problems.

My minister has and I have got two minutes, my minister has consistently been seeking the Federal government to make that information available, in order that a reasonable assessment can be made, as to what the actual evidence is of the impact of AWA's. At the moment, all we can assume is what was occurring at the beginning of their implementation has continued.

As you would all know, the Victoria government supports a national system of workplace regulation, but it is ones based on fairness. The Victorian government was the first to urge Canberra to consult with the states, before it introduced work choices. The Victorian government stuck its neck out and it resisted calls from vested interest, to reintroduce a state based industrial relation system.. It pleaded with the Federal government to negotiate on what would actually be the terms of a genuine national system, to which Victoria, which is the only state, generally committed too.

So one year old, the Victorian government does still not support work choices as has been amended, because it continues to fail to meet the Victorian governments benchmark of fairness. It does not provide for rights of collective bargaining, genuine unfair dismissal protection, work and family standards and it doesn't, it is not underpinned in the Victorian governments view by a comprehensive safety net. From the Victorian governments perspective and from my point of new as its chief industrial advisor, this last year of work choices and particularly it's implementation, has been a case study of how something as fundamental as changing, so radically, national workplace policy and change should not be managed.

Thanks very much.

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