

## **Question on Notice**

**No. 397**

**Asked on Tuesday 28 March 2006**

**MS NELSON-CARR ASKED THE MINISTER FOR EMPLOYMENT, TRAINING AND INDUSTRIAL RELATIONS AND MINISTER FOR SPORT (MR BARTON)—**

### **QUESTION**

Now that the Federal Government's so called Work Choices laws have come into effect, how difficult will it be to protect the minimum wage rights of Queensland workers, even taking into account the newly established Fair Pay Commission?

### **ANSWER**

With one stroke, Work Choices has removed the legal entitlement of workers to the pay and conditions set by awards. Instead of the 20 allowable award matters enforceable by law, workers are now guaranteed only five minimum conditions under the new Australian Fair Pay and Conditions Standard (AFPCS) covering minimum pay, maximum ordinary hours of work, annual leave, personal leave and parental leave.

What this now means is that workers can be required to sign a workplace agreement which offers no more than the five minimum conditions required by the AFPCS. This new standard displaces the award system as the minimum floor for the 'No Disadvantage Test' for workplace agreements.

Despite the federal Government's so-called "protection" of preserved award conditions covering loadings and penalty rates this is an empty commitment, simply window dressing with no legal status.

Under Work Choices, workers can lose their award provisions for overtime, rest breaks, redundancy pay, shift allowances, penalty rates, and public holiday pay without compensation. All the employer has to do is to modify or exclude all or part of the protected conditions in the workplace agreement. They are not required to offer any compensatory benefit for the loss of these conditions and they can require the worker to sign the agreement as a condition of employment.

While Work Choices technically protects employees from being forced into workplace agreements in their current job, in reality the employer will be able to apply pressure by threatening them with dismissal if they do not move to a new position on an Australian Workplace Agreement (AWA) or collective agreement. In addition, employers can offer employees a job or promotion on the condition that they accept and sign an AWA or collective agreement.

Furthermore, these workplace agreements are no longer scrutinised to check that they meet the few remaining minimum standards. Work Choices removes the role of the Office of the Employment Advocate (OEA) and the Australian Industrial Relations Commission (AIRC) to test that AWAs and Certified Agreements do not disadvantage the employee or employees in respect of their existing entitlements. From 27 March, workplace agreements will simply be filed with the OEA, which will have no role in certifying that the agreement meets the provisions of the new Act.

The new laws also remove the Commission's wage-fixing powers and hand it to the new Australian Fair Pay Commission (AFPC) with an implied mandate to lower minimum wage increases, a mandate reinforced by the pro-employer bias of its newly appointed members.

Since 1997, the Commission has increased the minimum weekly wage by \$135, setting the minimum wage rate in 2005 at \$12.75 an hour. On every occasion, the federal government has opposed these increases.

The federal government has not said how often the AFPC will sit or how regularly minimum wages will be increased, if they are increased at all, which is likely to lead to employees receiving far lower pay rises than they have received in the past.

What can individual employees do to protect their wage rights under Work Choices?

If they are members of a union, their union can attempt to negotiate with the employer on their behalf. However, if the employer refuses to enter into a union-negotiated workplace agreement, the union member has few options at their disposal. Work Choices has made the process of taking protected industrial action protracted, complicated and expensive with the possibility of excessive penalties being incurred by individuals as well as unions.

The federal Government has assured employees that an expanded Office of Workplace Services (OWS) will respond to any complaints about unlawful agreement making, non-payment of wages or loss of minimum conditions. However, even the additional 200 industrial inspectors Australia-wide will not match the very successful compliance and enforcement regime applied under the Queensland industrial relations system by our own industrial inspectorate.

In 2004-05, the State Industrial Inspectorate recovered over \$11m in unpaid wages for employees in Queensland and over \$5m during the first six month period of 2005-2006.

By contrast, the federal Department of Employment and Workplace Relations (DEWR), is currently prosecuting rather than protecting employees under its federal enforcement policies. Lawyers acting on behalf of the DEWR's workplace inspectorate are prosecuting 72 tradesmen and labourers who stopped work in central Queensland in protest at unsuitable accommodation when working under a contract to provide maintenance work for a mining company.

The workers took industrial action in early 2005 after complaints that their demountable accommodation was overrun with feral cats, fleas and smelt of raw sewage from a nearby faulty sewer were not resolved by the company.

Each worker is now being individually prosecuted by the federal Government on the basis of an alleged breach of the federal legislation.

This action demonstrates a new approach by the federal workplace inspectorate which is prepared to persecute individual employees in the interests of their employer. With the expansion of the federal inspectorate under Work Choices their powers to pursue and prosecute individual employees will only increase.

Work Choices has deregulated workers rights to such an extent that it will be virtually impossible to protect the minimum wage rights of Queenslanders and their families. The real effects of the new laws will be to drive down wages and conditions leaving employees, especially vulnerable and low-skilled workers, with little choice but to take what is offered to them.

In order to assist employees to work out their entitlements in this new deregulated environment of Work Choices, the Queensland Government has launched the *Fair Go Queensland Advisory Service* with a Hotline for queries on 1300 371 841.