

Workchoices: A year in review

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Thank you CEDA, thank you Mr Chair and good afternoon. I thought being the fourth speaker, you would be, you attention might be starting to wain by this time, so I thought I might show you a little bit of TV. Some of you might have seen this before. Those of you who watch a program called McCloud's Daughters and might have otherwise seen it on an otherwise, channel nine program and in advance, I would actually like to thank channel nine, for allowing me to show this particular piece. So if I could just throw to my audio man, thank you.

Patrick, great. I have been meaning to talk to you. I am restructuring the business, you are fired.

What!

But I am pleased to be able to offer you a new job under his workplace agreement. You get a new title, assistant manager, more flexibility and more responsibility.

Less money. Much less money.

Oh you are not taking into account the bonuses. You work hard, you make more.

I will stick with what I have got thanks.

Well it is not actually your choice, you either sign this contract or I have to employ someone else. It is up to you.

Hey Phil, you can't do this.

I believe that you will find I can. It is either my way or...

I'll take the highway, I quit.

Suit yourself, but if that dump goes through, I am going to need more staff. I am talking management opportunities, you think about that.

There is nothing to think about, I am not going to work for you Phil.

Taylor, you interested?

No way, I am not working for you either Phil.

Hang on, you can't go now, you will leave me short staffed.

You should have thought of that before. What are you going to do now?

I wish I knew.

Now my first question is to Richard. Is the ACTU now funding television programs as part of its campaign? You could be forgiven for believing that after seeing that and of course the recent Bastard Boys program.

I showed that, because I think it brings into perspective two interesting concepts of themes. One is, the perception is that this is what work choice is all about or you could take form that, this is a work choices thing. When of course it isn't. Phil can't do that, he is wrong. That is unlawful what he has proposed, what he has done there. Yet, the sentiment is, if you look at a lot of the anecdotal material out there, that this is the sort of thing that is happening, day in day out. And as I say, it is actually unlawful. The other thought is, the fact that here is a small business operator, who at the end of the day, has to maintain a viable workforce and he is at great risk, if he is not looking after and engaging with his or her workforce and I think those two theses come out nicely in that program.

There has been a lot of, a lot of the debate about work choices seems to be driven by a lot of the anecdotal material, which is out there. There has been a sweep of articles which talk about what employers aren't doing as opposed to what employers are doing and I have got a couple here. This first one is based upon a survey that Mercer conducted, just prior or just upon work choices coming into effect and it was a survey done of one hundred and eighty employers and the middle quote there, few employers would consider reducing their, you know, their employees, the workers terms and conditions. Two things about that. There is an assumption that the reduction of terms and conditions is something that is readily available to an employer under work choices, which is not the case and nor should it. And but secondly the fact that, employers have said, we are not doing that.

Here is another one. This one comes from The Age and this says or the theme of it says that, employers are actually, big employers are actually opting out of work choices, when what is happening here, is that a lot of the medium and larger employers are subject to collective agreement and unions are actually quite successful in reaching agreements with employers, pre work choices, which are still current now.

So what is it, I ask myself, you know you read a lot of the news reports and so forth and it is said that, an employer is taking advantage of work choices. And I ask myself, well what, what is that a reference to? Is it the McLeod's Daughter's strategy, because if it is, it is unlawful. It is not actually something that work choices allows. Is it redundancies? In circumstances where there is a loss of unfair dismissal rights, maybe, but of course a redundancy still has to be genuine and the onus is on the employer to establish that. Is it hiring new starters on Australian Workplace Agreements? That was of course a function of the pre work choices legislation and there has been a lot of talk about AWA's cutting back entitlements. From what I can see, there isn't the data which talks about the compensation for the cutting back of those entitlements.

And I was only reading an article yesterday, where Mr *6:06 says as much. The reason why that data has not being produced is that it is not there. The reason why the more fulsome production of evaluated data is not coming out, is because the flip side isn't being shown and therefore, there isn't

a balanced assessment. All we have heard about is the way in which entitlements have been cut. We haven't heard about the extent to which there is compensation on the other side. Is it the employer Greenfield's agreements. The fact is, there hasn't been too many of those and in any event, they only have a one year life and after that one year, employees can, if they so wish, with the aid of a union, collectively bargain to replace that. It is working away from collective negotiations, if you are walking away from union discussions, if you are to believe a lot of the rhetoric flying around, it would seem as if there is an incapacity to collectively bargain under work choices and those of you in the room who are practitioners, will know that that is not the case. There remain collective bargaining rights in work choices, which Labour, in fact will keep intact.

Is it, just something about that though. It is interesting, I have a number of clients of mine say, to the workforce, sorry the union have said to the workforce, your employer is not or is refusing to reach an agreement with us or is not agreeing to the agreement on our terms, so they are taking advantage of work choices. And I say to my client, well tell the workforce that the union not agreeing to the agreement that you want, is taking advantage of work choices. You don't actually sort of ever here that flip side.

Is it resisting the prohibitive content? There are restrictions on certain content going into agreements under work choices. Labour is going to change that. The response has been for many employers to agree to side deals with actually include this content and in fact many unions have taken advantage of this to include in those deeds, rights and restrictions over and above what they otherwise would have had.

Is small business unfairly dismissing? Maybe that is what it's about. The counter to that is I guess again, Phil needs a workforce, he needs to treat his workforce properly and in today's labour market, that is all the more paramount.

Finally, is it the loss of these protective award conditions? Again, maybe, but that is dealt with by the government's new safety net. So what about, what can we say about the impact of work choices? From the perspective of a practitioner that at least acts for medium and larger size employers. It is hard to see that the sky has fallen in a way, predicted by unions at the advent of this legislation. Unions remain influential, very influential. Those employers that collectively bargain, know that the reason why they get to the table, is the threat of industrial action and that remains. Many of them are subject to old collective agreements. To those that have bargained with new agreements, as I said previously, prohibitive content, content which largely go to union rights, such as delegate rights and enhanced right of entry and so forth and has gone into side deeds.

And they final point about union influence. Who has heard about union solidarity? Put up your hand if you have heard about union solidarity? Right. Richard, you haven't put your hand up. He knows about it. And you know, I have had to advice many an employer that has been in a bargaining stoush, only to confront the amorphous forces of union solidarity blockade and form a picket to prevent the movement of goods, with it being very difficult to identify who these people are, because they are unknowns and it is very difficult to draw a connection between them and the particular union who, let's face it, is ultimately organising that sort of conduct.

Strong growth in AWA's, that is bought out by the data of the eight hundred and fifty or so, thousand AWA's that have come into place since, what '97. Three hundred area a post work choices phenomenon. For large employers and again, a lot of the client base that I deal with, you know, they have been largely compliant focussed, they have been concerned to ensure that their obligations in bargaining have been met. They are doing the right things around things like payroll records and that they are understanding and coming to grips with the way in which the minimum

entitlements interact with their awards and agreements. Some of whom face many, many of these various instruments.

And finally, I think it is fair to say that the regulator has been far more active in pursuing prosecutions and the like against employers who get it wrong, even if they just do make honest mistakes. Finally I just want to pick up on a comment that David made. This is statistics around days lost in the construction industry. Draw your own conclusions about the correlation between that statistic and the billing and construction legislation and the ABCC, but on that, there tends to show that there is a correlation that has a massive impact on the economy and the public interest nationally. And there is of course talk of labour dismantling that body and as David said, most, if not all in the sector agree that that is a bad outcome. I was going to talk a bit about what labour was doing, but I think I am out of time, so thank you once again.

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