

HOBSON'S CHOICE - NOT "WORK CHOICES"

John Howard's Radical Industrial Relations Regime and its Incompatibility with ILO Standards

**Address to the
Australian Workers Union
Sydney**

**Kevin Rudd, MP
Shadow Minister for Foreign Affairs, Trade and International
Security**

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Tobias Hobson ran a thriving carrier and horse rental business in Cambridge, England, around the turn of the 17th century.

Observing that the Scholars rid hard and were prone to choose his best horse, his manner was to keep a large Stable of Horses ... when a Man came for a Horse, he was led into the Stable, where there was great Choice, but he obliged them to take the Horse which stood next to the Stable-Door; so that every Customer was alike well served according.

In no time, people adopted Hobson's Choice to mean "an apparently free choice when there is no choice at all" in situations having nothing to do with horses¹.

Hobson's Choice is in fact the better name for Work Choices – John Howard's new industrial relations regime.

¹ www.phrases.org.uk

The truth is that under Work Choices there is no real choice at all.

Upon entering John 'Hobson' Howard's new stable you will be given but one horse to ride.

A radical hack registered as AWA, sired by Ideological Obsession, out of Work Till You Drop.

Work Choices offers no choice at all.

It is extreme, unfair and irresponsibly will send Australia down the lower skilled, lower paid, lower productivity path.

This is not a vision for a smarter Australia.

This is not a vision for a knowledge nation.

Nor is it a vision for a more competitive Australia.

It is a tired man's tired dream that unfortunately will become the reality very soon.

The Government has failed to put forward any rigorous economic analysis supporting the introduction of this extreme agenda.

In fact, it has failed to put forward any economic analysis full stop.

At least it hasn't released any.

That is because there is no supporting evidence that individual contracts enhance productivity.

But there is plenty of evidence to the contrary.

Plenty of evidence that this Bill will further undermine Australia's productivity growth and further undermine our international competitiveness.

That is bad for Australian exporters, bad for future job growth, bad for the economy and of course bad for working families.

Today I want to focus on three key areas:

- The Howard Government's consistent violation of International Labour Rights since it came to office in 1996.

- Work Choices continues that violation – indeed it undermines Australia’s international obligations even further.
- Australia’s declining productivity which has contributed to our appalling trade performance; and
- The fact that Work Choices will do nothing to enhance productivity growth.
 - Rather it is likely to exacerbate that deterioration - further undermining our international competitiveness and further undermining our trade performance.

INTERNATIONAL LABOUR STANDARDS

The International Labour Organisation is the UN’s specialised agency that pursues the promotion of social justice and internationally recognised human and labour rights.²

The ILO was founded in 1919 and is the only surviving major creation of the Treaty of Versailles which brought the League of Nations into being and became the first specialised agency of the UN in 1946.

The ILO operates on the basis of a tripartite structure where representatives of workers and employers enjoy equal status with those of governments and where ILO standards are adopted with the support of unions, governments and employer representatives.

Australia has a strong and proud association with the ILO.

We were a founding member in 1919 and have been an active and constructive contributor to its activities and promotion of workers’ rights across the globe.

At least that was the case until the election of the Howard Government.

Since that time, Australia’s contribution to the ILO and respect for fundamental workers rights and standards has been significantly diminished.

Under John Howard, Australia’s ILO obligations were immediately breached by the Workplace Relations Act in 1996.

² www.ilo.org

Despite that – and herein lies the hypocrisy of the Prime Minister – Australia was elected to the Governing Body of the ILO representing the Asia Pacific region in June of this year.

At that time Minister Andrews claimed that:

‘Australia has much to offer ILO members and we look forward to greater engagement with the ILO, both as a Governing Body member and representative of our close neighbours’³.

Well the Minister should be aware that being elected to the ILO Governing Body brings with it additional responsibilities - particularly, the responsibility to lead by example and show genuine substantive commitment to the principles of the ILO.

Australia has never been a country to sign up to international law or conventions just for the sake of it.

We have always carefully considered the implications of committing to such agreements before proceeding to do so or, alternatively, deciding not to commit if we did not believe it was in our interests to do so.

Such careful consideration reflects a proper political and policy perspective that we should not commit to such agreements unless we genuinely believe in the policy objective - and genuinely believe we have the capacity and willingness to adhere to our obligations.

That has been the case right across the broad spectrum of international policy including trade, environment, defence and human rights obligations.

It was most definitely the case in regard to our observance of ILO conventions.

Almost all of the ILO conventions have been accepted by Australia⁴, and as a result we are under an obligation to ensure that these standards are met in domestic law and practice.

There are two fundamentally important ILO conventions.

They are:

- No 87 – Freedom of Association and the Right to Organise Convention; and

³ Andrews, K. Press Release 9 June 2005

⁴ Two core ILO Conventions that Australia has not ratified are Convention No 138 (minimum age) and Convention No 182 (worst forms of child labour).

- No 98 – Right to Organise and Collective Bargaining.

Respect for the principle of freedom of association is regarded as so important to the operation of the ILO that the obligations to do so are regarded as inherent in the fact of membership of the Organisation⁵.

This is reflected in the ILO Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Conference in 1998 which declared that:

“...all Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith, the principles which are the subject of those Conventions, namely:

- (a) *freedom of association and the effective recognition of the right to collective bargaining.”*⁶

As pointed out by the International Centre for Trade Union Rights in its submission to the Senate Inquiry into the Work Choice Bill, the 1998 Declaration was accepted by the Howard Government.

In 1999, the then Minister for Employment, Workplace Relations and Small Business, Peter Reith told the ILO Conference that:

*“The Declaration on Fundamental Principles and Rights at Work, which has the firm support of the Australian Government, is a significant milestone on the road to reform of the standard setting process. The Australian Government’s workplace relations legislation reflects our respect for the fundamental principles in the Declaration.”*⁷

Well there is a yawning gap between the Government’s commitment in theory and the Government’s implementation in practice of its ILO obligations.

Since the implementation of the Workplace Relations Act 1996, the Government has accumulated a lengthy list of ILO Convention breaches that attest to its complete disregard for basic human and worker rights.

Let me detail its track record.

⁵ ICFTU, Submission to Senate Inquiry into Workplace Relations Amendment (Work Choices) Bill 2005, p10

⁶ www.ilo.org

⁷ ICFTU, Submission to Senate Inquiry into Workplace Relations Amendment (Work Choices) Bill 2005, p11

In 1998, the ILO Committee of Experts found that the 1996 Workplace Relations Act contravened Convention 98 by:

- Favouring single-business agreements over other levels of agreements;
- Failing to promote collective bargaining as required by Article 4 owing to the primacy of AWAs; and
- Limiting the scope of negotiable issues.

In 1999, the ILO Committee of Experts expressed concern about the limits on the right to strike contained in the 1996 Workplace Relations Act. Three areas of particular concern were identified:

- Restrictions on the subject matter of strikes, including the effective denial of the right to strike in the case of the negotiation of multi-employer, industry wide or national level agreements;
- The prohibition of sympathy action; and
- Restrictions beyond essential services.

In June of this year, the ILO again strongly criticised the Government for its failure to meet its international obligations to protect the rights of workers to collective bargaining arising from the provisions of the Building and Construction Industry Improvement Bill 2003 and Act 2005.

And just this week, the ILO upheld another ACTU case taken against the Howard Government's Building and Construction Bill in regard to freedom of association.

The ILO recommended that the Government:

- Amend the Construction Bill to ensure that any reference to unlawful industrial action conforms with freedoms of association principles;
- Change the Bill to eliminate excessive impediments, penalties or sanctions against industrial action in the building and construction industry;
- Review the Bill to ensure the determination of the bargaining level is left to the discretion of the parties and is not imposed by law; and
- To keep the ILO informed of relevant developments⁸.

So the Howard Government already has a litany of ILO findings and criticisms against it for failing to meet basic and core labour standards.

⁸ ACTU Media Release 21 November 2005

And that is before the ILO has even had the opportunity to assess the Work Choice Bill.

Sharan Burrow has indicated that the ACTU will lodge an action in the ILO about Work Choices once it is enacted by the Parliament.

Work Choices contains several provisions dropped from the final version of the Building and Construction Bill but subject to the ACTU's original ILO complaint about the 2003 Building Bill⁹.

Given the ILO's findings so far on the Government's industrial relations laws already enacted there is a reasonable prospect that major aspects of Work Choices will also be found to violate ILO conventions.

In this regard the International Centre of Trade Union Rights (ICTUR) in its submission to the Senate Inquiry suggests that the Bill will worsen Australia's already long list of ILO breaches in at least eight initial ways including¹⁰:

- First, the prohibition on "pattern bargaining" in the 2005 Bill which would result in an amplification of major breaches of ILO Conventions 87 and 98 identified by the ILO Committee of Experts - i.e. by further restricting the right of employees and their representatives to bargain and take industrial action in support of multi-employer or industry-wide collective agreements.
- Second, the prohibition on the incorporation of a range of matters in workplace agreements which is likely to include trade union training leave, mandating union involvement in dispute resolution and provide a remedy of unfair dismissal, represents a severe, unnecessary and impermissible restriction on collective bargaining and further compounds Australia's breach of ILO Convention 98.
- Third, under the 2005 Bill an AWA will wholly displace a collective agreement for the life of the AWA. The Bill severely curtails the efficacy of collective agreements vis-à-vis AWAs in flagrant disregard of both Australia's obligations under ILO Convention No 98 and previous findings of the ILO Committee of Experts.
- Fourth, the right of entry provisions in the Bill would reduce union access to workplaces in a way which would: further impair workers' freedom of association and the right to organise; undermine "right of entry" as a way of ensuring compliance with industrial instruments; and unjustifiably impede unions from operating effectively in both monitoring compliance and organising and recruiting.

⁹ ACTU, Media Release, 21 November 2005

¹⁰ ICTU 2005 p 6

They are just some of the many potential breaches of ILO Conventions contained in the Government's latest Bill attacking hard-won workers' conditions and rights.

But not only is the Bill potentially in breach of Australia's obligations as a signatory of the ILO, it also falls foul of commitments made by the Government under the US Free Trade Agreement.

A trade agreement in which the US forced John Howard to commit to basic ILO standards.

How ironic is that?

Under Chapter 18 of the US FTA:

"The Parties reaffirm their obligations as members of the International Labour Organisation (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1989).

Each Party shall strive to ensure that such labour principles and the internationally recognised labour principles and rights set forth in Article 18.7 (of the FTA) are recognised and protected by law."

And what are those rights set forth in Article 18.7?

Internationally recognised labour principles and rights means:

- (a) the right of association; and
- (b) the right to organise and bargain collectively.

So, through the US FTA the Government reinforced its commitment to meet ILO obligations.

Through Work Choices not only will the Government be potentially breaching its ILO obligations, but it will also be breaching its FTA obligations to the US.

So should we be surprised that the Government is prepared to trample all over hard won conditions, awards, and the rights of working families in this new Bill?

Of course not.

The precedent was set in the Workplace Relations Act of 1996 and the Building and Construction Industry Act of 2003.

Should we be surprised that the Government is prepared to ignore its international obligations in regard to labour rights under the UN's ILO Conventions?

Of course not.

This Government has form in ignoring, trampling all over, criticising or attacking various UN bodies when it suits its domestic political purposes.

- In March 2000, Foreign Minister Downer unleashed on the UN Commission on the Elimination of Racial Discrimination for having the audacity to critique Australia's mandatory sentencing laws on the detention of aboriginal people.
- In 2002, Downer again unleashed on the UN High Commissioner for Refugees over its criticism of the Government's approach to the mandatory detention of asylum seekers.
- In July 2002, Australia was one of only eight countries that voted against the UN Protocol on Torture; and
- In the lead up to the Second Iraq War beginning in March 2003 the Prime Minister and other members of his Government repeatedly attacked the actions of the UN Security Council for failing to back the Government's determination to invade Iraq.

Australians cannot sit idly by while its government systematically traduces Australia's obligations under international law – together with our broader commitment to the maintenance of the fabric of the multilateral order.

It is inconsistent with Australia's long-term tradition of good international citizenship going back to the days of Australia's role in the foundations of the United Nations.

It is also inconsistent with Australia's overall national interests in having other states (large and small) uphold the international order on whose stability our stability ultimately rests.

And it is inconsistent with Australia's specific national interests in having developing economies apply ILO standards to the domestic labour laws under which their economies operate.

INTERNATIONAL COMPARISONS

In addition to the Government's complete disregard for fundamental labour standards John Howard is also hell bent on driving wages down.

Doing away with overtime, penalty payments, leave loadings and the like.

Let me remind you what Hobson Howard - then Shadow Minister for Industrial Relations -- said at the 1992 ACOSS Congress:

*"It is a strong view of ours that if anyone in this country makes a capital investment than it ought to be possible to run that capital investment 24 hours a day, seven days a week, without penalty or additional costs as to the time of the day or night that the capital investment is run".*¹¹

And nothing has changed.

John Howard's vision remains the 24 hour workplace, seven days a week without penalty or additional costs for labour working overtime, night shift, or public holidays.

It is not as if Australians are not already hard working men and women.

We only have to compare our current workplace arrangements with other countries.

Australian employees worked an average of 1855 hours each in 2000 compared to the developed country average of only 1643 hours in 2000 - "so Australians take the prize as the hardest working workers in the developed world"¹².

A study by the International Labour Organisation found that Australia had the fourth highest proportion of people who work 50 hours per week and that the number of Australians working these hours had grown faster than in any industrialised country over the past 20 years.

Australia is by no means overly generous when it comes to public holidays or length of annual leave per year.

Japan has the most public holidays per year - 5 more than Australia in 2000.

While Australia's current minimum annual leave of 20 days is consistent with that offered in most OECD countries and around 5 days less than that applying in many EU member states.

¹¹ John Howard, *The future of work in Australia*, ACOSS, Pluto Press, 1993

¹² Tiffen, R and Gittins, R, *How Australia Compares*, Cambridge University Press, 2004

As noted earlier this week, by Dr Jill Murray, Senior Lecturer in Law at La Trobe University¹³, the Work Choices Bill does not set minimum or maximum hours of work, except for the requirement of the of the 38 hour week averaged over 12 months

This means that the bill fails to protect a minimum period of daily rest.

In the 25 EU Member States it is a legal requirement that workers have at least 11 hours rest each working day.

Many countries go further and legally limit the ordinary hours of the working day to eight or ten.

Most EU countries also designate a minimum of one day a week for rest – a legal right not provided by the bill.

So the Howard Government wants us to work longer for less pay even though we are one of the hardest working nations in the industrialised world, and under the new arrangements workers will not even have the minimum right of one day a week for rest.

THE ANSWER IS PRODUCTIVITY

Australia is not going to compete against China, India and other developing countries on the wages front.

The Howard Government wants to drive us down that path when common economic sense tells us that we have to improve our levels of productivity by investment in skills, education, infrastructure and R&D.

On this front, Australia has been falling behind and as a result we are experiencing our worst trade performance since the end of the Second World War.

Australia recorded another trade deficit of \$1.6 billion in September - the 44th consecutive monthly trade deficit.

- Last year Australia recorded its largest trade deficit ever of \$25.5 billion compared to a deficit of only \$864 million in 1996;
- That contributed to Australia's record current account deficit last year of \$57 billion;

¹³ Dr Jill Murray, We're headed for a 'work till you drop' workplace, The Age 24 November 2005

- Blowing out Australia's foreign debt to a record level of \$430 billion leaving Australia exposed to any sudden adverse change in sentiment by international financial markets.

Despite Government assurances, any recovery in Australia's trade performance is turning out to be at best a very protracted affair.

Average annual export growth under the Howard Government between 1996 and 2004 has been less than half that achieved by Labor between 1983 and 1996 - right across the board in commodities, agriculture, manufactures and services.

Alarmingly, this appalling trade performance has occurred at a time of extremely robust world economic growth, record commodity prices and our best terms of trade for 30 years.

Numerous reports from the RBA, IMF, OECD and others have attributed our poor export performance to a range of factors including infrastructure constraints, skills shortages and a lack of Government support and investment in education, R&D, and innovation.

The combination of these factors has led to our worst productivity growth figures in 19 years and we must reverse this slide.

As I outlined in the House of Representatives debate on this Bill - in the 90s, Australia enjoyed the best run of productivity growth on record on the back of the comprehensive economic structural reform program undertaken by the Hawke and Keating Governments.

Compared to the US, Australia rose from 79 per cent of US productivity rates in 1983 to 86 per cent by 1998.

But since 1998, we've gone into decline.

We've now fallen back from 86 to 81 per cent, losing most of the gains of the Labor years.

The OECD has said that 'productivity measures consistently show that output per person-hour in Australia is well below that in leading countries'.

That is a fundamental cause of our export decline and a threat to our future economic growth and prosperity.

In announcing his Workplace Relations reforms in May of this year, the Prime Minister¹⁴ said that:

“...our future living standards will rely largely on the productivity of our workers and their workplaces...only through this (reform) will the full potential for productivity gains in the Australian economy be realised.”

In advancing these claims the Government has not advanced any cogent body of evidence.

It has not even tried to do so.

It has just asserted it as though it is fact completely ignoring the substantial body of evidence to the contrary.

As a submission to the Senate Inquiry by 151 Australian Industrial Relations, Labour Market and Legal Academics outlined:

“There is no persuasive evidence systematically linking industrial relations systems and industrial relations changes to productivity improvement.

*There are many reasons why productivity grows but industrial relations legislative changes are not generally a source of productivity growth across OECD countries”.*¹⁵

In his address to the Sydney Institute in July, the Prime Minister sought to claim some productivity basis for his reforms on the back of New Zealand’s experience with Employment Contracts.

It is evident from the detailed work of David Peetz¹⁶ that the radically different IR paths taken by Australia and New Zealand in the 1990s lead to significantly different outcomes in terms of productivity growth.

Australia moved towards a system of collective enterprise agreements, while New Zealand shifted to individual contracts.

The result – Australia’s growth in labour productivity was far superior to New Zealand’s year after year because collective agreements encourage more harmonious workplaces while also enhancing greatly the industrial flexibility of individual firms.

¹⁴ Howard, J. Prime Ministerial Statement: Workplace Relations, 26 May 2005

¹⁵ Research Evidence About the Effects of the ‘Work Choices’ Bill, A Submission to the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, by A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market and Legal Academics, November 2005

¹⁶ Peetz, D, Is Individual Contracting More Productive? Griffith University, 2005

In fact New Zealand's productivity fell below the levels it achieved in the 1980s – and yet now at a time of falling productivity growth in Australia the Prime Minister wants to go down the very same New Zealand path.

The Business Council of Australia has for some time been putting forward a productivity enhancing agenda that goes to tax reform, business regulation and addressing infrastructure constraints.

In its Submission to the Senate Inquiry, the BCA suggest the Work Place Relations amendments will have productivity pay-offs but provide no supporting economic analysis to justify such claims.

Work the BCA has had undertaken by Access Economics notes that reforms to workplace relations policies have boosted the pace of productivity growth, largely by linking wages more closely to enterprise-level performance and productivity.

This point reinforces Peetz's research referred to above that enterprise based collective agreements drove Australia's productivity in the 1990s - not enterprise based individual agreements along the lines of New Zealand's experience.

The Government has once again sub-contracted ACCI to assist in the hard sell on its IR changes.

But it too fails to make any analytically rigorous case that AWAs will enhance productivity growth.

In its submission to the Senate Inquiry, ACCI seeks to claim that such extreme reforms are necessary to spark the next productivity surge.

Their supporting evidence is a grab bag of economic studies on labour market reform in general, including the need to cut the minimum wage, ACCI's overriding credo of boosting profits by reducing wages.

As Peetz said in his appearance before the Senate Inquiry:

“When you look at the studies that are referred to by ACCI, very few of them actually refer specifically to the sorts of things that are directly related to the impact of the bill upon productivity. In particular, the most important aspect of the bill is the promotion of individual contracting at the expense of other methods of wage determination. A lot of the studies that are referred to are not about productivity at all.”¹⁷

¹⁷ Peetz, D. Committee Hansard, 17 November 2005

The bottom line is that John Howard's Hobson's Choice is a triumph of ideology over evidence.

It is a triumph of prejudice over reason.

It is a triumph of politics over economics as John Howard's underlying political agenda is straight forward – to crush organised labour.

Australia's level of productivity could diminish further if these new laws lead to significant disruption in the workforce and/or a reduction in investment in skills and technology as employers seek to increase productivity by cutting wage costs rather than investing in new plant and equipment and upgrading the skills of their workforce.

Any further reduction in productivity will exacerbate our appalling trade performance.

In their latest Long Term Economic Forecast for Australia, BIS Shrapnel¹⁸ definitively state that:

“As it currently stands the proposed changes will do little to improve labour productivity.”

And in a stark warning, particularly when our economy is burdened by record levels of debt and significant external imbalances, BIS Shrapnel question the whole basis of these reforms by also noting that:

“...it's probably a bad time macro-economically to buy a fight on industrial relations.”¹⁹

CONCLUSION

It is a bad time to be going down this path when there are deep economic uncertainties ahead.

It is a bad time to be going down this path when long-term productivity growth instead should be being built on the back of education, skills, training, R &D and infrastructure.

It is a bad time to be going down a path that has only one direction for Australian working families.

¹⁸ BIS Shrapnel Long Term Forecast for Australia 2005-2020, August 2005 p72

¹⁹ Ibid p73

Beyond these considerations, however, we are we embarking on a set of radical, extreme and ideological changes that will further undermine Australia's adherence to fundamental internationally codified labour standards.

International labour standards that Australia has constructively participated in the development of over many decades

International labour standards that are integral to a civilised international economic order that seeks to eliminate (not encourage) exploitation in the workplace.

International labour standards that Australia now as a member of the Governing Council of the ILO should be even more fundamentally committed to upholding.

Australian working families deserve better than these laws.

Australia's long-term competitiveness deserves better than these laws.

Australia's international standing demands better than these laws.