APPLYING CATHOLIC SOCIAL TEACHING

TO THE WORKCHOICES LEGISLATION

INTRODUCTION

Late in 2005, the Federal Government passed the WorkChoices Legislation through the Federal Parliament, using its numbers to guillotine the debate and ensuring that passage through both Houses of Parliament was achieved by Christmas that year .

Following the drafting of the accompanying regulations, the WorkChoices Legislation came into effect on and from the 27th March, 2006.

We have now had over twelve months experience with the Legislation and, accordingly, it can be analysed in the light of Catholic Social Teaching on the subject.

We can also examine the areas of the WorkChoices Legislation which will need to be amended if the Legislation is to apply in a manner consistent with Catholic Social Teaching.

CATHOLIC SOCIAL TEACHING

For more than a hundred years, the Catholic Church has made its position clear in regard to the world of work, the duties of employers, together with the rights and responsibilities of the working person.

Formal Catholic Social Teaching on these subjects commenced with the encyclical, Rerum Novarum, in 1891, and this has been followed by a regular pattern of social encyclicals ever since.

In preparing for this presentation, I have used the encyclical letter, Laborem Exercens, issued by Pope John Paul II in 1981.

The encyclical was addressed not only to the various members of the episcopate and the ordained priesthood but to all the members of the Catholic Church and "to all men and women of goodwill".

The encyclical starts with an assertion of the dignity of man when it says "Man is made to be in the visible universe an image and likeness of God himself, and he is placed in it in order to subdue the earth".

The encyclical then asserts the responsibility of the Church to ensure the rights of the working person.

"But the Church considers it her task always to call attention to the dignity and rights of those who work, to condemn situations in which that dignity and those rights are violated, and to help to guide the above-mentioned changes so as to ensure authentic progress by man and society".

The encyclical asserts that the value of human work is determined by the fact that it is done by a human person.

"….. the basis for determining the value of human work is not primarily the kind of work being done but the fact that the one who is doing it is a person".

The encyclical goes on to insist that "work is for man and not man for work".

The dignity of the worker is again brought out in the encyclical when the Pope says:

"….. it should be recognised that the error of early capitalism can be repeated wherever man is in a way treated on the same level as the whole complex of the material means of production, as an instrument and not in accordance with the true dignity of his work -that is to say, where he is not treated as subject and maker, and for this very reason as the true purpose of the whole process of production."

The encyclical recognises the role the trade unions can play.

"Through appropriate associations, they (the workers) exercise influence over conditions of work and pay, and also over social legislation."

The encyclical clearly states the Church's position on the side of workers to ensure their just entitlements when it says:

"In order to achieve social justice in the various parts of the world, in the various countries, and in the relationships between them, there is a need for ever new movements of solidarity of the workers and with the workers. This solidarity must be present whenever it is called for by the social degrading of the subject of work, by exploitation of the workers, and by the growing areas of poverty and even hunger. The Church is firmly committed to this cause, for she considers it her mission, her service, a proof of her fidelity to Christ, so that she can truly be the Church of the poor. And the poor appear under various forms; they appear in various places and at various times; in many cases they appear as a result of the violation of the dignity of human work:

either because the opportunities for human work are limited as a result of the scourge of unemployment, or because a low value is put on work and the rights that flow from it, especially the right to a just wage and to the personal security of the worker and his or her family."

The encyclical discusses the importance of work in the formation and the functioning of the family which is the fundamental group unit in our society when it says:

"Work constitutes a foundation for the formation of family life, which is a natural right and something that man is called to."

The encyclical then goes on to say:

"…...work is a condition for making it possible to found a family, since the family requires the means of subsistence which man normally gains through work."

The encyclical has a lengthy analysis devoted to the teaching that:

"…...we must first of all recall a principle that has always been taught by the Church: the principle of the priority of labour over capital."

And again:

"We must emphasise and give prominence to the primacy of man in the production process, the primacy of man over things."

The encyclical then explains "a fundamental error, what we can call the error of economism, that of considering human labour solely according to its economic purpose."

The encyclical says that "economism directly or indirectly includes a conviction of the
primacy and superiority of the material, and directly or indirectly places the spiritual and the personal (man's activity, moral values and such matters) in a position of subordination to
material reality."

The encyclical continues on to say: "The error of thinking in the categories of economism went hand in hand with the formation of a materialist philosophy ".

The encyclical addresses the rights of workers and it puts these rights within the context of the broader perspective of human rights. The encyclical says that work "is also a source of rights on the part of the worker". It says "The human rights that flow from work are part of the broader context of those fundamental rights of the person".

The encyclical says that: "The key problem of social ethics in this case is that of just remuneration for work done".

The encyclical states that: "Just remuneration for the work of an adult who is responsible for a family means remuneration which will suffice for establishing and properly maintaining a family and for providing security for its future. Such remuneration can be given either through what is called a family wage or through other social measures such as family allowances or grants to mothers devoting themselves exclusively to their families."

The encyclical also devotes attention to the right of the worker to rest from their employment. "Another sector regarding benefits is the sector associated with the right to rest. In the first place this involves a regular weekly rest comprising at least Sunday……"

The encyclical addresses itself to the importance of trade unions when it says:

"All these rights, together with the need for the workers themselves to secure them, give rise to yet another right: the right of association, that is to form associations for the purpose of defending the vital interest of those employed in the various professions. These associations are called labour or trade unions."

The encyclical addresses the responsibilities of trade unions as follows:

"Their task is to defend the existential interests of workers in all sectors in which their rights are concerned. The experience of history teaches that organisations of this type are an indispensable element of social life, especially in modern industrialised societies."

And again:

"They are indeed a mouthpiece for the struggle for social justice, for the just rights of working people in accordance with their individual professions."

Finally, the encyclical links work with the redemption of mankind by Jesus Christ through his cross:

"The Christian finds in human work a small part of the Cross of Christ and accepts it in the same spirit of redemption in which Christ accepted his Cross for us."

APPLYING THE CHURCH'S TEACHING TO WORKCHOICES

Let us now take a look at the WorkChoices Legislation in the light of the Catholic Church's social teaching.

1. Unfair Dismissals

Under the WorkChoices Legislation, workers have lost almost all their rights to seek reinstatement or compensation in the Industrial Relations Commission in the event they are dismissed unfairly.

Under the Legislation, where a company has less than 100 employees, an individual employee has no right to reinstatement or compensation in the event of unfair dismissal. It has been estimated that businesses in this category employ approximately 3.6 million of Australia's 10 million plus workforce.

This lack of rights for workers in smaller enterprises applies irrespective of the length of service and irrespective of the circumstances and the nature of the dismissal.

In businesses with 100 employees or more, there is no right to reinstatement or compensation in the first six months of employment, nor are there any rights for an employee if the employer can show that "operational reasons" were at least one factor i n the decision.

As a consequence, the Legislation gives larger employers the power to dismiss staff for operational reasons which could of an economic, technological, structural or similar nature relating to the employer's business.

Taking away from working people the right to challenge an unfair dismissal greatly increases job insecurity. It means workers cannot be confident about their ability to provide for themselves and their dependents. This is clearly contrary to the spirit and intent of Catholic Social Teaching which stresses the rights of workers. It makes the worker subject to the dictates of the employer, thereby attacking and diminishing his dignity at the workplace.

2. Individual Contracts -Australian WorkPlace Agreements

As an individual contract involves, in most cases, an unequal bargaining relationship, with the employer holding the whip hand.

The WorkChoices Legislation has made individual contracts, known as Australian Workplace Agreements or AWAs, an even more powerful instrument than the previous legislation of 1996 which introduced the concept of statutory individual contracts between the worker and the employer.

An AWA over-rides the terms of any other industrial instrument such as an Award or an Agreement.

An AWA can be made a condition of employment for a new employee, even if its terms are worse than those which apply to other employees in the same business doing the same work.

The WorkChoices Legislation provides that an AWA can override the terms of a certified agreement which is in force, even if the AWA provides worse terms and conditions of employment.

The WorkChoices Legislation also provides that the "No Disadvantage Test" which previously protected an employee on an AWA, no longer applies except only that each worker must get at least the five minimum terms of the Government's Fair Pay and Conditions Standard.

While there are undoubtedly some workers on individual contracts which are better than the terms of employment that would otherwise apply, the vast majority of individual contracts have caused employees to lose at least some of their entitlements.

In evidence given before the Senate Estimates Committee last year, the head of the Office of the Employment Advocate, Mr. Peter McIlwain, said that an analysis of new AWA's under the WorkChoices Legislation showed that:

- 64% of AWAs lodged under the new law removed the annual leave loading;
- 63% of AWAs took away penalty rates;
- 52% of new AWAs removed shift allowances;
- 51% of new AWA's reduced the rate of pay for overtime;
- 16% of new AWAs took away all award conditions other than the Government's five basic minimum standards;
- 46% cut the rate of pay for work on a Public Holiday;
- 40% took away the right to rest breaks;
- 48% cut monetary allowances, including those for special skills;
- 40% of AWAs dropped some gazetted public holidays; and
- 22% of agreements provided for no pay rise over the life of the AWA.

There have been many individual cases of AWA's where workers have been made worse off .

Mrs. Annette Harris of the Spotlight retail chain at Coffs Harbour was pressured to accept an AWA which took away many of her award entitlements in return for no increase in the base rate of pay or any other compensation. She would have lost her penalty rates, public holidays, tea breaks, 17.5% annual leave loading, overtime and redundancy pay. It was only when the union created a storm of publicity that the company caved in and restored her to her original entitlements.

In a supermarket in Hilton in Perth, which was to be taken over by a new owner, employees were told that unless they signed up to a new AWA which would take away their overtime, their rostering protection, their tea breaks, their penalty rates and other benefits, they would not have a job with the new owner. As a consequence, two of the employees refused to sign and lost their jobs while the remaining employees signed up to the AWA and lost both income and conditions of employment.

POW Juice pressured its casual employees to sign AWAs. In the case of one union member who worked as a casual on weekends, she stood to lose $40 per week in wages under the AWA while working the same hours as before. This case was so bad that the employer was fined $49,000 by the Court when it was proven that he had failed to observe the proper processes for negotiating AWAs with his employees. Had the proper processes been followed, he would have succeeded in reducing the entitlements of his employees.

The operator of POW Juice outlet was quoted in the Sydney Morning Herald on the 10th April, 2006 as saying :

….."If they don't want to sign, they can leave. It's not about what's fair, its about what's right -right for the company."

The federal magistrate who dealt with the POW Juice case found that the young workers would be underpaid by up to 74% under the AWAs which the employer had tried to force the employees to sign.

Last year in Victoria, a company called E-Fill pressured its employees to sign an AWA in which the following entitlements were removed:

- ⇒ Penalty Rates
- ⇒ 17.5% Annual Leave Loading

⇒

The five day week
⇒ The right to take a Rest Break after 4 hours of work
⇒ Payment for leave for Jury Service
⇒ The right to up to 30 weeks of Makeup Pay in the event of an accident.
⇒ Redundancy Pay; and
⇒ The right to go to arbitration in the event of a workplace grievance.

The AWA also made work on a Public Holiday compulsory at the election of the employer.

One worker at the site refused to sign the agreement. The employer said that none of the other workers would get a pay rise until this last worker signed the AWA. Under pressure from his fellow employees, the individual then signed the AWA and it went into effect for all the employees at the establishment.

Recently it was found that the Darrell Lee Chocolate Shop Chain was asking its casual employees to sign an AWA. The AWA takes away the following entitlements:

⇒ Penalty rates for Public Holidays and Sunday work
⇒ Laundry Allowance of $5.85 per week
⇒ Tea Breaks
⇒ Sick Leave
⇒ Accident Make Up Pay

The AWA reduces the minimum period of work for casual workers from two hours to one hour. The loading for casual workers is reduced from 25% to 20%. The hourly rate of pay for a casual on a Public Holiday is reduced from $38.80 per hour to just $20.02 per hour.

This disgraceful cut in rates of pay and conditions of employment is perfectly legal under the WorkChoices Legislation.

Following representations from the Union, the Company has agreed to cease offering the AWA to casuals, and allowing AWA signatories to elect to return to their Award benefits.

The Commonwealth Bank of Australia, one of the most profitable institutions in the country, whose annual profit comes to several billion dollars, has an AWA which not only strips bank employees of conditions such as overtime, shift allowances, public holiday pay and rostered days off, it also removes weekend penalties, the annual leave loading and all other allowances.

It leaves matters such as pay increases, paid parental leave, redundancy pay, hours and days of work, duties and location of work at the discretion of management over the five year duration of the AWA.

The Bank claims that staff have choice about accepting this new flexibility. However, the company forces employees to accept the AWA, with the only alternative being remaining on an enterprise agreement, which is deliberately frozen in time, with rates of pay frozen to those applicable in 2004.

A Bank that makes $4 billion profit a year can afford to pay all its employees well, and providing them with decent, secure working conditions.

These and many other examples show that the WorkChoices Legislation provides employers with the opportunity of both reducing the income of their employees and reducing their enjoyment of working conditions. An AWA can be made a condition of employment in applying for a job or for making a transition in employment which requires the employer's consent.

This is clearly not consistent with Catholic Social Teaching which stresses the rights of workers to enjoy a standard of living which is sufficient for themselves and their dependents.

3. The Removal of the "No Disadvantage Test"

Under the WorkChoices Legislation, the "No Disadvantage Test" which compares the terms of a proposed new agreement with the underpinning award has been abolished. As a consequence, workers can lose the following entitlements:

- The 5 day week
- Rostering Protection
- Certain public holidays
- The right to a day's pay on a public holiday
- Meal breaks and tea breaks
- The 17.5% annual leaving loading
- Penalty rates, allowances and loadings for
- Work at unsociable times (nights, weekends, public holidays)
- Work for extended periods (10 or 12 hour days)
- Work under adverse conditions (heat, noise, dust etc)
- Redundancy Provisions
- The right to permanent employment

The conditions of employment enjoyed by Australian workers under awards have been built up over many decades, mostly by painstaking negotiations between unions and employers and, occasionally, by decision of the Industrial Relations Commission exercising its powers as the independent umpire. To put most of these hard-won conditions of employment at risk in unequal bargaining between individual workers and the employer, is a deliberate strategy by the Howard Government and its supporters among the employers to reduce the cost of doing business and thereby to improve company profitability at the expense of the entitlements of ordinary working people.

This is contrary to the teaching of the Church about the dignity of the individual, and the pre-eminence of the individual over other considerations in employment.

4. Barriers to Unions

The WorkChoices Legislation provides a range of barriers to the normal operation of trade unions.

(a) Right of Entry

The WorkChoices Legislation denies right of entry to an authorised union official if all the workers in the establishment are engaged on individual contracts.

Right of entry is restricted if a union official is seeking to speak to employees. These restrictions apply to the times when a worker can be seen and the venue where an interview with a worker can be conducted. There are also restrictions on right of entry where a union is investigating a breach of the terms of employment.

(b) The WorkChoices Legislation states that certain entitlements are regarded as "prohibited content" and can no longer be part of an award or agreement. These matters include:

- Provision for union meetings with employees.
- The payroll deduction of union fees.
- The training and education of delegates by the union.
- The provision of a union notice board at the workplace.
- The right to unfair dismissal protection under an agreement.
- Right of entry for the union.
- A commitment to negotiate a new agreement when the current one expires.

The WorkChoices Legislation provides for a fine of $33,000 if a union asks for these matters to be contained in an agreement. There is a fine of up to $5,000 if a worker asks for these matters to be contained in an agreement.

It is utterly absurd for the Government to prohibit these agreement entitlements which workers, the union and the employer all agree should be part of the employment relationship. It is an exercise of dictatorial powers by the Government which is not part of the workplace scene.

Clearly these provisions are intended to restrict the proper operation of unions within a democratic society as the representatives of working people. This again is contrary to the teaching of the Church on workers and their rights to be represented effectively by trade unions.

A PRODUCTIVE ECONOMY WITHOUT WORKCHOICES

A crucial issue is whether we can expect to have an efficient and productive economy without the vicious WorkChoices Legislation to reduce the entitlements of workers.

The Prime Minister and his Government have argued strongly in recent times that economic growth and prosperity and the productivity of workers, together with adequate job creation, all depend upon the continued operation of the WorkChoices Laws. It is interesting that the Government has stopped trying to argue that the WorkChoices Legislation operates fairly, and is now defending its unpopular legislation solely on the basis that it is essential for the wellbeing of the economy and society.

Australia has enjoyed 16 years of uninterrupted economic growth since the last recession in 1991. For most of this period, (namely, for 15 of the past 16 years) we did not have the WorkChoices Legislation to generate economic growth and prosperity. It is manifestly clear, therefore, that economic growth is possible without the WorkChoices Legislation operating.

For most of the 1990s and since the start of the new millennium, the productivity of Australia's workforce has continued to increase.

The growth of labour productivity was 2.6% per annum during the 1990's and was 2.1% per annum from 2000 to 2006. Gross domestic product per hour worked declined by 0.1% and 0.2% in the June and September quarters last year and was unchanged in the December quarter. It is notable, therefore, that productivity actually declined for much of the period that WorkChoices has been in operation. Although it might be tempting to argue that WorkChoices has caused a drop in productivity -the truth is that it has made no real difference. Productivity depends upon a range of factors and the WorkChoices Legislation is not one of these.

Job creation and the growth of employment in Australia has been continuous since the last recession. Job creation is caused primarily by economic growth, and we have seen the rate of unemployment in Australia progressively decline to its present level of 4.5%. Again, job growth in Australia has occurred over a long period of time during which the WorkChoices Legislation was not in operation.

The Government has even argued that significant pay rises will cause a loss of jobs. Within reasonable limits, this is manifestly untrue. The Government's own Fair Pay Commission ignored the Government's warnings last year, and awarded a $27.36 increase in award rates of pay, operative from the 1st December, 2006. Since then, job growth has continued as the Prime Minister has been keen to point out. This means, however, that the Government's traditional argument that increased wages cause job losses has been shown to be false. This argument can never be used again, either by employers or by the Government.

On the 18th December last year, the Treasurer Peter Costello was reported in the Australian Financial Review as responding to a question about whether WorkChoices was responsible for jobs growth. He said in answer:

"Well, let me say on the record that what creates jobs is economic growth and corporate profitability. Your Industrial Relations System will either aid or hinder that, but an Industrial Relations System in and of itself doesn't create jobs."

The employers seem to agree with this because the CEO of the Australian Chamber of Commerce and Industry, Peter Hendy, said "Employers do not stop their businesses growing simply to avoid employment obligations".

A memo from the Treasury to Peter Costello dated the 6th October, 2005 stated that the initial effect of the IR Changes would be to reduce productivity, and that the reforms would deliver lower wage growth for low paid workers.

Economic growth and prosperity, a productive workforce, and an efficient economy depend upon a whole range of economic conditions. The WorkChoices Legislation, with its inherent ability for employers to disadvantage their workers, is totally irrelevant to the economy's wellbeing. Wages growth in line with price increases and productivity, the improved education and training of a skilled workforce, and general economic growth both in Australia and overseas, are the essential ingredients of a successful economy.

On the other hand, legislation which takes away the rights of workers, and gives employers the ability to reduce the earning capacity of workers, simply contributes to company profits. This does not contribute to the general wellbeing of the economy. An unfair and unjust industrial relations system for a country like Australia, which has always been proud of its preparedness to give everybody a fair go, is contrary to Catholic Social Teaching and should be thrown into the dustbin of history as soon as possible.

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