

[Home](#) » [Opinion](#) » Article

## Goodbye to a decent life

June 6, 2006

**Workers are not machines. They need lives outside work and time to take care of family, writes Joo-Cheong Tham.**

LAST week, the brave new world of WorkChoices unfolded before Senate estimates hearings with the evidence of Peter McIlwain, the Employment Advocate. McIlwain's testimony in relation to 250 Australian Workplace Agreements lodged in April vividly exposed the sham of "protected award conditions". These conditions are protected only in the sense that they have to be specifically excluded by agreement. This can easily be done in a context of workers with poor bargaining power through the use of pro-forma agreements. Indeed, McIlwain conceded that

an appropriately drafted "single sentence" could do the trick. Not surprisingly, all the workplace agreements in the sample removed at least one "protected award condition" while 16 per cent removed all such conditions.

What is at stake is partly about the loss in take-home pay. More than a fifth of the sample did not provide for any pay increase during the life of the agreements. Around half of these agreements excluded award conditions relating to penalty and shiftwork rates. Nearly a third excluded provisions requiring additional payment for working on public holidays and modified award conditions relating to overtime rates.

What is also at stake is the control workers have over their working hours. Overtime rates discourage employers from requiring employees to work beyond regularly scheduled hours. Shiftwork loadings, penalty rates and public holiday rates, on the other hand, deter the use of workers during unsociable hours whether at night, during weekends or public holidays.

This policy of deterrence is underpinned by important values. While workers usually surrender control over their time when they are employed, penalty rates and the like allow them to maintain a modicum of control over their working hours. In doing so, they stem from a simple proposition: workers are not machines. They need some degree of regularity in working hours. They also need rest and should not be required to work excessive hours.

Moreover, overtime, penalty, shiftwork and public holiday rates embody a crucial distinction between paid work time and social time. For workers, paid work is a central part of life. Yet life is not wholly about paid work. As human beings, workers need time outside paid work for their friends, families, education and caring responsibilities. This is possible only if labour regulation insulates blocks of workers' time from the encroachment of paid work.

This has importance for both the individual worker and the community at large. For instance, the dawn service on Anzac Day is feasible not simply because a public holiday has been declared but, more importantly, because workers do not feel pressured to work on that day and, therefore, are able to participate in this communal event.

It is, of course, premature to declare that WorkChoices will destroy the boundaries between

paid work and social time. As McIlwain has argued, definitive conclusions should not be drawn from this limited sample.

The signs are, however, ominous and somewhat predictable. Even before the enactment of WorkChoices, a key feature of workplace agreements was that they increased the discretion of employers to determine working hours through, for example, the removal of penalty and overtime rates. Back then, however, the

"no-disadvantage" test required the provisions of agreements to be equivalent or more favourable than award provisions. The abolition of this modest protection is likely to mean that more employers will seek to extend their power over working hours.

If so, the hollowness of choice under these new laws will be revealed. Under WorkChoices, many workers will have little option but to agree to reduced working conditions. What choice did Annette Harris really have when, on returning from unpaid leave, she was told by her employer, Spotlight, that if she wanted to keep her job, she had to sign an agreement removing penalty rates worth \$90 a week in exchange for an increase of two cents in her hourly rate?

Unfreedom also begets more unfreedom. As workers sign away their limited control over working hours, they will also lose some of their freedom to engage in socially worthwhile activities such as education and caring. Even for workers who do not contract away this control, a "flexible" culture of working nights, weekends and public holidays will mean it will be much harder for them to refuse to work unsocial hours. Such is the reality of a labour market in which degradation in one worker's conditions flows on to others.

WorkChoices may then very well mean little choice for workers.

The way forward is a new set of labour laws that institutes real choice for all workers through a robust set of minimum standards accompanied by the capacity to meaningfully bargain through unions.

At the heart of these laws must be the important truth that labour is not a commodity: while workers have to sell their ability to labour so they can live, they should not have to trade away their ability to have decent lives.

Joo-Cheong Tham is a law lecturer at Melbourne University. He is also a committee member of Liberty Victoria and a member of the Centre for Employment and Labour Relations Law, Melbourne University.

[Get The Age home delivered for as little as \\$2.70 a week\\*](#)

Copyright © 2006. The Age Company Ltd.