

VERIFIED TRANSCRIPT

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into budget estimates 2006–07

Melbourne — 20 June 2006

Members

Mr W. R. Baxter

Ms C. M. Campbell

Mr R. W. Clark

Mr B. Forwood

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Mr J. Merlino

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Witnesses

Mr R. Hulls, Minister for Industrial Relations;

Ms F. Thorn, secretary; and

Mr T. Lee, deputy secretary, Industrial Relations Victoria, Department of Innovation, Industry and Regional Development.

The CHAIR — Good morning, everybody. I declare open the Public Accounts and Estimates Committee hearings on the budget estimates for the Attorney-General and the portfolios of planning and industrial relations. I welcome the Honourable Rob Hulls, Minister for Industrial Relations; Ms Fran Thorn, Secretary of the Department of Innovation, Industry and Regional Development; and Mr Tim Lee, deputy secretary, Industrial Relations Victoria. Departmental officers, members of the public and media are all welcome.

In accordance with the guidelines for public hearings I remind members of the public that they cannot participate in the committee's proceedings. Only officers of the PAEC secretariat are to approach PAEC members. Departmental officers, as requested by the minister or his chief of staff, can approach the table during the hearing. Members of the media are also requested to observe the guidelines for filming or recording proceedings in the Legislative Council Committee Room. All evidence taken today by this committee is taken under the provisions of the Parliamentary Committees Act and is protected from judicial review. However, any comments made outside the precincts of the hearing are not protected by parliamentary privilege. All evidence given today is being recorded. Witnesses will be provided with proof versions of the transcript by email for verification. You have two working days to do that after receipt of them. All mobile phones are to be turned off and pagers put to silent. Minister, it is over to you now for an overhead presentation for 5 minutes on the industrial relations portfolio.

Mr HULLS — Thank you very much; it is always a pleasure to be here.

Slides shown.

Mr HULLS — On industrial relations I have a number of slides; I will just run through them very quickly. The first slide is about the output group. Industrial Relations Victoria advocates IR frameworks that encourage high performance workplaces, in both the public and private sectors, and minimise industrial disputes. The output group innovative and high performance workplaces has responsibility for policy development and compliance services in both the public and also the private sectors, as well as providing information to employers and employees on things like long service leave, child employment and in relation to outworkers. The output group also includes the new Office of Workplace Rights Advocate. The budget for 2006–07 has increased by \$2.4 million to \$13 million, and that reflects the new funding for the workplace rights advocate.

The next slide is on key achievements last year. We saw a number of legislative initiatives, including the owner-drivers and forestry contractors legislation and amendments to the Long Service Leave Act to bring it into line with other jurisdictions and to provide much better work and family balance. We also passed the public sector award entitlements legislation to protect the award entitlements of Victoria's public sector employees, who, as we all know, face a fair amount of uncertainty as a result of WorkChoices. We believed it was an appropriate bill to protect those 254 000 public sector employees.

Mr FORWOOD — You are the employer.

Mr HULLS — And you opposed the legislation. On 1 March I opened the Office of the Workplace Rights Advocate.

The next slide, again, is on key achievements in 2005–06. We are evaluating the effectiveness of our grants program to shape future policy. The new mandatory child employment code for the entertainment industry came into operation in November 2005. You can see a whole range of achievements there. Following the passage of the owner-driver legislation, both the transport industry and forestry industry councils began work on recommendations to government for codes of practice for information booklets and also cost schedules and model contracts.

The next slide deals with the workplace rights advocate, which commenced on 1 March this year. Its job is to inform employees and employers on work-related matters to promote informed decision making. The advocate has established a workplace rights information line to provide information to employees on how proposed new agreements compare to relevant awards and collective agreement provisions as well. You can see the funding there for the workplace rights advocate.

The third-to-last slide deals with further key initiatives. I have said in this place and other places in the past that we support a fair, unitary industrial relations system, but we are concerned about the changes being made in relation to the Workplace Relations Act. We believe they are already creating conflict and inequity. We will work with other states and territories to advocate a fair unitary system of industrial relations.

The next slide deals with long service leave. We will continue to provide advice to employers and employees on reforms to the Long Service Leave Act, child employment, owner-driver legislation and high performance workplaces.

The final slide really summarises the IR portfolio. We are about advocating better industrial relations frameworks in Victoria. We provide information to employers and employees through the workplace rights advocate. We want to promote innovative workplace practices and a cooperative public sector industrial relations system.

The CHAIR — Thank you very much, Minister. I refer you to budget paper 3, page 147, which outlines some of the government's key investment attraction activities. Can you outline to the committee how those investment attraction opportunities could be impacted upon by the federal government's WorkChoices legislation, what the main impacts are, in particular, on Victorian workers, and how WorkChoices is affecting workplace relations here in Victoria? How do you intend to respond?

Mr FORWOOD — You did not write that question.

The CHAIR — If you don't mind, Mr Forwood, that is my question. If you want to ask a question, you can have the next one.

Mr HULLS — There is an interesting article in today's *Age* by Tim Colebatch on this very issue. I think in Victoria we are already seeing the devastating impact WorkChoices is having on the entitlements of Victorian families. In the first month following the commencement of WorkChoices, the federal government's own employment advocate has confirmed that 100 per cent of workplace agreements exclude at least one protected award condition. So every workplace agreement excludes at least one protected award condition, 64 per cent exclude leave loading, 63 per cent exclude penalty rates, 52 per cent exclude shift loading and 16 per cent actually expressly exclude all protected award conditions — so obviously there are devastating impacts here in Victoria.

This information by the Office of the Employment Advocate is actually backed up by an early report by the University of Melbourne, where they actually examined 500 randomly selected AWAs and explored whether or not they actually promote high performance organisations. The research showed that the AWAs actually spell disaster for low-paid workers. They get paid less than workers on collective agreements, and this is confirmed by the article in today's *Age*. Women are even worse off. Women on AWAs are earning, often, 11 per cent less — 11 per cent less than those on collective agreements.

We are about promoting cooperation and collaboration in the workplace. People say, 'You are opposed to WorkChoices, but what do you say is a collaborative, corroborative approach in the workplace?'. We have actually set out a workplace rights standard here in Victoria, which includes the right to a comprehensive safety net, the right to an independent umpire, the right to collective bargaining — which includes appropriate industrial action — the right to freedom of association, the right to decent unfair dismissal laws, the right to equal pay for work of equal value, and the right to work and family balance. That is what our standard is, and so far we have been introducing legislation to deliver. That includes things such as the public sector award entitlements bill, the High Court challenge, and the Long Service Leave (Preservation of Entitlements) Bill. However, we cannot shield all Victorian workers from WorkChoices. We have to make that clear. We cannot raise those expectations, but we will continue to do what we can to protect workers here in Victoria.

Mr FORWOOD — At the outset let me say that it is a travesty of the committee system and the Bracks government's commitment to transparency and openness — —

The CHAIR — Have you got a question?

Mr FORWOOD — I have, but I am going to make a short statement first. The ALP members of this committee have used their numbers to prevent proper scrutiny of the portfolio areas of Minister Hulls. It is an insult that only half an hour has been allocated for industrial relations, 1 hour for Attorney-General and an hour and a half for planning. My question — —

The CHAIR — Just a moment — —

Mr FORWOOD — My question is — —

The CHAIR — Just one moment, stop. You are the deputy chair of this committee; you know the process for estimates. You also know that everyone is given the chance to ask questions. If you wish to ask a question, you ask it courteously and you do not act like a grade 1 bully by shouting across the other side. We in this Parliament make it perfectly clear to the rest of the community that bullying is unacceptable. If you wish to continue to be considered seriously here, I would suggest you ask your question politely, and answers will be provided.

Mr FORWOOD — Thank you. Minister, just on the issue of bullying, your colleague Minister Garbutt and her chief of staff — and the candidate for Caulfield — Steve Cusworth, have used a demonstrably phoney restructure to get rid of two employees: one, a pregnant woman for no reason other than she is pregnant, and two, a person whose husband happened to be in dispute with the government. What action will you take as the IR minister to remedy this situation?

The CHAIR — Excuse me, Mr Forwood, the minister only needs to answer questions in relation to his portfolio and his budget estimate allocation. Over to you if you wish to make any comment, Minister.

Mr HULLS — I am happy to answer any question that Bill may have, it being his last hurrah. Can I say that allegations have been made in relation to the matter that you raised. Those allegations are the subject of a complaint to the Equal Opportunity Commission, and it is not appropriate for me to make any further comment on that basis. However, I think it is in stark contrast to the federal WorkChoices legislation where there is no avenue for a complaint to be made in relation to an allegation that a person has been dismissed.

Mr FORWOOD — On the basis of being pregnant? That is not true

Mr HULLS — In Victoria we certainly have provided an opportunity for people who feel aggrieved to access courts and tribunals and to have their complaint heard by an impartial person, in contrast with the federal government through its WorkChoices legislation which absolutely denies the vast majority of workers access to any unfair dismissal rights at all.

Ms ROMANES — I refer you to budget paper 3, page 316, and the output initiatives outlined in table A.9 and in particular to the output Office of Workplace Rights Advocate. I ask you to tell us some more about this initiative and what is expected to be achieved through it, in particular what is the structure of the Office of the Workplace Rights Advocate — perhaps tell us more about staff numbers and roles. How does the office intend using the budget allocation that is outlined there over the next three years?

Mr HULLS — Thanks, Glenyys. The workplace rights advocate is going to focus on fairness. It will provide advice and assistance to all employers and employees who seek that advice on all employment entitlements as well as related matters such as equal opportunity, occupational health and safety and the like. The workplace rights advocate will ring alarm bells, if you like — do not sign an AWA that takes away your entitlements. This is in stark contrast, I might say, in relation to the Office of Workplace Services, the federal body, which has not been set up to advise employees against signing an agreement even if it disadvantages them — that is not part of its role. The workplace rights advocate will look at working with employees to try to secure existing rights — rights that can legally be taken away under WorkChoices.

The office currently comprises the advocate, an administrative support position, two staff members in acting roles pending finalisation of staffing structures and positions; that is expected to be concluded in the short term. In relation to some of the issues that the workplace rights advocate is currently investigating, the advocate is investigating cases involving unfair work practices including the Spotlight case, which has received a fair amount of media — an employer is offering AWAs that do not contain overtime, do not contain penalty rates or annual leave loading. As we know, in New South Wales employees receive compensation of 2 cents an hour in return for giving up those entitlements. In Victoria they receive a total of nothing for giving up those entitlements.

The advocate will also play a significant role in highlighting and putting on the public record employers who are exploiting isolated and vulnerable workers. Apart from Spotlight, the advocate, as I understand it, is also investigating allegations regarding companies exploiting 14-year-old kids. These kids are paid 10 per cent of what they make from selling ice-creams, lollies and the like. They have no guaranteed minimum rate of pay. They are not being treated as employees but as independent contractors. They are actually expected to be responsible for complying with health regulations and occupational health and safety standards. I am sure everyone here would agree that is an outrage; I would hope everyone would agree that is an outrage. But the federal authorities, when

told about this, said they could not see a problem with it and took no action. They are the types of things that are being investigated.

Just to conclude, we have embarked upon an advertising campaign. I think we spent some \$660 000 on print, radio, regional TV ads and other advertising. I understand that another \$250 000 has been allocated for a TV campaign to ensure that the most vulnerable groups of employees under WorkChoices know where to get help when they are faced with unfair AWAs. I might say in conclusion that does contrast fairly starkly with the, I think, \$55 million the feds spent on advertising WorkChoices.

Mr CLARK — You have expressed a lot of outrage about allegations as to what has been happening under the federal jurisdiction. You showed far less outrage in answering Mr Forwood's question about concerns raised in your own backyard about state government employees. Is there any unit within your portfolio that could provide advice to ministerial advisers or other Victorian public sector employees who have been unfairly dismissed, or do you simply leave it to them to pursue their own remedies through the industrial relations system?

Mr HULLS — You are referring to an allegation that has been made. My understanding is that allegation is being pursued through an independent process. Both as IR minister and Attorney-General it would be inappropriate for me to comment further. I have read, as you have, the media reports. An allegation has been made, it has been denied and that matter will, I suspect, ultimately be tested in an independent forum. The fact is that there is an independent forum in Victoria for those types of matters to be tested. You contrast that, as I said, with WorkChoices where because a person may have a smirk on their face, because a person for whatever reason is dismissed without cause, there is no recourse whatsoever under WorkChoices. I do not want to get into the veracity or otherwise of the accusations and allegations that have been made, save to say that in regard to the allegations made and allegations denied, there is an independent body for those matters to be tested.

Mr CLARK — Minister, is there a capacity within your portfolio to defend Victorian public sector employees who believe they have been harshly treated by their employer?

Ms GREEN — It is called a union.

Mr HULLS — Obviously we have unions. We also have whistleblower legislation in this state. We have introduced a whole range of reforms, but what you are suggesting is that I, as Minister for Industrial Relations, should be jumping into a situation which is ultimately going to end up before the courts.

Mr CLARK — You should have a capacity as an employer to treat your employees decently and to seek internal remedies to employment disputes.

Ms GREEN — We do not often hear you lot say that.

The CHAIR — Minister, is there anything else you wish to add?

Mr HULLS — No.

Mr SOMYUREK — Minister, I refer you to the promotion of innovative and high performing workplaces table on major outputs/deliverables on page 150 of budget paper 3. These outputs cover the promotion of positive employment relations between employers and employees, but can you also indicate what initiatives are under way to promote fairer conditions of employment for workers on less typical arrangements, such as low-paid contractors and owner-drivers, for example?

Mr HULLS — It is a good question, because research was undertaken by my department last year. Significant problems were found facing small business in the transport and forestry industries — for example, owner-drivers were found to earn on average \$20 000 a year for working a 50-hour week. Despite the unprofitable rates, many owner-drivers were forced to accept these rates just to stay at work and to keep up the repayments on their substantial vehicles. Such conditions of course put pressure on drivers to work long hours, to speed and to overload vehicles. They become a hazard to themselves and also to road users and of course the soaring cost of fuel adds to that pressure. So we implemented the recommendations of a review which was conducted in consultation with the forestry industry in the owner-drivers and contractors legislation. It provides a significant and positive difference for these trucking businesses. It provides better information for small businesses through information booklets, indicative models of overhead costs and the like. It ensures a fair business environment by banning

certain improper practices, prohibiting unconscionable conduct, allowing for codes of practice to be made. It also provides a very fast and cheap dispute resolution mechanism through the small business commissioner.

These are positive reforms, and I would have to say that even Minister Kevin Andrews, the federal minister, has announced that the innovative protections for owner-drivers that we have introduced here in Victoria will be maintained under the soon-to-be released federal independent contractors act. I am very pleased that even the federal government has agreed that what we have put in place here is fair and equitable.

Tragically of course that legislation was opposed by the opposition when it was introduced. I think it was described as typical Labor socialist policy. It was described as being reckless legislation which was driven by unaccountable trade unions. Can I say it certainly protects vulnerable employees. It is supported by the federal government. Even the Victorian Transport Association has said it can vouch for the operational effectiveness of the model we have put in place as we have already represented prime contractors or hirers on several matters. The legislation is good legislation and it is working.

Mr RICH-PHILLIPS — The Victorian government has gone to the High Court over the WorkChoices legislation. Can you tell the committee how much has been budgeted for that action you have taken in the High Court and how much has been spent to date?

Mr HULLS — Yes, it is a good question because it is a very important High Court challenge. We decided to be a part of the challenge, because the new federal laws we believe are fundamentally unjust. They radically reduce the safety net, protections for Victorian workers and protections we have been working for years to achieve. I mentioned earlier the safety net requirements — the safety net requirements that we believe are appropriate for a fair industrial relations system. Tragically the commonwealth has chosen to reject the cooperative approach that we tried to bring about here in Victoria. It is attempting, as you know, when reading about the High Court challenge, to use the corporations power in a manner that we argue was never intended by the drafters of the constitution. It wants to impose its radical IR agenda despite the defeat of all the previous attempts to expand this power by way of referendums. So it is trying to impose its agenda through the backdoor, if you like. I have to say in relation to the commonwealth's power, if it goes unchecked — that is, the use of the corporations power — it does leave it open for the commonwealth to undermine federation generally and use the corporations power for a whole range of other things, whether it be education, health and the like.

So we believe this challenge is important. We also believe the legislation is very poorly drafted. It is so poorly drafted that it may have inadvertently overwritten the Equal Opportunity Act. We have written to the commonwealth asking it to remedy this as a matter of urgency.

You spoke about the issue of costs. The matter before the High Court has only just concluded, so I of course cannot give you a final figure of the total cost of representing the people of Victoria before the highest court in a land. But we make no apology for spending money to protect Victorian working families from the insidious WorkChoices laws. I have to say that the cost pales into insignificance compared to the nearly \$500 million that the commonwealth government is spending on implementing this law. I have received some initial advice — and these are just preliminary figures — that indicate, as I said, the costing of the case which is yet to be concluded. However, I understand that senior and junior counsel's legal fees, including related advising, case developments, and research, amounts to \$513 000.

Mr RICH-PHILLIPS — How much was budgeted for that case and which output group is it funded through?

Mr LEE — I can get back to you about that specific.

Mr RICH-PHILLIPS — You will take it on notice.

The CHAIR — Minister, we have time to do two more questions if we have brief questions and brief answers on this portfolio. It will be Mr Merlino, Mr Baxter and then we will move to the next one.

Mr MERLINO — Minister, further to your comments on the federal government's WorkChoices legislation and its impact on workplace relations and investment promotion of Victoria, can you indicate whether we now know the full raft of federal government industrial relations changes or are there further possible changes that could be made, for example, by way of federal regulations?

Mr HULLS — This is an issue that I had actually raised with Kevin Andrews at the last workplace relations ministers meeting, because at the stroke of the pen, Canberra has indicated that it can use its regulation-making power to exclude Victorian legislation designed to protect Victorian workers. Again, this is one of the reasons we have issued a challenge in the High Court. As I said earlier, the legislation has been so badly drafted that the commonwealth government conceded in the High Court that it had accidentally excluded parts of the Juries Act that protects jurors from being sacked and being paid make-up pay. It has actually admitted that in the High Court. It now appears that it has accidentally excluded the Equal Opportunity Act from the legislation. So that is not very good value I would have thought for the \$58.5 million it spent drafting this law. It spent \$45.5 million- plus advertising it and a total of \$489 million it intends to spend over the next three years to implement it.

In May, last month, I sought from Kevin Andrews a guarantee that the commonwealth would not use its regulation-making power to override current or future Victorian laws that are about protecting Victorian workers. He refused to give that guarantee, and I was seeking bipartisan support from the Leader of the Opposition in relation to that, but I was not able to get it. The Liberal opposition in Western Australia is on record as opposing certain elements of WorkChoices. The Liberal opposition in New South Wales and also The Nationals in Victoria did not oppose the state legislation designed to protect public sector workers from WorkChoices. But unfortunately the opposition is not prepared to join with me to seek a guarantee from Kevin Andrews that he will not use his regulation- making power — and he does have that power, tragically.

Mr BAXTER — Just a comment on the minister's last mention of The Nationals. We did not oppose the legislation in Victoria because the legislation was not necessary. You are the employer; you can make whatever arrangement you like.

Mr HULLS — No, sorry, you did not oppose it.

Mr BAXTER — For that very reason, we did not oppose it because you had the power.

Mr HULLS — Right.

Mr BAXTER — Minister, in your answer to Ms Romanes in relation to the workplace relations advocate you used words to the effect that the WRA will be advising persons who contact it not to sign AWAs. Is that a standing instruction to Mr Lawrence, and would that not mean that he would not be able to assess the merits of the particular AWA and see if it had other features that more than compensated for any removals of traditional measures, and therefore it would disadvantage some persons and he would not able to give impartial advice?

Mr HULLS — No. If I have been misinterpreted as saying that he has instructing people not to sign — what he is doing is actually instructing people on the facts so people have the facts. Under the current law, workplace agreements are legal. The federal opposition leader has said that if he is elected he will get rid of them. But AWAs are currently legal but they are being used to undermine basic award entitlements and conditions of workers. So the advocate will play, I think, a very important role in restoring some balance and fairness to the system. The advocate will indeed investigate unfair employment practices, will provide free independent information and advice to Victorian workers trying to get a fair deal under the federal government's unfair legislation. It is a statutory body so it will have the right to intervene in court cases and tribunal hearings. It will report to Parliament and make sure Victorians are informed through a hotline and web site. There is a hotline that workers, employees — and employers by the way — can call, and employees can find out how their terms and conditions are affected by the WorkChoices legislation. Employees can be advised what they stand to lose by signing a workplace agreement: penalty rates, overtime, rest breaks, allowances, annual leave loading. It is really about providing honest information and impartial advice to employees in relation to what they may lose.

The CHAIR — And a point of clarification.

Mr BAXTER — As a corollary to that, does that mean that if the WRA concludes that the employee is going to be better off he will recommend to the employee that he sign the AWA?

Mr HULLS — An employee who contacts the workplace rights advocate will be getting independent, impartial advice. An AWA may include, for instance, a higher hourly rate for a particular job but will actually take away a whole range of penalty rates, leave loading and the like. It is — —

Mr BAXTER — My question deals with all that.

Mr HULLS — Yes, and the workplace rights advocate will give independent advice to a person as to whether or not what they are about to sign is going to take away conditions or otherwise. Ultimately it is going to be up to the employee whether or not, having the full facts — —

Mr BAXTER — What I am trying to establish, Minister, is the WRA just going to list what is being taken away in one column without compensating for that in the other column with the advantages?

Ms GREEN — He has just answered that.

Mr BAXTER — That is what he is saying, that it is going to be one-sided advice.

The CHAIR — No, that is not what he is saying, but the minister can speak for himself.

Mr HULLS — It is not one-sided advice, Bill, with due respect. Here is the AWA. Let us say the AWA gives you a higher hourly rate. You might like that but you need to understand that you are trading off, for that higher hourly rate, overtime, a whole range of other penalty rates that may well affect work-family balance and the like. You may well be losing long service leave; who knows? It is up to you to decide whether or not it is worthwhile signing on the basis that you will get a higher penalty rate but you lose all these other conditions.

Mr FORWOOD — You are just a captive of the trog unions.

The CHAIR — Thank you very much. Minister, I place on record this committee's appreciation to the witnesses we have had for the IR portfolio and to the departmental people who have prepared the folders to and provided PAEC with very useful information for its report. Thank you.

Witnesses withdrew.