It is now more than one year since the Howard Government’s industrial relations (IR) laws came into effect in March 2006. Anticipated fears of erosion of workers’ rights have turned into a bleak reality for many Australian workers. One thousand workers a day are being moved onto Australian Workplace Agreements (AWAs); individual contracts which require only five minimum conditions. Entitlements such as penalty rates, meal breaks, shift length, and maximum hours that protect the health and safety of many workers have been cut. Australian Council of Trade Union (ACTU) figures of all AWAs show: 100% remove at least one protected award condition; 51% remove overtime loadings; 63% abolish penalty rates; 52% cut shift work loadings; 64% remove annual leave loading and 40% cut rest breaks. Penalty rates and conditions that compensate nurses and their families for shift work and the demands and stresses of the job are under attack in the private and aged care sectors. Nurses in the public sector are only exempt if their respective state governments legislate to exempt them from WorkChoices. Nurses need safe workplaces Access Economics estimates 4,900 work-related deaths occur each year in Australia, more than double the national road toll. Of the 10.8 million Australians who worked during the past financial year, 689,500 suffered work-related injury or illness (ABS 2006). ACTU occupational health and safety (OHS) officer Steve Mullins says the figures are appalling with 200,000 more workers affected in 2006 than in 2001. “This is an increase of 45% of people with work-related injury and illness in six years under the Howard Government.” More than one quarter of Australians with work-related injury or illness are shift workers and the second highest group of women affected, work in the health and community sectors making OHS a high priority for nurses. The Queensland Nurses’ Union (QNU, ANF Queensland Branch) highlighted OHS as a key concern in a submission to a Federal Government review of nursing (ANF 2002). “Safety was seen as directly related to the increasing pressure and stress nurses are facing and the inherent risks and dangers in working long hours and large amounts of overtime. Hospitals and nursing homes are areas within the health and aged care sectors that most commonly experience injuries and subsequent workers’ compensation claims.” ANF federal secretary Jill Iliffe says the federal government’s IR laws threaten conditions which ensure the health and safety of nurses. “Nurses have the right to work in a safe workplace and to perform their work without risks to their health. Under these laws nurses can be unfairly dismissed, have their penalty and shift allowances cut and hours of work changed without notice.” Unfair dismissal Arguably the biggest threat of the Howard Government’s WorkChoices to OHS for nurses is unfair dismissal. The legislation eliminates unfair dismissal protection for employers with fewer than 100 employees and enables larger organisations to use ‘operational reasons’ to unfairly sack workers. Of all private sector employers in Australia, 99% are now exempt from unfair dismissal laws. Victorian Trades Hall Council (VTHC) Workcover liaison officer Jarrod Moran says
employees on workers’ compensation may be targeted by employers. “Three days after WorkChoices came into effect there was a case in Western Australia where employees on workers’ compensation were sacked with the employer citing ‘operational reasons’.

“In fact the only reason they were sacked was because they were on workers’ compensation. This means workplaces can use ‘operational reasons’ rather than the true reason, which is unfair dismissal.”

Nurses in the aged care sector have been among the first to feel the brunt of the IR laws. In one example, five nurses in Parkes, NSW were forced to choose between keeping their job with less pay or taking redundancy. They were given the choice to either take a 22% pay cut to become ‘care service employees’ or be made redundant by the nursing home where they worked.

**Job fears affect health**

University of New South Wales School of Organisation and Management professor Michael Quinlan has studied the link between job insecurity and OHS. Of 61 studies where job insecurity and downsizing were measured, 87% had adverse OHS effects.

In the health care sector, examples included an increase in violence and aggression, mental and physical health problems and even increased infection rates. “There is more pressure on staff, increased workloads, nurse assistants doing nursing duties, and agency nurses unfamiliar to the workplace,” professor Quinlan said. “With reduced staffing levels, people are more likely to work in isolation, increasing the risk of violence.”

Professor Quinlan says the shift to individual contracts under the IR laws creates job insecurity and increases the capacity for OHS risk. “If people lose penalty rates, they lose other protections, such as minimum call back times when on call, call back at irregular hours, and longer work hours. If you do not have decent working conditions then it is hard to manage health and safety. Decent working conditions underpin the standards for health and safety.”

VTHC OHS coordinator Cathy Butcher says apart from the immediate threat of job loss, there are long term repercussions of unfair dismissal, including a work environment where people are too scared to speak up which can jeopardise their own safety. “Fear of losing your job can actually lead to psychological problems and a negative culture in the workplace. People may feel they are without a choice and need to take risks – ‘unless I do this lifting, I will not have this job or not have my contract renewed’.”

Mr Mullins agrees that if workers are fearful of speaking out it exposes them to hazards. “Open communication and getting people to talk about health and safety is important for employees and decreases the number of incidents in a workplace.”

**Union role undermined**

The IR laws have undermined the ability of unions to act on behalf of their members. The IR laws encourage AWAs and discourage collective agreements. Unions are limited in their capacity to negotiate, organise industrial action and enter workplaces, and union training is prohibited from enterprise bargaining agreements.

Unions are a major provider of training in many areas, including OHS, and under collective agreements says Mr Mullins. “In NSW, over two years, the Labor Council provided 20,000 workers with trade union training, including OHS training. That has now been stripped away and those workers do not have access to training. We know that workplaces with union representatives are healthier and safer workplaces.”

The IR laws have restricted the right of entry for unions to enter the workplace. Union officials must have both federal and state entry permits, give 24 hours notice and obey ‘reasonable’ employer requests. “These are not trivial matters as right of entry provisions for unions are critical to effective protection of workers’ health and safety,” professor Quinlan said.

The ACTU is urging union members to have elected OHS representatives in their workplaces as their rights and powers remain under state and territory laws for the time being. Mr Mullins says OHS representatives keep an active, open OHS workplace. “Elected OHS representatives can ensure workers have a voice and are heard, they keep employers accountable and allow workplace representatives to investigate issues and incidents, and improve safety.”

**Federal attack on workers’ comp**

Recent changes to OHS laws and workers’ compensation further enable the federal government to encroach on state and territory jurisdiction.

Until recently the federal government’s workers’ compensation scheme, Comcare, was limited to federal government department employees and government businesses. Legislative changes have enabled and even encouraged companies to become ‘self-insurers’ and move across from state and territory schemes which usually have stricter laws. Removal of compensation for journeys to and from work, and the level of proof needed to claim compensation has increased under the new OHS Act.

Fears of less enforcement of safety standards, fewer inspections, and jurisdictional loopholes, have been voiced by critics of the federal scheme, including by the ANF. While Comcare has 33 inspectors nationwide, Victoria’s WorkCover has 230 for the state alone.

University of South Australia research fellow and workers’ compensation expert Kevin Purse says of almost 88,000 work-reported injuries under Comcare, there has only been one prosecution.

Mr Purse views the OHS changes as similar to WorkChoices and fears Australia is heading to ‘a return to feudalism’. “The most immediate concern for workers is when a firm opts to go to Comcare, workers or the unions have
University of New South Wales School of Organisation and Management professor Michael Quinlan

no say whatsoever. The company can email workers of the decision and say they [the workers] have been consulted but the process is not transparent.

Companies are already complaining of too much bureaucracy and too high entitlements with Comcare and there is nothing to stop the incumbent government from making further cutbacks if they are re-elected, says Mr Purse. “After the election I think the government would be listening to self-insurers and may wind back entitlements.”

Unions make safe workplaces

Research published recently in the Australian Journal of Industrial Relations shows arguably the best evidence to date linking union presence to workplace safety. United Kingdom Cardiff University professor Theo Nichols and colleagues argue the ‘union effect’ on OHS has previously been difficult to gauge as union presence can increase reporting of injuries, and unsafe environments often bring trade unions into workplaces. The research strongly supports the theory that mediation by unions helps to create safer workplaces (Nichols et al 2007).

Evidence from the Australian Government’s Workplace Relations Survey 1990-1995 shows unionised workplaces in Australia are three times as likely to have a health and safety committee, and twice as likely to have undergone a management OHS audit in the previous 12 months.

Editor of UK based Hazards magazine and union safety campaigner Rory O’Neill views health and safety as one of the main reasons people join and remain in unions. He says there is no doubt unions worldwide have improved health and safety in workplaces.

“The main reason they do that is that workers know their job and their hazards but they do not know the power structure of management. Companies don’t talk about health and safety in the boardroom. James Hardie is a prime example where board members were more interested in profits than the health and safety of workers.”

WorkChoices must go

Amidst growing public opposition to their IR laws and a federal election this year, the Howard Government has announced a fairness test will be introduced to guarantee entitlements such as penalty rates are not traded off without compensation under AWAs. Treasurer Peter Costello has admitted the test will not apply to people already on AWAs. State and territory industrial relations ministers have roundly condemned the move as ‘tinkering on the edges of a punitive regime’. A federal Labor Government has promised to overturn the legislation to restore the balance of power between employers and employees.

Perhaps Queensland’s Griffith University industrial relations professor David Peetz puts it best: “In the long run, it is that fundamental shift in power – which eventually tears away the entitlements that workers fought so long to get – that represents the biggest threat posed by these laws. It is not what it does in 2007 or 2008 that comprises the worst aspects of WorkChoices; it is what it could do to the prospects of our children and our grandchildren.” (Peetz 2007)

ANF federal election campaign

Nurses want a commitment to benchmarks for occupational health and safety standards and workers’ compensation and are calling for:

- OHS legislation in each jurisdiction that is compatible and developed under the following four principles:
  - a) tripartite approach,
  - b) effective enforcement,
  - c) adequately resourced inspectorates and authorities, and
  - d) no reduction of existing protections with continuous improvements;

- An end to the current strategy of inviting companies into the federal workers’ compensation scheme;

- A commitment to funding a national ‘no lift’ strategy in the health, aged and community care sectors; and

- Funding for a national strategy to combat the rising and dangerous incidents of violence and aggression toward nurses and other health care workers.

References


National strategy against violence

The ANF has campaigned for zero tolerance to violence in workplaces and as a result several states have introduced it into health policy. The ANF wants federal government commitment to funding a national strategy to combat rising violence and aggression toward nurses.

Two thirds of nurses in a Tasmania study reported having experienced workplace violence (Farrell et al 2006) and more than 30,000 nurses surveyed in Queensland reported workplace violence had increased in all public, private and aged care sectors (Hegney et al 2006).

NSW mental health RN Stephen Murphy has been a victim of violence and a system which tried to deny him compensation. In two serious assaults by patients he was kicked in the chest and treated for a cardiac arrhythmia and difficulty breathing, and sustained swelling and bruising to his head and face.

“I thought I was going to die, and I could have if I had been older or had a heart condition when I was kicked in the chest. It definitely [violence] needs to be taken far more seriously, it’s dangerous and if it is not addressed someone could get killed.”

While his workplace has now introduced duress alarms and new rules against workplace violence, Mr Murphy says they are insufficient and while back at work he is unable to return to the acute ward where he was assaulted. “The level of violence is increasing but the system is not equipped to cope. Governments need to commit to putting legislation in place to ensure workplaces at least adopt minimum standards; otherwise nurses have no protection.”

Suffering post traumatic stress disorder for six months after the second assault, Mr Murphy was denied compensation. His partner was forced to pay the rent and bills and he racked up a credit card debt of $3,000 in order to live, while the NSWNA INSW Nurses’ Association, ANF NSW Branch, paid for a solicitor and took his case to the Workers’ Compensation Commission. After several offers of less than his entitlements by law, Mr Murphy finally received full compensation 10 months later.