

PART B

EXECUTIVE SUMMARY

It is noted that the introduction of an entirely new federal regime makes definitive pronouncements about its meaning and effect difficult and uncertain.

This uncertainty has increased because a High Court challenge in relation to the validity of the Work Choices legislation is still pending.

Since this is an Interim Report, the issues are dealt with as broadly as possible while attempting to ensure that sufficient detail is provided for the purpose of analysis and comment. Further detail about the operation of Work Choices will be provided in the Inquiry's Final Report.

INQUIRY PARTICIPANTS

- Approximately 72 employee, employer organisations and individuals state-wide have registered their interest in participating in this Inquiry.
- At the first Brisbane sittings, approximately 35 individuals gave evidence (including "*in camera*" evidence).
- At this point in time the Inquiry has received 17 submissions from a range of participants.

FUTURE PROGRAMMING FOR THE INQUIRY

Regional sittings

- Sittings outside of the Brisbane metropolitan area have been scheduled and are due to commence on 22 September 2006.

Friday, 22 September 2006	Toowoomba
Monday, 25 September 2006	Emerald
Tuesday, 26 September 2006	Hervey Bay
Wednesday, 27 September 2006 Thursday, 28 September 2006 Friday, 29 September 2006	Southport
Monday, 2 October 2006	Cairns
Tuesday, 3 October 2006	Townsville
Wednesday, 4 October 2006	Mackay
Thursday, 5 October 2006	Rockhampton
Friday, 6 October 2006	Gladstone
Monday, 9 October 2006	Bundaberg
Tuesday, 10 October 2006 Wednesday, 11 October 2006	Caloundra



Logistical considerations

- For logistical purposes participants have been grouped into categories *viz.* those expressing a concern with Work Choices, those expressing a neutral view and those expressing a positive view of Work Choices.

Further Brisbane sittings

- Brisbane sittings to date have dealt with those participants expressing a concern about Work Choices.
- Those participants expressing a neutral view or support of Work Choices will be heard in Brisbane at sittings commencing on 16 October 2006.

SUMMARY OF POINTS RAISED IN EVIDENCE AND INTERIM SUBMISSIONS

Unfair dismissals

A significant area of concern for participants related to changes to unfair dismissal provisions with the introduction of Work Choices.

Evidence adduced in the Brisbane sittings highlighted the following:

- dismissal for raising issues of under-award payments;
- dismissal for temporary absence from work due to illness;
- performance of extra duties without additional payment;
- use of corporate structure to avoid payment of employee entitlements on liquidation of company;
- dismissal with no reason given to employee;
- no opportunity for employee to respond to allegations made at time of dismissal;
- dismissal for "unsatisfactory performance" with no facts provided by employer to employee;
- dismissal of employee for not signing an Australian Workplace Agreement. Too expensive for employee to pursue action against employer;
- dismissal of employee for enquiring about the ramifications of an Australian Workplace Agreement;
- there is evidence of large companies using a variety of corporate structures to avail themselves of the operation of Work Choices legislation with respect to unfair dismissals;
- federal bodies, such as the Office of Workplace Services, not advising employees with obvious *prima facie* cases of unlawful dismissal about their rights;
- employees seeking advice about unlawful dismissal cases being discouraged from pursuing such cases because of cost factors and the complexity of the Work Choices legislation;
- previously, such employees could have pursued both unlawful and unfair dismissal claims before the Queensland Industrial Relations Commission;
- the majority of incorporated businesses within Queensland subject to Work Choices employ less than 100 employees;
- employees of those businesses are unable to seek re-dress for an unfair dismissal.

The Inquiry does not know whether or not these claims can be substantiated however, what is evident is that the employees concerned will not have the opportunity to challenge what, in their view, is an unfair or unlawful dismissal without considerable cost to them.

Australian Workplace Agreements and/or other collective agreements

Evidence and submissions relating to Australian Workplace Agreements and/or other collective agreements raise the following matters:

- in response to questions from the Senate Employment, Workplace Relations and Education Committee, Estimates Hearings, 29-30 May 2006, p. 98, Mr P. McIlwain (Office of the Employment Advocate) gave responses which were compiled in submissions to produce the following information. In a sample of 250 Australian Workplace Agreements the following outcomes occurred:
 - 100% excluded at least one protected award condition;
 - 64% removed leave loadings;
 - 63% removed penalty rates;
 - 52% removed shift work loadings; and
 - 40% removed gazetted public holidays,
- the Inquiry has received evidence on the content of some Australian Workplace Agreements and those before the Inquiry are generally poorly drafted;
- Australian Workplace Agreements do differ in content, however there is evidence before the Inquiry of "one size fits all" Australian Workplace Agreements being circulated amongst some employers;
- the following is an example of some standard conditions of employment which are excluded from Australian Workplace Agreements before the Inquiry:
 - penalty rates;
 - annual leave loadings;
 - hours of work clauses;
 - rest breaks;
 - restrictions on unilateral variations to working hours;
 - penalty loadings for overtime or shift-work;
 - penalty rates for work performed on public holidays;
 - expenses incurred in the course of employment;
 - redundancy pay;
 - dispute settlement procedures;
 - employee entitlements to long service leave;
 - categories of employment - e.g. full-time work; part-time work; casual work; shift work,
- as a consequence of literacy problems encountered by many in the workforce, difficulty is encountered by employees in understanding the content of the individual agreement being presented for acceptance;
- inequality in bargaining power between employers and employees during negotiations;
- concerns with Welfare to Work programs - employees at risk of negotiating lower rates of pay in exchange for the workplace flexibility they require;
- an employee paid to work public holidays for cash only at ordinary rates of pay;
- practices by which employers obtain approval for agreements raise issues as to whether consent is genuine or whether employees have been coerced into agreement. For example, employees being deemed to have voted "yes" for a non-union agreement unless they send an SMS message to their employer indicating their "no" vote;
- there was evidence of employees being dismissed or discriminated against after refusing to agree to sign an Australian Workplace Agreement or for questioning the content of the Australian Workplace Agreement.

Removal of choice for Queensland employers and employees

- Lack of choice for Queensland employers and employees for an industrial relations system best suited to their needs;
- evidence was received from employer witnesses to the effect that there would be a gradual loss of "level playing field" for employers where labour costs will differ greatly within the same industry through loss of the requirement to comply with common award provisions;
- a failure, through Work Choices, to acknowledge the needs of rural and regional Queensland employers and employees by placing them in a federal industrial relations system;



- 70% of Queensland employees were covered by the state industrial relations system suggesting that employers found that system provided a simple and straight forward environment best suited to their collective needs;
- many employers and employees who had historically chosen to stay within the state industrial relations system have had that choice removed from them by the introduction of Work Choices.

Complexity of the Work Choices legislation

- Lack of understanding by both employers and employees as to which system governs their workplace relationships;
- difficulty on the part of both employers and employees in comprehending the content of Work Choices;
- lack of assistance to employees through the Work Choices Infoline;
- employees and employers who wish to negotiate an agreement are often so confused about the process that no outcome is achieved at all;
- many businesses do not employ human/industrial relations personnel and the complexity of Work Choices legislation leaves both employees and employers confused.

Transmission of business

- Under Queensland legislation employees were able to maintain entitlements when ownership of business changed and they continued performing the same duties. This protection for entitlements such as long service leave, sick leave, annual leave, amongst other conditions, has been lost under Work Choices.

The emergence of new participants in the workforce - “guest labour”

- Evidence has been given of "guest labour" (i.e. employees brought into Australia for the purpose of working in particular industries) being engaged by employers within the construction industry;
- many of these employees do not speak English;
- many of these employees have no knowledge of their industrial relations rights;
- there is evidence of "guest labour" employees being paid \$10 per hour on a particular construction site;
- through the intervention of an employee organisation, back-payment for these particular employees was achieved but the capacity for such organisations to pursue these claims in future is in jeopardy because of the operation of Work Choices.

Vulnerable workers

- Legislation providing for social security benefits for unemployed workers has been amended so that persons who refuse to agree to an Australian Workplace Agreement, which may provide lesser conditions, face an 8 week penalty period before they can obtain employment benefits;
- young workers are vulnerable to exploitation in the workforce as a consequence of unequal bargaining power and general lack of education concerning rights;
- vulnerable workers may be described as people:
 - *“with skills and attributes that are not in demand;*
 - *who are from culturally and linguistically diverse backgrounds;*
 - *who live in regional and remote areas with little opportunity to work;*
 - *with child care responsibilities and who can not find quality child care;*
 - *who are reluctant to work unsociable hours as this will mean less time with their family;*
 - *who are responsible for children over 11 years of age and are unable to commit to out of hours work as they are unable to support their children and supervise their activities;*
 - *with a disability who may be judged by their disability prior to being given an opportunity to prove their worth in the workplace”;*

1 Submissions of Welfare Rights Centre Inc., “Vulnerable Queenslanders”.



- women in rural areas face difficulties in refusing to accept an Australian Workplace Agreement because alternative jobs and child care are scarce, transport is costly and their partners may be locked into retaining jobs in one available industry.

The removal of protection for “contractors” and “sub-contractors”

- Contractors and sub-contractors are now unable to access cost effective and efficient mechanisms to challenge the validity and fairness of contracts.

Restrictions on “right of entry” for employee organisation representatives at workplaces

- Evidence that restrictions upon "right of entry" of employee organisation representatives at workplaces would have a detrimental affect upon employees' health and safety;
- the transport industry was cited as one which required regular monitoring from employee organisations in relation to hours worked by truck drivers;
- evidence was given that, in one instance, a trucking company faced considerable fines for breaches of safety regulations which were uncovered through the exercise of "right of entry" provisions under the Queensland industrial relations legislation by employee organisation representatives.

Queensland Industrial Relations Commission

Participants have made submissions to the effect that:

- the lack of choice for many employers and employees in Queensland as to jurisdiction resulted in a loss of the ability to access quick resolutions to disputes provided under state legislation through the Queensland Industrial Relations Commission;
- participants cited the Queensland Industrial Relations Commission's ability to hear urgent matters on the day of notification (if necessary) and to travel to any area within the state to assist the parties resolve their differences;
- participants believe access to this type of assistance has been greatly diminished under Work Choices;
- participants have also referred to the narrowing of the type of dispute which can be heard within the federal industrial relations system as an impediment to the resolution of workplace disputes.

Statistics relating to Queensland industrial relations outcomes

- Industrial disputes in Queensland are currently at an historic low;
- the average quarterly strike rate for the year to March 2006 was 3.5 working days lost per thousand workers in Queensland compared with a national average of 6.1 days and a Victorian average of 9.1 days;
- Queensland is the largest of the state jurisdictions in terms of award-reliant workers with 23% of Queensland workers in this category compared to 20% of workers in the same category nationally;
- ABS statistics show that 59.9% of Queensland businesses are corporations and thereby governed by Work Choices. The Australian average is much higher, with 76.3% of businesses being corporations;
- Queensland Government submissions highlight that the Queensland Industrial Relations Commission resolves 98% of its reinstatement applications at conciliation without the need for arbitration.

Social and economic impact of Work Choices

- Underpinning the submissions made upon the social and economic impact of Work Choices was the question of uncertainty which prevailed for employees under this new industrial relations regime;
- submissions of participants request the Inquiry to consider the impact on work/family balance with the changes imposed by the Work Choices legislation;
- submissions refer to the economic impact caused overall by an uncertain work environment for employees;

- reference is made to the increased uncertainty for employees of continued employment manifested in increased strain on families meeting financial commitments;
- participants express apprehension for employees who are already disadvantaged in the workplace (i.e. those who lack any form of training, education and bargaining power) having to bargain individually for a workplace agreement;
- reference is made to issues of social inequality and negative social outcomes for employees in an uncertain work environment;
- evidence has been given to the Inquiry of the greater stress placed upon community organisations which provide support for disadvantaged persons;
- as the demand for community organisations' assistance increased, those organisations were finding it difficult to retain volunteers;
- community and welfare organisations were uncertain as to future federal/state funding arrangements (upon which they rely) because funding previously had a nexus with the applicable award classification levels and pay rates.

Organisation for Economic Cooperation and Development (OECD) (2006 Employment Outlook)

The Inquiry has been asked to consider Chapter 7 of this Report as it relates to questions of :

- unfair dismissal laws;
- minimum wages; and
- co-ordinated wage bargaining mechanisms.

It has been submitted that views expressed by the OECD in its 1994 *Job Strategy* Report have now been revised and bring into question the philosophy which, to some degree, underpins much of the Work Choices legislation.

Participants may further make submissions to the Inquiry on this matter as and if they see fit.

Apprenticeships

- It has been submitted that Work Choices has the potential to impede the necessary skills development priorities (*Queensland Skills Plan*);
- the Queensland industrial relations system provides for:
 - competency based training and wage progression;
 - school based part-time apprenticeships and traineeships;
 - adult and existing worker apprenticeships and traineeships; and
 - accommodating the Australian Qualifications Framework (AQF), including opportunities to achieve qualifications far beyond the traditional trade level;
- the submissions point to:
 - added complexity of the federal industrial relations system and its effect upon the administration of the apprenticeship and traineeship system in Queensland;
 - uncertain effects on legislative and administrative powers in relation to apprentices and apprenticeship training;
 - the effects on dismissal arrangements and the termination of training contracts.



OBSERVATIONS AND EMERGING TRENDS FROM EVIDENCE AND SUBMISSIONS AT THIS POINT IN TIME

As this is an Interim Report, it is acknowledged that being definitive about emerging trends is difficult as trends may increase or decrease over time. However, from the evidence and submissions received at this stage, we are able to point to what appears to be emerging trends within the various areas upon which the Inquiry is to report. The areas canvassed in this section are not exhaustive and will be revisited by the Inquiry in its Final Report. The outcomes referred to hereunder are drawn from witness evidence and submissions. The witnesses who have given evidence at this point in time work in a wide cross-section of Queensland industry. Also, the submissions which have been considered by the Inquiry have been made by employee organisations which represent many hundreds of thousands of employees within Queensland. Those submissions draw upon the experiences and knowledge gained through representing those employees across most of Queensland industry. Against that background the Inquiry is able at this stage to make initial commentary about emerging trends in the Queensland workplaces as a consequence of the introduction of Work Choices legislation.

The Inquiry has been asked at (a) of the Directive to consider “Mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices”.

- There is a general consensus from participants that a mechanism is required for reporting unfair treatment of employees;
- it has been suggested that the appropriate mechanism would incorporate a "one stop shop" approach;
- this "one stop shop" could provide advice and easy access to relevant organisations which may be able to assist the employee;
- participants have requested that government funding be provided to facilitate the implementation of this mechanism which would not necessarily need to be part of a government departmental infrastructure;
- this mechanism would be required to report to and advise government and the public of trends and issues within the industrial relations framework.

The Inquiry has been asked at (b) of the Directive to consider “incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including the reduction in wages and conditions through Australian Workplace Agreements (AWAs) or other collective agreements”.

From the material before the Inquiry at this point in time, the following trends appear:

- in AWAs or other collective agreements to which reference has been made in this Interim Report, there is a clear trend towards a reduction in terms and conditions of employment for Queensland employees affected by Work Choices;
- conditions of employment which have previously governed employers and employees under the Queensland industrial relations system have been eroded considerably;
- overall wage rates have been reduced significantly in many instances;
- previously held conditions of employment such as penalty rates, sick leave, holiday leave loading, payment for work on public holidays, by way of example, are either absent from agreements or are said to have been aggregated into one wage rate which, in the instances which the Inquiry has seen, produces lower wages for employees;
- substantial evidence has been produced to show that employees generally are apprehensive about entering into these types of agreements;
- there is a trend towards the adoption by some employers of a "take it or leave it" approach with their employees to the introduction of AWAs;
- there is the emerging trend of employee anxiety about the uncertainty of their continued employment.

The Inquiry has been asked at (b) of the Directive to report on “discrimination, harassment or the denial of workplace rights”.

- If the question of "workplace rights" relates to the conditions employees were familiar with and entitled to under existing state industrial relations legislation, then, within context, there has been a trend towards a denial of "rights" under Work Choices;
- the Inquiry has heard evidence that the non-acceptance of Australian Workplace Agreements has caused dismissal as has the questioning of the terms of Australian Workplace Agreements. Under current Queensland industrial relations legislation such actions would be unlawful. Whilst this may remain so, the cost and difficulty of pursuing a remedy under Work Choices is prohibitive for the average employee. Within context, such a course could be viewed as a denial of "workplace rights";
- the restrictions placed upon employee organisations entering workplaces to when matters of occupational health and safety arise may be viewed as a denial of "workplace rights";
- employees appear less able to debate and discuss their work conditions with employers because of an apprehension that they may be subject to an adverse reaction from their employer.

The Inquiry has been asked at (b) of the Directive to report upon “unfair dismissal or other forms of unfair or unlawful treatment of employees”.

- For employees at workplaces governed by Work Choices with less than 100 employees, there is no remedy available for an alleged unfair dismissal;
- there is a trend emerging from the evidence received at this point in time (and from submissions made by major employee organisations) that some employers are not providing any reason for terminating the services of employees;
- the trend, for some employers, is to cite "operational reasons" when it is questionable whether that is a valid reason;
- what is of concern to those who have given evidence before the Inquiry is that there is no avenue for them to challenge the employer's decision to terminate their employment;
- there is a trend for some employers not to provide a Separation Certificate to employees (even when specifically asked to do so by employees) causing employees delays in accessing Centrelink payments.



OVERVIEW OF INQUIRY

THE DIRECTIVE

On 13 June 2006, the Honourable Tom Barton, Minister for Employment, Training and Industrial Relations and Minister for Sport, directed the Queensland Industrial Relations Commission (QIRC) to hold an Inquiry to examine the impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* (Cth) on Queensland workplaces, employers and employees (see Appendix 1). The Minister's directive was given under s. 265(3)(b) of the *Industrial Relations Act 1999* (Qld) which requires the Commission to hold an Inquiry into or about an industrial matter, and to report and make recommendations, if directed to do so by the Minister (see Appendix 2).

Essentially, the Directive required the Commission to:

- consider mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices;
- inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices;
- consider the investigations and outcomes of similar inquiries in other states and territories; and
- recommend processes for facilitating the reporting of incidents of unfair treatment and for monitoring and reporting to the Minister on industrial relations practices under Work Choices.

The Commission was also required to establish processes for conducting the Inquiry including receiving and examining incident reports from individuals and organisations; inspecting workplaces if necessary; identifying remedies or options for further action; promoting the Inquiry and submitting reports on major trends and developments under Work Choices. An interim report and recommendations was required to be provided within 3 months and a final report within 6 months of the commencement of the Inquiry.

PROCESSES FOR THE CONDUCT OF THE INQUIRY

The Inquiry given the task of complying with the Minister's Directive comprises Deputy President Swan and Commissioners Asbury and Thompson. Following notification of the Inquiry through newspaper advertisements (see Appendix 3); the establishment of a web-site (see Appendix 4); advice to registered organisations of employers and employees by the Industrial Registrar (see Appendix 5); and a general invitation to all interested organisations and persons within the community through these mechanisms (see Appendix 6); a preliminary sitting of the Inquiry was held on 23 June 2006.

At the preliminary sitting, participants who attended were invited to announce their appearance, and to advise the Commission of the extent to which they proposed to be involved. The Commission also indicated an expectation that employer and employee organisations; community groups; church groups; academia and individual members of society may wish to participate in the Inquiry through making submissions, presenting evidence or otherwise informing the Commission about their experiences. Arrangements for persons to give their evidence "*in camera*" should they wish to do so were also foreshadowed.

It was made clear that the Inquiry was a fact finding exercise and that the Commission expected that participants would be broadly categorised into those who had concerns with Work Choices; those who held a positive view; and those who wished simply to comment on the impact of Work Choices. It was also stated that the Commission as an independent body was not concerned with the many controversies surrounding Work Choices except to the extent that they were relevant to the terms of the Inquiry and would report on the facts presented to the Inquiry. A program was established for participants, including those in regional areas, to be heard.

A written Statement detailing these matters was issued to those who participated in the proceedings on 23 June 2006, and was also posted on the Inquiry's web-site (see Appendix 7). Further directions in relation to the giving of evidence and its publication on the Inquiry's web-site were issued on 10 July 2006. Those



directions also established processes for interested participants to provide evidence “*in camera*” which would not be published or, in special circumstances, to give evidence by telephone or outside normal sitting hours (see Appendix 8).

The Inquiry sat again on 1 August 2006 to flag a proposed agenda for Brisbane hearings to be conducted from 21 August 2006 to 1 September 2006 and issued further directions on 4 August 2006 (see Appendix 9). A Statement was issued on 24 August 2006 advising participants that if any workplace inspections were requested, the Inquiry would give due consideration to such a request and may also instigate such inspections at any time it saw fit. Participants were invited to advise the Inquiry at its next directions hearing on 4 September 2006, if they wished to make any requests for inspections (see Appendix 10).

A program for regional sittings was developed and provided to participants, and placed on the Inquiry’s web-site (see Appendix 11). Regional sittings are scheduled to commence on 21 September 2006.

SITTINGS FROM 21 AUGUST 2006 TO 1 SEPTEMBER 2006

At the time of making this Interim Report, sittings of the Inquiry had been held between 21 August 2006 and 1 September 2006. Submissions and evidence were received by the Inquiry from the organisations and individuals listed in Part E of this Report.

At this stage, approximately 72 employer and employee organisations and individuals have registered interest in participating in the Inquiry. The Inquiry has received detailed submissions from seventeen (17) organisations and individuals. Thirty-five (35) individuals have given evidence to the Inquiry.

These affidavits of evidence and submissions have been placed on the Inquiry’s web-site and extracts are included in Parts C and F, respectively, of this Interim Report. All participants who have made submissions and given evidence to date, have been advised the Inquiry will receive any further material which they may wish to put before it before the Final Report is made, on the basis that such material may not be currently available. Given the relatively recent introduction of Work Choices, the Inquiry is desirous of considering its implications over the longest possible period, before making its Final Report.

IMPACT OF WORK CHOICES

In May 2006, the State of Queensland, together with the other states and territories challenged the validity of the Work Choices legislation in the High Court of Australia. At this point in time, that decision is reserved. Consequently, the final responses of state and territory governments and the participants in this Inquiry to the Work Choices legislation, is constrained by the uncertainty surrounding the High Court challenge.

The participants who have placed evidence and submissions before the Inquiry to date, are strongly supportive of the current framework for industrial relations in Queensland. The *Industrial Relations Act 1999* (Qld) which underpins that framework, was the result of a tripartite process involving representatives of employees, employers and government. A common theme emerging from submissions to the Inquiry was that prior to the introduction of Work Choices, employers, employees and their representative organisations in Queensland had a choice about whether they wanted to have their relationships regulated under the Queensland or the federal industrial relations systems, providing them with the option of using the system which best suited their needs.

Participants also submitted that a significant number of incorporated businesses operating within the Queensland industrial relations system, by either relying on the award system or by negotiating agreements formalised within that system, had the option of moving into the federal system, prior to the introduction of Work Choices, but had chosen not to do so. It was submitted that the fact that 70% of employees in Queensland were covered by the state system prior to the introduction of Work Choices, suggested that many employers and employees found that it provided a simple and straightforward operating system that suited their needs. The Work Choices legislation, by requiring incorporated businesses to operate in the federal



industrial relations system, was said to remove the choice which could previously be exercised by employers about the manner of regulating their employment relationships. Further, the transitional provisions under the Work Choices legislation had moved agreements made under the *Industrial Relations Act 1999* (Qld) into the federal system, effectively over-riding the choice which parties to those agreements had already exercised to formalise their agreements under the Queensland industrial relations system.

It was also submitted that choice of jurisdiction was not the only choice that had been removed. For example, in the Queensland industrial relations system employers, employees and their representative bodies could make agreements on a wide range of industrial matters. By contrast, under Work Choices, there are significant restrictions on the matters that parties can include in their awards and agreements. Thus an employer may wish to include in an agreement a statement that employees would not be unfairly dismissed, and to provide a process or remedy to deal with such matters. Such a provision would help to reassure existing employees and attract new employees. Employers may also wish to include a commitment in the agreement to continue with collective agreements in future, and not to introduce Australian Workplace Agreements. Work Choices legislation prevents such provisions being included in agreements, even where employers and employees agreed to do so.

The Queensland industrial relations system was said to provide a number of benefits:

- flexibility for employers to make agreements that suit their business needs and protect employees;
- a strong common rule award system to protect those unable to bargain;
- an independent, responsive umpire in the form of the QIRC which provides a low cost forum for matters such as unfair dismissal and unpaid wages;
- a fair minimum wage which is updated annually, along with a process for regular review of conditions of employment to ensure consistency with community standards.

It was pointed out that industrial disputation in Queensland has been at historically low levels, with the average quarterly strike rate for the year to March 2006 standing at 3.5 working days lost per thousand employees, compared with the national average of 6.1 days or 9.1 days in Victoria, where only the federal industrial relations system operated.

A number of participants also pointed out that the Work Choices regime does not recognise the uniqueness of regional and rural areas in Queensland and that these areas were well served by the current system of state regulation of industrial relations. The QIRC regularly visited regional areas to conduct a variety of proceedings ranging from formal hearings and conferences to private mediation. This reduced the cost to business and ensured that all relevant parties at a workplace could participate in proceedings. The activities of the QIRC in regional areas are complemented by the Department of Industrial Relations, with its network of regional offices across Queensland and 70 inspectors to conduct campaigns and ensure compliance with industrial obligations. This was said to assist both employees by ensuring that they got their proper entitlements, and employers, by ensuring a level playing field between competing businesses.

Data was placed before the Inquiry indicating that the proportion of businesses in Queensland actually affected by the existence of both state and federal systems of industrial relations regulation is quite small, and is generally restricted to larger and well resourced businesses operating across a number of states within Australia. It was also pointed out that the effect of Work Choices has been to reduce the coverage of the Queensland industrial relations system from around 70% of employees to between 35-38%. This falls well short of creating a single national industrial relations system.

Further it was contended that key assumptions upon which Work Choices was based, in particular that the new provisions would create employment opportunities, were flawed. In this regard, evidence was given by the managing director of a property management company. That company employs five employees, and the managing director told the Inquiry that in his view, the Work Choices legislation would not lead to any increase in employment. The legislation simply provides a basis for employers to reduce wages and conditions

of employment. While this would increase profit to businesses, that profit would be retained by owners and shareholders rather than providing a basis for the employment of additional staff. This evidence is broadly consistent with the findings in the OECD Employment Outlook Report 2006.

That witness also pointed to the complexity of the Work Choices legislation, and said that the Queensland award under which his staff were previously employed, provided a level playing field and was well understood by all employers and employees in the industry. Work Choices would create uncertainty. He said that if there was one thing in business that is important it is certainty. Certainty allows business people to budget, borrow money and to plan.

MECHANISMS FOR EMPLOYEES TO REPORT INCIDENTS OF UNFAIR TREATMENT AS A RESULT OF THE INTRODUCTION OF WORK CHOICES

Prior to the introduction of Work Choices, employees, employers and their representative organisations had a variety of mechanisms to have a wide range of matters affecting the employment relationship dealt with by the QIRC. The *Industrial Relations Act 1999* (Qld) contains a broad definition of industrial matters. All awards, certified agreements and Queensland Workplace Agreements contain procedures for the settlement of disputes over industrial matters and for parties to those instruments to seek the resolution of disputes by the QIRC. Parties could notify the QIRC of a dispute and have that dispute dealt with through mediation, conciliation and failing resolution, through arbitration.

Participants in the Inquiry submitted that these processes had worked very well and had provided parties to awards and agreements with timely, efficient and cost effective processes to resolve disputes. In particular, a number of parties noted that when disputes were notified, the QIRC would conduct a conference usually within no more than two days, and in the event that a matter was urgent, on the day that the QIRC was notified. A significant number of disputes notified to the QIRC were resolved through conciliation shortly after being notified.

There was also evidence about the impact of the restriction on the subject matter of industrial disputes under Work Choices. For example, previous standard agreement conditions in the construction industry dealing with camp accommodation on construction projects were no longer able to be the subject of agreements under Work Choices and as a result could not be the subject of disputes procedures under agreements. A decline in the standard of camp accommodation and facilities had already been observed, and there was difficulty in having the concerns of workers about camp accommodation addressed under the Work Choices legislation. These restrictions further circumscribe the ability of employees to articulate workplace issues under grievance procedures in agreements made under the Work Choices legislation.

The majority of organisations making submissions to the Inquiry called for the establishment of a mechanism for workers to use to report incidents of unfair and unlawful treatment. Some participants sought to put further and more detailed submissions about this issue later in the Inquiry's proceedings. On an interim basis, there appeared to be a general view that the establishment of what could be termed a "one stop shop" would be beneficial. Some submissions made the point that unions rather than government may be better positioned to deal with complaints and that consideration could be given to providing funding for this to occur. It was submitted that the QIRC could fulfill the role of a complaints registry, with appropriate legislative amendments to facilitate this. Participants also pointed to a lack of understanding about rights on the part of both employers and employees, and called for an education program to ensure that information about those rights and any mechanism for dealing with complaints about their infringement, was widely disseminated.

In addition to trade unions, there are organisations providing assistance to specific groups such as women and young persons. A number of those organisations made submissions and gave evidence to the Inquiry. Further, there was evidence from organisations providing assistance to unemployed persons. That evidence made it clear that persons in Queensland who had previously been outside the operation of the industrial relations system - for example persons who are or who become unemployed - are now at risk of unfair treatment as a



result of the introduction of the Work Choices legislation (see discussion below in relation to Australian Workplace Agreements). These organisations are not equipped to deal with industrial relations issues and are struggling with limited funding, to deal with complaints from dismissed employees.

There may be merit in facilitating a network of all organisations providing assistance to workers, so that persons seeking redress and assistance following alleged unfair or unlawful treatment, can be directed to the appropriate organisation, and resources are not duplicated. Unions participating in the Inquiry also submitted that there may be merit in funding being provided to them to pursue remedies for employees alleging unfair or unlawful treatment, on a case by case basis.

INCIDENTS OF UNLAWFUL, UNFAIR OR OTHERWISE INAPPROPRIATE INDUSTRIAL RELATIONS PRACTICES

Reduction in wages through Australian Workplace Agreements or other collective Agreements

There was considerable evidence about the use of Australian Workplace Agreements to reduce wages and conditions of employment previously enjoyed by employees both under awards and agreements which had operated prior to Work Choices. A number of submissions pointed to statistics provided to Senate Estimates by the Office of the Employment Advocate on 29 May 2006, showing that in a sample of 250 Australian Workplace Agreements:

- 100% excluded at least one protected award condition;
- 64% removed leave loadings;
- 63% removed penalty rates;
- 52% removed shift work loadings; and
- 40% removed gazetted public holidays.

A number of submissions contained analyses of agreements in the retail industry and the textile clothing and footwear industry which indicated that employers are actively attempting to use the Work Choices legislation to reduce terms and conditions of employment previously enjoyed by employees under pre-Work Choices agreements and the award which underpinned them. Concerns were also expressed by organisations representing workers in the construction industry and the electrical industry about similar attempts on the part of employers, particularly in relation to employees who were not union members.

A number of submissions detailed concerns about the "no disadvantage" test previously applied to all agreements made under the *Industrial Relations Act 1999* (Qld) Act being over-ridden by the Work Choices legislation which does not provide an equivalent test. The "no disadvantage" test provided for agreements to be scrutinised by the QIRC and compared to relevant award conditions, to ensure that employees were not disadvantaged overall. Agreements which did not pass the "no disadvantage" test were not approved. In contrast, the Work Choices legislation replaces the "no disadvantage" test with a set of five minimum conditions under the Fair Pay and Conditions Standard. Employers are required to submit a statutory declaration when agreements are lodged stating that they meet this standard, and the agreement will be automatically be approved by the Employment Advocate. Of great concern is the fact that the Australian Industrial Relations Commission (AIRC) will no longer have any role in scrutinising agreements made under the Work Choices legislation.

There was evidence that many Australian Workplace Agreements operated for a term of five years and did not provide for any wage increases during that period. Many Australian Workplace Agreements referred to policies which were not detailed and which could be changed unilaterally by the employer. Employees could be obligated to comply with policies which were not in effect at the time an Australian Workplace Agreement was made or which were changed during the life of the Australian Workplace Agreement. Such provisions would have been questioned by the QIRC (or the AIRC) in its previous role of approving agreements, and employer

parties to agreements required to attach policies so that employees understood what they were required to comply with. Employers could also have been required to undertake not to unilaterally alter policies referred to in agreements during their term.

The provisions of many Australian Workplace Agreements in evidence before the Inquiry, left much to be desired in terms of drafting. For example, one Australian Workplace Agreement disseminated by an employer with 1,000 employees, contained the following provision:

“Unauthorised absence is not permitted unless approved by the Department Manager.”

There was also evidence that many Australian Workplace Agreements were *pro forma* documents which had been provided to large numbers of employees in identical terms. This was said to give lie to the proposition that Australian Workplace Agreements were designed to allow flexibility and innovation and to ensure that individual employers and employees could put particular arrangements in place to suit their needs. It was also suggested that if such conduct was engaged in by unions it would be prohibited on the basis that it could be seen as “pattern” bargaining.

There was evidence before the Inquiry about apparent discrimination against employees who refused to sign Australian Workplace Agreements or who questioned the terms and conditions of employment offered to them under such agreements. Witnesses said that while they may have had a potential remedy for unlawful dismissal or discrimination, they lacked the funds to pursue such remedies. Prior to the introduction of Work Choices, employees who were dismissed or otherwise discriminated against because of refusing to sign an agreement or for questioning terms and conditions of employment offered to them under an agreement, could access a cost effective and quick remedy in the QIRC for unfair or unlawful dismissal or breaches of the provisions of the *Industrial Relations Act 1999* (Qld). Employees could also have had concerns dealt with by notifying the QIRC of an industrial dispute. In this regard, the following evidence was provided:

- A junior employee in a retail establishment selling ice cream was dismissed after questioning terms and conditions in a proposed Australian Workplace Agreement and involving a union in discussions with her employer about the agreement. That employee also questioned the failure of her employer to pay her superannuation contributions for the entire period of her employment, notwithstanding the fact that her monthly earnings were above the amount entitling her to such contributions under federal legislation. After stating to the employee that she would be dismissed if she did not sign the Australian Workplace Agreement the reason given by the employer for her dismissal was changing shifts with another employee. This employee is a union member and the matter is being pursued on her behalf by her union. The employee stated that she could not afford the legal costs of pursuing the matter if she was not a union member.
- An employee was dismissed after raising questions about an agreement providing for terms and conditions of employment less than the award which had previously applied to him. The dismissal occurred after the employee had taken sick leave and leave to care for a sick child, in circumstances where the need for such leave was documented in a certificate provided by a medical practitioner. That employee was advised by the Office of Workplace Services that he would be unable to lodge an unfair dismissal application as his employer had less than 100 employees. The employee was not advised about the ground of unlawful dismissal.
- An employee employed as electrician was dismissed after expressing concern about a new "wages policy" his employer was attempting to introduce, and which he had been requested to sign. The employee believed that the policy undercut award wages and conditions. He was also concerned that apprentices had been asked to sign it and that it reduced their entitlements. The employee told the apprentices employed by his employer of his concerns about the policy and its effect on them. The employee was told that he was "causing trouble" and that as he was a casual employee he would probably be finishing up soon. The employee was then dismissed.
- A group of electrical employees of a company providing electronic security services were asked to vote on an agreement by SMS message. Employees were told that if they wished to vote against the agreement



they were required to send an SMS message to their employer from their company supplied mobile telephones. If employees did not send an SMS message to indicate that they did not agree with the terms of the agreement they would be taken to have approved the agreement. Employees did not send messages because they were concerned that they would be identified and discriminated against by their employer.

Welfare organisations pointed to amendments to legislation governing receipt of unemployment benefits and other social security payments, which provide for persons who refuse or cease employment because of refusing an Australian Workplace Agreement, to be penalised by having to wait for an eight week period before receiving benefits. This was the case even where an Australian Workplace Agreement may have reduced the pay of an existing employee or provided for an employee to earn less than other employees doing the same or comparable work. It was pointed out that such penalties had not been applied to persons who refused to accept other agreements such as collective agreements to which trade unions were party.

There were submissions and evidence before the Inquiry to the effect that more stringent bargaining processes and the inability of union officials to access workplaces to assist employees with bargaining, was resulting in a reduction in terms and conditions of employment provided for in agreements. It was also submitted that in the long distance transport industry, union right of entry had facilitated prosecutions of employers in cases where employees had been compelled to break laws in relation to maximum driving hours. It was alleged that the stringent notification requirements for unions to obtain entry to workplaces would assist unscrupulous employers to destroy evidence necessary to mount prosecutions.

The promotion of individual contracts at the expense of collective bargaining was said to be a significant issue for employees in regional Australia where mobility between jobs can be more restricted. Under the Work Choices legislation, new or existing employees can be offered Australian Workplace Agreements on inferior conditions to their existing conditions and/or the award. In theory such employees have a choice. They can either accept the Australian Workplace Agreement or get a job elsewhere. However, in practice, there may not be a genuine choice. Access to alternative jobs is particularly hard for some groups, such as women in rural areas, where child care is scarce, transport costly and partners are likely to be locked into retaining jobs in one available industry.

The managing director of a major company in the construction industry gave evidence "*in camera*" of the benefits of industry level negotiations in relation to wages and conditions of employment on that industry. In particular, the benefits of a level playing field for all those engaged in the industry was identified. This witness also highlighted the need for a simple wage bargaining system in the construction industry because of lack of resources of people in the industry to undertake bargaining themselves. The industry wide negotiation model which operated prior to Work Choices was said to have worked well and created certainty for head contractors, sub-contractors and workers. Workers performing comparable work under vastly different pay scales, was said to create an un-level playing field which is unfair and difficult to manage. The witness also pointed to constructive relationships between the parties in the construction industry including employers, employees and their representative organisations. Similar evidence was given by the state manager of a painting contracting company who said industry agreements had provided both flexibility and stability in his industry. He also expressed concern that if the building industry did not have standardised wages outcomes, developers and major builders could use their economic power unfairly against subcontractors.

Witnesses including union officials and employers who gave evidence to the Inquiry said that there were many employers who had previously provided employees with fair and reasonable terms and conditions of employment, who were now becoming uncompetitive because of reductions in terms and conditions of employment being implemented by other employers against whom they were competing. There was also evidence of employers engaging overseas or guest worker, and paying those workers at lower rates and providing them with reduced conditions of employment, in comparison with those provided to Australian employees.

Unfair dismissal or other forms of unfair or unlawful treatment of employees

Under the *Industrial Relations Act 1999* (Qld) employees who were dismissed had mechanisms to challenge the fairness and/or lawfulness of their treatment. Persons under contracts for services could challenge the validity and the fairness of those arrangements and seek a remedy from the Commission. The ability for an employee to notify an industrial dispute and to have that dispute dealt with by the QIRC through conciliation, mediation or arbitration also provided a cost effective, efficient and timely mechanism to deal with complaints about the manner in which employees were treated. Participants were supportive of the manner in which applications claiming unfair or unlawful dismissal were dealt with by the QIRC, with 98% being resolved by agreement through conciliation, following a conference of the parties to them. With the introduction of the Work Choices legislation, these mechanisms for the resolution of workplace issues are no longer available to employees or employers.

Although the remedy of unfair dismissal is still available it is limited to employees of employers who have more than 100 employees. The vast majority of employers in Queensland have less than 100 employees. Evidence before the Inquiry to date indicates that employees who are being dismissed under questionable circumstances, are unable to access any remedy. For example, there was evidence of an employee being dismissed shortly after making a complaint about being paid less than his award entitlements and having no access to unfair dismissal remedies.

In this case, the employer had cited an alleged refusal of the employee to travel to perform work. The employee maintained that he had not refused to travel but had simply questioned his entitlement to award rates for such travel including reasonable expenses for meals and accommodation. Upon contacting the federal Work Choices Infoline to seek assistance after he was dismissed, the employee was told that he could not take action against his former employer because the employer had less than 100 employees. This was the case notwithstanding that the employee's former employer settled a claim for underpayment of wages, at least suggesting that there was some validity to the employee's claims in this regard.

There was also evidence from a number of employees about having been dismissed after taking sick leave, or being absent on workers compensation. One employee was dismissed after seeking time off to care for a sick child. These employees had also contacted the federal Work Choices Infoline or the federal Office of Workplace Services and been advised that they could not take action against their former employers because those employers had less than 100 employees.

The evidence of these employees is supportive of the anecdotal material dealt with in the submission of the Queensland Government, to the effect that workers who contacted the Work Choices Infoline were not being assisted although they appear to have claims for entitlements or some other matter for redress under the federal legislation. It is at least arguable that an employee claiming to have been dismissed because of making a claim for award entitlements would have some remedy under Work Choices and should have at least been provided with some advice in this respect. Similarly, employees dismissed while on sick leave or workers compensation leave, or shortly after having taken such leave, arguably have claims relating to unlawful rather than unfair dismissal and should be at least informed of the prospects of taking such a claim by a service which purports to provide advice and support to persons claiming to have been unlawfully or unfairly treated.

One employee, whose claim clearly related to unfair rather than unlawful dismissal, gave evidence of not being advised upon contacting the Work Choices Infoline, that he had no claim because his employer did not employ more than 100 employees, despite the employee stating that this was the case. Upon contacting the Work Choices Infoline, that employee was forwarded an application form for relief in relation to termination of employment and told to return it within 21 days, along with a payment of \$50. It was only later that the employee was told that he had no case.

There were a number of witnesses who gave evidence of being dismissed without having an opportunity to respond to allegations of misconduct or poor work performance on which the dismissal was based. It is



important to note that while the claims of these employees were not tested in the Inquiry, they have lost the opportunity to have them tested because the introduction of the Work Choices legislation has removed their access to unfair dismissal legislation. Many of these employees claimed that they worked for large employers who had created structures - such as separate companies to operate particular parts of their businesses - which created an argument that employees had no access to unfair dismissal laws, on the basis that the company which employed them had less than 100 employees.

Another area of unfair treatment which was the subject of evidence before the Inquiry, is the practice of employers unilaterally making fundamental changes to the contracts of employment of employees. One employee with 14 years service, claimed that he was forced to resign, when his employer introduced fundamental changes to the duties he had previously performed and refused to discuss the changes with the employee or listen to his concern about their impact on his own and workplace health and safety. Another employee with 16 years service was subjected by her employer to a unilateral change from full-time to part-time employment. The employer also attempted to compel the employee to agree to change her employment status to casual employment. The employee refused to change her employment status to casual employment, but suffered a reduction in her working hours from full-time to part-time employment and a corresponding decrease in her earnings of approximately \$150 per week. The employee was told that the reason for this change was that it was too difficult to roster her as a part-time employee.

Prior to the introduction of Work Choices employees subject to fundamental changes to their employment contracts, had the capacity to notify the QIRC of an industrial dispute if they did not agree to the change and to have the matter dealt with through conciliation, mediation or arbitration. Employees in these circumstances also had the capacity to claim that the change constituted a termination of employment or a constructive dismissal, and to seek a remedy for any unfairness in the manner in which they had been treated. Both of the employees who gave evidence of their contracts of employment being unilaterally changed, no longer have any access to a remedy for any unfairness they may have suffered as a result. Both work for employers with less than 100 employees so cannot access remedies for unfair dismissal. Further, both work for constitutional corporations and cannot access dispute settling procedures under the Queensland awards which governed their terms and conditions of employment because the operation of Work Choices has removed access to the QIRC.

It is also the case that prior to the introduction of Work Choices, workers who were said to be independent contractors could test the fairness and the validity of the arrangements under which they performed work. The Work Choices regime has removed this opportunity. There are submissions and evidence before the Inquiry indicating that arrangements under which workers are said to be independent contractors rather than employees continue to proliferate, and persons subject to those arrangements have no remedy to pursue allegations of unfairness or exploitation.

Investigations and outcomes of similar inquiries in other States and Territories

The Inquiry has before it details of similar inquiries in other States and Territories. That material has been made available on the Inquiry's web-site and is summarised in this Interim Report. The time frame of this Inquiry may preclude consideration of the final reports in some of these other similar inquiries. However, at the point when the Final Report is prepared further material may be available for consideration. It is also the case that at that point, participants will have had further opportunity to consider this material and to make any additional submissions in this regard.