

## PART C

### COMMENTARY ON DIRECTIVE (TERMS OF REFERENCE)

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

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

#### **Queensland**

The Queensland government's initial response to Work Choices was the establishment of the Fair Go Queensland Advisory Service. Other state and territory governments have established specific bodies with mechanisms for employees to report incidents of unfair treatment (see Directive C in this Part).

In considering existing reporting mechanisms in Queensland, the Inquiry has relied on the Queensland government submission (Section 4 para. 168-189) as a source of factual information. Currently the Queensland government monitors the impact of Work Choices on Queensland workers through:

- The Fair Go Hotline, operating in conjunction with the existing Wageline service and the network of regional Department of Industrial Relations offices;
- Protocols for referral of callers to the Work Choices Infoline where there is confusion about jurisdictional coverage;
- Referral to other agencies; and
- Grants to organisations such as the Queensland Working Women's Service and the Young Worker's Advisory Service.

Participants at this stage support these processes and urge the Queensland government to undertake further processes to provide information and advice to employees. It has been suggested that in gathering relevant information about Work Choices and its impact on Queensland employees, the Queensland government may face legal impediments in responding to such concerns. What has been suggested by some participants is that, upon receipt of such information, the government give consideration to forwarding such material to relevant employee organisations which may be better placed to process such concerns.

#### **Reporting mechanisms in other states and territories**

Other state and territory governments have established specific bodies with functions including the investigation and monitoring of potentially illegal, unfair or inappropriate industrial relations practices. These bodies include:

- Victorian Workplace Rights Advocate (VWRA);
- Northern Territory Workplace Advocate (NTWA); and
- South Australian Employee Ombudsman (SAEO).

South Australia has a state-based industrial relations system while the Northern Territory and Victoria are in the federal workplace relations system. The Northern Territory has always been under federal jurisdiction due to powers conferred on the Commonwealth by the Australian Constitution. Victoria referred the majority of its powers over workplace relations matters to the Commonwealth in December 1996.



## Victorian Workplace Rights Advocate

In Victoria, the government established the Office of the Workplace Rights Advocate (VWRA); an independent statutory body that is required to investigate monitor and report to the Minister and Parliament on industrial relations practices in Victoria. On 7 December 2005, the Workplace Rights Advocate Act 2005 (Vic) received assent and commenced on 1 March 2006. The purpose of this Act is established by Section 1:

*“Section 1. Purpose*

*The main purpose of this Act is to establish the Office of the Workplace Rights Advocate to provide information about, and promote and monitor the development of, fair industrial relations practices in Victoria.”.*

The VWRA undertakes a broad range of functions and activities including investigating and monitoring the impact of Work Choices. Section 5 of the Act establishes the VWRA function and powers:

*“Section 5. Functions and powers of WRA*

*(1) The WRA has the following functions -*

- (a) to inform, educate and consult with Victorian workers, employers and their representatives about rights and responsibilities in relation to work-related matters;*
  - (b) to facilitate and encourage the fair industrial treatment of workers in Victoria;*
  - (c) to promote informed decision-making by Victorian workers and employers;*
  - (d) to investigate illegal, unfair or otherwise inappropriate industrial relations practices in Victoria;*
  - (e) to make representations to an appropriate person or body in relation to work-related matters;*
  - (f) to monitor and report to the Minister and Parliament on industrial relations practices in Victoria;*
  - (g) to investigate and report to the Minister on the impact of any aspect of the industrial relations arrangements affecting Victorian workers or employers;*
  - (h) to advise the Minister generally about work-related matters;*
  - (i) to advise the Minister on the operation of this Act;*
  - (j) to request assistance or information from any public entity within the meaning of the Public Administration Act 2004 and provide information about work-related matters to any such entity at the request of the entity or when the WRA thinks appropriate;*
  - (k) any other function conferred on him or her by or under this or any other Act.*
- (2) The WRA may carry out his or her functions and exercise his or her powers at the request of the Minister or of any other person or body or on his or her own motion.*
- (3) The WRA has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.*
- (4) Without limiting sub-section (3), the WRA may intervene in a proceeding in any court at any time, despite any provision to the contrary made by or under any Act.*
- (5) The WRA is responsible to the Secretary to the Department of Innovation, Industry and Regional Development for the general conduct and management of the functions and activities of the WRA and must advise the Secretary in all matters relating to that conduct and management.”.*

As the VWRA did not commence operation until 1 March 2006, it is difficult to establish the merits of the VWRA in terms of what has been achieved, however it does provide a useful model to assess the benefits of the mechanisms used to investigate, monitor and report on the impact of Work Choices.

## Northern Territory Workplace Advocate

The Northern Territory Workplace Advocate (NTWA) is a government body; created through an administrative process, which is required to report directly to the Minister. The Northern Territory Workplace Advocate was established by the Northern Territory government in May 2006 and is therefore in the early stages of its

development. The NTWA undertakes a range of functions which includes monitoring industrial relations practices and providing reports to the Minister.

### **South Australian Employee Ombudsman**

The South Australian Employee Ombudsman (SAEO), created by the *Fair Work Act 1994* (SA), reports directly to the South Australian Parliament. Relevant sections of this Act include:

*“Section 60 Independence of the office*

*The Employee Ombudsman is not subject to control or direction by the Minister.*

*Section 62 General functions of Employee Ombudsman*

*(1) The Employee Ombudsman’s functions are -*

- (a) to advise employees on their rights and obligations under awards and enterprise agreements; and*
- (b) to advise employees on available avenues of enforcing their rights under awards and enterprise agreements; and*
- (c) to investigate claims by employees or associations representing employees of coercion in the negotiation of enterprise agreements; and*
- (d) to scrutinise enterprise agreements lodged for approval under this Act and to intervene in the proceedings for approval if the Employee Ombudsman considers there is sufficient reason to do so; and*
- (e) to represent employees in proceedings (other than proceedings for unfair dismissal) if -*
  - (i) the employee is not otherwise represented; and*
  - (ii) it is in the interests of justice that such representation be provided; and*
- (f) to advise individual home-based workers who are not covered by awards or enterprise agreements on the negotiation of individual contracts; and*
- (g) to investigate the conditions under which work is carried out in the community under contractual arrangements with outworkers and other examinable arrangements; and*
- (h) to provide an advisory service on the rights of employees in the workplace on occupational health and safety issues.*

*(2) The Employee Ombudsman may delegate functions and powers.*

*(3) A delegation under this section -*

- (a) is revocable at will; and*
- (b) does not derogate from the Employee Ombudsman’s power to act personally.*

*(4) The Employee Ombudsman may in the performance of his or her functions, if the Employee Ombudsman thinks fit, determine not to disclose to an employer, or any other particular person, information that would enable an employee to be identified in a particular case.*

*Section 63 Annual report*

- (1) The Employee Ombudsman must, before 30 September in each year, prepare a report on the work of the Employee Ombudsman’s office during the financial year that ended on the preceding 30 June and forward copies of the report to the Presiding Members of both Houses of Parliament to be laid before their respective Houses at the earliest opportunity.*
- (2) The report must contain particular reference to any investigation made by the Employee Ombudsman into the conditions under which work is carried out by outworkers (or others) under examinable arrangements.”.*



**DIRECTIVE B. INQUIRE INTO 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;
- DISCRIMINATION, HARASSMENT OR THE DENIAL OF WORKPLACE RIGHTS;
- UNFAIR DISMISSAL OR OTHER FORMS OF UNFAIR OR UNLAWFUL TREATMENT OF EMPLOYEES.

**EXAMPLES OF EXTRACTS OF EVIDENCE GIVEN DURING FIRST BRISBANE HEARING (28 AUGUST 2006 TO 1 SEPTEMBER 2006)**

**NAME SUPPRESSED**

Occupation: Engineer

Terminated for refusing to sign a claim that he knew to be fraudulent and/or misleading.

Paragraphs 34 and 35 of his affidavit state:

- “34. As a Registered Professional Engineer (RPEQ) I am bound by a Code of Practice that forbids me from engaging in misleading or fraudulent behaviour and from making false statements. I contend that [name suppressed]’s demands require me to engage in unethical behaviour in contradiction to my professional obligations under the Queensland Board of Engineers Code of Practice.*
- 35. I was not given notice for termination of my employment. I was not paid compensation or wages in lieu of notice for termination of my employment.”*

The company employed less than 100 employees therefore no “unfair dismissal” remedy was available.

**CROSSINGHAM, Sterling Michael**

Occupation: Builder

Termination of employment dealt with in paragraphs 19 to 23 (inclusive) of his affidavit:

- “19. My employment was terminated on 01 May 2006.*
- 20. My employment was terminated because I confronted by employer regarding rates of pay and working conditions as advised by the Department of Industrial Relations.*
- 21. I was not given notice for termination of my employment. I was paid wages in lieu of notice for termination of my employment.*
- 22. I was given a reason for termination of my employment. The reason given to me for termination of my employment after questioning my employer of the need to travel to Darwin at 8.00 pm after completing a day’s work, whether I would be paid penalty rates for not having a 10 hour break and that the constant travel was affecting mine and other employee’s family life was that she would have to check about paying penalty rates, that the flights were cheaper at the times they had booked and no one could tell her how to run their business.*
- 23. I believe the termination of my employment was unjust because I am entitled to be paid the correct award rates of pay.”*



On contacting the Work Choices Infoline he was advised that as the employer had fewer than 100 employees, he could not take action regarding his dismissal.

### GROVES, Dean Patrick

Occupation: Drillers offsider

Termination of employment due to having sustained an injury whilst at work and making a claim for WorkCover.

At paragraph 21 of his affidavit he stated:

*“21. I believe the termination of employment was unjust because I sustained an injury at work and was on WorkCover. I was ready and willing to return to the workplace.”*

Advice was given by the Work Choices Infoline that due to changes in legislation they could not be of assistance.

The impact of his termination was described [by the witness] in the following words:

*“Besides the direct impact of my dismissal of loss of employment I have had difficulty because of the reduction of my income due to being on WorkCover. I have a partner to support and financial commitments including a personal loan that I had to renegotiate an extended repayment schedule. It has affected my health both physically and mentally. It has put a strain on my relationship with my partner and my family.”*

The company employed less than 100 employees therefore no “unfair dismissal” remedy was available.

### HAMMOND, Murray Ian

Occupation: Master/Engineer

The witness had been engaged in his calling with the employer since 13 July 1992 and gave details of his termination at paragraphs 19 and 20 of his affidavit:

*“19. My employment was terminated on 10 July 2006.*

*20. My employment was terminated because my refusal to have my employment circumstances and duties changed from one of instead of working principally as Master/Engineer to one where I was now collecting tolls from passengers, cleaning toilets, deckhand duties, discharging and loading of motor vehicles and cleaning the deck of marine vessel.”*

The witness had experienced a range of emotional difficulty because of concerns in respect of obtaining future employment due to being 59 years of age.

The company employed less than 100 employees therefore no “unfair dismissal” remedy was available.

### NEWMAN, James

Occupation: Electrician

On or around 23 June 2006 the employees of an electrical company were presented with a new wages policy which was to be signed off by all employees the following week.

The witness having read through the document formed a clear view that the new proposal would undercut award conditions and as such contacted apprentices employed by the company and “*suggested that they should read the document carefully before signing it*”.

At paragraph 10 of his affidavit the witness described the circumstances of his termination:

*“10. Next morning the boss’s wife rang me and said word to the effect of ‘Someone’s told you what’s happening and you’re causing trouble’. I said that I was not causing trouble but I knew enough to know that the document would disadvantage us. She said that it was nothing to do with me because I was a casual and would probably be finishing up soon so it would not affect me. I asked her if the policy was at all negotiable, and she said, ‘That’s it. You’re finished now’.”*

The company employed less than 100 employees therefore no “unfair dismissal” remedy was available.

### **SIMPSON, Peter John**

Occupation: Assistant State Secretary, The Electrical Trades Union of Employees Queensland

The witness has a role to organise members who are covered by the *Electricity Generation, Transmission and Supply Award - State 2002*.

His area of coverage extended to such employers as Energex, Ergon Energy, Powerlink and all Government owned corporations power stations.

When industrial disputes would arise the witness at paragraphs 13 and 14 of his affidavit gave evidence as how such matters would previously be dealt with:

*“13. When disputes arise, discussions take place quickly. If the matter is not able to be resolved within the reasonable period of time, it is referred to the QIRC for conciliation. Usually the QIRC has been able to respond with a conference listing within 1 or 2 days, and sometimes, when the matter is urgent, the dispute has been listed for conciliation on the same day as notification was given.*

*14. For the most part, disputes have been resolved by conciliation, and generally all parties have adhered to any recommendations, directions or orders issued by the Commission. Where necessary, we have been able to rely on the QIRC being able to arbitrate a dispute, or interpret an industrial instrument.”*

Since the introduction of Work Choices according to the witness “the industry has lost its access to a responsive, proven process for the resolution of disputes, without a viable alternative having been provided”.

The Union had further concerns in respect of the high standards of safety being maintained throughout the industry due to the appropriate training now being classed as prohibited content in the Work Choices legislation.

### **WONG, Leonie Anne**

Occupation: Junior Employee, Ice Cream Parlour

The witness evidence was that shortly after completing her probationary period of employment she had queried her employer over entitlements which included overtime, superannuation, penalty rates on public holidays and annual leave.

Some time thereafter she was provided with an Australian Workplace Agreement (AWA).

At paragraphs 46 and 47 of her affidavit she states:

*“46. [The employer] then said to me in words to the following effect:*

*‘If you don’t have the AWA on my desk signed by Monday then there is no job for you. I would have to let you go.’*

*47. [The employer] then seemed to hesitate and said to me in words to the following effect:*

*‘Oh no. I have to let you view it for 5 or so days, so have it to me at the end of those days or I’ll have to let you go.’*“



The witness did not sign the AWA and was subsequently terminated.

An application for unlawful termination has been filed in the Australian Industrial Relations Commission and as the matter did not resolve at conciliation, it now moves to the Federal Magistrates Court of Australia.

The witness has received advice from her Union that the cost involved in engaging solicitors for such an application would be in excess of \$15,000 and even if she could get the \$4,000 available from the Federal Government it would still be out of reach for her if she did not have access to Union resources.

## LANG, Jill

Occupation: Director, Queensland Council of Social Service Inc. (QCOSS)

The witness indicated that QCOSS had significant concerns in respect of the impact of Work Choices from two perspectives.

Firstly, the impact on low wages and on people who are disadvantaged attempting to enter the workforce.

Such people were identified as:

- indigenous persons;
- long term unemployed persons (or persons at risk of long term unemployment);
- sole parents;
- persons with disabilities;
- older persons;
- homeless persons; and
- migrants and refugees.

Secondly, the impact on community service sector employees including those employed in not-for-profit organisations.

The concerns were identified as:

- The uncertainty created by the lack of definition of what is a constitutional corporation and the apparent need to rely on case law which is not showing any clear direction at present.
- Uncertainty as to which organisations are captured by the federal legislation and which are captured by the State, as this is determined by constitutional status.
- The extreme uncertainty about the maintenance of current wages, if the award is disbanded after a number of years.
- Anxiety about the cessation of wage increases over the next few years as unions are now unable to apply to vary awards through the application of the federal living wage case decision each year.
- Concern regarding potential impacts on funding provided by government agencies where the award is used in determining funding levels.
- The uncertainty about the ability of workplaces to lock in existing conditions through enterprise agreements under the State jurisdiction and the likely time limit to be able to do this.
- Practical difficulties for organisations in undertaking any form of enterprise bargaining or workplace bargaining due to the limitations on human resources expertise.
- Inability of organisations to obtain appropriate advice regarding these issues due to the prohibitive expense.

## ROBERTSON, Michelle Louise

Occupation: Advocate, Queensland Services, Industrial Union of Employees

The witness has responsibilities in the non-government community services industry which is fast growing and comprises of some 20,000 employees, nationally (overwhelmingly women).

Majority of employers are small organisations and have no dedicated human resources management.



The effect of the Work Choices legislation in these areas was covered in paragraphs 16 to 19 (inclusive) in the witness' affidavit:

16. *The current legislation has created confusion and uncertainty within the industry as some organizations are captured by the federal legislation whilst others may operate in the state system. The determination of the jurisdiction, and subsequently the form of industrial regulation, is now dependent on their status as a constitutional or as a non constitutional corporation.*
17. *This means that already there is already in existence a difference between allowable and non allowable matters, and which jurisdiction we can access to represent our members, or to achieve an enforceable industrial instrument prescribing wages and conditions i.e. the Office of the Employment Advocate for Union Collective Agreements or the QIRC for Certified Agreements.*
18. *The effect of this is the employer is now the determining factor of where we operate, rather than the sector. This means that within discrete industry sectors there may be different forms of regulation.*
19. *Awards are effectively frozen regardless of the status of the employer and it is expected that award rationalization will have a further negative impact.”*

The difficulties that will be on-going in the sector identified in paragraph 20 of the witness affidavit:

20. *There are practical difficulties in negotiating collective agreements in each of the respondent employers to maintain and improve wages and working conditions as there are several hundred employers who are largely not organised into employer organisations. Achieving an industry standard, or even maintaining existing conditions throughout the state is onerous in this climate.”*

## ALLEGRETTO, Aaron

Occupation: Co-ordinator, Young Workers Advisory Service

The evidence of the witness went to his direct knowledge of representation made to the Service by persons alleging that they had been disinfecting by the introduction of Work Choices.

Examples were provided at paragraphs 31, 33, 34 and 35 of his affidavit:

31. *Debbie (19) was working as a casual bar attendant in a small tourist community. During the school holidays (peak season) her hours were increased significantly to 55 - 60 hours per week. In other weeks, her hours had been around 35 - 40 hours per week. On average she didn't work for more than 38 hours a week in a 4-week period. She asked her employer about her entitlements to overtime; her employer told her that she was ungrateful for the hours that he had provided to her and told her to get out of the office. When she finished her shift she was terminated from her position (less than 100 employees) and told not to come back. Since this time her employer has been informing other local businesses not to hire her and that they terminated her from her position for stealing, which she strongly denies.*
33. *Juana (21) was informed that her organisation was a small employer (with less than 100 employees) so they were under no obligation to keep her position open for her to return to work after she finished maternity leave. A month prior to termination she was excluded from company activities, including training and staff social events. She was asked to train another person in her position; the company did not inform the new employee that they were a 'replacement employee' while Juana was on maternity leave. While the employer has no legal basis for the termination or not allowing Juana to return to the position she held prior to termination, this again highlights YWAS' concern about the misconceptions (deliberate or otherwise) about the Work Choices amendments and the right of the employees/employers.*
34. *Helen (24) was fired from her position at a hotel/resort without warnings, reasons or notice. When she attempted to lodge her unfair dismissal application in the AIRC, her ex-employer claimed the company employed less than 100 people and they were therefore excluded from the unfair dismissal provisions of the act. Helen was anecdotally aware that her employer was part of a much larger [sic]. However,*

*without legal advice, this was difficult for her to prove. The difficulties involved in locating this information through the Australian Securities Investment Commission (ASIC), as well as the cost involved in retrieving it, is a further hurdle to an employee who may be legally entitled to pursue an unfair dismissal claim.*

35. *Sebastian (20) contacted YWAS after being told by his employer that he was, 'no longer needed' in the workplace. On the company letterhead provided by the employer they identified that they were a 'Pty Ltd' company, Sebastian was also regularly informed how 'great the new legislation was because employers could do what they want, when they want, and are not restricted by legislation'. An ABN search revealed that the organisation was not a Pty Ltd company but a trust. While Sebastian did not accept the employer's termination on face value, this highlights a concern that people who are not as perceptive and judicious as Sebastian may not seek advice about the termination.'"*

## NAME SUPPRESSED

Occupation: Qualified Chef

The witness, a family man with two young children, having recently taken on a home loan mortgage raised concerns in relation to the impact of Work Choices on himself and dependents.

From the introduction of Work Choices he stated that he had experienced the following effects:

- very long intense hours;
- lack of consultation by his employer in relation to workplace issues;
- consistent pressure, stress, delegation of duties by his employer onto subordinate staff; and
- hierarchical attitudes prevalent.

The impact on his family life was described as:

*"These issues have additional ramifications in regards to my family life: 1. No extra pay to contribute to the family to offset additional child care costs and time spent away from the home. My children are spending 10 hours in care. 2. No recognised time by my employer for family responsibilities and duties. I am expected to work 2 hours longer than my rostered finishing time, without consideration I have dependents to get back to. 3. Insufficient rostered days off to spend with my family. It has become rare for me to obtain two consecutive days off.*

*The introduction of Work Choices has ultimately removed any element of CHOICE in my working life.*

*My children's interests are left secondary to the demands of an Executive Management Committee. As a father and a dedicated employee, the actions of my employer reflect unappreciation and a total lack of understanding of the work I perform. Work Choices promotes class divides with the workplace, an 'us' vs 'them' mentality, and leaves an employee of a labour intensive industry physically and emotionally burnt out."*



## DIRECTIVE C. CONSIDER THE INVESTIGATIONS AND OUTCOMES OF SIMILAR INQUIRIES IN OTHER STATES AND TERRITORIES IN TERMS OF THEIR RELEVANCE TO QUEENSLAND.

Other inquiries to be considered by the Inquiry for the purpose of analysing the information presented and drawing inferences on the impacts of Work Choices on Queensland's economy and labour market are as follows:

- New South Wales Parliamentary Inquiry
- Labour Parliamentary Taskforce on Industrial Relations - Work Choices: A race to the bottom
- Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill
- Tasmania Parliamentary Inquiry
- Select Committee on Working Families in the ACT

The timeframes imposed on the Inquiry may exclude consideration of the final reports of the New South Wales Parliamentary Inquiry and the Tasmania Parliamentary Inquiry. In addition, the Labour Parliamentary Taskforce has only released preliminary findings at this point. Given that Work Choices commenced on 27 March 2006, some inquiries have stated an intention to review the impact of Work Choices over a longer period of time.

### NSW Parliamentary Inquiry

In New South Wales the Minister for Industrial Relations set up a Parliamentary Inquiry into Work Choices. Submissions were due by 26 May 2006 and the final report is due on 23 November 2006.

#### *“Terms of Reference*

*That the Standing Committee on Social Issues inquire into and report on the impact of Commonwealth Work Choices legislation on the people of New South Wales, and in particular:*

- (a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment,*
- (b) the impact on rural communities,*
- (c) the impact on gender equity, including pay gaps,*
- (d) the impact on balancing work and family responsibilities,*
- (e) the impact on injured workers, and*
- (f) the impact on employers and especially small businesses.”*

The Queensland government submission (Part 6 para 283) expresses the view that the New South Wales Parliamentary Inquiry is particularly relevant to Queensland, as the impact of Work Choices is likely to be similar in both states. This is based on a number of factors which include:

- the significant percentage of the respective workforces previously covered by the state jurisdiction;
- similar industrial relations framework in terms of enterprise bargaining, unfair dismissal laws, award making and the role of the Industrial Relations Commission; and
- issues raised are not necessarily confined to New South Wales in terms of their impact.

### Labour Parliamentary Taskforce

For Queensland, the relevance of the preliminary findings of the Labour Parliamentary Taskforce is based on two factors: the broad terms of reference addressed; and the degree of involvement from Queensland residents, to which The Australian Workers' Union of Employees, Queensland draws attention. The terms of reference addressed issues of a general nature that have application to all state jurisdictions, while public hearings took account of the experiences and concerns of Queensland residents in a number of federal electorates which include the regions of: Gladstone; Rockhampton; Townsville; Wynnum Manly; Caboolture; and Brisbane. As yet, no timeframe for a final report has been put forward.



## “TERMS OF REFERENCE

*That a Caucus taskforce on the adverse effects of the Government’s extreme industrial relations changes be established in order to:*

1. *Establish the adverse effects of the Government’s extreme industrial relations (IR) changes on individuals, families and communities, in particular:*
  - i. *the adverse effects on women;*
  - ii. *the adverse effects on young people;*
  - iii *the adverse effects on regional communities; and*
2. *Identify specific cases of the abuses of these laws.”.*

### Preliminary Finding 1:

*“The abolition of the No Disadvantage Test means that Australian Workplace Agreements ignore the inherent inequality in the bargaining relationship between an employer and an employee. The Taskforce considered that AWAs were always unfair except in the rarest of circumstances, but by removing the protection of the award minima, Work Choices has stripped away safeguards relied upon by employees having to negotiate individually with an employer. The use of the five statutory minimum conditions to replace all terms, conditions and wage rates contained in awards has also permanently lowered the starting point for negotiation, presenting even less opportunity to negotiate fairly.”.*

### Preliminary Finding 2:

*“The removal of the right to challenge unfair dismissals and the skewing of bargaining power in favour of employers means that in businesses with less than one hundred employees, permanent employees effectively no longer have any more rights than casual employees. In effect, half of the country’s workforce is now precariously employed. Employees in larger businesses also face more precarious employment because the legislation allows larger employers to sack employees on the basis of an ‘operational’ requirement.”.*

### Preliminary Finding 3:

*“The Fair Pay Commission has been established to drive down minimum wages and has already delayed the first national wage decision, denying the lowest paid a much needed wage increase.”.*

### Preliminary Finding 4:

*“Contrary to assertions by employer bodies, many small businesses worry about the impact of Work Choices on their employees and on their business. They have expressed the concern that Work Choices condones the actions of rogue employers and pressures good employers to also take the low wage road. Many businesses, particularly small business operators, have a good relationship with their employees and they expressed concern that the use of Work Choices by their competitors will force them to choose between their employees’ employment conditions and the future of their business. Furthermore, the Taskforce found that many employers consider Work Choices to be prescriptive, confusing and complex.”.*

### Preliminary Finding 5:

*“By limiting the right of entry to workplaces and prohibiting union-based training clauses, the Government is putting its ideological hostility towards unions ahead of health and safety standards. This will increase the likelihood of death or injury in Australian workplaces.”.*

### Preliminary Finding 6:

*“Stripping the powers of the AIRC to regulate awards and certify collective agreements will remove protection afforded to the most vulnerable groups in the workforce. There is little capacity to ensure the principles of pay equity under Work Choices.”.*



### Preliminary Finding 7:

*“The Taskforce found that Work Choices makes young people particularly vulnerable to exploitation and the loss of basic pay and conditions, since most young workers have little or no work experience, limited knowledge of their rights, limited access to information about their rights and little confidence to stand up for themselves. The Government assumption that employees and employers are equally skilled negotiators is therefore false.”*

### Senate Inquiry

The Work Choices Bill was tabled in Parliament on 2 November 2005 and a Senate Inquiry of the Bill followed. Submissions for the “*Senate Employment, Workplace Relations and Education Committee Inquiry into the Work Choices Bill*” were due by 9 November 2005 and 5 days of hearing in Canberra followed. The Senate Inquiry released a report on 22 November 2005. The relevance of the outcome of this Inquiry to Queensland is limited somewhat by the narrow terms of reference. However a number of submissions made reference to research and other associated material that may be considered by the Inquiry. This includes a joint submission by 151 academics.<sup>2</sup>

### Tasmanian Inquiry

A Tasmanian Government Media Release, dated 5 August 2006, indicated that the Tasmanian Premier intends to establish a parliamentary committee to investigate the impact of Work Choices in that state. The committee would operate under parliamentary privilege and have the power to summon people to give evidence under oath.<sup>3</sup>

### ACT Inquiry

On 5 May 2005, the Legislative Assembly for the ACT resolved to establish a Select Committee on Working Families in the Australian Capital Territory, with the Select Committee to be composed of:

- (a) two members to be nominated by the Government; and
- (b) one member to be nominated by the Opposition.

The Legislative Assembly further resolved that the Select Committee would provide the Assembly with interim reports on its progress before providing its substantive report by the first sitting day in August 2006.

### Terms of Reference

The terms of reference for the Select Committee on Working Families in the ACT are:

- to examine the effect on working families in relation to health costs;
- effects of industrial relations changes, adjustments by the Commonwealth Grants Commission and the allocation of funds by the Commonwealth, impacts on current or potential ACT legislation by the Commonwealth and any other related matter.

<sup>2</sup> [http://www.aph.gov.au/senate/committee/eet\\_ctte/wr\\_Work Choices05/submissions/sublist.htm](http://www.aph.gov.au/senate/committee/eet_ctte/wr_Work%20Choices05/submissions/sublist.htm) date accessed 7 August 2006. Submission No 175

<sup>3</sup> [http://www.cch.com.au/fe\\_email\\_login.asp?p\\_f\\_n&d\\_i=79767&ct\\_c=9&c\\_c=0&u\\_i=53752](http://www.cch.com.au/fe_email_login.asp?p_f_n&d_i=79767&ct_c=9&c_c=0&u_i=53752) date accessed 7 August 2006



**DIRECTIVE D. RECOMMEND A PROCESS FOR:**

- FACILITATING THE REGULAR REPORTING AND EXAMINATION OF INCIDENTS OF UNFAIR TREATMENT AS A RESULT OF THE INTRODUCTION OF WORK CHOICES; AND
- MONITORING AND REPORTING TO THE MINISTER ON A REGULAR BASIS, ON INDUSTRIAL RELATIONS PRACTICES UNDER WORK CHOICES INCLUDING THEIR IMPACT ON EMPLOYEES AND EMPLOYERS.

Whilst the Inquiry is unable to make formal recommendations at this point in time (because evidence from those supportive of Work Choices Legislation has not yet been heard) the Inquiry encourages participants to consider outcomes from other jurisdictions for the purpose of establishing a basis from which formal recommendations might be made. It is acknowledged that participants may offer a range of outcomes for the Inquiry to consider which may not have been considered by other jurisdictions.

The Queensland Government submission to the Inquiry lodged on 21 July 2006 provided no recommendation and provided factual information only on the bodies that have been established in other jurisdictions to perform this function. This includes the Workplace Rights Advocate in Victoria and the Northern Territory, and the Employee Ombudsman in South Australia.

**Research**

The Queensland Government also commissioned a Queensland Workplace Industrial Relations Survey carried out in association with the University of Sydney. This survey developed baseline data of Queensland workplaces and the survey will be repeated regularly so that changes to workplace industrial relations over time can be monitored and appropriate responses developed.

