# Part 4

## Incidents of Unlawful, Unfair or Otherwise Inappropriate Industrial Relations Practices Post Work Choices

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INCIDENTS OF UNLAWFUL, UNFAIR OR OTHERWISE INAPPROPRIATE INDUSTRIAL RELATIONS PRACTICES POST WORK CHOICES

4.1 Overview

The second Directive required the Inquiry to investigate incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including:

- the reduction of wages and conditions through AWAs or other collective agreements;
- discrimination, harassment or the denial of workplace rights; and
- unfair dismissal or other forms of unfair or unlawful treatment of employees.

This aspect of the Directives attracted significant attention from the participants making submissions to the Inquiry. For the most part, submissions did not explicitly attempt to distinguish between the different types of unfair or inappropriate practices identified in the Direction but rather tried to provide a range of examples of practices considered to fall under the broad heading. Indeed, it was frequently the case that in the examples provided, there was overlap between the areas identified, for example, a person may have been seen to be unfairly dismissed for not signing an AWA. In line with the Directions, however, this Report does provide an examination of the evidence according to the different types identified above and provides findings in relation to each of those areas.

Given the nature of the Directive, calling as it did for the investigation of specific incidents of industrial relations practice, this section provides a broad sample of the evidence before the Inquiry in this regard. As indicated earlier in section 1.4.6 of this Report, this is done to provide clear illustration of the evidence before the Inquiry. Also as indicated earlier, with respect to the assertions and claims before the Inquiry, the Panel made no finding of law or fact. Rather it was accepted that all information before the Inquiry reflected the concerns, held by those organisations and individuals presenting the evidence, in relation to Work Choices. All of the evidence given to the Inquiry (save for “in camera” evidence where the names of the employee in question and the employer were suppressed) was available for scrutiny on the Inquiry’s web-site. Importantly, the Inquiry conducted its business in open hearings and any aggrieved party was able to respond to any adverse claim and this in fact did occur on occasions. It is worth noting also the view expressed below by a participant before the Inquiry:

“There are two witnesses to the Inquiry today. There were three witnesses yesterday, but their stories are, in the QCU’s view, the tip of the iceberg. Remember, those who come forward to the Inquiry do so for no reward. That is, there is no outcome to the matters they raise, no resolution to the dispute they may have with their employer. They come to expose an injustice. They receive no immediate answer to it.”

In relation to the reduction in wages and conditions of employment through AWAs or other collective agreements, the Report first considers and compares the framework for approval of workplace agreements under the IRA which has been substantially over-ridden by Work Choices. This discussion provides the background for consideration of evidence before the Inquiry in relation to AWAs or other workplace agreements. This evidence is discussed in terms of three main areas: the impact on wages and conditions of employment under AWAs and other workplace agreements; discrimination and harassment of employees in relation to workplace agreements; and the use of workplace agreements to unilaterally alter terms and conditions of employment. The AWAs viewed by the Inquiry and upon which submissions were made were indicative of what had been found in other

222 QCU Submission, 28 October 2006; Transcript p 642
Inquiries. This Inquiry does not and is not able to draw any conclusion about the nature of all AWAs operating within Queensland. What the Inquiry can do however, is to identify the trends prevalent in the AWAs brought before it.

In relation to discrimination, harassment or the denial of workplace rights as a result of the introduction of Work Choices, the Report discusses a range of submissions and evidence presented to the Inquiry. This was an area where there was significant overlap with the other areas identified in the Directions. Rather than attempt to provide clear definitions and distinctions between the areas, the Report provides a range of examples from the submissions and evidence from the parties which were of concern in relation to discrimination, harassment and denial of workplace rights.

Submissions and evidence in relation to unfair dismissal or other forms of unfair or unlawful treatment of employees formed a majority of the material before the Inquiry and was an area of significant concern for many of the parties appearing before the Inquiry. A selection of these submissions and evidence is provided in this Report. This selection attempts to provide a fair representation of the wide range of material before the Inquiry in respect to this area.

The consideration of the above evidence gave rise to a number of related issues. Although these issues had not necessarily been directly addressed in the evidence, they frequently arose out of the evidence and as such were given consideration by the Inquiry. These issues are also discussed here and include the Employment Separation Certificate (ESC), subclass 457 visas, occupational health and safety, vulnerable groups of workers and gender pay equity.

4.2 Reduction in Wages and Conditions of Employment through Australian Workplace Agreements or other collective agreements

4.2.1 Overview

Under Work Choices there is a considerable shift in the regime for the approval of workplace agreements. Under the IRA, agreements about the relationship between an employer and employees are able to be made between:

- employers and a group of employees in the form of certified Agreements; \(^{223}\)
- employers and employees on an individual basis in the form of Queensland Workplace Agreements (QWAs); \(^{224}\)
- employers and individual employees on a collective basis, in the form of two or more QWAs included in the same document; \(^{225}\)
- employers and unions on behalf of employees of existing businesses; \(^{226}\)
- employers and employees and their Unions with respect to a project or proposed project; \(^{227}\)
- employees and unions on behalf of employees who will be employed by new businesses; \(^{228}\)
- a group of employers (multi-employers) and their employees; \(^{229}\)
- a group of employers (multi-employers) and unions on behalf of employees. \(^{230}\)

\(^{223}\) s. 142 IRA
\(^{224}\) s. 192 IRA
\(^{225}\) s. 191 IRA
\(^{226}\) s. 142 IRA
\(^{227}\) s. 141 and s. 142 IRA
\(^{228}\) ibid
\(^{229}\) ibid
\(^{230}\) ibid
The IRA also provides safety mechanisms for employees and employers with respect to the approval of workplace agreements. Significantly, there are provisions requiring the QIRC to be satisfied that an agreement meets a no-disadvantage test when compared with an employee’s entitlements or protections under an award or statute. There are also provisions requiring the QIRC to be satisfied that the agreement has been appropriately explained to employees, that there is no coercion in relation to its making, and that a valid majority of employees have approved the agreement.231 The QIRC also has extensive powers to receive submissions and evidence relevant to the certification including from individuals and non-parties232 and to make an agreement binding on a Union where there is a request by a member that this occur.233 These provisions ensure that agreements do not disadvantage employees and that there is integrity in relation to the manner in which they are negotiated and approved.

These provisions have been substantially over-ridden by Work Choices. Employers and employees who chose to make their agreements under these provisions have now had their agreements transferred to the federal system and the Work Choices regime. New agreements being made under Work Choices which have been viewed by the Inquiry or around which submissions have been made by participants, show a significant reduction in terms and conditions of employment which were previously guaranteed under the IRA and the WRA prior to the Work Choices amendments.

The Inquiry received evidence and submissions indicating that a number of significant trends are emerging with respect to workplace agreements under Work Choices. These trends emerging from the evidence and submissions can be broadly summarised as:

- the use of workplace agreements to reduce wages and conditions of employment;
- discrimination and harassment of workers who do not wish to enter into workplace agreements or who question the terms of those agreements; and
- unilateral alterations to the terms and conditions of existing employees through the introduction of workplace agreements.

It is also clear that some employers are purporting to introduce workplace agreements which alter terms and conditions of employment without having those agreements approved by the OEA under Work Choices. Many of the agreements which are approved are standard form agreements and contain significant errors in drafting.234 The evidence before the Inquiry indicates that those agreements are providing flexibility for employers through the deregulation of working hours and the removal of penalty rates and other conditions of employment which were previously standard in agreements approved by both the QIRC and the AIRC prior to Work Choices.

There was also evidence of irregularities associated with the manner in which workplace agreements are being made. These irregularities included:

- balloting processes which allowed for the identification of and the manner in which employees voted;
- existing employees being offered agreements on a “take it or leave it” basis; and
- corporate structures being used to avoid legislative protection for existing employees.

The evidence before the Inquiry indicates that the difficulties being experienced with the use of the Work Choices regime for the introduction of workplace agreements, are predominantly related to workers in labour-intensive work and industries, and to individuals predominantly supplying and being remunerated principally for their labour rather than any qualifications or technical expertise.

231 s 144 and s 156 IRA
232 s 155 IRA
233 s 166 IRA
234 Queensland Government Submission, 7 November 2006, p 11; CFMEU Submission p 8; AWU Submission, 8 November 2006, p 3
4.2.2 Framework for Approval of Workplace Agreements under the *Industrial Relations Act 1999* (Qld)

4.2.2.1 **Current legislative framework**

By virtue of s. 3 of the IRA (*Principal object of this Act*), the objects of the IRA include promoting and facilitating the regulation of employment by awards and agreements. Agreements are not given primacy over awards, and other objects such as providing for economic advancement and social justice; fairness in relation to living standards; prevention of discrimination in employment and equal remuneration for men and women for work of equal or comparable value, are also given prominence in the objects of the IRA.

4.2.2.2 **Agreements with groups of employees**

Under s. 141 of the IRA (*Certified agreements*) a certified agreement may be made about the relationship between an employer and a group of employees, whether all employees or those in a category. The group of employees may be employed by a single employer; a multi-employer; on a project or proposed project; in a new business; the state; an entity established under state or Commonwealth law; or another entity in which the state has a controlling interest. An agreement may be made between an employer on the one hand, and one or more employee organisations who represent the employees or are entitled to represent them or the employees at the time the agreement is made.235

Section 143 of the IRA (*Proposed parties to be advised when agreement is proposed*) creates a framework under which proposed parties to agreements are advised when agreements are proposed. Other than in the case of an agreement for a new business or project, s. 144 of the IRA (*What is to be done when an agreement is proposed*) requires that each employee proposed to be bound by an agreement has or has ready access to the agreement in writing, and is provided with an explanation of the terms of the agreement and its effect. That section also requires that where an agreement is to be made directly between the employer and employees, each employee is informed that he or she may ask a relevant employee organisation for representation in negotiations about the agreement. For this purpose, a relevant employee organisation is one bound by an award that binds or would bind the employer, or if there is no such award, an organisation entitled to represent the industrial interests of the relevant employees.236

These safeguards are reinforced by s. 156 of the IRA (*Certifying an agreement*), which requires the Commission to be satisfied of certain matters before it certifies an agreement. This section requires that the Commission must be satisfied that the appropriate advice has been provided to proposed parties consistent with s. 143 of the IRA, and that employees have had access to a copy of the proposed agreement and been provided with an appropriate explanation of its terms, including those employees with special needs, in accordance with s. 144 of the IRA. The Commission must also be satisfied that there has been no coercion237 in relation to employees requesting representation and that a valid majority of employees approved the terms of the agreement.238

The agreement must pass the no-disadvantage test as prescribed in s. 160 of the IRA (*When an agreement passes the no-disadvantage test*).239 That test is flexible and is applied on a global basis. Essentially, an agreement disadvantages employees only if the QIRC considers that it would result in a reduction in employees’ entitlements and protections under an award, industrial instrument or order of the QIRC.240 However, such a reduction may occur if it is in the public interest, and for example, is part of a reasonable strategy to deal with a short term crisis or help in the revival of a business. A similar test was applied by the AIRC under the WRA as it was prior to Work Choices.

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235  s. 142 IRA
236  s. 144(5) IRA
237  s. 156(1)(b) IRA
238  s. 156(1)(j) IRA
239  s. 156(1)(b) IRA
240  s. 156(1)(b) IRA
The *Industrial Relations Regulations 2000* (Qld) require that an agreement for certification is to be accompanied by an affidavit, sworn by an authorised officer of one of the parties to the agreement, containing information including:

- the industry in which the employer is engaged;
- the relevant award for the purposes of the no-disadvantage test;
- the average percentage by which wages under the agreement will increase or decrease compared with wages before the agreement;
- the steps taken to comply with requirements for explaining the terms of the agreement to employees;
- the steps taken to comply with requirements for the approval of the agreement by a valid majority of employees; and
- a statement that the agreement passes the no-disadvantage test.\(^{241}\)

Significantly, each agreement is assessed individually by the QIRC and is subject to a hearing for the purposes of the QIRC being satisfied with respect to each of the requirements for certification. In satisfying itself on these requirements, the QIRC will typically read and consider each agreement and supporting material including affidavits which are required to be filed with each agreement. The QIRC will also conduct a hearing during which it may question the parties to the agreement and hear evidence and submissions about the agreement and the way in which it was made.

An additional flexibility is provided by s. 158 of the IRA (*Other options open to commission instead of refusing to certify agreement*), which allows the QIRC to accept an undertaking from the parties about the operation of the agreement to address any concerns which the QIRC may have. This flexibility is enhanced by s. 151 of the IRA (*Steps to be repeated if proposed agreement is amended*) which allows agreements to be amended at the point of certification, without the need for a further ballot, where the amendment is for a formal or technical reason, or does not adversely affect an employee's interests. In combination, these provisions facilitate proper drafting of agreements, minimise ambiguity and ensure that agreements are effective and enforceable by all parties.

Section 155 of the IRA (*Right of employee organisation to be heard*) gives relevant employee organisations a right to be heard on certification of an agreement. Further, under s. 166 of the IRA (*Persons bound*) an organisation of employees can seek to be bound to an agreement if it has one member whose employment will be subject to the agreement, and that member has asked the organisation to give notice that it wants to be bound.

Section 146 of the IRA (*Negotiations must be in good faith*) requires that when negotiating the terms of an agreement, the parties negotiate in good faith, and gives examples including meeting at reasonable times proposed by the other party; attending meetings; complying with agreed negotiating procedures; not capriciously adding or withdrawing items for negotiation; disclosing relevant information and negotiating with all of the parties.

Section 147 of the IRA (*Peace obligation period to assist negotiations*) prescribes a peace obligation period during which industrial action cannot be taken and the parties cannot ask the QIRC for help in negotiating an agreement. When the peace obligation period expires, one or both parties may seek the assistance of the QIRC by conciliation. The QIRC is also empowered to act on its own motion on public interest grounds, to assist parties to negotiate an agreement. Under s. 149 of the IRA (*Arbitration if conciliation unsuccessful*), the QIRC may arbitrate if conciliation is unsuccessful, in circumstances where industrial action has been protracted or where it is threatening the economy, an enterprise, employees or public health and safety.

\(^{241}\) Regulation 9 *Industrial Relations Regulation 2000* (Qld)
4.2.2.3 **Agreements with individual employees**

The IRA also gives the QIRC the power to approve QWAs. These agreements may be made between an employer and an individual employee.\(^{242}\) Section 191 of the IRA (Collective QWAs) provides that two or more such agreements negotiated collectively, may be included in the same document, provided that the same employer is party to both agreements. However, a QWA for a new employee cannot be included in the same document as one for an existing employee.\(^{243}\) A QWA may not be made with an employee under the age of 18 years. A QWA must also specify a nominal expiry date no more than three years after the date upon which it is made.

Significantly, QWAs were required to pass the same no-disadvantage test applicable to AWAs.\(^{244}\) The QIRC considered each QWA and was required to be satisfied that the agreement passed that test before approval. Although AWAs were approved by the OEA prior to Work Choices, a no-disadvantage test in similar terms to that applied to QWAs also applied. Further, the WRA prior to the introduction of Work Choices provided a mechanism by which the OEA could refer an AWA to the AIRC for consideration, where it believed that the agreement may not pass the no-disadvantage test. These provisions have been removed by the Work Choices legislation.

Section 193 of the IRA (Matters to be included in QWA) prescribes some content for QWAs including a dispute resolution procedure, and anti-discrimination provisions. An employer or employee may appoint a bargaining agent for the making of a QWA, and there must be no coercion in connection with such appointment.\(^{245}\) Employees proposed to be bound by a QWA must be provided with a statement containing information about their entitlements under the IRA; occupational health and safety law; services provided by the Chief Inspector; and bargaining agents.\(^{246}\) Additional provisions relating to the filing of QWAs are found in s. 200 of the IRA (Filing requirements), which requires the QWA to be signed, dated and witnessed, and accompanied by a declaration from the employer that the QWA complies with s. 193 of the IRA and that the employee was given a copy of the information statement the required number of days before signing the QWA. Section 202 of the IRA (Additional approval requirements for QWA and ancillary documents) requires that the QWA comply with s. 193 of the IRA and that the employee consented to its making. There is also a requirement that if the employer did not offer the QWA in the same terms to all comparable employees, that the employer did not act unfairly or unreasonably in not doing so.\(^{247}\) Further, the right of an employee to consult with or seek advice about the QWA from anyone is protected.\(^{248}\)

These requirements are supported by the *Industrial Relations Regulations 2000* (Qld) which provide that both the postal address at which the employee is employed, and an address provided by the employee must be provided when the agreement is filed for approval. In addition, the following must be provided:

- the employee’s date of birth if under the age of 21 years;
- whether the employee was already employed by the employer;
- the employee’s occupation;
- the industry in which the employee is employed;
- the name of the relevant or designated award for the purposes of the no-disadvantage test; and
- a statement that the QWA passes the no-disadvantage test.\(^{249}\)

\(^{242}\) s. 192 IRA  
\(^{243}\) s. 193(3) IRA  
\(^{244}\) s. 209 IRA  
\(^{245}\) s. 196 IRA  
\(^{246}\) s. 200(1)(b) IRA  
\(^{247}\) s. 202(3)(e) IRA  
\(^{248}\) s. 202(2) IRA  
\(^{249}\) Regulation 13 Industrial Relations Regulations 2000 (Qld)
The Industrial Relations Regulations 2000 (Qld) also provide that the signature of an employee on a QWA must not be witnessed by the other party to the QWA, or if the other party is a corporation, by a person who is a director, or involved in the day to day management of the corporation.250

4.2.2.4 Submissions of participants in the Inquiry

A number of submissions of participants were strongly supportive of the framework provided by the IRA for the making and approval of agreements. This system was seen as giving flexibility to employers to make agreements to suit their business needs, while ensuring the protection of workers in the bargaining process and providing protection for those unable to bargain. The QCU251 and the Queensland Government submissions252 pointed out that prior to Work Choices, parties had the choice of operating in either the Queensland or the Commonwealth system. The fact that 70% of employees were covered by the Queensland industrial relations system was seen as an indication that the system suited the needs of employers and employees.

The Queensland Government submission also submitted that choice of jurisdiction was not the only choice removed by Work Choices. There are now significant restrictions on the matters which parties can include in agreements, further increasing the complexity of the legislation. Employers who may wish to include a positive statement in their agreements that employees will not be unfairly dismissed, or to provide a process or remedy for such matters, are prohibited from doing so under Work Choices. This is despite the fact that such a provision may reassure existing employees and attract new employees. Further, an employer with a positive relationship with its workforce who may wish to include a commitment to continue with collective agreements, may not include such a provision under Work Choices.253

4.2.3 The Use of Workplace Agreements to Reduce Terms and Conditions of Employment

4.2.3.1 Introduction

The Inquiry had a wide range of evidence before it of the use of agreements under the Work Choices regime to reduce terms and conditions of employment. The submissions of the majority of participants highlighted the impact of the removal of the no-disadvantage test in the approval of workplace agreements. This was said in the Queensland Government submission to be the most far reaching change introduced under Work Choices.254 Professor Peetz in his submission to the Inquiry pointed out that Work Choices promotes individual contracting at the expense of awards and collective bargaining. It does this by removing many procedural obstacles that were in place for AWAs by abolishing the no-disadvantage test. Previously, the no-disadvantage test meant that there was significant effort involved in employers setting up an AWA for employees for the purposes of cutting costs. This was because if AWAs were scrutinised properly in terms of the previous no-disadvantage test, they would not be able to achieve anything in the way of cost savings, at least in net overall terms, below what could have been achieved under the award.255 It should be noted, however, that the submission of the LGAQ noted that changes to conditions of employment of themselves should not be interpreted as a diminution in conditions and provides examples of changes in employment conditions in local government councils which have merely resulted in the removal of irrelevant and outdated conditions.256
It was the view of Professor Peetz that the Work Choices regime removes the no-disadvantage test to create an incentive for employers to use AWAs and there have been obstacles put in the way of collective agreements. These include the prohibited content provisions and the provisions that make it more difficult to engage in legal industrial action because of the additional matters that can trigger bargaining periods being terminated or found to be invalid.\textsuperscript{257}

The no-disadvantage test has been replaced by a set of five minimum conditions under the AFPCS. Employers are now required to submit a statutory declaration when agreements are lodged with the OEA, stating that the agreement meets this standard. Agreements are automatically approved by the OEA and the AIRC has no role in this process.

The five minimum conditions under the AFPCS include the guaranteed hours standard (although the efficacy of this is questioned),\textsuperscript{258} minimum wages (and classification structures to be established by the AFPC); annual leave; personal leave and parental leave. The Textile Clothing and Footwear Union of Australia (TCFUA) contend that these conditions already apply to employees across Australia and represent nothing more than the barest of minima.\textsuperscript{259} The TCFUA also submitted that Work Choices provides many ways for an employer who is a constitutional corporation to shift employees onto an arrangement that only requires the employer to meet the four minimum conditions.

It was further submitted that provisions of the WRA prohibiting duress being applied to an employee in connection with an AWA, did not provide protection to employees, particularly in light of the Cowra matter, where the federal OWS found that it was not unlawful to dismiss employees and to re-employ them on inferior conditions.\textsuperscript{260}

The YWAS submitted that the reduction of the terms of a contract or workplace agreement to the five minimum conditions, was of great concern not just in relation to the working conditions of young people, but also their attitudes to work. The minimum conditions comprising the AFPCS under Work Choices, essentially lowers the bar in terms of the standard of treatment of employees and gives employers greater opportunity to treat employees unfairly. The previous no-disadvantage test allowed for a much broader set of standards or values against which to measure fairness.\textsuperscript{261}

The YWAS also highlighted reports of a recent push by the Australian Chamber of Commerce and Industry (ACCI) to further reduce the five minimum standards. Changes sought by the ACCI include: cutting sick leave to five days per year; stopping accrual of leave while employees are on workers’ compensation; removal of obligations to transfer pregnant workers to safe work; and complete cashing out of annual leave to enable pay to be increased by 8% in lieu of annual leave, to avoid the 20% loading for casual employees.\textsuperscript{262}

These concerns of participants in the Inquiry about the removal of the no-disadvantage test, are borne out by statistics provided to Senate Estimates by the OEA on 29 May 2006. According to the OEA, a sample of 250 AWAs lodged since the commencement of Work Choices showed that:

- 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.

\textsuperscript{257} Transcript, 6 December 2006, pp 807-808
\textsuperscript{258} TCFUA Submission, para 9
\textsuperscript{259} TCFUA Submission paras 8-10
\textsuperscript{260} ibid paras 12-16
\textsuperscript{261} YWAS Submission p 9
\textsuperscript{262} ibid p 10-11
In relation to this data, Professor Peetz submitted that the incidence of the abolition of such award provisions had markedly increased in AWAs made under Work Choices, in comparison with AWAs made under the previous legislation. For example, in 2002/2003, only 25% of AWAs had abolished overtime pay. This was compared to the situation after the introduction of Work Choices where 51% of AWAs abolished overtime pay and 31% of AWAs modified overtime pay. In terms of penalty rates, 54% of AWAs pre Work Choices abolished penalty rates, compared to 63% of AWAs post Work Choices. Annual leave loading was abolished in 41% of AWAs pre Work Choices and in 64% post Work Choices. Shift loadings were abolished in 18% of AWAs pre Work Choices and 52% post Work Choices.263

Professor Peetz also noted that the data provided by the OEA to the Senate Estimates Committee hearing on 29 May 2006 may be the last information provided on AWAs. At the most recent Senate Estimates Committee hearings, the OEA had declined to provide any more information about the changes in AWAs. This was of great concern to people trying to track what was happening under Work Choices.264

The submission of the CFMEU highlighted the impact of the narrowing of matters which may be the subject of an agreement under Work Choices. A particular example highlighted in the evidence of Mr Ravbar (CFMEU) was camp accommodation. Prior to Work Choices, many of the standards relating to such accommodation had been specified in project agreements. This had ensured that where accommodation did not meet required standards, problems could be dealt with under the disputes settling procedures in those agreements. These matters were no longer able to be included in agreements made under Work Choices and could not be the subject of disputation under procedures in agreements. As a result, the CFMEU had observed a significant decline in the standard of accommodation and related services such as cleanliness and hygiene in camps.265

In relation to AWAs, the CFMEU submitted that these could be used to undermine previous collective agreements by virtue of the fact that AWAs could be made even where a collective agreement was in place. Further, even in workplaces where employees were highly skilled or experienced, they would not be in a position to negotiate with their employers on an equal footing. The employer had the power in the relationship because the employer has the right to hire and fire. This power imbalance had been enhanced in favour of employers by the abolition of unfair dismissal laws.266

4.2.3.2 Examples of Australian Workplace Agreements

There were many examples of AWAs provided to the Inquiry by various participants including the AWU, the Liquor, Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees (LHMU), the SDA and the TCFU in particular, provided actual copies of AWAs which were in the possession of their various members. The major features of these are summarised below. In some cases, given the sensitive nature of the information, or the potential to expose members who provided it to discrimination, participants sought that evidence be given “in camera”.

A major retailer with operations in most states has implemented an AWA with the following provisions:

- base rate of $0.02 per hour above the relevant award;
- removal of Saturday, Sunday and public holiday penalty rates of 25%, 200% and 250% respectively;
- removal of overtime rates of 150% for the first two hours and 200% thereafter;
- removal of paid 10 minute rest break;

263 Transcript, 6 December 2006, p 810
264 Transcript, 6 December 2006, p 810
265 Mr Ravbar, Evidence, 25 August 2006, Transcript pp 164-165
266 CFMEU Submission p 7
abolition of provisions specifying when ordinary hours may be worked and designation of all hours as ordinary hours;
• removal of 17.5% annual leave loading;
• removal of limits on consecutive days which may be worked;
• removal of allowances for first aid, meals and laundry;
• ability to work part-time employees for the same number of hours per week as full-time employees;
• removal of 23% casual loading; and
• resulting loss of up to $146.58 per employee per week.

A major supermarket chain with over 100 stores nationally, has effectively frozen wages in its second generation AWAs. Originally staff were paid competitively and were compensated for loss of penalty rates on weekends and evenings. Staff could also access a productivity bonus, estimated to be between $2.50 and $3.00 per hour. AWAs now on offer do not provide for such a bonus. Base hourly rates of pay for employees of this chain have increased by 9.7% over the past five years, against inflation which has increased by 15.6% during the same period. The SDA was unaware of any employee who had requested to negotiate or had successfully renegotiated the terms of the AWA as offered to staff.

A major fast food retailer offered AWAs to an existing workforce which provided for:
• reductions in rates for Saturday, Sunday and after midnight work of between $1.00 and $11.00 per hour;
• the imposition of a flat allowance of between $75.00 and $150 per shift in lieu of award provisions for public holiday loadings which provide for an uplift in base rate of 250%;
• removal of weekend penalty rates of 25% for Saturday and 50% for Sunday;
• an increase in the threshold level for overtime payments so that employees are not entitled to overtime until they have worked 152 hours in four weeks compared to an entitlement to overtime payments for work in excess of 38 hours per week under the award;
• a reduction in overtime payments from 150% for the first two hours per shift and 200% thereafter, to 150% for the first 40 hours of overtime and 200% thereafter;
• the capacity to unilaterally increase or decrease the working hours of part-time employees;
• an increase in the maximum length of a shift and the capacity for employees to be required to work split shifts necessitating them travelling to and from work twice on the same day;
• an increase in the maximum number of consecutive shifts which can be worked by one employee from five to ten;
• removal of laundry allowance;
• removal of annual leave loading; and
• removal of access to the QIRC for the resolution of workplace grievances.

An AWA in the electrical retailing industry provides wage rates for shop assistants increasing from $14.20 to $15.80 per hour in the period from 1 April 2006 until 1 July 2010. At the point the AWA commenced, the rate for a shop assistant was $14.20 per hour which was $1.45 per hour in excess of the FMW at that time of $12.75 per hour. The current rate under the AWA is $14.60 per hour, which is $1.13 per hour above the FMW of $13.47 per hour established by the AFPC in its decision of October 2006. Thus the margin between the hourly rate under this AWA and the FMW has shrunk by $0.32 per hour or $12.16 per 38 hours worked. This difference is exacerbated by the fact that the minimum rate in the AWA of $14.60 is stated to be payable for all hours worked, regardless of the day or time. Further, that rate is said to contain an allowance for penalty payments to account for any evening, Saturday and/or Sunday
work, public holiday work and annual leave loading. This would appear to be a significant benefit to the employer in return for a mere $1.13 per hour for the employee.

The AWA provides that a rotating roster may be implemented at the discretion of the employer, with no more than six days to be worked in any week, Monday to Sunday inclusive, comprising any combination of days and times. Work outside ordinary hours is overtime, and the AWA provides as follows:

“Where you volunteer to work overtime it will be paid at your normal hourly rate of pay. Where the employer directs you to work overtime, it will be paid at 1.5 times your normal hourly rate of pay.

If an employee wishes to dispute the voluntary nature of any overtime, they should notify the Director in writing by the end of the next pay period. Thereafter, the Dispute Resolution Procedure (clause 6.4) will be followed. If no notice of dispute is received in this time period the overtime will be at the ordinary hourly rate.”.

An AWA in the agricultural industry provides as follows:

“To avoid any doubt, this agreement excludes all of the following protected award conditions:

- Rest breaks;
- Incentive based payments and bonuses;
- Annual leave loadings;
- Observance of days declared by or under State or Territory laws to be observed generally within that State or Territory or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of employees to payment in respect of those days;
- Days to be substituted for, or a procedure for substituting days referred to in [the] paragraph above;
- Monetary allowances for:
  - expenses incurred in the course of employment; or
  - responsibilities or skills that are not taken into account in rates of pay for the employee; or
  - loadings for working overtime or for shift work;
  - penalty rates;
  - outworker conditions;
  - any other matter referred to in the regulations of the Workplace Relations Act 1996 as amended from time to time.”.

The AWA goes on to provide that unless otherwise advised in writing, all employees are deemed to be casual employees. Ordinary hours of work may be worked over any period, from midnight Sunday to midnight Sunday. The employer may also require employees to work “reasonable additional hours”. The casual hourly rate provided for in the AWA is $15.30 per hour. This rate is equivalent to the guaranteed minimum wage of $12.75 and the guaranteed casual loading of 20%. The casual hourly rate is said to be inclusive of payments for:

- rest breaks;
- incentive based payments and bonuses;
- leave loadings;
- monetary allowances for expenses incurred in the course of employment, responsibilities or skills that are not taken into account in rates of pay for employees or disabilities associated with the performance of particular conditions or locations [sic];
- loadings for working overtime or shift work;
- penalty rates; and
- outworker conditions.
Another AWA in the agricultural industry provides for employees to be placed on either short term or long term assignment. While on long term assignment employees receive “reasonably predictable” hours of work, which may be more or less than 30-35 hours each week. The AWA goes on to provide that where it is established that an employee has not received regular hours, their hourly rate reverts to the short term assignment rate. The status of an employee as either a short term or a long term assignee is determined by the nature and pattern of their employment, and is subject to review during the life of the AWA. The AWA provides for only one weeks notice on termination of employment even in the case of redundancy, and states that redundancy entitlement is factored into the all up rate.

The AWA also states that during its period, employees may be offered more than one engagement on separate occasions and that on any occasion an employee is engaged it will be for a fixed period of time, or event, or specific project or contract. There is no guarantee that employees will be re-engaged during the life of the AWA. During periods between each intermittent engagement, the AWA provides that employees will be able to claim unemployment benefits or work for other employers, so long as this does not directly interfere with their ability to work for the employer when required.

An AWA in the horticultural industry provides for:

- standard weekly working hours of 42 hours and 30 minutes per week;
- a casual rate of $15.30 (the FMW plus 20%) for all hours worked including weekends, public holidays and all hours in excess of 42 hours and 30 minutes per week;
- a rate for permanent employees of $14.50 per week for all hours worked including weekends, public holidays and all hours in excess of 42 hours and 30 minutes per week;
- employees to work up to 51 hours per week with payment being made at the standard rate, without penalty payments for overtime;
- employees may also be required to work weekends for an additional allowance of $2.00 per hour; and
- other than allowances for weekend work and night spraying, employees are not entitled to any allowances, penalty or disability payments.

An AWA covering employees of a pathology service provider replaces all other workplace agreements including a certified agreement which previously applied to employees. The AWA provides for unilateral changes to an employee’s position description and to the basis of employment. Ordinary hours are anticipated to be between 24 and 38 per week, with employees being required to work reasonable additional hours. The AWA does not provide for minimum hours to be worked on any day, unlike the previous certified agreement which required that a minimum of three hours be worked on any day. Unlike the previous certified agreement, there is no requirement for employees to be given two consecutive days off each week.

There is a salary package inclusive of all loadings, allowances and penalty rates, and additional hours attract a loading of 50% in lieu of the provisions of the previous certified agreement which provided for a loading of 100% for shift workers and a loading of 100% after three hours of overtime. Further, the AWA removes previous entitlements under the certified agreement for employees to be paid at the rate of time and a-half for Saturday work and double time for Sunday work, with work on all of these days under the AWA being required to be paid for at the base rate. Typically, an employee under the AWA would earn in the region of $53 per week less under the AWA than under the certified agreement.
The AWA also removes rights under the previous certified agreement to:

- allowances such as those for an employee being on call or using his or her private vehicle, meals and living away from home;
- notification to employees and consultation with the relevant union in circumstances of redundancy;
- time off during a notice period to seek other employment;
- preservation of accrued entitlements through continuity of service, on transmission of the business or transfer of a calling;
- additional payment for performance of higher duties;
- leave to attend industrial relations training; and
- conciliation, arbitration or mediation by either the QIRC or the AIRC.

An AWA in the hospitality industry provides for employees to be paid the higher of the following rates which are termed “all up hourly or piecework rates”:

- the ACPS for the employee’s relevant classification of employment (or applicable junior/disability percentage thereof) plus a casual loading of 20% if applicable;
- the FMW of $12.75 per hour (or applicable junior/disability percentage thereof) plus a casual loading of 20% ($15.30) if applicable; or
- an all up hourly amount or piece rate as specified in a separate document.

The AWA provides that an employee’s hours of work will depend on the employer’s operational requirements, but should be “reasonably predictable”. No minimum hours are guaranteed but if the employee is called into work a minimum of two hours is payable. The following provisions with respect to hours of work are contained in the AWA:

“You will not be required or requested to work more than an average of 38 ordinary hours per week over a 12 month period, and reasonable additional hours. You may however voluntarily apply to be available for extra hours or shifts, be they on public holidays, weekends or outside ordinary time hours and be paid at the agreed all up rate.

Unless you advise us in terms of clause 1(f) [hours are unreasonable] then you agree that you will volunteer to be available for extra shifts or extra hours be they on weekends or public holidays at the all up rate.”.

The AWA also requires employees to consent to deductions being made from their wages on termination for breakages or for amounts advanced to them by the employer. It was submitted in respect of this AWA that employees could be worked for excessive hours, have no entitlement to any overtime payments, and be compelled to work as and when the employer required. The dispute procedure in the AWA simply provided that the employee must raise any issue with the employer first, and then if the matter was unresolved, it may be referred to a mutually agreed arbitrator. Further, the dispute procedure rendered employees liable to pay the costs of the employer if they did not make a genuine attempt to resolve a dispute at the workplace level before referral to “another party”.

Queensland Industrial Relations Commission
Evidence was given to the Inquiry of AWAs being used to reduce conditions of employment as follows:

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**Security company**

This security company agreed in principle to include a number of provisions previously found in a multi-employer agreement for the security industry certified by the QIRC. The Union sought a provision in the agreement to protect continuity of service in accordance with the decision of the Industrial Court of Queensland in the *Wilson Parking Case* which applied s. 69 of the IRA and ensured that employees in contracting industries have continuity of service for all purposes, including long service leave, sick leave, severance pay and notice of dismissal. The company refused to include such a provision in the agreement other than with respect to long service leave. As a result employees lost what the LHMU saw as one of the most significant improvements in many years, in the conditions of its members employed in the contracting industry.

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**Security company**

An agreement which provided for rates of pay significantly below rates in agreements covering the employees of other major security companies in Queensland was twice rejected in a ballot by Queensland employees. The company then held a ballot where the votes of Queensland employees were amalgamated with those of employees in other states with the result that the agreement was approved by a majority of employees.

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**Hotel**

An agreement which was proposed to cover employees in a hotel, contained the following reductions in conditions of employment:

- reductions in payments for shifts from between $2.51 on Monday to Friday between 5.00 p.m. and midnight, and $120.48 per shift on public holidays;
- removal of paid tea breaks;
- no overtime payments for work over 38 hours per week or 10 hours per day;
- no shift penalties;
- no late shift penalties;
- no annual leave loading; and
- removal of allowances for meals, and tool allowances for cooks.

When employees voted against the agreement, new employees started to be sourced from a labour hire company rather than being directly employed by the hotel.

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In evidence to the Inquiry, Mr Damien Davie of the LHMU highlighted a further example of an AWA being used to reduce conditions of employment:

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267 Exhibit 25 [Suppressed]


269 Exhibit 13 Statement of Damien Davie
**Pie manufacturing company**

An agreement proposed to cover employees within this industry included the following reductions in conditions of employment:

- reduction of casual loading from 23% to 20%;
- removal of minimum daily working hours for casual employees;
- removal of penalty rates for weekend work;
- ability to work five out of seven days rather than five consecutive days as required under the previous award;
- where an employee volunteers to work overtime, he or she is paid at ordinary rates;
- where an employee is directed to work overtime, all such overtime is paid at time and a-half rather than double time after the first three hours;
- reduction in rest pauses;
- annual leave can only be split into two periods;
- extension of time which must be worked before a meal break is provided;
- removal of accumulation of sick leave and reduction in the amount of leave available;
- no provision for bereavement leave;
- reduction in public holiday payments; and
- no provisions in relation to severance pay, termination of employment and notice on termination.

The Queensland Government in its submissions highlighted a number of cases of national prominence, which were said to provide an early indication of various ways in which the Work Choices laws can be used to the detriment of employees.

**Cowra Abattoir**

Twenty-nine workers were terminated on 30 March 2006, and invited to reapply for 20 positions on new contracts which provided for pay cuts of up to $180 per week and loss of performance bonuses. After investigating complaints about this matter, the OWS concluded that the conduct of the employer was based on operational requirements and that the employer could not be prosecuted for denying employees the benefit of wages and conditions under the industrial instrument which covered them. The decision confirms that under Work Choices it is legal to sack workers and to re-hire them on lower wages and conditions, on the basis of operational requirements.

**Hunter Valley Mining**

In this case a 21 year old mine worker refused to sign an AWA because she objected to certain provisions. One of the clauses in the AWA provided that an employee unable to attend work for reasons other than an emergency (as determined by the company) must provide 12 hours notice. If the employee breaches this provision, the employee expressly authorises the employer to deduct $200 from the employee’s weekly pay.

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270 Queensland Government Submission, 21 July 2006, pp 40-41
271 ibid p 42
The Spotlight chain of stores offered AWAs to employees in New South Wales which provided wage increases of 2 cents per hour, while removing penalty rates, overtime payments, rest breaks, incentive based payments and bonuses, annual leave loadings and public holiday pay. As a result, an employee working shifts including weekends, could receive $90 per week less under the AWA because of the removal of weekend and overtime penalty rates. The removal of these conditions is lawful under Work Choices, and the management of Spotlight said in response to criticism of the AWAs: “We are doing what we were told by the legislators.”

The TCFUA undertook a comparison of how the minimum conditions under Work Choices compare to current award protections for employees covered by the Clothing Trades Award 1999 (Cth). The example clothing worker is a lingerie/underwear machinist, who works for a clothing company with 10 employees, graded at Skill Level 2, and working from 7.00 a.m. until 5.00 p.m. each week day. That employee, working in the same job, and for the same hours under a Work Choices agreement providing for the minimum conditions, would lose the following entitlements:

- 3 hours overtime at time and a-half - $62.01;
- 4 hours overtime at double time - $110.24;
- head of table allowances - $10.20;
- meal allowances - $41.50; and
- leave loading - $7.05.

The result would be a total loss to the employee of $134.63 or $141.73 if the employee was entitled to additional allowances because the employer did not provide dining and rest room facilities. In addition, the employee working under a Work Choices agreement would have no entitlement to the following award conditions:

- 1 weeks notice of changes to working hours;
- 1 hour unpaid meal break between 11.30 am and 2.00 pm;
- 3 x 10 minute paid meal breaks;
- the payment of allowances while on annual leave;
- dispute resolution training leave;
- accident make-up pay for up to 26 weeks;
- severance payment in the event of redundancy;
- paid jury service;
- paid hospital leave;
- protection against stand downs; and
- penalty payments for work on public holidays.

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272 ibid pp 41-42
273 Workplace Express 25 May 2006
274 TCFUA Submission paras 24-26
The TCFUA highlighted the following cases in its submission to the Inquiry:

**Pacific Linen**

On 12 April 2006 workers at Pacific Linen a commercial laundry employing approximately 60 people, were given a letter with their payslips which purported to reduce their entitlements to overtime, leave loading, cumulative sick leave and penalty rates from the next day. After the Union raised this issue in the media, the employer revoked the proposed changes. Whilst the manner in which the employer acted did not comply with the technical requirements of Work Choices, a number of the changes to conditions could have been lawfully achieved through an AWA or other workplace agreement.275

**LWR Manufacturing**

LWR Manufacturing Australia Pty Ltd, a clothing company employing approximately 45 people, is in the process of trying to implement a non-union workplace agreement. There is currently an agreement in place with the Union. The proposed agreement had not been distributed to workers when the Union made its submission to the Inquiry, but a draft seen by the Union contained the following:

- overtime, weekend and public holiday rates are removed;
- afternoon shift allowance is reduced for new employees from 22.5% to 15% and the night shift allowance is reduced from 30% to 22.5% for current employees and 15% for new employees;
- the entitlement to a ten hour break between shifts is removed;
- casual loading has been reduced from 33.3% to 20%;
- meal, training and other allowances are removed;
- two weeks annual leave is to be paid out;
- beneficial long service leave provisions allowing for accumulation at a higher rate and providing the capacity to take long service leave after five and seven years are removed;
- steady employment of 38 hours per week for full-time employees is removed and hours can be averaged over twelve months;
- the entitlement for shift workers whose hours do not fall completely within one shift classification to be paid at the higher shift rate is removed;
- paid meal breaks if overtime continues more than two hours past normal finishing time are removed;
- the entitlement to a minimum of two hours employment on a Saturday or Sunday is removed;
- higher pay for higher duties performed for more than two hours is weakened with workers needing to perform higher duties for more than one day to receive the higher rate of pay, and if higher duties are performed for more than two days, the higher rate is paid for the time those duties are performed rather than for the whole week;
- the right to equal representation for management and workers on the single bargaining unit is removed;
- the requirement is removed for the employer to notify the TCFUA before changes to the method of operation occur;
- the employees’ right to elect representation in the dispute resolution process is weakened;
- the capacity to stop work where there is a dispute relating to a serious health and safety concern is removed; and
- the prevention of discrimination on the basis of colour, natural extraction or social origin is removed;

275 ibid paragraphs 51 to 53
The LGAQ submission asserted that changes to conditions of employment of themselves should not be interpreted as a diminution in such conditions. They provided the following examples:

- "Removal of the horse and saddle allowance in councils where the means of transport is only, and will only, be a motor vehicle.
- Removal of camp and temporary camp allowances and arrangements in large metropolitan and urban centres where temporary camps have not and never occur or will be required.
- Removal of callings derived from broader industry awards, such as riggers and scaffolders in councils where buildings will only ever be less than those stipulated in the construction-related industry award.
- Alteration of ordinary hours to reflect environment and climatic conditions.".277

4.2.4 Discrimination and Harassment of Employees in relation to Workplace Agreements

The submissions of participants in the Inquiry focused heavily on concerns about the ability of employers to discriminate against and to harass workers in relation to the making and approval of workplace agreements. In particular, submissions highlighted the plight of vulnerable workers. The Queensland Government submission highlighted that the issues of coercion and duress associated with the making and approval of workplace agreements was one of the predominant subjects of complaint made to FGQAS, Wageline and regional offices of the Department of Industrial Relations.278

According to the Queensland Government submission:

“There are no clear geographical patterns in the difficulties being encountered, with issues occurring across Queensland and across industries. However, the experience in the first four months of the operation of Work Choices is that the difficulties being experienced are predominantly related to workers in labour-intensive work and industries, and to individuals predominantly supplying and being remunerated principally for their labour rather than any qualifications or technical expertise.”.279

Further, the Queensland Government submissions stated:

“The difficulties encountered follow a pattern of closely matching the industries in which non-compliance has always been an issue in Queensland such as transport driving, hospitality services, accommodation services, retail services, fruit and vegetable growing, security, and cleaning. While there have always been issues of non-compliance in these and other industries, the Work Choices legislation has removed many protections of the Queensland Industrial Relations Act 1999 under which workers at least had remedies to some of the difficulties they are facing.”.280

276 TCFUA Submission para 54
277 LGAQ Submission p 12
278 Queensland Government Submission p 44
279 Queensland Government Submission , 21 July 2006, p 44
280 ibid p 44
The difficulties encountered follow a pattern of closely matching the industries in which compliance has always been an issue in Queensland, such as transport driving, hospitality services, accommodation services, retail services, fruit and vegetable growing, security and cleaning. While there have always been issues of non-compliance in these and other industries, the Work Choices legislation has removed many protections of the IRA, under which workers at least had remedies to some of the difficulties they are facing.281

The submission of the TCFUA highlighted factors in its industry, which are making already vulnerable workers more susceptible to discrimination and harassment in relation to the introduction of workplace agreements.282 In this regard it was submitted that there has been a significant reduction in aggregate output and employment in the textile, clothing and footwear sector. “In 1986, there were 116,000 workers in the textile clothing and footwear industry in Australia.283 Fifteen years later, by 2000/2001, employment in the textile, clothing and footwear industry had fallen by over one half, to 58,700 or less than half that number”.284 Large numbers of TCFUA workers who have lost their jobs have been unable to find comparable or other work, and a study shows that where the average time since retrenchment is three years, “[o]nly 54% of those surveyed had found work, and only one in five had found work commensurate with their former jobs, in terms of pay and conditions”. Mean earnings had reduced, the upper income range had been truncated and many had found only part-time or casual work, compared to full-time positions they had previously held. “Eighty-one percent had received no instrumental assistance from their past employer, Government, or any other agency since retrenchment”.285

The TCFUA contended in its submission that arguments of the Commonwealth Government to the effect that labour shortages will ensure that individual employees will not be disadvantaged under Work Choices, were flawed. Labour is not transferable from one sector to another and employees from the textile clothing and footwear sector were extremely difficult to redeploy.286

Other impediments to equal bargaining highlighted in the submissions of the TCFUA are:

- low levels of formal qualifications in the industry, with 74% of workers having no formal qualification;287
- high proportions of workers from non-English speaking backgrounds, with the Union estimating that 80% of workers are in this category;
- high proportions of members being reliant on either federal or state awards;
- clothing outworkers being reliant on relevant state or federal awards in combination with state legislation to protect outworkers in Queensland, New South Wales, Victoria and South Australia;
- the prevalence of sham arrangements and illegal below-award pay and conditions in the industry afforded to outworkers in clothing sweatshops;
- imbalances suffered by regional workers because of high unemployment and few job opportunities in those areas, combined with the economic power of regional companies, threatening to close or to down-size; and
- a large proportion of Union members are women who are often in weaker bargaining positions compared with their male counterparts due to institutionalised gender discrimination in the industry.288

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281 ibid p 44
282 TCFUA Submission paras 29-42
283 ABS TCFL Employment: ANZIC 4d by Financial Year
286 TCFUA Submission paras 34-38
287 TCFUA Submission para 39 and their reference to ABS 1996 Census Data
288 ibid paras 39-50
It was also submitted that certain features of the membership of the TCFUA affected their ability to bargain individually with an employer on a genuine basis. "These factors include levels of education, including simply the capacity to read and write in English, language difficulties, the effect of the contraction of the industry and fears about job security and fears about discrimination in the workplace for speaking out. These fears are often worse amongst those with the least secure forms of employment such as casual employees." 289

Further, the TCFUA stated:

"Many of our members have overcome these factors by collectively bargaining, as a union, for a union agreement. In our experience this has been most common at larger workplaces, which, given the breakdown of our membership, are much more likely to be in the textile industry. It may also not be coincidental that the textile industry has suffered less from tariff reduction and import penetration in recent years. Further, there is a higher proportion of male employees in the textile industry, and a lower proportion of workers with a non-English speaking background." 290

"Where our members act collectively as a union they have often [been] able to negotiate above-Award conditions, especially in areas which are important in our industry such as redundancy entitlements and protection of accrued entitlements. Density of union membership at a workplace is also a key factor to obtaining better outcomes from the negotiations. It remains to be seen how effectively this can occur after the many limits on the union’s capacity to represent members in Work Choices begin to bite. It is also worth noting that our members have been able to negotiate these conditions in a context where the existing no-disadvantage test has provided a far more comprehensive base from which to bargain." 291

4.2.5 Use of Workplace Agreements to Unilaterally Alter Terms and Conditions of Employment

The Queensland Government submission pointed to a recurring theme in cases reported to the Fair Go Hotline and to Wageline, of employees being dismissed because of refusal to accept an AWA or a new contract of employment proposing reduced wages and/or conditions of employment. The following examples of such cases were highlighted in the Queensland Government submission:292

- A Rockhampton man was presented with a new employment contract and told that if he did not sign he could look for work elsewhere. His previous position was as a casual undertaking mobile security patrols in the Rockhampton area. His new position was under an AWA, and required him to work at a location 2.5 hours from Rockhampton on static shifts at a central Queensland mine.
- A part-time employee with a year’s service, felt pressured to resign after receiving a memorandum from her employer informing her of completely new hours of work arrangements which did not suit her personal circumstances. The memorandum also required the employee to sign a new work contract within 24 hours, or resign her position.
- A part-time employee was provided with a memorandum requiring her to work on a full-time basis. This did not suit the employee due to family commitments, and she was dismissed.
- An employee resigned after being offered an AWA on reduced wage rates to what he had previously been receiving, with no weekend penalties, overtime penalty rates of only 25% in addition to the normal rate, no payment for public holidays not worked, no penalty payments for public holidays actually worked and no leave entitlements.
- An adult male ferry Master/Engineer with 14 years service resigned due to safety concerns brought

289 ibid para 46
290 TCFUA Submission para 47
291 TCFUA Submission para 48
292 Queensland Government Submission pp 44-47
about by his employer requiring him to accept expanded duties and an excessive workload undertaking both his duties as a Master/Engineer and additional duties as a deck hand, which had previously been undertaken by another additional employee.

• An adult male scaffolder was informed he would be dismissed and re-engaged as a casual employee because of economic circumstances. The employee is also being paid on a new wages and conditions arrangement under which he does not receive payments into an industry redundancy scheme and a daily travel allowance previously paid has been removed.

• An adult female child care group leader resigned her employment when she received a memorandum from her employer stating that she was required to sign a new contract within 24 hours, under which she would have to work at times which did not suit her personal circumstances. The employee was told that if she did not sign the contract she would be required to resign.

• An adult female child care assistant at the same centre was dismissed when she refused to sign a new agreement requiring her to work hours which did not suit her personal circumstances.

• An adult female plant operator with more than one years service, was dismissed shortly after a minor accident in which she was injured. In the period between the accident and her dismissal, the employee’s hours and rate of wages had been significantly reduced.

• An adult male welder (unqualified) in permanent full time employment was dismissed ten minutes prior to his normal ceasing time and was told that the dismissal was because he did not have a ticket as a qualified welder and there was not enough work. He and four other employees were dismissed in the same way, and he was handed a new work contract which he was required to sign if he wanted to work for the company from the following day.

• An adult male farm labourer returned from a period of paternity leave and was told that unless he accepted casual employment he would be dismissed.

The YWAS provided a case study of a young paralegal who on 26 March 2006, was directed to type and sign a document by the end of the day. As the paralegal typed the document, he realised that he was typing out his “new” employment contract. His employer stated that as at 27 March 2006, the minimum standards would apply and that there was no obligation to pay any additional amount.293

4.2.6 Drafting of Workplace Agreements

Many of the submissions to the Inquiry contended that AWAs were pattern documents, with each employee being offered the same terms and conditions of employment as other employees. The CFMEU in its submission said that the reality was that if an AWA was not accepted, an employee would not get work:

“This is in reality a collective outcome achieved on an individualised basis, thereby ensuring that the employer is in complete control of the outcome. Whilst employers are allowed to use the ultimate force to make workers to commit to individualised agreements, the legislation denies workers the right to use any force to advance a pattern agreement with an employer.”294

Professor Peetz in his submission to the Inquiry said that template AWAs were encouraged under Work Choices. According to Professor Peetz, there were template AWAs both within and across employers. While such templates no longer appeared on the OEA site after Work Choices, they had appeared before Work Choices.295

293 YWAS Submission p 10
294 CFMEU Submission p 8
295 Transcript p 817
The template AWA approach was graphically illustrated by one AWA before the Inquiry which had the following statement appearing at the bottom of each page:

“This document which includes variations in previous versions and associated documents and fundamental principles therein are the property of the Small Business Union (SBU) and legal action will be taken against any party which copies, uses, attempts to vary, adopts the principles or lodges these documents without our specific permission. To protect the integrity of our systems, all documents are to be returned to the SBU for processing.”

This AWA had a covering letter accompanying it indicating that it had been approved by the OEA. A further illustration of the template approach and poor drafting of AWAs was an agreement covering a security guard, which referred to an award which previously applied to the employee as the *Fast Food Industry Award - South Eastern Division 2003 (Qld)*. That award contains no reference to security guards and could not have ever regulated the employment of the employee party to the AWA.

### 4.2.7 Bargaining and Approval Processes

The submission of the ETU highlighted the complicated nature of the bargaining process under Work Choices.

“In particular, the process for taking protected industrial action has become more convoluted and drawn out. The capacity for an employer to choose the type of industrial instrument, and to choose the method of approval of that instrument is expanded, and the level of approval required for an agreement is reduced”.

Evidence was given to the Inquiry by an Organiser for the ETU, Mr Alan Hicks, about attempts by a particular employer to make an agreement directly with its employees. The employer had refused to alter the proposed agreement to include matters requested by employees. When a majority of employees had on two occasions voted against the agreement, the employer introduced what Mr Hicks described as an “unusual” voting process.

The employer notified all employees that the method of indicating their approval or otherwise for the proposed agreement, was by sending an SMS message via their mobile telephones. The employer also notified employees that if they did not send an SMS message indicating opposition to the agreement, then they would be deemed to have voted to approve the agreement. This method of voting would have enabled employees who wished to vote against the agreement, to be identified. Mr Hicks said that as a result of concerns about this, only two employees out of a total of 65, sent an SMS message indicating their opposition to the proposed agreement. The ETU believed that this was approval by default, rather than genuine approval, and the employer’s conduct constituted coercion. However, employees decided that they did not wish to pursue the matter. The agreement was lodged for approval with the OEA, and was subsequently approved.

Mr Hicks also said that:

“Under previous legislation the agreement would have been required to be approved by a valid majority of persons employed at the time whose employment would be subject to the agreement. The legislation only requires the approval of the majority of employees who cast a vote, or who show their approval in whatever form is determined.”

The ETU submission also pointed to the fact that the Work Choices legislation does not provide the capacity for a union to seek to be bound to any type of agreement other than a union collective agreement or a union greenfields agreement.
“This can be contrasted with the previous legislation which enabled employees to request that their Union be bound to an agreement. Whether or not a union is bound by an agreement is also significant in terms of union officials ability to exercise entry permits in accordance with the legislation”. 299

The ETU submission also highlighted difficulties with the process for filing and approval of agreements under Work Choices. Agreements which were previously filed in the Registries of the QIRC or the AIRC are now lodged for approval with the OEA through its central office. A certificate is sent to each of the parties within a period of time, but parties are not provided with a stamped copy of the agreement when it is lodged, or given any immediate feedback as to deficiencies with the paperwork or the agreement itself. In this regard, Mr Hicks gave evidence about an employer who was severely disadvantaged by not having an agreement approved by the OEA and subsequently found that the reason for this was that a declaration was not signed properly. 300

The submissions of the CFMEU also noted that the Work Choices legislation “had reduced scrutiny and compliance mechanisms in the agreement making process, and has made it more difficult for workers and Unions to enforce the procedural aspects of agreement making. This difficulty with enforcement can lead to employers flouting the minimal laws which accompany the process of agreement making” under Work Choices. 301

The CFMEU submission highlighted two major areas of particular concern.

Firstly, the CFMEU said that the loss of scrutiny of the procedures accompanying the making of workplace agreements, had effectively turned that process into a “rubber stamping exercise” with agreements applying from the time of lodgement rather than when they are approved. The OEA is “not required to consider or determine whether any legislative requirements relating to the process followed or the content of the agreement have been met”. 302

Mr Ravbar gave evidence that “this lack of scrutiny had already lead to a situation where the CFMEU had received notice of the lodgement of a union collective agreement to which the CFMEU was a proposed party, and which contained a provision for the CFMEU to sign the proposed agreement, and yet the CFMEU had not been afforded the opportunity to sign the agreement”. 303

The CFMEU submission also pointed out that the failure to comply with procedural aspects of agreement making could only be dealt with by a Court, and there was no other relief for employees alleging such failure. 304

The CFMEU also highlighted the lack of opportunity for workers to get advice about AWAs or non-union collective agreements. This opportunity was limited by the requirement that employers only needed to give employees a copy of the agreement or reasonable access to it, seven days before employees were asked to approve it. This was insufficient time for employees or their union to scrutinise agreements and to analyse their effect. Further, there is no requirement that each employee be given a copy of an agreement and “it is conceivable that ready access might mean that one copy of the document is located in an office at the employer’s premises ...”. 305

Ms Vicki Smyth, an Organiser with the Queensland Nurses’ Union of Employees (QNU), and member of the Bundaberg Provincial Labour Council, referred in her submissions to the Inquiry to a balloting process for workplace agreements which had been adopted by a number of employers in the health sector. An example of this process is found in the conduct of one private hospital, where there had been long and protracted negotiations for an agreement. As part of the negotiating process the employer had balloted employees about whether they wished to have the QNU involved in the process of negotiating the agreement. Employees were told that if they wished to have the QNU involved in the negotiations, they were required to go to a particular Executive Officer of the employer and provide their details, and indicate that they wanted the QNU to be involved in the negotiations for the agreement. Employees were told that if they did not do this, then they would be deemed to have voted against the QNU being involved in the negotiations for the agreement.

299 ETU Submission p 1
300 Exhibit 19 paras 11-13
301 CFMEU Submission p 5
302 ibid p 6
303 Exhibit 1, Statement of Michael Ravbar para 80
304 CFMEU Submission p 6
305 ibid p 8
According to Ms Smyth, not surprisingly employees had felt intimidated, and had remained silent. The employer had interpreted this silence as support for the proposition that employees did not want the QNU involved in the negotiation of the agreement and was in the process of negotiating an agreement directly with employees. Ms Smyth said that the assumption on the part of the employer was wrong, but there was little the QNU could do in the circumstances given the fears of the employees concerned.306

This evidence before the Inquiry is supported in a recent paper entitled “Work Choices: Mythmaking at Work”307 where it was noted that:

“Under AWAs or common law individual contracts, most employees had not been genuinely bargaining with their employers about the content of agreements. The word ‘bargaining’ is another misnomer because these contracts are typically ‘take it or leave it;’ they are ‘pattern contracts’ unilaterally developed by employers. The rise of AWAs therefore really ‘amounts to an increase in managerial decision making within the workplace’.” 308

That paper also highlighted the fact that there was no guarantee under the Work Choices legislation, that collective bargaining would occur simply because employees wanted it or that there was any right for employees to bargain on a collective basis. While the legislation purports to treat individual and collective agreements equally, “employers who wish to do so can readily frustrate the preference of their employees for collective representation. In the absence of legal processes to direct employers to respect the wishes of their employees to bargain collectively, there is little that employees without bargaining power can do”. 309

4.2.8 Use of Corporate Structures to Avoid Protections for Employees

The TCFUA said in its submission that an effective way for an employer to implement the minimum conditions for employees was to create a new business. It was argued by the TCFUA that:

“The definitions of a ‘new business’ should make it much easier for an employer to fit any new activities within the definition, especially for public entities such as the Commonwealth. ‘New business’ is broadly defined as:

- A new business, new project or new undertaking that the employer in relation to the agreement is proposing to establish; or
- In the case of a Commonwealth or State Government or public entity, ‘new activities proposed to be carried on by the employer’.310

Once a new business is established, an employer can implement the minimum conditions through an “employer greenfields agreement”. These agreements do not require any other party to be involved in determining wages and conditions of employment. The employer can simply determine unilaterally, what conditions will apply to its employees in the new business. The Union said that “[t]here is a well known history of sham arrangements, phoenix companies and restructuring in the textile clothing and footwear industries, and that these provisions would encourage this further”. Employers acquiring a business could also implement the minimum conditions, regardless of the fact that there may be pre-existing industrial relations arrangements in place at that business.311

306 Transcript, 9 October 2006, pp 586-592
307 Bradon Ellem, Marian Baird, Rae Cooper, Russell Lansbury “Work Choices: Mythmaking at Work” Journal of Australian Political Economy No. 56 p 17
308 Bray & Waring 2005; see also Bickley et al, 1999 in Bradon Ellem, Marian Baird, Rae Cooper, Russell Lansbury “Work Choices: Mythmaking at Work” Journal of Australian Political Economy No. 56 p 17
309 Bradon Ellem, Marian Baird, Rae Cooper, Russell Lansbury “Work Choices: Mythmaking at Work” Journal of Australian Political Economy No. 56 p 18
310 TCFUA Submission paras 17-18
311 TCFUA Submission paras 19-22
4.2.9 Summary

The removal of the no-disadvantage test was identified in a number of submissions as a particularly significant aspect of Work Choices and one which allowed for the reduction of terms and conditions of employment. There was significant evidence before the Inquiry establishing that the removal of the no-disadvantage test significantly and detrimentally alters agreement making for those Queensland workplaces, employees and employers affected by Work Choices. Evidence was also before the Inquiry of AWAs which removed entitlements which had previously been standard for Queensland workers. Many AWAs were developed from template documents which adopted a “one size fits all” set of conditions. Evidence was also presented of discrimination and harassment of employees in connection with the making and approval of AWAs and of balloting processes which would not have constituted genuine agreement making under the IRA or the WRA as it was prior to Work Choices. Those AWAs spoke for themselves. A number of submissions also questioned the extent to which genuine negotiation occurred in agreement making and pointed to the greater employment insecurity (as a result of the removal of unfair dismissal protections) which was believed to exacerbate the exploitation of already vulnerable workers.

4.3 Discrimination, Harassment or the Denial of Workplace Rights

4.3.1 Overview

As indicated previously, this aspect of the third Direction was one in which there was considerable overlap with other areas of the Direction. Submissions from the QWWS and the YWAS were important in examining issues relating to discrimination and harassment in the workplace. Union organisations also raised concerns in relation to discrimination, harassment and denial of workplace rights of Unions, as representatives of employees, and Union members. These concerns are also dealt with in this section.

4.3.2 Discrimination and Harassment

Submissions from the QWWS,312 the Queensland Government313 and the WRC314 raised concerns about the uneven impact of Work Choices on more vulnerable workers in the labour market. These concerns were primarily in relation to the limited bargaining power of more vulnerable groups in the labour market, and the impact of the AFPC and Welfare to Work legislation on the gender pay gap and pay dispersion more broadly. These broader concerns with the impact of Work Choices on systemic discrimination in the labour market are discussed elsewhere in this report. Our concern here is to consider more direct forms of discrimination in evidence before the Inquiry. Much of the evidence, in this respect, comes from the submissions of the QWWS and the YWAS which provide a number of cases believed to be illustrative of the types of cases presented to these organisations since the proclamation of the Work Choices legislation. The Inquiry was cognisant that this material was not by way of direct evidence. Also reported here are samples of direct evidence before the Inquiry.

312 QWWS Submission, 20 July 2006, pp 3-8
313 Queensland Government Submission pp 27-33
314 Welfare Rights Centre Submission pp 7-8
The QWWS submission reported that:

“During 2005, QWWS were in direct contact with over 5,000 women seeking advice or assistance in relation to industrial matters. Recently, a number of studies into internal labour market issues for women have been conducted by the Queensland Working Women’s Service (QWWS), in conjunction with Queensland University of Technology’s School of Business (QUT) (McDonald and Dear 2005 and McDonald and Dear 2006). This research explored the nature and frequency of approximately 15,000 (combined) reports of workplace related concerns that had been made by individual women to the centre over a three-year period (June 2001 to June 2004). These findings suggested that despite legislative protections, a substantial number of women in a range of industries, occupations and employment arrangements experienced serious problems in Queensland workplaces. These studies led to the conclusion that the implementation of the Workchoices reforms (and consequent removal of some previous protections) will increase vulnerability to unfair treatment for women employed at the lower end of the labour market.”

The QWWS submission provided a number of examples of discrimination and harassment experienced by women contacting the service since the introduction of Work Choices but made the point that these examples are not necessarily representative of all women, many of whom have positive and productive relationships with their employers and colleagues. Rather, the submission suggested that the:

“data analysed by QWWS/QUT paints a picture, that for many women working in the retail, clerical and hospitality industries in particular, there exists unacceptable incidence (and therefore risk) of pregnancy, work and family and gender discrimination including sexual harassment and intolerance of short-term absences due to illness or caring responsibilities that manifests into a distinct disadvantage for women when negotiating within the context of a reduced rights environment such as has been facilitated via the implementation of Workchoices”.

The ability of employers to terminate employment without any reason is seen as facilitating discriminatory practices. The following examples were provided in the submission:

**Case Study 00**

Client was employed for 3 years in marketing role for larger employer, and was made redundant shortly after announcing she was pregnant. Employer previously made another employee redundant while she was on maternity leave. Client has been told in the past that she should not have children while she is working in her role. Employer is familiar with WRA and Anti-Discrimination Act 1991 (Qld) and has acted outside of the legislative protections for pregnancy discrimination in both cases but has argued “operational reasons” in each redundancy.

**Case 1a**

Client contacted centre for assistance (over 45). She was an award worker and was offered an AWA. This employee was the only female in the group and discovered that male counterparts had been offered higher remuneration and commission in their workplace agreements.

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315 QWWS Submission, 20 July 2006, p 1
316 QWWS Submission, 20 July 2006, p 3
Case 1b

Client works in a large not-for-profit organisation and performs a management role. She is paid at award wages and all the male managers are on a salary. Client has been provided with a 4 cylinder car and other male managers drive 6 cylinder cars. Client is not in the union and has not been successful in applying to have her position re-classified and has been told they will take away extra responsibilities rather than pay her a salary because all the other women would then expect the same thing.

Case 1c

Award free personal services worker (25-45) discovered her male colleague with same duties was paid $16,000 higher wages annually. Employer has ignored her concerns and maintains that it is entitled to pay her minimum wage.

Case 3a

Client commenced work as engineer, was dismissed on probationary period for checking mail at work, receiving calls during a training seminar and late for work. She was late for work twice, first time 5 minutes and second time 10 minutes late. She rang in advance to tell them she would be late, as her child had not settled at the childcare centre. The calls she took at the seminar were from her husband, as he had just arrived in from overseas and had troubles with hotel. Her dismissal was on the spot and she was not allowed to call her husband to notify him, but had to leave the office straight away.

Case 3c

Client went for a position at childcare centre. The employer questioned her at the interview about her own children and how she would be able to care for them while she was working if they were sick.

Case Study 4a

Client is from non-English speaking background and was dismissed from call-centre for not being a team player. Client submitted application to AIRC for relief, but employer provided evidence that there were only 96 employees. Client could not understand the basis for this exclusion.

Case Study 5a

Client employed for 3 months and needed time off to go to appointments concerning pregnancy. Last week when she informed boss of being pregnant, client was then given a letter dismissing her stating reason was because of sick days taken.
Case Study 5b
Client was short term casual at supermarket since December 2005. Needed some time off for an operation and asked for her job to be kept open. Employer refused time off and dismissed her.

Case Study 5c
Client employed less than 3 months and dismissed within probationary period after requesting week off (with medical certificate) for gall bladder problems. Dismissal letter actually said she was fired because she was not present for previous work assessment (she was sick).

Case Study 5j
Client was 8 weeks pregnant and had excessive bleeding and rang in sick on Friday but felt she had to come to work on Monday as employer is strict and frowns upon employees when they take sick leave. She asked to go home as felt too unwell and employer insisted she try to stay. Client left and suffered miscarriage shortly after.

Other examples of direct evidence before the Inquiry included:

NAME SUPPRESSED
Occupation: Plant Operator Industry: Civil Construction - Mining

The witness was engaged to operate plant for a Contractor at a Central Queensland Mine site. Her employment was terminated on 10 April 2006 for reasons advanced by the employer that related to a minor accident in which she was involved. The real reason for the termination, according to the witness was that she had made complaints to the company about sexual harassment from a company supervisor. Following the complaint, the supervisor was relocated to another worksite, however on his transfer back, her employment was ceased. The witness provided detail of the alleged harassment suffered at the hands of the supervisor. At page 556, line 40 of transcript, her evidence included the following:

“I don’t like to say it but, yeah, like harassment, yeah. Like sexual harassment. There was the issue and he - oh, I don’t know how much detail to go into. I - like I would get up in the morning and I’d open my blinds and he’d be asleep in my driveway in his car, and my work colleagues were telling him to leave me alone and he wouldn’t do it, and then I got phone calls from his mother at 4.30 in the morning, and from his daughter, who was going to come out to [name suppressed] and sort me out, bash my head in, apparently, was her words. That was 5.30 or - yeah, 5.30 on a Thursday night I got that call. And, um, they called me a number of times and - and they weren’t nice, but I just tried to set them straight and say, ‘Look, I don’t - there’s no - there’s no reason for you to be doing this.’ It was all happening in his head. It’s - so - he’s a troubled man.”

The termination placed great financial strain on the witness’ household.
The witness, a mature aged person, gave evidence that her employment was terminated without a clear reason being given, some 18 days after the commencement of Work Choices. The witness gave further evidence that “after all staff had signed AWAs he [the employer] used them as a threat intimidating staff by saying that he did not have to give notice or warnings and could dismiss staff with five minutes notice”. The witness was subject to questioning from the Inquiry about allegations of bullying by the employer, at page 462, line 3 of transcript:

“Inquiry: The question is that you know that this inquiry is looking at Work Choices and Work Choices became effective upon the 27th of March. Did you notice his attitude in terms of the bullying change specifically?

Bruning: He started skiting about how much the government was giving him the right to do what he was doing.

“Inquiry: So prior to that was he the same or was he less - -?

Bruning: No, I think he became a bully after that once he knew that he could get away - you know, he could start - -

“Inquiry: When you say skiting, did he sort of - -?

Bruning: He used to come to me and say, ’I can do this, you know. I don’t have to give you a warning. I don’t have to give her a warning.’

“Inquiry: And this is because, as you understand it, the changes to the industrial – –?

Bruning: He told me so. He told me that it was because of the AWA. He said, ’You guys don’t know what you’ve signed’.”

The QWWS submission stated that the service receives a high volume of complaints and enquiries about gender based discrimination, bullying/harassment and sexual harassment and that many of these concerns simultaneously relate to concerns about unfair termination of employment. The removal of unfair dismissal laws is seen as providing less protection for women if employers counter discrimination claims with performance issues or other “lawful” or “operational” reasons for termination responses that are permitted under Work Choices. Alternative avenues to seek redress for discrimination are seen as being too costly and time consuming for many of the women effected (see Part 3 of this Report for more discussion of this point). The QWWS submission also expressed concerns about the capacity of many women, including those from regional, Aboriginal and Torres Strait Islander (ATSI), low literacy and culturally and linguistically diverse backgrounds to gain access to information about the workplace reforms and to have an informed understanding about changes to their rights and obligations.

Similar concerns were expressed in the YWAS submission with regard to young workers. The YWAS submission also contended that:

317 Ms Bruning, Evidence, 28 September 2006, Transcript pp 452-464
“Removing the obligation to provide explanations for termination or to follow a transparent process in dismissing an employee allows unfair treatment to perpetuate and leads to further exploitation of young workers.”

The YWAS submission contended that there is a tendency for genuine unlawful terminations to be disguised as a dismissal for an occupational or performance related reason. The YWAS submission’s principle concern, however, was the lack of knowledge and “misinformation” among young people about their workplace rights. The experience of YWAS is that young people commonly make assumptions about their rights on the basis of workplace size alone and fail to distinguish between unfair and unlawful dismissal. The following examples were provided:

**Case Study 6: Sonya**

Sonya telephoned, she said she was a casual employee; that she worked for a large retailer in a shopping centre. There was an apologetic tone in her voice and she said something along the lines of, “I thought I would just give you a call, I’m sure I don’t have a leg to stand on but I was just wondering if my boss could force me to work these long shift on the shop floor. Usually my roster rotates, so I do 2 floor shifts and 1 telephone shift (sitting down) per week. Since I asked my boss if I could increase my phone shifts, he’s taken them away completely and now only rosters me on long floor shifts. I know I don’t have a leg to stand on because I’m a casual but I’m pregnant and my legs strain if I’m on my feet for so many hours at a time. I’d rather not have to quit?! I already told him my boss that it was due to my pregnancy, he only said, ‘well it’s not my fault you went out and got pregnant’.”

**Case Study 9: Rebecca**

Rebecca was a 19 year old short-term casual who worked at a take-away shop. She was pregnant, had morning sickness, so her sister phoned her employer on her behalf and informed her employer that she was unwell, and the reason she was unwell was because she was pregnant. Her employer allegedly said to Rebecca’s sister, that she would have difficulty serving customers, and keeping up with the momentum of the busy store. Rebecca never received a shift after that. The essence of Rebecca’s complaint came down to the conversation that took place between Rebecca’s sister and her employer. In this case, a conciliation conference was held, the employer denied the contents of the conversation, with the knowledge that for the contents of that conversation to be determined by a court, Rebecca, the 19 year old casual, would have to file an application to the Federal Court or Federal Magistrates Court at a potential cost of $30,000 to herself.

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318 YWAS Submission p 16
Case Study 19: Cassy

Cassy (18) was dismissed from her position in the real estate industry. She said that she worked for a constitutional corporation with less than 100 employees. She worked there for more than 6 months. On the day before her termination she was ill and informed her employer that she was not able to attend work. The employer stated that she had to come into work, as there was a very important meeting that she could not miss. Despite not feeling well, Cassy felt obligated to attend work and agreed to attend for the afternoon. When she arrived, her employer said that she was dismissed from her position effective immediately. Her employer told her that since she had attended work in the afternoon, she wasn’t really that sick and accused her of just wanting a “sickie”, and that that she is not committed to the organisation. Although Cassy was advised that she could pursue an application for unlawful termination for temporary absence due to illness she did not follow through with the application.

The YWAS submission called strongly for further education for young people with regard to unlawful terminations, in particular, and workplace rights more broadly. YWAS went on to express concerns that if young people come to believe and to accept that unfair treatment is acceptable, “at what point do they recognise that unfair treatment is unacceptable”. They pointed out the confusion created especially for young people, new to the workforce, when workplace rights are seen to only exist for some employees and not others (e.g. for those employees in organisations with over 100 employees) rather than being understood as a universal human right. The YWAS submission also raised concerns over the ability of young workers to engage in effective negotiations over pay and conditions of employment with their employer, given their lack of experience in the workforce, their lack of understanding of workplace rights, their impressionable age, and in some cases their lack of education, training and qualifications. As a result, YWAS fear that young workers will be particularly vulnerable to exploitation under Work Choices.

4.3.3 Denial of Workplace Rights

With respect to this area of Inquiry, workplace rights tended to be very widely interpreted in most submissions and tended to be discussed more generally, except in the case of Union submission, where issues of the restrictions placed on Unions in representing their members were presented as issues of concern with respect to the denial of workplace rights. Provided in this section are examples from submissions and direct evidence.

The AWU submission noted that changes to the WRA as a consequence of Work Choices have resulted in restrictions being placed on right of entry of union officials. It is reported that:

“For a union official to access a site to hold discussions with members or eligible members, they must comply with a request to hold discussions in a particular room or area of the premises. Although the Act refers to the fact that the request must be ‘reasonable’, this process is open to substantive abuse by employers. Employers can intimidate workers by ensuring that a meeting room is next to management’s office. This way management can identify individual workers who have spoken to the Union…. Provisions such as the Right of Entry provisions now in place allow for intimidation to openly occur.”

319 YWAS Submission p 18
320 ibid pp 13-15
321 AWU Submission pp 10-11
The AWU also highlighted the issue of conscientious objection certificates. The submission states:

“Further restrictions are placed on workers freedom of association by allowing employers to apply for certificates as conscientious objectors. An employer who is a practising member of a religious society or order whose doctrines or beliefs preclude members of an organisation or body other than the religious society or order of which the employer is a member, can apply for a conscientious objection certificate. In circumstances where the workplace has no more than 20 employees and none of the employees are members of a union, once a certificate has been obtained a union cannot gain entry to that workplace. This is despite the fact that if not for the certificate an eligible employee could contact a union and request it to come to site to hold discussions.”.

In addition the evidence of Mr D. Harrison, sited earlier in this Report, is reproduced here as it provides an illustrative example of the potential effects of the restrictions on entry for trade unions.

HARRISON, Daryl Arthur
Occupation: Union Organiser, AWU

The witness has responsibilities in a range of industries including metalliferous mines, local government, retail industry, construction industry, Main Roads and Queensland Health. The geographical area encompasses a significant area that includes Mt Isa, Hughenden, Boulia and Burketown. The evidence went to the witness’ involvement in organising a particular mining site for the past 12 years and of the changes that have occurred following the implementation of Work Choices.

The Union was initially advised not to “assume that any past practices that you have enjoyed will necessarily continue to apply”. Whilst visiting the isolated Mining lease previously, the company had provided the witness with accommodation which included meals at no cost. Following Work Choices, that situation was altered to require a payment for each night which was accompanied by a set of restrictions which were identified at paragraph 36 of his affidavit:

“The following restrictions were also a condition of my entry onto the site:
Provision of access to the residential areas carries with it the following restrictions:
- You are permitted to access the mess area for the purpose of meals only.
- You will not be permitted to access the wet mess area at any time.
- You will not be permitted to meet with employees whilst in the residential areas, whether that be in the mess or other area.
- At any time whilst on the Lease, if you are not in the room on the mine site supplied to you for the purpose of meetings with eligible employees, and you are not partaking in a meal, you will be restricted to your allotted room in the residential village.”.

Further restrictions were placed upon the witness which effectively prevented him from operating in a reasonable manner in that members and potential members wishing to see him were required to pass the offices of management thus providing a form of intimidation that had not previously existed. The company has commenced a process of offering AWAs where, in the past, collective agreements had operated. Members on-site were concerned with a number of safety issues that had arisen due (they say) to the Union having limited access to the site.

322 Mr Harrison, Evidence, 3 October 2006, Transcript pp 509-519
The witness tendered a copy of correspondence received from a mine employee tendering his resignation as a Union member:

"Hi. My name is [name suppressed] I’m currently employed at [name removed]. Due to the new IR Laws, they have made it pretty much impossible to see a union rep so it’s pretty pointless in paying union fee’s and being part of one so I would like to cancel my membership."

4.3.4 Summary

The Inquiry accepts the evidence that there exists considerable confusion within many Queensland workplaces and amongst employees and employers about many aspects of Work Choices, and in particular jurisdictional issues as well as the distinction between unlawful and unfair dismissal. The Inquiry believes that further education and information in relation to these areas is warranted. This information needs to be presented in a variety of media and provided to as broad a representation of workplaces, employees and employers as possible. The Inquiry accepts that the position of more vulnerable groups in the labour market under Work Choices requires monitoring. Further, the Inquiry believes that ancillary effects of Work Choices in relation to 457 visas and the Welfare to Work regime, also require monitoring. The Inquiry also accepts the concern expressed by Unions about the denial of workplace rights and the potential effect of that on employees’ willingness to report matters of concern at the workplace.

4.4 Unfair Dismissal or Other forms of Unfair or Unlawful Treatment of Employees

4.4.1 Overview

Incidents of alleged unfair dismissal of employees were by far the most common concerns expressed in the witness evidence before the Inquiry. Although the nature of these concerns also often overlapped with concerns regarding AWAs and discrimination and harassment, it was the unfair termination of the employment relationship and the lack of a means to report and redress their situation that most concerned witnesses before the Inquiry.

4.4.2 Direct Evidence

In this section, the Report has provided a number of examples from the direct evidence before the Inquiry of unfair dismissal incidents. These examples are confined to those incidents which were not also primarily concerned with issues of AWAs and discrimination and harassment as these have been dealt with earlier in this part of the Report.

**BUNYOUNG, David**

Occupation: Counter Officer Industry: Postal Service (privately owned)

The witness had worked at the post office facility for 9 years during which time he had taken approximately 7 days of sick leave prior to being on Work Cover (for 2 weeks) for an injured back in May 2006. On 10 August 2006, at the conclusion of his shift, and without any prior warning, he was handed a letter stating he was no longer employed for “operational reasons”.

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323 Ms Bunyoung, Evidence, 9 October 2006, Transcript pp 584-586
No explanation of what constituted “operational reasons” was given to the witness. The witness, who is 62 years of age with 46 years of service in the postal industry, was left with a complete sense of demoralisation.

In response to questioning from the Inquiry as to whether the witness had knowledge of whether his previously held position had been filled, at line 44, page 585 of transcript, he stated:

“Well, I understand it’s a - a younger person, so they possibly may have to train her and just from people relating back to me that she’s working on the counter.”.

**CHILD, Gisela**

**Occupation:** Short Order Cook  
**Industry:** Hospitality

The witness, a 58 year old female, had worked for the reported business over a 12 year period under the direction of a number of different owners. The witness, in her affidavit, described the events leading up to and including her termination:

“On Monday 8th May 2006 I was informed that my roster had been changed and my hours reduced. I spoke to [the Employer] about this and said you can’t do this. He replied that he could under the new laws.

On Tuesday 9th May 2006 I started work at 5.30 am and about 11.30 am [the Employer] told me to go home and that I was doing a split shift that day. As it was the norm with a split shift, I returned to work at 4:45 pm to commence my second shift when [the Employer] handed me a letter. I read the letter which stated that due to the business not being able to meet their sales target, I was being made redundant and was being given 2 weeks notice. The letter said that I was not required to work the two weeks. I told [the Employer] that he could not do that to which he replied that under the new workplace laws he could. He told me that I would have to come back in the next pay day to pick up my first weeks pay, and again on the pay day after to pick up my second weeks pay.

On termination I made enquiries about my rights in relation to my correct rate of pay, classification, not being supplied with pay slips, and unfair termination. As a result of my enquiries, I lodged a complaint with the Office of Workplace Services but I was told that I could not take an action regarding unfair termination.”.

**HAMMOND, Murray Ian**

**Occupation:** Master/Engineer  
**Industry:** Maritime

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 [of] 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.”.

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324  Ms Child, Evidence, 24 October 2006, Transcript p 688  
325  Mr Hammond, Evidence, 29 August 2006, Transcript pp 258-266
The witness had experienced a range of emotional difficulties 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.

**ISMAIL, Sophie Shirin**

Occupation: Industrial Services Officer Industry: Education

Evidence was provided to the Inquiry in respect of the termination of a member of the Queensland Independent Education Union (QIEU) and representations made by the Union on the members’ behalf. At paragraph 5 of the witness’ affidavit, it stated:

“During one of the discussions I had with [name suppressed] I raised the concerns I had in regards to the employer serving our member with no less than three formal warning letters, the final one constructively dismissing her, all dated the same date, at the same time. I expressed my grave concerns that our member had not had adequate time to address the concerns raised before she was fired. In response [name suppressed] told me that he had taken legal advice in relation to this matter. He said words to the effect that, ‘I’ve sought legal advice from my lawyer, and he has consulted a barrister, and we are covered by the new Work Choices Legislation, and since ours is a workplace of under 100 employees, we can fire whomever we want to’.”

**MUNRO, Marja-Riitta**

Occupation: Shop Assistant Industry: Retail

The witness had been in full-time employment in the same business for 16 years. On 19 June 2006 the employer provided correspondence that her employment status was to change to that of either part-time or casual status. The changes to her employment were made without any consultation, subsequently reducing her from 38 hours per week to part-time employment on between 29 and 31 hours per week. At page 270, line 25 of transcript, she described ongoing changes to her hours of work:

“I’m finding that each week the hours are getting less. I’m getting more five hour shifts and I guess - I’m not quite sure how few hours permanent part-times can work, but I’d imagine that they’ll eventually - I’ll be down there with the minimum hours.”

The reduction of wages had caused her to experience severe financial hardship. Page 270, line 46 of transcript went to loss of income through being denied the opportunity to work weekends:

“My boss just said that until I go casual I will no longer work weekends which I was doing for a couple of years before.”

At paragraph 9 of her affidavit, she stated:

“Under the new Work Choices legislation, I am aware that an employee cannot contest their dismissal if their employer employs less than 100 employees at the time of their termination of employment. As a result, I cannot pursue my claim for unfair dismissal and have no other recourse to argue my case.”

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326  Ms Ismail, Evidence, 31 August 2006, Transcript pp 356-358
327  Ms Munro, Evidence, 29 August 2006, Transcript pp 267-272
An employee with 7 years service, the witness had her employment terminated because the employer had decided "to put on some kids because they were cheaper". The witness who, at the time of termination (3 May 2006) was 46 years of age, believed her termination was unjust because she was dismissed due to her age and replaced by junior staff. At page 642, line 30 of transcript, the witness recalled comments made by the employer at the time of termination:

"Feldman: And do you agree with the reasons that were purported in that - that letter to be the reasons for your termination of employment?

Urquhart: No, because he verbally said he was going to employ a couple of kids because they're cheaper and actually adding to that there was an ad in the paper yesterday for one full-time or two part-time employees for [name removed] in Townsville."

She chose not to contact the Work Choices Infoline because she was unsure if they would have been able to help as there were less than 100 employees in the business.

The witness had followed her calling for around 25 years and accepted a position of Administration Manager/Personal Assistant to the General Manager in November 2005 on a salary in excess of $50,000 per annum. Her employment was terminated on 26 May 2006 without any warning or reprimands for the reason that the Managing Director advanced as "did not like her personality". At paragraph 20 of her affidavit she gave evidence of the attitude of the general manager following the operational commencement of Work Choices:

"At a management meeting just after Work Choices came in the Managing Director said, 'Isn't it great what Johnny has done for us with the new Work Choices Laws. Whoo Hoo!' whilst arm pumping triumphantly."

The witness made enquiries in terms of making a claim for unfair dismissal, but was informed that under Work Choices, because the business had less than 100 employees, no such application could be pursued. In terms of finding new employment, the witness, at page 437, line 38 of transcript, stated:

"Well, it was time consuming, and it was frustrating, and I felt definitely helpless, and I didn't like Johnnie Howard anymore."

The impact upon the witness in losing her employment was significant in that as a sole parent, she was left without any income. She was unable to afford braces for her child.
NAME SUPPRESSED
Occupation: Shop Assistant  
Industry: Retail

The employment of the witness was ceased at the hand of the reported employer on 28 June 2006. The witness was not given a reason for the dismissal, nor was she given notice or payment in lieu of notice. The reason advanced by the witness for the termination was set out in paragraph 20 of her affidavit:

“My employment was terminated because after I had checked with my superannuation fund I had asked the staff manager [name suppressed] about my unpaid superannuation. About two weeks after I had questioned the unpaid superannuation the director of the company [name suppressed] told me that my status was now being changed from fulltime to casual. She also stated that I was being smart when I questioned [name suppressed] regarding the unpaid superannuation and that I had to apologise to him or they would let me go. I did not apologise because I did not do anything wrong and I was dismissed before I started work as a casual employee.”

The witness contacted the Work Choices Infoline where she was advised that as her employer had less than 100 employees, they were unable to help.

4.4.3 Submissions

Many submissions before the Inquiry also addressed the issue of unfair dismissal. The Queensland Government submission contended that:

“Prior to Work Choices, employees in Queensland have had access to unfair dismissal laws in either the state or federal jurisdiction. These laws have provided employees with the right to seek a remedy if they feel they have been dismissed in a harsh, unjust, or unreasonable manner, and to have their case heard by an independent tribunal with powers of conciliation and arbitration and extensive expertise in handling such matters.”

The Queensland Government’s concern was that the removal of these protections for employees of constitutional corporations with 100 or fewer employees leaves them very few real options for having their concerns heard and “has serious implications for the bargaining position of these workers and their ability to raise legitimate issues in the workplace without fear of dismissal”.

The submission of the ETU suggested that:

“Changes to unfair dismissal sections of the Act have been the most publicised aspect of Workchoices, and unfortunately these have created a situation where unscrupulous employers are able to treat employees unfairly, secure in the knowledge that they will be able to get away with it”.

Their submission also expressed concern that the allowance of the general term “operational requirements” to dismiss employees has resulted in the use of that reason for dismissal in circumstances where it clearly is not the reason.

In addition to these more specific concerns, the Queensland Government submission also contested the claim that unfair dismissal laws will create jobs as lacking in evidence. They suggested the changes to unfair dismissal protections will only result in high social costs and lack of job security for workers.

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329 Queensland Government Submission pp 9
330 ibid p 10
331 ibid pp 25-27
“The evidence and research [cited in the discussion above] has demonstrated that deregulation has failed to produce any positive impact on economic outcomes. At the same time, the research shows that weakening employment protections has led to adverse social consequences, particularly in the form of widening wage disparities”.  

4.4.4 Summary

The evidence before the Inquiry shows a high level of concern, of both organisations and individuals, with respect to the changes to unfair dismissal provisions. Concerns are held about the confusion among the workforce as to the distinction between unfair and unlawful termination of employment as well as the confusion over jurisdiction. Concerns are held with respect to the intersection between lower levels of job security and issues such as occupational health and safety and workplace rights more broadly (the issue of occupational health and safety is dealt with more fully in section 4.6.3 of this Report). Concerns are held with respect to the intersection between lack of unfair dismissal protections and the welfare issues such as the ESC and the Welfare to Work changes (the issue of the ESC is dealt with more fully in section 4.6.1 of this Report). Concerns are also held with respect to the lack of mechanisms for employees to have their concerns heard and dealt with in a meaningful way. The Inquiry accepts that the concerns held by the participants are valid. The Inquiry accepts that there exists a need for education about workplace rights and, in particular, about the distinction between unlawful and unfair termination and jurisdictional issues. The Inquiry also notes the need for close monitoring of the impact of changes to unfair dismissal laws on issues of occupational health and safety and other workplace rights.

4.5 Employer Concerns

Whilst the nature of the Inquiry was such that the majority of persons presenting to give evidence were employees, the Inquiry did however take direct evidence from a number of employer witnesses. Extracts from three persons of that category of witness, each of whom gave their evidence at the Brisbane hearings of the Inquiry, has been included in the Report as follows:

CROWTHER, Paul

Occupation: Managing Director  
Industry: Property Management

The witness, a Director of a proprietary limited company, gave evidence to the Inquiry of concerns he had relating to Work Choices. Paragraphs 8 and 9 of his affidavit identified such concerns:

“8. I have a number of serious concerns with the new Work Choices laws and the implications they will have on business. One of my concerns is that reducing wages and working conditions will impact on everyone through a reduction of our overall standard of living in this country.

9. New businesses and/or ruthless businesses will have an opportunity to undercut competitors by offering goods or services at a discount by reducing employment costs. Employment costs in my industry are generally between 45% and 55% of total revenue and are our biggest expense.”.

In response to questioning from Ms Karen Garner (Counsel assisting the Inquiry) on what impact Work Choices would have on business generally, the witness, at page 246, line 6 of transcript, stated:

332 ibid p 27
333 Mr Crowther, Evidence, 29 August 2006, Transcript pp 244-249
“I think for small business we - we face some big problems with these laws. The - in my situation in property
management we currently have an award system that provides for employees to be paid $32,000 plus
superannuation plus car allowance, phone allowance and a host of other things. If an employer does take
full advantage of these new laws and drive their wages down and their working conditions down, then
especially they can provide the service that I provide at a cheaper price. Because I've got a set amount of
wages now, which is generally between 45 and 55 per cent of my total revenue per month. Now, if somebody
can provide that service at a cheaper price then that's going to leave me uncompetitive. So - and it's not just
going to affect my industry, I think it'll affect all industries. And the other thing that worries me in particular
when you get to smaller more boutique businesses, and I know I've heard this from a number of employers,
is that they are very concerned that if wages do go down - you know, I was speaking for instance to a guy
who owned a camera shop and he, you know, processes photos - he's worried that if wages do go down then
who's going to have the money to spend on those - those things that are perhaps seen as luxuries rather than
essentials in life. So, I think there's two things there that - your competitors may get a competitive advantage
over you but also consumers may not have the money to spend on your product or service anymore.”.

NAME SUPPRESSED
Occupation: State Manager Industry: Building Construction

The witness, employed as the state manager of a company with employee numbers in excess of 70, gave
evidence based upon 20 years experience in the industry. Evidence was given in respect of a number of
areas, including:

- pattern bargaining;
- compliance;
- safety; and
- training.

On concerns with Work Choices, the witness, at paragraph 17 of his affidavit, stated:

“With the WorkChoices Legislation making it more difficult to do collective agreements and encouraging
employers to do Australian Workplace Agreements, I am concerned that the standards we have established in
the industry will quickly be eroded. I am concerned that the builders and developers will exploit this and
legitimate subcontractors who pay all the correct rates will be squeezed out of the industry.”.

NAME SUPPRESSED
Occupation: Managing Director Industry: Building Construction

The witness had extensive experience in the industry having commenced an apprenticeship in 1974
and, over a period of time, occupying a range of positions in various levels of management. His current
position entailed the responsibility for managing projects with a total value in excess of $350 million and
included maintaining employment for over 400 direct employees, plus subcontractors.

The initial evidence of the witness went to his experience of enterprise bargaining in the building
and construction industry, which he suggested had brought about a stability within the industry at
the same time rewarding workers with levels of remuneration consistent with what he described as a
“physical demanding and comparably dangerous occupation”. Industry co-operation with Unions had led to
jointly developed industry policy initiatives that related to safety, training, industry licensing and other
matters.
At paragraph 24 of his affidavit, he stated:

“It has been my experience that this cooperative approach has been far more productive than the ‘winner takes all’ approach that may otherwise prevail.”.

The witness indicated a high level of support for the employment of apprentices, including reference to the regulation of their employment under the state system. Concerns were expressed in respect of the change to Work Choices where, at paragraph 29 of his affidavit, it was stated:

“I am concerned that many employers already have enough difficulty understanding the arrangements required for apprentices. This change could add a further level of complexity to employing apprentices and may therefore have a negative impact on their employability. This result could further undermine the industry’s skills base.”.

The Inquiry raised with the witness the matter of whether Work Choices (in his view) would impact negatively upon the employment of apprentices in the industry.

At page 4, line 10 of transcript (“in camera”), the witness provided his response to the question:

“I hear many in the industry and many colleagues, in fact, in the industry expressing concern about the high cost of apprentices and training. I’m not an advocate that apprentices do cost an enormous amount to train. I see that high wages or good solid wages at least for apprentices is an inducement into the industry in an area where we have shortages. Certainly, [name suppressed], and there are many other builders and subcontractors that are wonderful trainers of apprentices. We don’t see any impediment whatsoever to the current regime of wage setting. All of our [number removed] apprentices are paid under our enterprise bargaining arrangement, which is at the top end of the pay scales and we don’t believe we’re disadvantaged by that process at all. So, deregulation in the apprenticeship training area - in particular, wages - I don’t think will auger good for the industry - auger well.”.

This evidence suggests that Work Choices presents a number of challenges to employers also in terms of greater competitive pressures in relation to the wages and conditions of employment offered to employees. Concern is expressed that such pressure will lead to downward movement of wages and conditions which employers will be forced to meet in order to remain competitive. Concern is expressed also about the demise of collective bargaining in favour of individual bargaining which was seen as resulting in less co-operative workplaces. This evidence suggests that it is far too simplistic to accept that Work Choices is supported by all employers.

4.6 Additional issues arising from the evidence

4.6.1 Employment Separation Certificate

The evidence of individual witnesses, quite frequently, highlighted the issue of the ESC. Individual witnesses expressed concerns that an employer could arbitrarily complete the certificate indicating their view of the reason for separation which could potentially result in the employee being unable to access any social security income for a period of eight weeks. The impression gained was that, as some employers were longer concerned with the prospect of an unfair dismissal case being brought against them, they were less cautious when indicating the reason for separation. The AWU submission also noted their concerns with respect to the ESC and stated that:
“If an employee is sacked for what their employer terms to be ‘misconduct’, the workers will now face an eight-week non-payment penalty. Leaving a dismissed worker penniless for eight weeks does nothing to help them get a new job, in fact it will only make it harder”.334

In response to these concerns, the Inquiry undertook its own search for information on the ESC. This search showed that the Centrelink web-site provides the following information for businesses:

“ESCs provide important information which enables Centrelink to ensure that the right people get paid the right amount from the correct date.

You may be requested to complete an ESC by either Centrelink or your (ex) employee. The ESC should be completed within 21 days and can be handed back to the (ex) employee or forwarded directly to Centrelink through Centrelink’s Business Hotline dedicated fax service on 13 2115.

It is recommended that you keep a copy of the ESC for your own records.

From FAQ. Employees who cease work voluntarily and wish to apply for a Centrelink allowance may have a penalty applied by Centrelink.”.

The Centrelink web-site provides the following information for Newstart Allowance claimants:

“You will need to provide proof of identity. You may also be asked to provide documents proving your age, residence, income and assets. If you have worked in the last 12 months, you will need to provide an Employment Separation Certificate from your last employer. If the employer does not give you a certificate, you can ask for one or download an Employment Separation Certificate from the Businesses section of our website. Tell Centrelink if you are having trouble getting a certificate.

Eight week no-payment period - applies if you have been voluntarily unemployed, dismissed due to misconduct, failed to undertake a Full Time Work for the Dole program, or received three participation failures within a 12 month period.”.

It seems possible that the way this information is presented may mean that some employers are unaware of the consequences for the employee of their determination of the reason for separation of employment. It may also lead some employees to believe that if they had received an ESC which indicated that they had ceased employment because of misconduct or voluntarily, then they would automatically be constrained by an eight week no-payment period in their access to Newstart Allowance.

Further telephone enquiries with Centrelink directed the researcher to the Participation Solution Team (PST) who indicated that the reason for separation was a difficult part of the decision making process when the reason given is challenged by the customer (employee). The first step in the process, identified by the PST, was for the Centrelink case manager to speak to the customer. It was claimed that the case manager is trained to take into account sensitivities of the given situation, especially in the case where a customer feels that they were harassed (for instance) in their previous employment. The next step identified was for the case manager to speak to the customer about the steps they took to resolve the situation before leaving employment. It was indicated that the case manager would then typically speak with the employer to hear their side of the story and to put to them an alternative view.

334 AWU Submission p 12
The final decision, on the reason for separation of employment, was said to be made on the weight of the evidence and in the case of serious failures (misconduct and voluntarily leaving employment) a specialist (in most cases a social worker) provided intervention. It was indicated that Centrelink would expect some due process in the dismissal e.g. they would especially have an expectation of some warning process. The credibility of the employer version of events would also be helped by evidence of the employer having provided counselling or provision of relevant training etc. The history of the employee (in particular but also employer) was also considered e.g. homelessness, family situation, family history, frequent changes of address, past welfare payments, mental illness and any other factors seen as relevant and contributing to the situation.

The PST indicated that they believed only a small number of cases resulted in penalties being applied. It is clear from the evidence before this Inquiry, however, that penalties are applied and that the consequences of such penalties can result in considerable hardship. It would also seem that the processes for considering such appeals are, at best, informal and that the process itself could result in further stress and hardship for the claimant.

Note: On 31 October 2006 the Inquiry wrote to Mr Jeff Walan, Chief Executive Officer of Centrelink, providing a copy of the above information and requesting a review of that information and an indication of the accuracy of the material presented. The Inquiry Panel also extended an invitation to the Chief Executive Officer to make submissions to the Inquiry on the material presented (see Appendix 18). As at the date of finalisation of this Report, no response had been received.

The Inquiry notes that the ESC was an issue of concern raised commonly in evidence before it. In circumstances where the form had indicated that the employment had ceased due to misconduct or voluntarily, that had resulted in considerable hardship for the employee. This was especially the case when the employee disagreed with the reason for the termination of employment. The Inquiry notes that the removal of unfair dismissal protections has the potential to effect the approach that employers take to completing this form and that a review of the form and processes is warranted.

4.6.2 Subclass 457 visas

The business long-stay or subclass 457 visa (457 visa) is Australia’s main temporary visa for employer-sponsored skilled persons. It allows a maximum stay in Australia of four years but in practice this is extendable.

The 457 visa program was introduced in 1996 to enable employers to access skilled people overseas and to fill positions quickly in the face of competitive pressures in a global economy. The program was aimed as assisting employers to recruit managers, administrators, professionals, associate professionals and skilled tradespersons.

In July 2001, minimum skill and salary thresholds were introduced as requirements to ensure that the skilled focus of the visa program would be maintained. Labour market testing, where the employer must demonstrate that the vacancy has been advertised in the local labour market, is not generally required for these skilled occupation levels. Instead, it is a requirement of the 457 visa that a minimum salary level (MSL) is paid which from May 2006 was set at $41,850 per annum.

However, in November 2003, regional concessions were introduced to allow employers in regional Australia to access 457 visas for semi skilled positions and to allow the MSL to be waived where the nominated position is certified by a Regional Certifying Body (RCB). In July 2006, the MSL can be discounted for regional businesses by up to 10% where certified by an RCB.

A new study on *Current Issues in the Skilled Temporary Subclass 457 Visa*,335 has shown that:

335 Bob Kinnaird, People and Place, Vol 14, No 2, 2006
• growth in 457 visa is so rapid that in 2006-2007, for the first time there will probably be more temporary skilled 457 visas granted than skilled permanent residence visas;
• it is likely some 457 visa holders are paid at below market rates, but the Commonwealth Government does not collect data on actual salaries paid to these workers; and
• 457 visas have already adversely affected jobs and training for young Australians in ICT.

The projected number of 457 visas granted in 2005-2006 was around 40,000, a massive increase of 43% over 2004-2005 (28,000 visas).

In July 2006, the Council of Australian Governments (COAG) initiated a review of options for improving temporary 457 visa operations. A Working Party of Commonwealth, state and territory Government officials has been established. The Queensland Government is involved in the COAG initiative and supports it as a process for strengthening the protection of wages and conditions for migrant workers.

As demonstrated recently by the situation of a number of Filipino welders employed by Dartbridge Welding under 457 visas, guaranteed pay rates can be radically reduced by employer deductions unless there is an effective compliance and enforcement framework in place to regulate employment arrangements. The AMWU brought this matter before the Inquiry on 19 October 2006.

The AMWU’s submissions were that some 40 Filipino welders had been brought into Australia under the 457 visa scheme to work for Dartbridge. These workers were forced to sign AWAs which, at the time the matter was made public, had not been lodged with the Office of the Workplace Advocate. Only the last page of the AWA had been sighted by the employees at the time of signing the document and these workers had not received the $40,000 per annum promised, but in fact received less that $27,000 per annum.336

Dartbridge had rented accommodation for the employees who were to pay $175 rent each per week. This amount was also to take into consideration the cost of transportation to and from work. There were eight workers per house, and two workers per room. AMWU further submitted that workers had been required to pay $3,000 to a Filipino recruitment company over 6 months and this amount was also deducted from their bank accounts.337

Three workers had their employment terminated and the AMWU alleged that this occurred because of their union membership. At the time of hearing these submissions, the AMWU had referred the matters to the ADCQ.

AiG, representing Dartbridge, were advised by the Registry of the AMWU’s submissions being made before the Inquiry and were invited to either call witnesses or make submissions concerning matters which had been raised before the Inquiry. AiG confirmed that they had been retained by the new manager of Dartbridge on 16 October 2006 and also confirmed that of the 60 employees at Dartbridge, approximately 40 were employed under the 457 visa scheme and, with the exception of one employee, all were Filipino workers.338

AiG refuted claims that the employees had only sighted the last page of the AWA before being required to sign the document. They stated that two interpreters had been engaged to advise the employees of the content of the AWAs.

AiG stated that the accommodation arrangement provided by Dartbridge for these employees was optional. Included in the amounts paid by each employee were charges for gas, power, water and transport to and from work. These workers were also required to take out private health insurance and employees had authorised Dartbridge to deduct regular amounts out of their pay.339

336 AMWU submissions, 19 October 2006, para 2
337 ibid para 3
338 AiG submissions, para 15
339 ibid para 17
AiG stated that the $175 per employee paid each week included the cost of $67 for rent and utilities, $48 for private health insurance and $60 for transportation. The transportation provided was that of a mini-bus. The AiG believed that the Filipino workers had not been exploited in any manner and reaffirmed their belief that the workers had been paid an amount of $42,000 per annum.\(^{340}\) To the best knowledge of the Inquiry, this matter remained unresolved between the parties.

Submissions received from the CFMEU were to the effect that significant problems had arisen with the introduction of Work Choices as it related to the 457 visa scheme. Under the award system, the CFMEU had ensured that appropriate attention be given to companies investing in training and apprenticeships. CFMEU now feared that employers were filling these outstanding positions with guest labour under the 457 visa scheme.\(^{341}\)

### CLOSE, Peter Andrew\(^{342}\)

**Occupation:** Assistant State Secretary, CFMEU

The witness had been in the employ of the Union since 1994 and currently had the responsibility for coordinating the work of the Union’s 17 State Organisers. His evidence went to matters relating to Work Choices and guest labour working under 457 visas.

He was aware of a dispute on a project at Northgate (a Northern Brisbane suburb) where five employees were told that there was not sufficient work available to keep them employed, only to see five guest workers start on the site on the same day. The guest workers were not in the possession of the appropriate safety induction cards and all but one spoke limited or no English, which heightened workplace health and safety concerns.

On another project, a group of Korean tilers were employed on a rate of $10.00 per hour. The Union, when approached by one of the workers, interceded on their behalf, seeking a wage adjustment and back payment of the monies owing. The company responded by replacing all of the said workers with a new Korean workforce without any back pay being made to the former employees. Enterprise bargaining rates were paid to the new employees.

### 4.6.3 Occupational Health and Safety

Earlier in the Report, at section 2.5.4, the issue of occupational health and safety was addressed. A number of submissions before the Inquiry had discussed the broad concerns held with respect to the potential impact of Work Choices on health and safety in the workplace. The Inquiry noted these concerns and the importance of the continued close monitoring of health and safety issues. In this section of the Report examples are provided of the direct evidence before the Inquiry in relation to occupational health and safety issues. This evidence provides support for the broader concerns canvassed in the earlier part of the Report.

### ALLAN, Lance Travis\(^{343}\)

**Occupation:** Carpet Cleaner  
**Industry:** Services

The witness suffered an injury as a result of a motor vehicle accident whilst at work. The witness made application to Work Cover with his claim being accepted. The employer terminated the employment on the day of the accident for the reason that the witness **“was no use to him anymore”**.

The witness contended that he was dismissed because of a work related injury.

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340 ibid para 20  
341 Mr Ravbar, Evidence, 25 August 2006, Transcript p 32; Affidavit, paras 127-137  
342 Mr Close, Evidence, 30 August 2006, Transcript pp 330-334  
343 Mr Allan, Evidence, 4 October 2006, Transcript pp 538-547
BROWN, Kevin Norman James 344
Occupation: Backhoe Operator/Labourer Industry: Civil Construction

The witness was one month into employment which entailed working 19 days straight (staying in isolated work camp accommodation). The average working hours were 84 hours per week. On 10 August 2006, the witness was unable to commence work due to the effects of a stomach bug, however at around 8.00 a.m., he contacted a work colleague advising he would be prepared to commence work.

He was informed that “local” labour had been engaged and it was not necessary for him to work on that day. He was subsequently terminated for having the day off, but had no avenue under Work Choices to contest the dismissal because a minimum of six months employment did not exist. The impact of the termination had left him “living on the charity of friends”. The witness, in oral evidence, questioned the reasoning for his termination, believing that another reason existed as to why his employment ceased.

In transcript at page 523, line 38, he went on to say:

“Well, with this new legislation you get - you know, it doesn't - the everyday worker - it gives an employer - to - for an employer to be able to just give no reason for termination or - especially with this guy. I knew his son was just turning 18 whilst I was working with this guy, and I had a funny feeling that he may not longer - may get rid of me, actually, because his son was turning 18. His - you got to be 18 to go onto this camp site and to - to the mine site. And it sort of - it worked that way, but - with this new law, I mean, there's so many people are disadvantaged by it.”.

HESLOP, Richard John 345
Occupation: Factory Hand Industry: Manufacturing

The witness, a person of some 25 years of age, who had been employed with the same employer for 8.5 years, had his employment ceased after taking two days sick leave due to food poisoning. Upon termination, payment of his entitlements were initially withheld. In terms of seeking a remedy, at paragraph 26 of his affidavit he stated:

“The action I took as a consequence of my dismissal was to call the Employment Advisor (an employment advocate). I was told I had a good case for unlawful dismissal but I decided against it as I could not afford their fees which I were told would be in the thousands.”.

The impact of his dismissal left him with significant financial difficulties, to the extent that he had not been able to afford yearly vaccinations for his dog.

344  Mr Brown, Evidence, 3 October 2006, Transcript pp 520-528
345  Mr Heslop, Evidence, 29 August 2006, Transcript pp.250-257
The witness had been employed with the reported business in a regional city for more than five years. The business changed hands in July 2005 with the new owner becoming increasingly aggressive to the employees in a manner that could best be described as bullying.

At one stage employees were told “if we didn’t shape up and like the changes that he intended to introduce, then we could f*** off and find another job”. A number of employees, including the witness, decided to apply for membership of the AWU at around that time. As the employees left for the Christmas break in December 2005, the employers final words were “I hope you have a c*** of a Christmas.”.

In early January 2006, on his return to work, the witness injured his ankle which resulted in him going on WorkCover. After some weeks, a specialist recommended surgery on his ankle, with the witness returning to work on light duties. The witness was scheduled to have the operation on 27 April 2006, however on 26 April 2006, without any prior consultation, he was made redundant. On the redundancy, at page 580, line 2 of transcript, the witness went on to say:

“I had received no prior knowledge of any redundancy. There had been no consultation or information as to the reason for the redundancy. I was informed 10 minutes before finishing my work for the day that I was redundant. I was made redundant despite the fact that this was at the time casuals employed by the company. Two other employees were also made redundant. Both of those were also in the union. The local newspaper carried my story and the fact that I had only received one week’s pay. Following the publicity an officer from Work Place Services contacted me. The officer did assist with the assistance of the AWU to get an increase, one that I was entitled to in the redundancy package. However, the officer of Work Place Choices was not interested in assisting me with my claim that it was not a genuine redundancy and that I should get my job back. I was substantially informed that because the employer had less than 100 employees understand the Howard Government Work Choices, I had no right to seek unfair dismissal. I am convinced that my reason for being redundant was as a direct result of the work place injury that I suffered and the following Work Choice claims and the restriction of my duties. The employer had never demonstrated that there was a genuine redundancy situation.”.

Two other employees (also Union members) were also made redundant on the same date. The termination placed financial strain upon the witness and his family. At paragraphs 56 and 57 of his affidavit, he made the following comment:

“56. I feel that I am a further example of the consequences of Howard’s industrial relations policies.

57. Indeed, it is not only myself who is a victim of Howard’s industrial laws, my wife and children also suffered.”.
NAME SUPPRESSED

Occupation: Engineer  
Industry: Construction

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.

DALY, John Francis

Occupation: Maintenance Manager  
Industry: Civil Construction

The witness was employed as a purchasing and maintenance manager with a civil construction firm in central Queensland. His employment was terminated on 23 May 2006. The reason given for the termination of employment was that the witness had failed to comply with a direction to travel to Dalby for training. The witness believed that the termination was unjust as he had been given only one days notice of the training; he had previously arranged personal business for that day; it transpired that there was no training on that day in Dalby; and the training bore no relevance to his position. The witness believed that the real reason for his dismissal was that he ensured compliance with the safety requirements of the Workplace Health and Safety Act 1995 (Qld) which meant that vehicles were out of action while repairs were taking place. The witness, in his evidence, stated:

“So I had a relationship with everybody that was required to give me authority to do things. If I gave them an honest assessment, a piece of equipment if it wasn't compliant and it wasn't safe to use I wouldn't put it to work and if I told them it was safe that was okay. We had a supervisor that came up there, a gentleman by the name of [name suppressed] who was put up there and by his words, he was the broom. He entered the mine site, he was non-compliant with his safety gear; his vehicle was non-compliant and he was warned two or three times and I had ongoing arguments with them, you know, where they wanted to take trucks out with no brakes on them and I wouldn't let them. They had an oversize truck that was 900 mil AB Triple which is 36.5 metres long which was 900 mil over length. They got a defect from the RTA and as soon as the RTA drove away they immediately put it back to work and I pulled it off the road. And it was just ongoing things whereas they wanted to take short cuts and I wasn't prepared to do it in the position of maintenance manager and it all came to a head. [Name suppressed] got reported to the mine about his vehicle being non-compliant. He blamed me, threatened to sack me, I put in a redress for verbal abuse from him which wasn't addressed by the company and I then - and [name suppressed] attended my office and said, 'You're going to Dalby' - this was on a Friday morning - 'You're going to Dalby for two weeks for training and you will report down there Monday morning'. I explained to him that I couldn't go at short notice because I had a family. I had to make other arrangements but I was happy to go but I couldn't go at short notice and he told me if I didn't go, I was sacked.”.

347 Mr Daly, Evidence, 24 October 2006, Transcript p 692
4.6.4 Vulnerable groups of workers

The evidence before the Inquiry showed that there are a number of categories of workers who fall under this banner. The group includes, but not exhaustively, young workers, women, casual employees, part-time employees, employees who have no access to unfair dismissal laws, and workers in regional areas.

Individual bargaining for employees is a focus of the Work Choices legislation. Under a collective bargaining system and a common rule award system, as has previously existed for many employees now covered under the Work Choices legislation, individuals least able to represent themselves had a collective system upon which to rely.

Participants before this Inquiry have expressed concern about the ability of young workers to adequately bargain for their wages and working conditions.

In evidence before the Inquiry, Mr Damien Davie, an Organiser with the LHMU, recounted a situation relating to a young person who had encountered difficulties in being able to negotiate a personal agreement:

“Threlfall: So how did you become aware of the [name suppressed] personal agreement?

Davie: A young lady working at [name suppressed] contacted us with an issue surrounding the fact that she’d been paid out her holiday pay for no apparent reason. She’d worked previously a couple of weekends and received no penalty rates for that time worked and she was wondering if this was legal because her boss had told her that under the new workplace laws they were able to do this to them.

Threlfall: And what happened after that conversation?

Davie: It took some coaching because the - for this young lady to stand up because she’d heard about the unfair dismissal laws and was fearful for losing her job, so at one stage she was almost prepared to take the reduction in earnings but eventually she agreed for us to meet with the employer. After several meetings with the employer he agreed to pay back the money and restore her penalty rates.”.

The clear inference from the evidence of Mr Davie was that, without the assistance of the Union, the young person in question would have had their employment conditions drastically reduced.

Submissions put to the Inquiry from Union representatives in rural areas referred to the vulnerability of young persons to the Work Choice changes.

348 Mr Davie, Evidence, 29 August 2006, Transcript p 274
In the Bundaberg and Hervey Bay region submissions, Ms Viki Smyth, an Organiser with the QNU, stated before the Inquiry:349

“There are approximately 1,000 students graduating from high school in Bundaberg alone each year. These students are particularly vulnerable to the impact of Work Choices.

They are not given choices when it comes to their working conditions. There is always another young person to take their place if they don’t like it.

This is a reflection of this region. Seasonal work and transient workforce means changes can be introduced without challenge and indeed without anyone really ever knowing what has happened.”.

For those employees covered by the Work Choices legislation working in businesses with less than 100 employees, there is the vulnerability of facing termination of employment with generally no redress before any tribunal.

A large number of employees, primarily women, with child care responsibilities, work in casual and part-time employment. Many of the prescriptive clauses contained with awards or certified agreements facilitating their particular requirements, for example, flexible hours of work and parental leave provisions, are now subject to negotiation with employers. The evidence before the Commission has shown that the AWAs surveyed do not contain any of these provisions.

4.6.5 Gender pay equity

The Inquiry heard evidence and submissions from academics and organisations on the effect of Work Choices on gender pay equity. Associate Professor Gillian Whitehouse of the University of Queensland made a submission to the Inquiry on the effect of Work Choices and the AFPC on gender pay equity.350

Associate Professor Whitehouse pointed to two risks to gender pay equity associated with the introduction of Work Choices, namely:

• the promotion of individual wage bargaining and decentralised bargaining will increase wage dispersion; and
• under Work Choices, there is a weakening of the ability of parties to effectively pursue equal remuneration claims.

The Inquiry accepts that gender pay equity is an area that will require close monitoring under Work Choices. The Inquiry accepts the evidence of Associate Professor Whitehouse that the weakening of equal remuneration principles in the state jurisdictions will adversely impact on the pursuit of gender pay equity. The Inquiry also accepts the evidence of Professor Peetz that as a significant proportion of women workers are award reliant, they are a particularly vulnerable group in the move to individual bargaining.

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349 Ms Smyth, Evidence, 9 October 2006, Transcript p 589
350 See Associate Professor Gillian Whitehouse, “WorkChoices, the Australian Fair Pay Commission and gender pay equity”
4.6.5.1 Promotion of individual and decentralised bargaining

Associate Professor Whitehouse recognised, in her submission, that individualisation of wage bargaining is not new to Australia, arguing that Work Choices promotes and facilitates greater use of individual employment contracts. She submitted that the evidence from the research shows that this leads to wage dispersion, which in turn is associated with increases in gender pay gaps. She further submitted that the AFPC’s new role in the determination of the minimum wage and change in processes and legislative environment for which this is to occur has increased the level of confusion about minimum wage rates in the future.

Associate Professor Whitehouse listed a specific example of this change in process by the language used in legislation in the AFPC parameters for setting the minimum wage. The AFPC’s first parameter (as contained in s. 23 of the WRA) states that the AFPC must have regard to the capacity for the unemployed and the low paid to obtain, and remain in, employment. Associate Professor Whitehouse submitted that fairness in the determination of wages is not part of the AFPC’s parameters in setting the minimum wage and, as such, there is no guarantee that real time wage value will not decrease. This will in turn increase wage dispersion. Associate Professor Whitehouse pointed to a great deal of evidence that shows that the effect on the minimum wage is important to gender pay equity, suggesting that Australia has had success on the measure of gender pay equity as a consequence of the minimisation of low pay for all workers.

4.6.5.2 Pursuing equal remuneration claims

Associate Professor Whitehouse submitted to the Inquiry that the loss and weakening of pay equity claims has come about from the loss of coverage of the state based equal remuneration principles. Associate Professor Whitehouse submitted that the loss of these New South Wales and Queensland based equal remuneration principles has hurt pay equity as they did not require male comparators or discrimination in proving women’s work. Associate Professor Whitehouse submitted that other “comparable worth” strategies require one or more of these components and there is difficulty in pursuing pay equity where there is difficulty in finding a male comparator suitable to make comparisons within enterprises.

Associate Professor Whitehouse then submitted that while Work Choices has retained equal remuneration provisions, they have not been particularly useful as they have been determined through a “work value” approach.

Professor David Peetz of the Griffith University Business School in his submission also made statements on the effect of Work Choices and gender pay equity. In his submission to the Inquiry, Professor Peetz pointed to evidence that 24% of women are reliant on award conditions which was the largest group reliant on award conditions. Professor Peetz submitted that people who are the most vulnerable are those whose wages and conditions are set by the award rate of pay as these people are the most likely to shift from one form of employment contract to another, for example, from an award to an AWA. Given that women form the vast majority of award reliant employees, they are more likely to find themselves in that situation.

From this, Professor Peetz submitted that one of the consequences of Work Choices and the difference between industrial instruments was that individual contracts tend to have a greater disparity between male and female wages. Exhibits 31 and 32 of Professor Peetz’s submission showed that on AWAs, average earning for women were 20% lower than for men. Professor Peetz also pointed to evidence that suggested that unions and collective bargaining tend to reduce inequality in wage outcomes. Professor Peetz submitted that Work Choices movement towards an individualised regime disadvantages women who without being able to exercise collective

351 See Report of the QIRC into Equal Remuneration Worth Valuing
352 s. 624 WRA
353 See Exhibit 29 of Professor Peetz’s Submission
354 Refer to Exhibits 30-35
power and being more award reliant, earnings are less likely to grow at a lower rate for women, than men. He also submitted, along the lines of Associate Professor Whitehouse, that with the decrease in collective power in the workplace, disadvantaged workers are less likely to exercise rights in the workplace and are perhaps less likely to exercise their rights through the processes available such as pay equity prosecutions.

4.6.5.3 Queensland Working Women’s Service Submission

The QWWS also made a submission that went to the claims that the Work Choices legislation threatens to further damage and undermine gains that have been achieved through the adoption of pay equity principles in the Queensland jurisdiction. The QWWS provided case studies that demonstrated the potential of Work Choices to undermine gender pay equity. Three case studies in particular were advanced.\(^{355}\)

**Case 1a**

Client contacted centre for assistance (over 45). She was an award worker and was offered an AWA. This employee was the only female in the group and discovered that male counterparts had been offered higher remuneration and commission in their workplace agreements.

**Case 1b**

Client works in a large not-for-profit organisation and performs a management role. She is paid at award wages and all the male managers are on a salary. Client has been provided with a 4 cylinder car and other male managers drive 6 cylinder cars. Client is not in the Union and has not been successful in applying to have her position re-classified and has been told they will take away extra responsibilities rather than pay her a salary because all the other women would then expect the same thing.

**Case 1c**

Award free personal services worker (25-45) discovered her male colleague with same duties was paid $16,000 higher wages annually. Employer has ignored her concerns and maintains is entitled to pay her minimum wage.

\(^{355}\) QWWS Submission, 20 July 2006, p 5
4.7 Part 4 Conclusion

The evidence addressed in Part 4 of this Report has been wide ranging and an attempt is made here to draw a number of broad conclusions. In relation to incidences “involving the reduction of wages and conditions through AWAs or other collective agreements”, the Inquiry finds that the removal of the no-disadvantage test is very significant in providing the opportunity for such reduction. The Inquiry accepts the evidence before it, in the form of AWAs registered with the OEA, which remove entitlements which were previously standard for Queensland workers. In relation to both “discrimination, harassment and denial of workplace rights” and “unfair dismissal or other forms of unfair or unlawful treatment of employees”, the Inquiry accepts the evidence that considerable confusion exists among Queensland workplaces, employees and employers in relation to these issues. In particular, the Inquiry accepts that there exists confusion in relation to the distinction between unlawful and unfair termination of employment and confusion in relation to jurisdiction. The Inquiry also accepts the evidence here and in Part 3 of this Report of the lack of appropriate means for employees to report and have considered their concerns in relation to workplace issues. The Inquiry also accepts the additional concerns which arose during the course of the Inquiry especially in relation to the ESC, 457 visas, vulnerable groups of workers, occupational health and safety and gender pay equity.