Part 3

Reporting Mechanisms Available to Employees Post Work Choices

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REPORTING MECHANISMS AVAILABLE TO EMPLOYEES POST WORK CHOICES

3.1 Overview

The first of the Directions for the Inquiry sought a consideration of the mechanisms available to employees to report incidents of unfair treatment as a result of the introduction of Work Choices. The various submissions to the Inquiry approached this aspect of the Directive quite differently with some submissions focusing on the mechanisms which had become available to employees in response to the introduction of Work Choices and others focusing on a comparison between the mechanisms available pre and post Work Choices. This section of the Report combines both of these approaches and provides a broad ranging overview of the submissions to the Inquiry which considered the mechanisms available to employees, pre and post Work Choices.

3.2 Unions

Not surprisingly, a number of submissions from organisations representing employees noted the traditional role Unions have played in the representation of the rights and interests of employees. Unions provide a specialised industrial relations and employment service to employees in exchange for membership fees. Unions have traditionally been the first point of contact for their members who feel that they are experiencing unfair treatment in the workplace. A number of submissions have noted, however, that the restrictions placed on Unions by Work Choices have restricted the usual operation of Unions in performing their role.

With the introduction of Work Choices, greater restrictions are placed on Unions, including the right of entry into workplaces to talk to members or to inspect time and wages records. Work Choices does provide a system for performing time and wages record checks, however, this is restricted by measures such as the need to provide 24 hours notice before the inspection takes place and the restriction that an employer can place on the Union official speaking to Union members. In addition, a Union official cannot view time and wages records for an employee member employed under an AWA unless the employee specifically requests this of the Union and the employer is made aware of this request.

Unions are still able to receive and investigate complaints of unfair treatment at the workplace by their members, however, this is impeded to the extent that there are now structural impediments to bringing claims before the QIRC and implementing industrial action, requiring Unions to pursue different avenues including the Federal Court, Federal Magistrates Court, the state Magistrates Court (for a small claims tribunal procedure) and ADCQ and the Anti-Discrimination Tribunal (ADT).

The submissions by The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland (CFMEU), the Australian Workers’ Union of Employees (AWU) and The Electrical Trades Union of Employees Queensland (ETU) all noted that the restricted access to workplaces, as a result of the implementation of Work Choices, has resulted in direct contact between members and Union officials becoming more difficult. These submissions also noted the increased time, costs and resources required to investigate and litigate breaches of industrial laws and instruments which has resulted in greater difficulty for Unions in providing representation for their members. Concern was also expressed, in these submissions, about the changes to unfair dismissal provisions which are believed to “greatly enhance the risk of termination where a complaint made to the union is acted upon”.

174 Submissions from CFMEU, AWU, QCU and ETU
175 CFMEU Submission p 14
Evidence from individuals before the Inquiry highlighted the difficulties encountered by Union officials as exemplified in the following evidence given by a Union official:

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.

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 its pretty pointless in paying union fee’s and being part of one so I would like to cancel my membership.”.

176 Mr Harrison, Evidence, 3 October 2006, Transcript pp 509-519
3.3 Department of Industrial Relations - Industrial Inspectorate

The submission of the CFMEU noted that the advent of Work Choices has led to a significant curtailment of the power of the various state Inspectorates to monitor compliance with industrial standards. The Department of Industrial Relations, Private Sector Division has responsibility for co-ordinating the Industrial Inspectorate which has as its primary role, the monitoring of compliance with industrial instruments (legislation, awards and agreements) in Queensland workplaces. Industrial Inspectors have power conferred under the IRA to:

- enter a workplace and inspect any part of the place or anything at the workplace;
- inspect, photograph or film any part of the workplace or anything at the workplace;
- copy a document at the workplace (including but not limited to time and wages records);
- require a person to produce for inspection, at a reasonable time and place nominated by the inspector, a document relating to an employee and keep the document to copy it before returning it as soon as practicable; and
- question a person at the workplace and require a person to give information, including their name and address, for purposes under the IRA.

The table below details the activity of the Queensland Industrial Inspectorate during the period 2004-2005 and 2005-2006 as set out in the annual report.

<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td>Wage complaints finalised</td>
<td>8,254</td>
<td>6,453</td>
</tr>
<tr>
<td>Amount of unpaid wages adjusted on behalf of employees (2004-2005 excluded $1.3m audit adjustments)</td>
<td>$9.88m</td>
<td>$10.16m</td>
</tr>
<tr>
<td>Amount of unpaid wages recovered through court proceedings</td>
<td>$0.88m</td>
<td>$0.65m</td>
</tr>
<tr>
<td>General audits conducted - workplaces</td>
<td>2,781</td>
<td>2,241</td>
</tr>
<tr>
<td>Wage recovery investigations completed within three months</td>
<td>73%</td>
<td>69%</td>
</tr>
<tr>
<td>Legal proceedings completed - employers</td>
<td>239</td>
<td>160</td>
</tr>
<tr>
<td>Success rate in court hearings</td>
<td>96%</td>
<td>96%</td>
</tr>
<tr>
<td>Level of customer satisfaction in relation to wage complaints</td>
<td>97%</td>
<td>97%</td>
</tr>
<tr>
<td>Trading hours inspections</td>
<td>11</td>
<td>23</td>
</tr>
</tbody>
</table>

Table 1: Department of Industrial Relations, Industrial Inspectorate Results

The Queensland Government submission noted that in regional areas of Queensland, the network of offices and Industrial Inspectors of the Department of Industrial Relations, are being provided as a resource to Queensland employers and workers for questions and clarification about the operation of Work Choices and comparisons to the Queensland system for matters such as proposed agreement terms.

The CFMEU submission suggested that “[w]hilst the State industrial Inspectorate still has a capacity to advise employees and to investigate complaints, the lack of jurisdictional capacity to act in any meaningful way means that they will be an inadequate option for the actioning of incidents of unfair treatment”. The OWS is seen, in the CFMEU submission as an inadequate replacement for the combined state Industrial Inspectorates as the OWS has just over 200 inspectors for the whole of Australia.

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177 CFMEU Submission p 13
178 Chapter 10 IRA
179 Queensland Department of Industrial Relations Annual Report 2005/2006
180 Queensland Government Submission p 36
181 CFMEU Submission p 13
182 ibid p 13
3.4 Anti-Discrimination Commission Queensland

The ADCQ made submission to the Inquiry on the basis of its capacity to inquire into employee complaints of discrimination and where possible to effect conciliation of those complaints. The submission was made on the basis of providing information to the Inquiry.

The ADCQ submission noted that the Work Choices legislation explicitly recognises the right of dismissed workers to discrimination claims and that the clear intent of the federal Government is to quarantine the exclusions or exemptions for unfair dismissal claims and anticipates alternative avenues of complaint such as the ADCQ. Also noted is s. 672 of the WRA which requires an applicant to effectively make a choice of jurisdiction between either pursuing a complaint with the AIRC, the Human Rights and Equal Opportunity Commission (HREOC) or a state based agency such as the ADCQ. This has the effect that once a choice is made, the applicant cannot generally initiate different termination proceedings unless the initial proceedings are either discontinued or fail for want of jurisdiction.

The ADCQ submission goes on to note that a number of commentators have suggested that one of the impacts of Work Choices is that a significant number of employees who have been unfairly dismissed may seek to explore alternate avenues of appeal against dismissals that are no longer protected under the WRA. Also noted is that “some anti-discrimination laws, including the Anti-Discrimination Act 1991 (Qld) in Queensland provide wider protection than the unlawful termination provision of the WRA” as there are more attributes under the ADA “as well as wider definitions of the term ‘impairment’ and of the work area (which includes volunteers and casuals)”.

Despite the predictions of the use of alternative avenues for redress mentioned in the above paragraph, the ADCQ submission showed that “in the six months following the commencement of Work Choices legislation there has not been a significant increase in the number of complaints involving dismissals to the ADCQ”. In the supplementary submission provided to the Inquiry in December 2006 the ADCQ report an overall increase in the complaints involving dismissals by some 21% in comparison to the previous period last year. The submission noted that “the percentage increase is significant but it should be noted that such complaints only make up approximately 10% of all complaints received by the ADCQ”.

A number of other submissions to the Inquiry highlighted that alternative remedies available to employees seeking remedies for unfair or unlawful termination are often more time consuming and expensive. The Queensland Government submission suggested, for example, that costs of legal representation to pursue an unlawful dismissal claim are typically up to $30,000. An article by Chapman (2006) also suggested that remedies for an anti-discrimination claim are slow and relatively ineffective. The QWWS submission reported that women who have experienced discrimination in the workplace coinciding with unfair dismissal claims often prefer to have the matter heard in the AIRC or QIRC rather than the various human rights commissions. They saw this as being the case “because of the shorter response time and the effectiveness of the Commissions in satisfactorily conciliating these matters as opposed to the lengthy (up to one year) delay in having matters listed for conciliation in the alternative jurisdiction”. The QWWS submission also suggested that the provision of financial assistance of $4,000 through the AIRC will be of little benefit to women who have a case of unlawful termination to pursue as the sum of money does not contribute significantly to the actual cost of proceeding with the trial.

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183 ADCQ Submission p 1
184 ibid p 2
185 ibid p 2. See also for example Chapman, A. 2006 “Unfair Dismissal Law and Work Choices: From Safety Net Standard to Legal Privilege” The Economic and Labour Relations Review 16 (2)
186 ibid p 2
187 ibid p 2
188 ADCQ Supplementary Submission, December 2006, p 1
189 Queensland Government Submission p 10
190 Chapman, A. 2006 “Unfair Dismissal Law and Work Choices: From Safety Net Standard to Legal Privilege” The Economic and Labour Relations Review 16(2) p 257
191 QWWS Submission p 11
The ADCQ submission, itself, noted that a challenge to applicants to the ADCQ is to meet the threshold requirement of the Anti-Discrimination Act 1991 (Qld) which requires a complaint “must provide reasonably sufficient information to indicate an alleged contravention of the Anti-Discrimination Act 1991 (Qld)”. “Of all complaints received by the ADCQ, traditionally around forty per cent fail to meet the threshold requirements.”  

Furthermore, the submission noted that approximately 48% of all complaints are resolved within the conciliation processes of the ADCQ and 23% are referred to the ADT.

In contrast, the Queensland Government submission noted that “prior to Work Choices, employees in Queensland have had access to unfair dismissal laws in either the state or federal jurisdictions. 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 also sees the QIRC as providing a responsive, low cost forum for matters such as unfair dismissal. The Queensland Government submission reported that fewer than 2,000 applications for reinstatement are received in the State jurisdiction each year and that more than 98% are resolved before or after conciliation and do not proceed to formal hearing.

The processes for making a complaint in the ADCQ and for bringing an application to the QIRC also differ. As noted above, in order to make a complaint to the ADCQ, a complainant needs to provide full details of the complaint (within one year of when the discrimination occurred) to determine if threshold requirements are met. A 28 day period is given to the respondent to respond to the allegations in the complaint. It is at this stage that a conciliation conference is held with the parties in the matter. The conference is chaired by a conciliator who is an employee of the ADCQ. If the matter does not settle, the applicant then has the opportunity to elect to go to a hearing before the ADT. When the matter is referred to the ADT, the ADCQ provides a written report which is sent to the parties by the Registrar of the ADT. The ADT then sets directions for the hearing of the claim.

There are no costs associated with bringing a claim before the ADCQ. However, there is a cost associated with representation before the ADT. It should also be noted that Legal Aid Queensland does provide a service in relation to anti-discrimination matters although the service is subject to a means test and is not automatic.

Bringing an application before the QIRC involves completion of an appropriate form which is filed with the Queensland Industrial Registry at the cost of $54 (although no fees are charged on filing an application for reinstatement made by a Union on behalf of its member). Of importance however, is the time taken to process an application for reinstatement and a notification of industrial disputation. Matters before the QIRC are heard expeditiously and especially so in the case of industrial disputation.

An additional point noted in the ADCQ submission is the evidence, in some enquiries and complaints made to the ADCQ, of a lack of understanding of both employees and employers of their ongoing obligation and rights under employment and equal opportunity (EEO) and anti-discrimination laws following the introduction of the Work Choices legislation. This point is supported in other submissions noted elsewhere in this Report, where employers and employees lack of understanding as to the distinction between an unlawful and unfair termination of employment is noted. The ADCQ also noted the lack of familiarity with ADCQ processes of employee and employer advocates who have traditionally practiced in the industrial relations area and who have begun to bring complaints to the ADCQ. In response to this last point, the submission noted that the ADCQ has run a number of workshops on practices and procedures at the ADCQ.  

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192 ADCQ Submission p 3
193 Queensland Government Submission p 9
194 ADCQ Submission p 3
Submissions point to a situation where an employee would have to bring an application for unlawful termination in the areas not covered by the ADCQ (e.g. dismissal as a consequence of refusing to sign an AWA), before the Federal Magistrates Court, which will usually require the appearance of legal practitioners and generally greater cost than a tribunal such as the ADT.

3.5 Queensland Industrial Relations Commission

Prior to the introduction of Work Choices, the QIRC had jurisdiction over approximately 70% of Queensland employees. Since the introduction of Work Choices it has been estimated that this percentage is now approximately 38%. Whilst the jurisdiction of the QIRC has decreased somewhat, there are still a significant number of employees and employers who remain within the jurisdiction of the QIRC.\(^{195}\)

The Queensland Government submission referred to the QIRC as “the independent umpire to assist the parties to resolve disputes if they need assistance”.\(^{196}\)

The QIRC is a specialist industrial relations tribunal established under the IRA. Under s. 265 of the IRA, the QIRC has jurisdiction to hear and decide industrial matters, regulate industrial awards, certify industrial agreements and conduct Inquiries as directed. Previously, the jurisdiction of the QIRC was not limited to employees under state awards and could hear and determine unfair dismissal applications for federal award employees\(^{197}\) and was the main jurisdiction for the setting of minimum wages and conditions of employment for Queensland employees; for employees seeking to recover unpaid wages and those seeking to amend or void unfair contracts, amongst many other things.

The submission of the Shop, Distributive and Allied Employees Association, Queensland Branch, Union of Employees (SDA) noted the capacity, under the IRA, to readily access the assistance of the QIRC was useful to both employers and employees when protracted or difficult disputes arose. This submission argued that the “knowledge of both parties that the QIRC held the powers and functions to arbitrate such disputes, if necessary also ensured that industrial disputation remained within reasonable limits and grievances were resolved”. Other submissions highlighted the likelihood of a deterioration in industrial relations between parties when there is a limited capacity for a body to expediently and independently address the issue, for example:

**MILLS, Wayne Anthony**\(^{198}\)

Occupation: Union Organiser, AWU

The witness in the course of his union duties operates in a geographical area that includes Brisbane, Boonah and Esk.

The evidence to the Inquiry went to the difficulties faced by the Union in representing a member who had been physically assaulted by a supervisor at work.

The matter (at the time of the evidence being given) remained unresolved, some 13 weeks after the complaint had been made.

This, according to the witness, was “because of the AIRC’s ineffectual powers as a result of the Howard Government’s Work Choices legislation, the matter was allowed to ferment, resulting in the matter taking over 10 weeks to come before an independent umpire for assistance.”.

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195 Queensland Government Submission, 21 July 2006, p 7
196 Queensland Government Submission p 12
197 See decision of President Hall in Gant v Multigroup Distribution Services Pty Ltd trading as Star Track Express [2004] 176 QGRG 718 and 177 QGIRG 382
198 Mr Mills, Evidence, 24 October 2006, Transcript pp 670-676
Under questioning from the Inquiry Bench on the incident, the following exchange is recorded at page 674, line 40 of transcript:

"Bench: Yes. In your evidence, you say that the industrial instrument that applied at Dairy Farmers was a preserved State agreement?

Mills: That's correct.

Bench: Now - which prior to the 27th of March, would have given you access through the dispute settlement procedures of the Queensland Industrial Relations Commission. Is that correct?

Mills: Yeah, that's - that's correct. You - my experience is you're in there within a few days.

Bench: Well, that's a question I was going to ask, you say you looked after that particular site for 18 years. In the past have you had the need to come to the Commission over disputes?

Mills: Yes. Yes, I have.

Bench: And generally, how did the Queensland Industrial Relations Commission respond by - by dealing, in terms of the timeframes?

Mills: The timeframes were - were generally within about three days, depending on what the matter was. If the matter was urgent, it could even be heard on that day. But I'd say around about three days on average, depending on the urgency of the matter."

3.6 Wageline

Wageline is a Queensland Government industrial relations information service to the private sector provided by the Department of Employment and Industrial Relations. The information that Wageline provides is that of Queensland industrial relations legislation, awards of the Queensland jurisdiction, agreements and public holidays and trading hours. Wageline provides its services to employees, employers, employee and employer organisations and the public generally.

On the Wageline web-site there is a “Compare What’s Fair” calculator application which can be accessed. This calculator helps workers compare current award entitlements with a proposed AWA. They can check if they will lose any current rights or entitlements under a proposed AWA. Furthermore, individual workers will be able to calculate the amount that they would earn over a year, including entitlements, based on their typical working week under an existing award and a proposed AWA. Since going on-line in March 2006, Compare What’s Fair had received 8,927 hits to the end of June 2006.199

199 Queensland Government Submission p 36
3.7  Fair Go Queensland Advisory Service

The Queensland Government submission noted that the Department of Industrial Relations established the Fair Go Queensland Advisory Service (FGQAS) to assist Queenslanders who need information about Work Choices in December 2005. As part of this initiative, a 1300 number was established to provide a dedicated telephone service - the Fair Go Hotline - available to all Queenslanders for the cost of a local call. Workers who call the Fair Go Hotline and are affected by Work Choices, are given the federal Work Choices Infoline to contact in the first instance. The FGQAS also includes referral to other agencies such as YWAS and QWWS.

The Queensland Government submission noted that to the end of June 2006, the Hotline had received 919 calls and that many of the calls since Work Choices came into effect, concern workers who have been dismissed or disadvantaged as a result of the introduction of Work Choices. The Queensland Government submission reported that it is the experience of managers and operators at FGQAS that many callers return from Work Choices Infoline dissatisfied with the information and service that they have received. The submission goes on to suggest that “the experience has also been that employee callers who, from the information they provide, would appear to have a claim for entitlements or some other matter for redress under the federal legislation, are allegedly being advised no action can be taken for them and are not being provided with assistance by Work Choices Infoline to have their issues investigated”.

The Queensland Government submission also referred to a degree of confusion surrounding the question of the correct identification of jurisdiction for employees and employers. They state that the Queensland jurisdiction has provided a system which has been understood by the public for more than 100 years. This has now been replaced by a system not readily understood by most.

The AWU submission applauded the establishment of the FGQAS and suggested that the service provides a credible channel for employees to report cases of unfair dismissal and unfair treatment in the workplace. The AWU suggested that this service provides for much, if not all, of what is required to monitor and report on the impact of Work Choices. The key issue for the AWU is an ongoing commitment to the maintenance and review of this service. The AWU position on this aspect of the Inquiry changed somewhat in their final submission as is discussed in the final part of this Report.

3.8  Other Advisory Services

3.8.1  Queensland Working Women’s Service

The QWWS is a not-for-profit service, established in 1994, providing free workplace relations advice and advocacy on a broad range of workplace issues affecting women, particularly in relation to specialist advice relating to unfair dismissals, discrimination and harassment, workplace bargaining and conflict mediation. QWWS also does provide a “casework” service for clients where appropriate. The QWWS submission noted that during 2005, QWWS were in direct contact with over 5,000 women seeking advice or assistance in relation to industrial relations matters.

200 ibid p 34
201 Queensland Government Submission p 34
202 ibid p 34
204 AWU Submission p 18
205 QWWS Submission p 2
The QWWS submission noted that the number of client contacts to their service has declined slightly with the launch of a number of other information services including the FGQAS and the Work Choices Infoline.\textsuperscript{206} The submission also noted that they have received numerous reports from women who have had difficulty in registering a complaint with the OWS in relation to wages or employment conditions. At the point of contacting the Work Choices Infoline they have been referred back to Wageline or to QWWS for assistance with wage claims or outstanding entitlements.\textsuperscript{207}

### 3.8.2 Young Workers Advisory Service

The YWAS is an initiative of the Queensland State Government funded by the Department of Industrial Relations to provide advice, referrals, information, assistance and advocacy to young workers (under 25) in Queensland. YWAS provides information sessions to secondary schools, community organisations, TAFEs and universities.\textsuperscript{208} YWAS adopts a range of strategies to advocate for, and encourage young people to voice their concerns about incidents in the workplace including formal and informal submissions, youth engagement, advocacy and referral to other agencies.\textsuperscript{209}

The YWAS submission noted that as far as they are aware, to date, the federal Government has not funded, nor sought to fund a youth service specifically designed to assist young workers in any state.

### 3.9 Office of the Employment Advocate

The CFMEU submission referred to the OEA as a reporting mechanism previously available to employees which was established following the passage of the WRA. Part of its function was to give advice and investigate complaints about breaches of coercion and duress provisions, freedom of association provisions, right of entry for union officials, strike pay and the national code of practice for the construction industry.\textsuperscript{210}

According to the OEA web-site, the primary role of the OEA is to accept lodgements of workplace agreements. In doing this, "\textit{the OEA provides free support and information to both employers and employees on agreement making. The OEA is also available to assist employers and employees understand the Australian Fair Pay and Conditions Standard. An employer or employee can ask the OEA to check agreements before they are lodged to ensure that they do not contain prohibited content. The OEA can explain the content of agreements in ways appropriate to an employee’s specific needs including, for example, the circumstances of persons from a non-English speaking background and young persons}".\textsuperscript{211}

Traditionally the OEA, prior to Work Choices, performed the approval process for AWAs and checked them against the relevant awards and statutory conditions so that they passed the no-disadvantage test. The expanded role of the OEA now includes the lodgement of all agreements, both individual and collective. The agreements come into operation on lodgement with the OEA and no longer need to pass a no-disadvantage test.

The CFMEU submission, however, contended that under Work Choices, the OEA “has been stripped of its advisory and compliance roles, which have been given to the Office of Workplace Services (OWS) and the Australian Building Construction Commission (ABCC). The OEA is therefore no longer an option for employees as it is unable to investigate or enforce suspected breaches of industrial laws and instruments”.\textsuperscript{212}

\begin{flushright}
\textsuperscript{206} ibid p 2
\textsuperscript{207} ibid p 3
\textsuperscript{208} YWAS Submission p 5
\textsuperscript{209} ibid pp 5-7
\textsuperscript{210} CFMEU Submission p 11
\textsuperscript{211} http://www.oea.gov.au (accessed 4 December 2006)
\textsuperscript{212} CFMEU Submission p 11
\end{flushright}
3.10 Office of Workplace Services

The CFMEU submission identified the OWS as one reporting option proposed by the federal Government. The submission noted that the OWS was established in 1997, replacing the Arbitration Inspectorate and was originally given responsibility for compliance with the WRA, certified agreements and awards. Following the passage of the Work Choices legislation, the powers of the OWS have been expanded, partially due to the assumption of part of the former role of the OEA.\footnote{Ibid p 9}

The OWS web-site states that the role of the OWS is to ensure that “the rights and obligations of workers and employers under the Workplace Relations Act 1996 are understood and enforced fairly”.\footnote{http://www.ows.gov.au (accessed 4 December 2006)} The web-site also states that the OWS provides advice and assistance to employers, workers and organisations about compliance and enforcement under the WRA; conducts targeted education and compliance campaigns to further protect the rights of workers; investigates claims of alleged breaches of federal industrial instruments and the WRA lodged by employers and workers; and where appropriate, initiates litigation action in the courts to enforce workplace laws. The OWS inspectors are described as having the power to enforce compliance with the WRA and the Australian Building and Construction Commission will continue to enforce workplace laws in the building and construction industry.

The CFMEU contended that despite the compliance and enforcement role of the OWS, it had not sought a penalty against an employer for a breach of an industrial instrument to 2002-2003. The submission reported on research by Ms Margaret Lee which found that “prospective actions for penalties must be assessed against detailed criteria, including whether the breach was willful, whether it is serious, the strength of the case, the cost of litigation and whether the employee can take their own private action or do so through a union or another organization”.\footnote{Ibid p 10} The CFMEU submission contended that “the role of the OWS in enforcing compliance is therefore dubious if it so obviously unwilling to punish employers who breach industrial laws and instruments”.\footnote{Ibid p 10}

The CFMEU submission also highlighted the relatively low number of OWS inspectors Australia-wide (approximately 200) which the submission believed would be insufficient to effectively enforce compliance of workplace laws and instruments for the one million or more businesses that fall within its jurisdiction. The submission also noted that as OWS inspectors are appointed, under s. 167 of the WRA, by the Minister that “it is difficult to see how the OWS will operate as anything but an agency that actively works to pursue the agenda of the Federal Government”.\footnote{Ibid p 10}

The CFMEU submission concluded that “the mandate of the OWS is to implement and enforce the Work Choices legislation. It is not a viable option for reporting incidents of unfair treatment arising through the operation of the Work Choices legislation. The OWS, from its history and its current behaviour, does not appear to be an effective reporting agency for employees that feel that they have been subjected to unfair treatment”.\footnote{Ibid p 11}

The Queensland Government submission noted that the Department of Industrial Relations has initiated arrangements with the OWS to manage the operational referral of wages and entitlements claims lodged in the wrong jurisdiction. The submission noted that while every effort had been made to provide a simple transfer of compliance cases between jurisdictions, there is still considerable confusion among both employers and employees as to which jurisdiction they fall.\footnote{Queensland Government Submission p 35}

\begin{footnotes}
\item[213] Ibid p 9
\item[215] CFMEU Submission p 10
\item[216] Ibid p 10
\item[217] Ibid p 10
\item[218] Ibid p 11
\item[219] Queensland Government Submission p 35
\end{footnotes}
These referral arrangements have included a means by which the Department of Industrial Relations can receive and refer wages and entitlements claims for Queenslanders who have not been able to have their matter understood or accepted by the Work Choices Infoline. The submission also noted that the OWS, DEWR web-site has now included an on-line Wages and Conditions Claim form to address some of the difficulties highlighted by the Department of Industrial Relations.\footnote{ibid p 35}

\subsection*{3.11 Part 3 Conclusion}

The Inquiry notes the evidence that the mechanisms for employees to report incidents of unfair treatment have been severely curtailed. As summed up by one participant:

\begin{quote}
"Historically, employees have had a variety of options by which to pursue claims of unfair, unlawful or unreasonable treatment by employers. With the implementation of Work Choices, options for employees to report unfair treatment have been all but eliminated." \footnote{CFMEU Submission p 9}
\end{quote}

The Inquiry also notes the confusion which exists in many Queensland workplaces and amongst employees and employers with regard to workplace rights and jurisdiction. This coupled with the lack of mechanisms for employees to report, and have heard, their concerns about unfair and unlawful treatment in the workplace, highlights the need for adequate reporting mechanisms for employees. Further, mechanisms which do exist are complex, expensive and difficult to access.

To this end, the Inquiry has made a number of recommendations to ensure that an appropriate reporting mechanism exists for Queensland employees and employers which will identify areas of concern.