Queensland Industrial Relations Commission

29 January 2007

Final Report | Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers |

Volume 2

Pursuant to s. 265(4) of the *Industrial Relations Act 1999* the Commission is to provide a report and recommendations to the Honourable John Mickel MP, Minister for State Development, Employment and Industrial Relations.

Deputy President D.A. Swan
Commissioner I.C. Asbury
Commissioner J.M. Thompson

Queensland Industrial Relations Commission

29 January 2007

The Honourable John Mickel MP
Minister for State Development,
Employment and Industrial Relations
Level 6
75 William Street
BRISBANE QLD 4000

Dear Minister

Inquiry into the Impact of Work Choices on Queensland Workplaces, Employees and Employers

In accordance with your Directive issued 13 November 2006, and the Directive issued on 13 June 2006, we herewith provide you with the Final Report and Recommendations of the Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers pursuant to s. 265(4) of the *Industrial Relations Act 1999*.

D.A. SWAN, Deputy President

I.C. ASBURY, Commissioner

J.M. THOMPSON, Commissioner

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Table of Contents

Glossary

ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Services
ADCQ	Anti-Discrimination Commission Queensland
ADT	Anti-Discrimination Tribunal
AFPC	Australian Fair Pay Commission
AFPCS	Australian Fair Pay and Conditions Standard
AiG	Australian Industry Group, Industrial Organisation of Employers (Queensland)
AIRC	Australian Industrial Relations Commission
AMWU	Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
APCS	Australian Pay and Classification Scale
ATSI	Aboriginal and Torres Strait Islander
AWAs	Australian Workplace Agreements
AWU	The Australian Workers' Union of Employees, Queensland
CFMEU	The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
COAG	Council of Australian Governments
DEWR	Department of Employment and Workplace Relations
EEO	Employment and Equal Opportunity
ESC	Employment Separation Certificate
ETU	The Electrical Trades Union of Employees Queensland
FGQAS	Fair Go Queensland Advisory Service
FMW	Federal Minimum Wage
HREOC	Human Rights and Equal Opportunity Commission
IRA	***Industrial Relations Act 1999*** (Qld)
LGA	Local Government Association of Queensland
LHMU	Liquor, Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
LSL	Long Service Leave
MSL	Minimum Salary Level
NAPSAs	Notional Agreements Preserving State Awards
OEA	Office of the Employment Advocate
OECD	Organisation for Economic Co-operation and Development
OWS	Office of Workplace Services
PSAs	Preserved State Agreements
PSEA	***Public Sector Employment (Award Entitlements) Act 2006*** (Vic)
PST	Participation Solution Team
QCU	Queensland Council of Unions
QIEU	Queensland Independent Education Union of Employees
QIRC	Queensland Industrial Relations Commission
QNU	Queensland Nurses' Union of Employees
QUT	Queensland University of Technology
QWAs	Queensland Workplace Agreements
QWWS	Queensland Working Women's Service
RCB	Regional Certifying Body
RCEAQ	The Restaurant and Caterers' Employers Association of Queensland, Industrial Organisation of Employers
SDA	Shop, Distributive and Allied Employees Association, Queensland Branch, Union of Employees
TCFUA	Textile Clothing and Footwear Union of Australia

TCR	Termination, Change and Redundancy clause
TWU	Transport Workers' Union of Australia, Union of Employees (Queensland Branch)
WRA	***Workplace Relations Act 1996*** (Cth)
WRAA	***Workplace Rights Advocate Act 2005*** (Vic)
WRAV	Workplace Rights Advocate (Victoria)
WRC	Welfare Rights Centre
WRIL	Workplace Rights Information Line
YWAS	Young Workers Advisory Service

Executive Summary

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

Four Directions were established by the Minister. These were, *inter alia*, to:

- consider mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices;
- inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices;
- consider the investigations and outcomes of similar Inquiries in other states and territories; and
- recommend processes for facilitating the reporting of incidents of unfair treatment and for monitoring and reporting to the Minister on industrial relations practices under Work Choices [Directive 13 June 2006].

An Amendment to the Directive was provided by the Honourable John Mickel, Minister for State Development, Employment and Industrial Relations on 13 November 2006.

This amended Directive contained two further Directions to the Inquiry which required that:

- the terms of reference for the Inquiry be extended to require the QIRC to take into account the outcomes of the High Court decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees, and employers; and
- the due date for the Final Report of the Inquiry be extended so that the Final Report is delivered within a reasonable time after the High Court hands down its decision, but no longer than two months after the decision.[3]

This Report will be released on 29 January 2007.

The Inquiry was also required to establish processes for conducting the Inquiry including receiving and examining incident reports from individuals and organisations; inspecting workplaces if necessary; identifying remedies or options for further action; promoting the Inquiry and submitting reports on major trends and developments under Work Choices. An Interim Report[4] and recommendations was required to be provided within three months and a Final Report within the timeframe provided in the amended Directive.

The Inquiry commenced by placing advertisements in metropolitan and regional newspapers to provide notification of the Inquiry and to call for expressions of interest from all interested organisations and persons. In addition, a web-site was established to provide information and advice with respect to the Inquiry. This advice was also available from the Industrial Registrar. A Preliminary Hearing of the Inquiry was held on 23 June 2006.

1 Appendix 1 - Ministerial Directive issued 13 June 2006
2 Appendix 2 - s. 265 IRA
3 Appendix 3 - Ministerial Directive issued 13 November 2006
4 Interim Report "*Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers*", Volume 1, released 20 September 2006

At the Preliminary Hearing, the Inquiry Panel clearly established that the Inquiry was a fact finding exercise and a program was established for participants, including those in regional areas, to be heard. Sittings of the Inquiry were held from 21 August 2006 to 1 September 2006 in Brisbane. Regional sittings were held from 21 September 2006 to 10 October 2006. Further sittings were held in Brisbane on 18 and 24 October 2006 and final submissions were heard in sittings held from 20 November 2006 to 6 December 2006.

The Inquiry received a total of 42 submissions. A number of organisations that had made submissions elected to make oral submissions to highlight the major points of their submission and to make comment on other submissions. In the making of these oral submissions, no further evidence was called. The submissions received provide the basis of this Report and its recommendations. Part 1 of this Report provides further details of the terms of reference and conduct of the Inquiry.

Part 2 of this Report provides an overview of the changes as a consequence of the introduction of the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). It also addresses the Directive issued on 13 November 2006 requiring that the Inquiry take into account the outcomes of the High Court Decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees and employers. As such, Part 2 of this Report begins with a discussion of the outcome from the High Court decision and then considers the implications for Queensland workplaces, employees and employers. This discussion provides the context in which the submissions before the Inquiry were considered. Also considered in Part 2 of this Report are aspects of submissions before the Inquiry which discussed the more general implications of Work Choices even though this was not one of the Directions. In particular, consideration was given to: the economic and social impact of Work Choices, likely changes due to the introduction and establishment of the Australian Fair Pay Commission, the intersection between Work Choices and Welfare to Work changes, occupational health and safety issues, gender pay equity issues and regional issues.

Although submissions varied considerably in their content, a number of common concerns with respect to Work Choices were evident. Significantly, the High Court decision must be viewed within context. This decision concerned itself only with the constitutional validity of Work Choices. The decision did not consider the fairness or otherwise of that legislation. The decision provided certainty in some areas but left unclarified what actually constituted a "constitutional corporation".

The full impact of the Work Choices legislation may not be realised for some time yet. However, as a consequence of the findings made and trends observed in this Report, the Inquiry strongly recommends the establishment of a separate statutory body to monitor the impact of Work Choices and also to assist employees and employers in understanding their fundamental industrial relations rights and obligations.

The Inquiry has serious concerns about the social and economic impact of Work Choices. Emerging trends show that employees have become extremely apprehensive about job security in this new uncertain work environment. This in turn has led many employees to refrain from raising normal industrial relations issues, such as occupational health and safety and questionable terms and conditions of employment, with their employers for fear of jeopardising their jobs. The Inquiry is strongly of the view that the most severe impact of Work Choices will be felt by those less skilled and vulnerable workers identified in this Report.

The evidence before the Inquiry has highlighted a trend towards lower wages and conditions of employment through the use of Australian Workplace Agreements (AWAs) as the relevant industrial instrument governing employment. In the AWAs reviewed and from the evidence before the Inquiry, the only outcomes evident are lower wages and conditions for employees. There has been no evidence whatsoever of reciprocal productivity and flexibility gains for employees and employers to justify such one-sided outcomes.

Part 3 of this Report addresses the first of the specific Directions issued by the Minister i.e. consideration of the reporting mechanisms available to employees to report incidents of unfair treatment as a result of the introduction

of Work Choices. This aspect of the Directive was approached differently in each of the submissions before the Inquiry. While some submissions focused on the mechanisms which had become available to employees in response to the introduction of Work Choices, others focused on a comparison between the mechanisms available pre and post Work Choices. As such, Part 3 of this Report considers both of these approaches and provides a broad ranging discussion of the mechanisms available to employees pre and post Work Choices including Unions, the Industrial Inspectorate, Anti-Discrimination Commission Queensland (ADCQ), the QIRC, Wageline, the Fair Go Queensland Advisory Service (FGQAS), Queensland Working Women's Service (QWWS), the Young Workers Advisory Service (YWAS), the Office of the Employment Advocate (OEA) and the Office of Workplace Services (OWS).

In relation to this Direction, the Inquiry accepts the evidence that the mechanisms for employees to report incidents of unfair treatment have been severely curtailed. There was also evidence of employees reporting what was *prima facie* unlawful treatment, being advised by bodies set up under Work Choices, that there was no remedy available for them. As summed up in one participant's submission:

> "*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.*".[5]

The Inquiry also notes the confusion which exists among many Queensland workplaces, 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.

Part 4 of this Report deals with the second of the Directions which required the investigation of 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 Direction 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 Direction, however, this Report provides an examination of the evidence according to the different types identified above and provides findings in relation to each of those areas.

The evidence, in relation to this Direction, was wide ranging and the Inquiry draws 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 that there is considerable confusion within Queensland workplaces and amongst employees and employers in relation to these issues. In particular, the Inquiry notes the confusion in relation to the distinction between unfair and unlawful termination and the confusion in relation

5 CFMEU Submission p 9

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. In addition, the Inquiry notes the concerns which arose from the evidence in relation to the Employment Separation Certificate, 457 visas, vulnerable groups of workers, occupational health and safety and the gender pay gap.

Within the category of "vulnerable group of workers" the Inquiry specifically records its concern for young workers either in or entering into the workforce. The Work Choices legislation can place these young workers in the position of having to independently bargain with their employer for their rates of pay and conditions of employment. The bargaining position between the parties will generally be unequal and the absence of adequate knowledge on the part of young workers as to what constitutes fair and reasonable workplace conditions of employment may see this group being amongst the most disadvantaged workers as a consequence of the Work Choices legislation.

Part 5 of the Report addresses the third Direction which required the consideration of the investigations and outcomes of similar Inquiries in other states and territories in terms of their relevance to Queensland. The Inquiries of particular relevance to this Inquiry were considered to be the New South Wales Parliamentary Inquiry; the Labor Parliamentary Taskforce on Industrial Relations; and the Select Committee on Working Families in the ACT. Also of relevance but only recently established was the Tasmanian House of Assembly Select Committee on Work Choices Legislation.

In relation to this Direction, the Inquiry notes that the terms of reference for each of these similar Inquiries differed quite significantly to the Directions guiding this Inquiry. The Directions for this Inquiry are specific, whereas the terms of reference for the other similar Inquiries can be considered to be more broadly focussed on the impact of Work Choices. The Inquiry accepts, nonetheless, the submissions of the Queensland Government, the AWU, and the CFMEU that the investigations and, where available, outcomes of these similar Inquiries have direct relevance to this Inquiry. As such, where available the Inquiry has considered the evidence before it in light of evidence before those similar Inquiries. The Inquiry notes the considerable support that the evidence from those similar Inquiries lends to the evidence in this Inquiry and, in particular, notes little contradiction in all of the evidence before all of the Inquiries including this Inquiry. The Inquiry also accepts that it is only with the passage of time that the full impact of Work Choices will be felt and accepts that ideally there should be some mechanism by which a longer term Inquiry into the impact of Work Choices in Queensland can be achieved.

The final part of this Report, Part 6, provides a summary of the major findings of the Inquiry with respect to each of the Inquiry Directives. Also considered in Part 6 of this Report are the final submissions received by the Inquiry which addressed the participants' recommendations to the Inquiry. Given the common ground between the participants in relation to recommendations, Part 6 of this Report also provides an overview of the *Workplace Rights Advocate Act 2005* [Act Number 100/2005]. From this discussion, the recommendations of the Inquiry are provided.

Recommendations are also made with respect to the monitoring and reporting to the Minister, on a regular basis, on industrial relations practices under Work Choices including their impact on employees and employers.

RECOMMENDATIONS

The Inquiry recommends that:

Recommendation 1

The establishment by the Government of a separate statutory body similar to that of the Victorian Workplace Rights Advocate.

Recommendation 2

The statutory body provides advice and information to the public regarding the promotion of fair industrial relations practices.

Recommendation 3

The statutory body is required to raise and contribute to public awareness of fair, reasonable and appropriate workplace practices.

Recommendation 4

The statutory body provides a "one stop shop" for the gathering, recording, referral and dissemination of information concerning unfair, unreasonable and inappropriate work practices.

Recommendation 5

The statutory body provides a "networking" facility for the sharing and referral of matters to appropriate bodies.

Recommendation 6

The statutory body provides a mechanism for referring the complaints of individuals to a range of appropriate organisations, for example, Unions, the ADCQ and QWWS.

Recommendation 7

The statutory body makes representations on general issues relating to workplace matters to other relevant bodies, for example, the QIRC and/or the Australian Industrial Relations Commission (AIRC).

Recommendation 8

The statutory body is not empowered to, and will not, directly represent individual employees in proceedings/negotiations about their employment terms and conditions and should not be empowered to advise employees to sign or not to sign workplace agreements.

Recommendation 9

The statutory body refers matters to appropriate enforcement agencies.

Recommendation 10

The statutory body engages in research relating to industrial relations matters, and disseminates that research to relevant bodies.

Recommendation 11

The statutory body monitors and collects information about workers under subclass 457 visas and those who are adversely affected by programs such as Welfare to Work, and refers such issues to appropriate bodies.

Recommendation 12

The statutory body liaises with like statutory bodies in other states, and other relevant organisations, for the purpose of sharing information and where possible, resources.

Recommendation 13

The statutory body conducts a public information campaign which informs and educates employees and employers as to their rights under appropriate legislation and in the workplace.

Recommendation 14

The statutory body regularly monitors health and safety considerations in the workplace, and the impact of any changes since the commencement of Work Choices and other related regimes, on the health and safety of workers.

Recommendation 15

The statutory body regularly monitors the employment conditions of those vulnerable groups of workers identified in this Report.

Recommendation 16

The statutory body regularly reports to the relevant Government Minister upon all of these issues.

Part 1

Terms of Reference and Conduct of the Inquiry

TERMS OF REFERENCE AND CONDUCT OF THE INQUIRY

1.1 Establishment of the Work Choices Inquiry

On 13 June 2006, the Honourable Tom Barton, then Minister for Employment, Training and Industrial Relations and Minister for Sport, directed the QIRC to hold an Inquiry to examine the impact of the federal Government's Work Choices amendments to the WRA on Queensland workplaces, employees and employers.[6] The Minister's Directive was given under s. 265(3)(b) of the IRA which required the Commission to hold an Inquiry into or about an industrial matter, and to report and make recommendations, if directed to do so by the Minister.[7] This section of the Report provides an overview of the Directives guiding the Inquiry and details of the conduct of the Inquiry.

1.2 Directions

The Directive required the Inquiry to:

- consider mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices;
- inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices 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;
- consider the investigations and outcomes of similar Inquiries in other states and territories; and
- recommend processes for:
  - facilitating the regular reporting and examination of incidents of unfair treatment as a result of the introduction of Work Choices; and
  - monitoring and reporting to the Minister, on a regular basis, on industrial relations practices under Work Choices including their impact on employees and employers.[8]

1.3 Amendment to the Directive

An amendment to the Directive was provided by the Honourable John Mickel, Minister for State Development, Employment and Industrial Relations on 13 November 2006. This amended Directive contained two further Directions to the Inquiry that:

- the terms of reference for the Inquiry be extended to require the Commission to take into account the outcomes of the High Court decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees, and employers; and

6 Appendix 1 - Ministerial Directive issued 13 June 2006
7 Appendix 2 - Legislation - s. 265 IRA
8 Appendix 1 - Ministerial Directive issued 13 June 2006

- the due date for the Final Report of the Inquiry be extended so that the Final Report is delivered within a reasonable time after the High Court hands down its decision, but no longer than two months after the decision.[9]

The Inquiry produced its report on 29 January 2007.

To facilitate the Inquiry, it was necessary to establish processes for the conduct of the Inquiry including receiving and examining incident reports from individuals and organisations; inspecting workplaces if necessary; identifying remedies or options for further action; promoting the Inquiry and submitting reports on major trends and developments under Work Choices. Initially, an Interim Report and recommendations was required to be provided within 3 months and a Final Report within 6 months of the commencement of the Inquiry.

1.4 Conduct of the Inquiry

1.4.1 Overview

Deputy President Swan and Commissioners Asbury and Thompson were given the task of complying with both Ministers' Directives. Following notification of the Inquiry through newspaper advertisements,[10] the establishment of a web-site,[11] advice to registered organisations of employers and employees by the Industrial Registrar;[12] and a general invitation to all interested organisations and persons in the community through these mechanisms;[13] a Preliminary Hearing of the Inquiry was held on 23 June 2006.

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

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

A written Statement detailing these matters was issued to those who participated in the proceedings on 23 June 2006, and was also posted on the Inquiry's web-site.[14] Further Directions in relation to the giving of evidence and its publication on the Inquiry web-site were issued on 10 July 2006. Those Directions also established processes for interested participants to provide evidence "*in camera*" which would not be published or, in special circumstances, to give evidence by telephone or outside normal hearing hours.[15]

9 Appendix 3 - Ministerial Directive issued 13 November 2006
10 Appendix 4 - Metropolitan and regional newspaper advertisements
11 Appendix 5 - Inquiry web-site
12 Appendix 6 - Registration of Interest - Notice of Listing
13 Appendix 7 - Registration of Interest
14 Appendix 8 - Statement 1 released 23 June 2006
15 Appendix 9 - Statement 2 - Directions relating to the Giving of Evidence and/or the Making of a Submission released 10 July 2006

1.4.2 Brisbane Hearings

The Inquiry sat again on 1 August 2006 to flag a proposed agenda for Brisbane hearings to be conducted from 21 August 2006 to 1 September 2006 and issued further Directions on 4 August 2006.[16] A statement was issued on 24 August 2006,[17] advising participants that if any workplace inspections were requested, the Inquiry would give due consideration to such a request and may also instigate such inspections at any time it saw fit. Participants were invited to advise the Inquiry at its next Directions Hearing on 4 September 2006, if they wished to make any request for inspections.[18] A program for Regional Hearings was developed and provided to participants, and placed on the Inquiry's web-site.[19] The schedule of regional visits changed slightly during the course of the Inquiry and the actual schedule of visits is provided at Appendix 13.[20]

The first round of Brisbane Hearings were conducted between 21 August 2006 and 1 September 2006. At this initial Hearing, the Inquiry received detailed submissions from 17 organisations[21] and heard evidence from 35 individuals.[22] The affidavits of evidence and submissions were placed on the Inquiry web-site and all participants who had made submissions were advised that the Inquiry would accept further material before the Final Report. The Inquiry was of the view that as Work Choices had only recently been introduced, it was important to be able to make an assessment of the impact over the longest period possible prior to the submission of the Final Report.

1.4.3 Regional Hearings

Regional Hearings were conducted between 22 September 2006 and 11 October 2006 and included the following regional cities - Toowoomba, Southport, Cairns, Townsville, Mackay, Rockhampton, Bundaberg and Caloundra. Submissions were received from 13 representatives and evidence heard from 26 individuals. Affidavits and submissions from these proceedings were also posted on the Inquiry web-site.

1.4.4 Further Brisbane Hearings

A Further Directions Hearing was conducted on 20 September 2006 and called for those participants who wished to express a positive or neutral view of Work Choices to file statements of evidence and submissions with the Registry by 10 October 2006 with Hearings resuming on 12 October 2006. Two submissions were received expressing a positive view of Work Choices.

Hearings were conducted on 18 October 2006 and 24 October 2006 and allowed for individuals to give evidence outside of normal hearing hours. A total of 11 individuals gave evidence at these Hearings.

In the interim, a further Hearing arose from a situation involving foreign workers which attracted considerable media attention in the week beginning 16 October 2006. As the incident was seen to have direct relevance to the Inquiry, a Hearing was convened on 19 October 2006 and heard evidence from the Queensland Council of Unions (QCU), the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (AMWU) and the Department of Employment and Industrial Relations. Employee and employer organisations were invited to provide submissions or evidence to the Hearing and a submission was received from the Australian Industry Group, Industrial Organisation of Employers (Queensland) (AiG) in relation to the matter. AiG were the employer representatives of the company under consideration.

16 Appendix 10 - Directions Order issued 4 August 2006
17 Appendix 11 - Statement 4 released 24 August 2006
18 Appendix 11 - Statement 4 released 24 August 2006
19 Appendix 12 - Schedule of regional sittings
20 Appendix 13 - Final schedule of regional sittings
21 Appendix 14 - List of Submissions
22 Appendix 15 - List of Appearances

1.4.5 Final Submissions

A Directions Hearing was held on 13 November 2006 to propose times for the hearing of final submissions. Final submissions were received from five organisations[23] and were heard during the week 20 November 2006 to 24 November 2006. A further two submissions were heard on 6 December 2006. A conference of participants who had made final submissions was held on 28 November 2006. The purpose of this conference was to clearly establish the common ground between the participants, in terms of their recommendations to the Inquiry.

1.4.6 Evidence produced to the Inquiry

As stated, the Inquiry was cognisant of the various controversies surrounding Work Choices and as such sought broad representation of interests before the Inquiry. The Inquiry was well publicised throughout the state through various media and the Preliminary Hearing held in Brisbane attracted all of the major industrial relations parties in Queensland (the Government, major employer and employee organisations, and a wide cross-section of interested participants). All of the participants were made aware of the conduct and breadth of the Inquiry. At any stage, when requests were made by any participants to produce further material, either in response to adverse commentary or in response to issues which arose during the course of the Inquiry, those requests were met favourably by the Inquiry. Although the Inquiry was available to hear evidence and submissions from all participants, the Inquiry heard primarily from participants expressing a concern about Work Choices.

With respect to the assertions and claims before the Inquiry, the Panel made no findings 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 also worth noting that for the individuals who did present evidence before the Inquiry, there was very little personal gain to be had for so doing. As one participant stated:

> "*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.*".[24]

Given the various controversies surrounding Work Choices and that the Directions required a focus on incidents of industrial relations practices arising out of Work Choices, the Panel decided to include a wide sample of the evidence received by the Inquiry in this Report. The Inquiry did so in order to provide a broad representation of the evidence before it and to allow for easy reference to the material if desired. Where possible this evidence has also been considered in light of broader evidence before the Inquiry and in light of evidence presented before other similar Inquiries.

23 Appendix 14 - List of Submissions

24 QCU Submission, 28 October 2006; Transcript p 442

1.5 Acknowledgements

The Inquiry would like to acknowledge and thank the following individuals for their contribution and assistance in preparing this Report:

- Gary Savill, Industrial Registrar and Registry Staff
- Graham Welsh, Part-time Research Officer (Volume 1 - Interim Report)
- Tricia Rooney, Part-time Research Officer (Volume 2 - Final Report)
- Tania Mavritsky, Associate
- Aaron Clark, Associate
- Hayley Button, Associate
- Ms Karen Garner, Counsel

All conclusions, views and recommendations expressed in this Report, however, are those of the Inquiry Panel.

Part 2

The Impact of Work Choices

THE IMPACT OF WORK CHOICES

2.1 Overview

This part of the Report provides an overview of the changes as a consequence of the introduction of the *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices Act). It also addresses the Directive issued on 13 November 2006 requiring that the Inquiry take into account the outcomes of the High Court decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees and employers. As such, this section begins with a discussion of the outcome from the High Court Decision and then considers the implications for Queensland workplaces, employees and employers. This discussion provides the context in which the submissions before the Inquiry were considered. Also considered in this section are aspects of submissions before the Inquiry which discussed the more general implications of Work Choices even though this was not part of the Directions. In particular the Inquiry Panel considered the economic and social impact of Work Choices, likely changes of the introduction and establishment of the AFPC, the intersection between Work Choices and Welfare to Work changes, occupational health and safety issues, subclass 457 visas and regional issues.

2.2 *The Workplace Relations Amendment (Work Choices) Act 2005*

The Work Choices Act introduced significant amendments to the WRA. In Part D of the Interim Report, the Inquiry provided a detailed analysis of the differences between the WRA, as amended by Work Choices, and the IRA.

Since completion of the Interim Report, the following significant events have occurred:

- the *Workplace Relations Regulations 2006* were amended by:
  - *Workplace Relations Amendment Regulations 2006 (No. 2);* and
  - *Workplace Relations Amendment Regulations 2006 (No. 3);*

- the High Court decision *New South Wales v Commonwealth of Australia*; *Western Australia v Commonwealth of Australia* [2006] HCA 52 (High Court decision) on the constitutional challenge to Work Choices was released on 14 November 2006;

- the Australian Fair Pay Commission Wage-Setting Decision No. 1/2006 (AFPC Wage decision) was released in October 2006; and

- the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006* (Cth) has introduced further amendments to the WRA.[25]

In this section, the Inquiry considers those developments. In particular, the Inquiry considers the outcomes from the High Court decision and consequent implications for Queensland workplaces, employees and employers.

25 At the time of writing, the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006* (Cth) has been approved by Parliament however it has not yet received Royal Assent. This report refers to the WRA as amended by that Bill as if it were in currently in force. (The related *Independent Contractors Bill 2006* (Cth) has also been approved by Parliament however it has not yet received Royal Assent. This Inquiry will not consider the latter instrument as it is not within the Terms of Reference of the Inquiry.)

2.3 Outcomes from the High Court Decision

2.3.1 Background

Prior to Work Choices, federal industrial relations laws were based primarily on section 51(xxxv) of the Commonwealth Constitution (Constitution), which gives the federal Parliament power to make laws with respect to "*conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State*" (the conciliation and arbitration power). By virtue of this, federal industrial laws applied only where an inter-state industrial dispute was in existence (apart from limited exceptions).

However, Work Choices is instead based primarily on section 51(xx) of the Constitution, which gives the federal Parliament power to make laws with respect to "*foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth*" (the corporations power). By virtue of this, Work Choices provides for federal industrial laws to apply in a wide-ranging manner to trading, financial or foreign corporations incorporated within Australia (called constitutional corporations) and their employees. This had the result that Work Choices significantly extended federal industrial laws into areas that were previously covered by state industrial relations laws.

Section 109 of the Constitution provides that a federal law prevails over a state law to the extent of any inconsistency. The effect of s. 109 is that the WRA prevails over a state law, where it is inconsistent with the state law.

2.3.2 Challenges to Work Choices

The states of New South Wales, Victoria, Queensland, South Australia and Western Australia and two Union organisations commenced proceedings in the High Court, seeking declarations of invalidity of the whole of Work Choices or alternatively to particular aspects of Work Choices or the WRA as amended by Work Choices. The Attorneys-General of Tasmania, the Northern Territory and the Australian Capital Territory intervened in support of the plaintiffs. The Attorney General for Victoria intervened in particular proceedings.

The arguments of the plaintiffs were similar in many significant respects. Largely, the challenges to Work Choices were directed to the Commonwealth's use of the s. 51(xx) corporations power to underpin the legislation. The major arguments in this regard included:

- the corporations power can only be used to regulate a corporation's dealings with external entities such as the public, and not its internal affairs such as its relationship with actual or prospective employees;
- the corporations power can only be used to regulate the trading or financial activities of trading or financial corporations;
- the corporations power cannot be used to regulate the employees of trading or financial corporations who are not involved in the corporation's trading or financial activities; and
- the corporations power can only be used, insofar as it deals with industrial disputes, subject to the limitations of the conciliation and arbitration power.

Challenges to particular aspects of the WRA as amended by Work Choices included arguments that:

- s. 16, which expressed an intention to exclude certain state or territory industrial relations laws, was invalid because it is a law about regulating state laws rather than a law about corporations; and
- s. 117, which allows the AIRC to restrain state tribunals from hearing matters that are before the AIRC, was invalid because it effectively interfered with continuation of state Constitutions in contravention of s. 107 of the Constitution.

2.3.3 The High Court Decision

The Inquiry noted that the High Court did not judge the social, economic or other impact of Work Choices. The High Court decision ruled only on the issues of constitutional validity put before the Court, and associated matters.

In a joint judgement, a majority of the High Court (Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ) rejected all of the arguments put by the plaintiffs, and found Work Choices and the amended provisions of the WRA to be valid. In separate judgements, Kirby J and Callinan J dissented, and found Work Choices to be invalid in its entirety.

2.3.3.1 The majority judgement of Gleeson CJ, Gummow, Hayne, Heydon and Crennan JJ

The majority considered the various arguments advanced, previous decisions of the High Court and the terms of the Constitution.

In relation to the corporations power generally:

- The majority rejected the argument that the nature of the corporation (i.e. trading, financial or foreign) had to be significant as an element in the nature or character of the law enacted. In this regard, the majority ruled that the corporations power will support a law even if the nature of the corporation is not significant as an element in the particular law.

- The majority rejected the argument that the corporations power can only be used to regulate a corporation's dealings with external entities such as the public, and that it could not be used to regulate a corporation's internal affairs such as its relationship with actual or prospective employees. In this regard, the majority ruled that it was inappropriate to interpret the corporations power on the basis of external and internal relationships of a corporation.

- The majority rejected the argument that the corporations power was limited by the conciliation and arbitration power. In this regard, the majority ruled that the extent of the corporations power was not to be determined by reference to other, more particular, grants of power, such as the conciliation and arbitration power.

- The majority adopted the views expressed by Gaudron J in *Re Pacific Coal Pty Ltd; Ex parte Construction, Forestry, Mining and Energy Union* where Her Honour said:[26]

  > "*I have no doubt that the power conferred by s.51(xx) of the Constitution extends to the regulation of the activities, functions, relationships and the business of a corporation described in that sub-section, the creation of rights, and privileges belonging to such a corporation, the imposition of obligations on it and, in respect of those matters through whom it acts, its employees and shareholders and, also, the regulation of those whose conduct is or is capable of affecting its activities, functions, relationships or business*.".

- The majority ruled that the corporations power will support:

  > "*A law which prescribes norms regulating the relationship between constitutional corporations and their employees, or affecting constitutional corporations in the manner considered and upheld in Fontana Films or, as Gaudron J said in Re Pacific Coal [(2000) 203 CLR 346 at 375 [83]], 'laws prescribing the industrial rights and obligations of [constitutional] corporations and their employees and the means by which they are to conduct their industrial relations'*." (at [198]).

26 (2000) 203 CLR 346 at 375 [83]

- The majority found that there was no need to limit the ambit of the corporations power to preserve a balance of legislative power between the Commonwealth and the states (the federal balance) on the basis that the plaintiffs had not identified or defined impermissible alteration of the federal balance.

- The majority applied these broad principles to Work Choices and to specific provisions of Work Choices challenged by the plaintiffs, and ruled them to be valid.

2.3.3.2 The dissenting judgement of Kirby J

Justice Kirby expressed intense opposition to the decision of the majority and indicated that he would have declared Work Choices and the amended provisions of the WRA to be entirely invalid.

Justice Kirby considered that:

- properly characterised, Work Choices was a law "with respect to" the prevention and settlement of industrial disputes necessary for the regulation of industrial relations;
- the corporations power could not sustain such a law;
- to be valid, such a law must conform to the requirements of the conciliation and arbitration power, namely it must be with respect to conciliation and arbitration of an industrial dispute extending beyond the limits of one state;
- the corporations power should be limited accordingly by the other provisions of s. 51 of the Constitution, including the restrictions in the conciliation and arbitration power; and
- the corporations power should also be limited by the federal character of the Constitution.

Justice Kirby considered the need to preserve a balance between the Commonwealth and the states to be of prime importance. In this regard Justice Kirby said:

> *"[611] … the unnuanced interpretation of the corporations power now embraced by a majority of this Court, released from the previous check stated in the industrial disputes power (and other similar constitutional checks), has the potential greatly to alter the nation's federal balance. It risks a destabilising intrusion of federal lawmaking into areas of legislation which, since federation, have been the subjects of State laws. It does so unchecked by any express provisions in such powers or by any implied features of the Constitution derived from the federal system that lies at its very heart.*
>
> *[612] This Court and the Australian Commonwealth need to rediscover the federal character of the Constitution. It is a feature that tends to protect liberty and to restrain the over-concentration of power which modern government, global forces, technology, and now the modern corporation, tend to encourage. In this sense, the federal balance has the potential to be an important restraint on the deployment of power. In that respect, federalism is a concept of constitutional government especially important in the current age. By this decision, the majority deals another serious blow to the federal character of the Australian Constitution. We should not so lightly turn our backs on the repeatedly expressed will of the Australian electors and the wisdom of our predecessors concerning our governance."* (reference omitted).

2.3.3.3 The dissenting judgement of Callinan J

Justice Callinan also expressed strong opposition to the decision of the majority and indicated that he would have declared Work Choices and the amended provisions of the WRA to be entirely invalid.

Justice Callinan considered that the majority paid insufficient regard to previous decisions of the High Court which interpreted the Constitution.

Justice Callinan's reasons for disagreeing with the majority view included:

"*(iii) The substance, nature and true character of the Amending Act is of an Act with respect to industrial affairs.*

(iv) The power of the Commonwealth with respect to industrial affairs is a power in relation to 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State' and not otherwise (except for Commonwealth employment and other presently not relevant purposes). As the jurisprudence of this Court shows, that power is a very large one. Much can properly be characterized as preventative of a relevant industrial dispute.

(v) The corporations power has nothing to say about industrial relations or their regulation by the Commonwealth. To the extent, if any, that s. 51(xx) might otherwise appear to confer such power, it must be subject to the implied negative restriction imposed by s. 51(xxxv).

(vi) The corporations power is concerned with the foreign, trading and financial activities and aspects of corporations, the precise limits of which it is unnecessary to decide in this case. In Australia, history, the founders, until 1993 the legislators who have followed them, and this Court over 100 years, as Kirby J has pointed out, have treated industrial affairs as a separate and complete topic, and s. 51(xxxv) as defining the Commonwealth's total measure of power over them, except in wartime.

(vii) To give the Act the valid operation claimed by the Commonwealth would be to authorize it to trespass upon essential functions of the States. This may not be the decisive factor in the case but it at least serves to reinforce the construction of the Constitution which I prefer, that industrial affairs within the States, whether of corporations or of natural persons, are for the States, and are essential for their constitutional existence.

(viii) The validation of the legislation would constitute an unacceptable distortion of the federal balance intended by the founders, accepted on many occasions as a relevant and vital reality by Justices of this Court, and manifested by those provisions of the Constitution to which I have referred, and its structure." (at [913], reference omitted).

2.4 Implications for Queensland Workplaces, Employees and Employers of the High Court Decision

2.4.1 General implications for all Queensland workplaces, employees and employers

General implications of the High Court decision for all Queensland workplaces, employees and employers include the following:

- Uncertainty regarding the validity of Work Choices (and the validity of the WRA as amended by Work Choices) has been removed: the majority of the High Court has confirmed that Work Choices is valid in its entirety.
- Determination of whether an employer, and their employees, is regulated by the WRA will depend on:
  - whether the employer is a "constitutional employer", that is whether it is:
    - a "constitutional corporation";
    - the Commonwealth;
    - a Commonwealth authority;

  - an employer of flight crew officers, maritime employees or waterside workers in connection with interstate or overseas trade or commerce;
  - incorporated in a territory; or
  - any other person or entity that operates in a territory; and
- whether immediately prior to the commencement of Work Choices, the employer was regulated by a federal award or workplace agreement.

- Some Queensland employers, and their employees, will have uncertainty in relation to whether or not they are subject to the WRA, until the issue of what is a "constitutional corporation" is conclusively resolved. The majority in the High Court decision did not consider the kinds of corporations that fall within the definition of "constitutional corporation", leaving the issue for later determination.

- In respect of Queensland employers who are "constitutional employers", and their employees, as from 27 March 2006:
  - the WRA as amended by Work Choices applies to them in its entirety (in the next sub-section, the Inquiry summarises some of the particular implications for those employees and employers who were previously regulated by state industrial laws, but who are now regulated by the WRA as a result of Work Choices);
  - the following state industrial laws will not apply to them:
    - the IRA, and any instrument made under it which is of a legislative character;
    - state laws that apply to employment generally and deal with leave other than long service leave;
    - state laws that allow a state court or tribunal to make an order about equal remuneration;
    - state unfair contract laws;
    - state right of entry laws other than for a purpose connected with occupational health and safety; and
    - state laws prescribed by federal regulation.

- The WRA will apply only for a transitional period to "non-constitutional employers" who were regulated by a federal award or workplace agreement immediately prior to the commencement of Work Choices (and their employees), subject to those employers and their employees either reverting to the state industrial system or alternatively becoming eligible for coverage by the WRA.

- All state industrial laws will apply to Queensland employers (and their employees) who are "non-constitutional employers" (except those employers covered by the WRA during a transitional period because they were regulated by a federal award or workplace agreement immediately prior to the commencement of Work Choices). This includes:
  - sole traders or partnerships (i.e. not incorporated) not covered by a federal award or workplace agreement as at the date of commencement of Work Choices;
  - corporations that are not "constitutional corporations" not covered by a federal award or workplace agreement as at the date of commencement of Work Choices; and
  - state government employing entities that are not "constitutional corporations".

- The following state laws will nevertheless apply to all Queensland employers, and their employees, irrespective of whether or not the employer is a "constitutional" employer:
  - discrimination and equal opportunity laws, provided they are not a "State industrial law" or contained in such;
  - superannuation laws;
  - workers' compensation laws;
  - occupational health and safety laws (including entry of a representative of a Union to premises for a purpose connected with occupational health and safety);
  - matters relating to outworkers (including entry of a representative of a Union to premises for a purpose connected with outworkers);
  - child labour laws;

- long service leave laws;
- public holiday laws, except regarding the rate of payment for public holidays;
- laws dealing with the method of payment of wages or salaries;
- laws dealing with the frequency of payment of wages or salaries;
- laws dealing with deductions from wages or salaries;
- laws dealing with industrial action affecting essential services;
- laws dealing with attendance for jury service; and
- laws dealing with regulation of associations of employees or associations of employers or their respective members.

• The WRA will apply to federally registrable associations of employees, associations of employers and enterprise associations which are registered under the WRA. Associations which are not federally registered, or transitionally registered under the transitional provisions, will have no right to be recognised under the WRA.

2.4.2 Particular implications for those Queensland workplaces, employees and employers previously regulated by state industrial laws who are now regulated by the *Workplace Relations Act 1996* as a result of Work Choices

The Inquiry set out in Part D of the Interim Report, a detailed analysis of the differences between the IRA and the WRA as amended by Work Choices.

Given the enormous scope of the WRA and the detail that it encompasses, the Inquiry will not set out an exhaustive list of all implications of coverage by the WRA. However, the Inquiry sets out below examples of some particularly pertinent implications that will be experienced by Queensland workplaces, employees and employers of now being regulated by the WRA, instead of the IRA, as a result of Work Choices.

2.4.2.1 Changes to basic rates of pay and casual loadings

Employers and employees who were previously regulated by the IRA but are now regulated by the WRA, will experience significant changes in the system for determining basic rates of pay and casual loadings.

(A) *Basic rates of pay and casual loadings under the Industrial Relations Act 1999*

Under the state industrial system, classification structures, basic rates of pay and casual loadings are primarily contained in awards (and workplace agreements assessed against relevant awards on the basis of the no-disadvantage test).

The QIRC exercises powers in relation to principles of wage fixing by way of general ruling and statement of policy,[27] and is obliged to ensure a general ruling about a Queensland minimum wage for all employees is made at least once each calendar year.[28] The objectives imposed on the QIRC in exercise of its powers include objectives to provide "*for an effective, and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness*" and to ensure "*wages and employment conditions provide fair standards in relation to living standards prevailing in the community*".[29]

27 s. 287, s. 288 IRA
28 s. 287(2) IRA
29 ss. 3(b), (g) IRA

On 27 July 2006 the QIRC issued a Declaration of General Ruling - State Wage Case 2006 (QIRC Wage decision).[30] The QIRC Wage decision declared a general increase in all award rates for wages or salaries for full-time adult employees of $19.40 per week from 1 September 2006, with corresponding pro-rata increases in respect of rates for junior employees, part-time employees and piece-workers. The QIRC Wage decision also declared a full-time adult minimum rate of $503.80 per week.

An implication of the High Court decision is that application of the QIRC Wage decision (and future QIRC Wage decisions) is effectively limited to wage increases in respect of employees of "non-constitutional employers" and those employees on agreements who receive a flow-on of adjustments from the QIRC Wage decision.

(B) *Basic rates of pay and casual loadings under the Workplace Relations Act 1996*

The WRA now establishes a new system of minimum safety net basic rates of pay and casual loadings as part of an Australian Fair Pay and Conditions Standard (AFPCS). The AFPCS standard for basic rates of pay and casual loadings is essentially applicable to those employers and their employees who are covered by the WRA and were subject to federal and state awards upon the commencement of Work Choices, or who were award free, and junior employees, employees with disabilities and employees to whom training arrangements apply. Employers and their employees who were subject to state or federal workplace agreements upon the commencement of Work Choices are excluded from the operation of the AFPCS standard.[31]

Under the AFPCS standard, the WRA now provides for minimum basic rates of pay (periodic rates and piece rates) by the Australian Pay and Classification Scales (APCS) or standard Federal Minimum Wage (FMW) or special Federal Minimum Wages (special FMW).[32] The AFPCS standard also includes:

- a "guarantee" of casual loadings;[33]
- a "guarantee" of frequency of payment;[34]
- a "guarantee" against reductions below pre-reform commencement rates;[35] and
- a "guarantee" against reductions below FMWs.[36]

The AFPC generally determines terms of the APCS (although some will be initially derived from certain instruments in effect prior to the commencement of Work Choices)[37] and exercises other wage-setting powers including:[38]

- adjusting the FMW;
- determining or adjusting special FMW;
- determining or adjusting basic periodic rates of pay and basic piece rates of pay; and
- determining or adjusting casual loadings.

30 182 QGIG 608

31 See clause 30, Schedule 7 WRA (excludes from operation of the AFPCS employees whose employment is subject to a pre-reform certified agreement, a pre-reform AWA or a s. 170MX award to the extent it deals with a relevant matter); clause 15E, Schedule 8 WRA (excludes from operation of the AFPCS employees whose employment is subject to a PSA to the extent it deals with a relevant matter).

32 s. 182-s. 184 WRA. See generally Division 2, Part 7 WRA

33 s. 185-s. 188 WRA

34 s. 189 WRA

35 s. 190-s. 192 WRA

36 s. 193 WRA

37 s. 208 WRA

38 s. 22-s. 24 WRA

The AFPC is required to conduct wage "reviews" and to exercise its wage setting powers "as necessary".[39] In contrast to the QIRC,[40] there is no obligation on the AFPC to conduct wage reviews annually or within any regularised time frame. In making its determination, the AFPC is required to have regard to objectives such as "*the capacity for the unemployed and the low paid to obtain and remain in employment*", "*employment and competitiveness across the economy*", "*providing a safety net for the low paid*" and "*providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market*".[41] This is substantially different to the objectives imposed on the QIRC.[42]

The AFPC released its first decision in October 2006, being the Australian Fair Pay Commission Wage-Setting Decision No. 1/2006 (AFPC Wage decision). The AFPC Wage decision was specified to take effect from 1 December 2006, approximately 18 months after the last previous pay increase for APCS reliant employees. In summary, the AFPC Wage decision resulted in the following:

(a) an increase in the standard FMW of $0.72 per hour, from $12.75 to $13.47 per hour (which is equivalent to an increase of $27.36 per week);
(b) an increase in all APCS up to and including $699.96 per week ($18.42 per hour) of $0.72 per hour (which is equivalent to an increase of $27.36 per week); and;
(c) an increase in all APCS above $699.96 per week ($18.42 per hour) of $0.58 per hour (which is equivalent to an increase of $22.04 per week).

The AFPC determined an additional increase to compensate certain employees who missed out on the 2005 safety net adjustment. In this regard, the AFPC Wage decision determined an additional increase of $17 per week, expressed as an hourly rate, for certain APCS from a pre-reform federal wage instrument (predominantly federal and state awards) that was not adjusted for the AIRC's 2005 Safety Net Review decision by the AIRC or a state industrial body, but:

- was adjusted in accordance with the AIRC's 2004 Safety Net Review decision (by the AIRC or a state industrial body); or
- received a safety net adjustment during the 12 months to 27 March 2006 (by the AIRC or a state industrial body); or
- took effect after the AIRC's 2004 Safety Net Review decision.

Whilst the AFPC Wage decision did not specifically provide for an increase in casual loadings, it was anticipated that pay rates for casual employees would be similarly increased by virtue of the general pay increase that adjusts their base rate of pay and a higher dollar value for any given casual loading by virtue of the fact that the loading is applied to a higher base rate. Where a flat dollar amount is payable for casual employees, these rates will be increased by the same amounts and in the same way as the general increase.

In general, the AFPC Wage decision increases flow on to junior employees, employees to whom training arrangements apply, and basic piece rates of pay on a pro-rata basis in accordance with applicable formulae. The AFPC Wage decision also determined certain minimum wages for employees with disabilities, which incorporated similar increases.

The AFPC has advised that it intends to initiate a review of wage arrangements for junior employees and conduct a wage review of APCS for employees to whom training arrangements apply.

The AFPC has further advised that it intends to deliver its second general wage-setting decision in mid-2007.

39 s. 22 WRA
40 ss. 287(2) IRA
41 s. 23 WRA
42 ss. 3(b), (g) IRA

2.4.2.2 Changes to minimum conditions of employment

The IRA and the WRA (by virtue of the new AFPCS and otherwise) provide minimum statutory conditions of employment which are similar in some respects, although there are some noticeable differences. For example:

- minimum entitlements in relation to hours of work are different under the IRA and the WRA;[43]
- the IRA and the WRA provide similar accrual of annual leave.[44] The IRA provides for leave loading in respect of certain employees,[45] however the WRA does not provide leave loading. Whilst the "cashing out" of annual leave is not provided by the IRA, the WRA permits "cashing out" of annual leave subject to certain criteria;[46]
- entitlements in relation to personal leave are expressed differently in the IRA and WRA.[47] Under the WRA employees may cash out an amount of paid personal/carers leave in certain circumstances,[48] although this is not provided by the IRA;
- the IRA and the WRA provide entitlements in respect of parental leave that are similar in some respects, although not identical;[49]
- whilst the IRA and the WRA specify similar entitlements to meal breaks, such entitlements apply only to certain employees. Entitlements to meal breaks under the IRA arise only in respect of employees under certain instruments made after 1 September 2005.[50] The WRA entitlements to meal breaks are excluded from applying to employees subject to a federal award, a workplace agreement or another instrument specified in the *Workplace Relations Regulations 2006* (Cth);[51] and
- the provisions of the IRA in relation to public holidays are more generous to employees than those of the WRA. The IRA generally requires payment for public holidays whether or not the employee worked on the public holiday (and in some cases payment at an increased rate when the employee did work the public holiday).[52] However, the WRA does not provide for payment for public holidays not worked. Further, the WRA provides that an employee may only refuse a request to work on a public holiday if the employee has reasonable grounds to do so.[53]

AFPCS entitlements under the WRA do not apply to an employee in relation to a matter if the employee is covered by a state or federal workplace agreement which was in force at the commencement of Work Choices that deals with that matter.[54]

2.4.2.3 Changes under *Workplace Relations Act 1996* transitional arrangements

State awards and industrial agreements which applied to constitutional corporations and their employees prior to Work Choices will generally continue to operate, as "notional agreements preserving State awards" (NAPSAs) or "preserved State agreements" (PSAs) respectively, for a period of time under the complex transitional provisions of Work Choices, pending full transition to the federal industrial system.[55] However, those instruments will be subject to a number of significant changes. For example, NAPSAs will now incorporate terms of state industrial

43 See s. 9 and s. 9A IRA; s. 226 WRA (Note that AFPCS in relation to minimum ordinary hours of work does not apply to employees covered by a NAPSA: clause 51 Schedule 8 WRA.)

44 s. 11 IRA; s. 232 WRA

45 s. 13A IRA

46 s. 233 WRA

47 See generally s. 10, s. 39-40A IRA; Division 5, Part 7 WRA

48 s. 245A WRA

49 See generally Division 2, Part 2, Chapter 2 IRA; Division 6, Part 7 WRA

50 s. 9A IRA

51 s. 607 and s. 608 WRA

52 s. 15 IRA

53 s. 612, s. 613 WRA. Note that the WRA minimum entitlements in relation to public holidays do not apply to employees subject to a pre-reform certified agreement, a pre-reform AWA or a s. 170MX award (clause 30A Schedule 7 WRA) or to a PSA (clause 15F Schedule 8 WRA).

54 Clause 30, Schedule 7 WRA (excludes from operation of the AFPCS employees whose employment is subject to a pre-reform certified agreement, a pre-reform AWA or a s.170MX award to the extent it deals with a relevant matter); clause 15E, Schedule 8 WRA (excludes from operation of the AFPCS employees whose employment is subject to a PSA to the extent it deals with a relevant matter)

55 See generally Schedule 8 WRA "Transitional treatment of State employment agreements and State awards"

laws relating to particular "preserved entitlements"[56] and the model dispute resolution process,[57] and certain prohibited content will be void.[58] PSAs will now incorporate terms of relevant state awards and state industrial laws relating to particular "preserved entitlements"[59] and the model dispute resolution process,[60] and certain prohibited content will be void.[61]

NAPSAs will be subject to the AFPCS (with the exception of the hours of work provisions), and the more favourable terms will apply.[62] PSAs will not be subject to the AFPCS to the extent they deal with a relevant matter, and accordingly such agreements may provide for terms and conditions lesser than those contained in the AFPCS.[63]

NAPSAs and PSAs will be ultimately replaced by other forms of industrial regulation provided by the WRA. Such other forms of industrial regulation include federal awards or collective or individual federal agreements or the minimum standard entitlements contained in the AFPCS.

2.4.2.4 Changes to awards

In contrast to the relatively wide permissible content of awards under the IRA,[64] awards under the WRA are more restricted in their content and operation. Apart from limited exceptions, WRA awards may only contain terms about certain "allowable" award matters.[65] Terms of WRA awards which are not "allowable" no longer have effect, with limited exceptions including some "preserved" award terms.[66]

Awards under the WRA will be further altered including through a process of award simplification and rationalisation.[67]

2.4.2.5 Changes to agreements

In comparison to requirements under the IRA,[68] the WRA generally prescribes lesser timeframes for notification and agreements to be provided to employees prior to approval.[69]

A significant difference to the position under the IRA[70] is that federal agreements generally commence operation on lodgement with the relevant authority, even if particular requirements have not been satisfied.[71]

In contrast to the system of assessing agreements on the basis of the no-disadvantage test under the IRA,[72] new federal agreements made after the commencement of Work Choices will not be assessed against federal awards as the no-disadvantage test no longer operates under the WRA. However, all new federal agreements made after the commencement of Work Choices will be subject to the AFPCS to the extent that it provides a more favourable outcome for relevant employees.[73]

56 Clause 34 Schedule 8 WRA
57 Clause 36 Schedule 8 WRA
58 Clause 37 Schedule 8 WRA
59 Clauses 5 and 13 Schedule 8 WRA
60 Clauses 8 and 15A Schedule 8 WRA
61 Clauses 9 and 15B Schedule 8 WRA
62 Clauses 44-46, 51 Schedule 8 WRA
63 Clause 15E Schedule 8 WRA
64 See s. 7 and Schedule 1 IRA in relation to "industrial matters". Note that awards are subject to compliance with the general requirements in s. 126 and s. 127 WRA.
65 s. 513 and s. 515 WRA and generally Part 10 WRA. "Allowable award matters" have been further reduced by Work Choices and for example no longer include matters such as long service leave, notice of termination, jury service and superannuation (although those particular terms may continue in operation as "preserved award terms").
66 s. 525 WRA and generally Subdivision B, Division 2, Part 10 WRA. See Division 3, Part 10 WRA in relation to "preserved award terms".
67 See generally Division 4, Part 10 WRA
68 s. 143 and s. 144 IRA in relation to certified agreements; ss. 202(1)(b), s. 187 IRA in relation to QWAs.
69 s. 337 and s. 338 WRA; s. 370 and s. 371 WRA
70 s. 164 and s. 195 IRA
71 ss. 347(1), (2), (3) IRA
72 ss. 156(1)(h) and ss. 203(1)(a) IRA
73 ss. 172(2) WRA

Also partly in contrast to the position under the IRA,[74] federal agreements will now ordinarily exclude the operation of federal awards[75] with the exception of certain "protected" award conditions which are taken to be included in the relevant agreement but subject to being expressly excluded or modified.[76] Under the WRA, award provisions will not be reinstated to apply to relevant employees following termination of a workplace agreement, with the exception of certain "protected" award conditions.[77]

2.4.2.6 Changes to laws relating to termination of employment

A significant change that will be experienced by employers and employees now regulated by the WRA concerns laws relating to termination of employment.[78]

In particular, access to the "unfair" dismissal jurisdiction under the WRA is considerably curtailed by the introduction of additional bases for exclusion from the "unfair" dismissal provisions. For example, an employee is now excluded from seeking relief under the WRA on the basis that a termination of employment was harsh, unjust or unreasonable:

(a) if their employer employed 100 employees or fewer;[79] or
(b) if their employment was terminated for genuine reasons of an economic, technological, structural or similar nature or reasons that include such reasons;[80] or
(c) if they have not completed a six month qualifying period (or such other period as may be determined by written agreement).[81]

These exclusions from access to "unfair" dismissal remedies do not apply under the IRA.

In relation to remedies for "unlawful" termination, "unlawful" reasons under the WRA are similar in many respects to "invalid" reasons under the IRA. However, the WRA does not include as "unlawful" reasons, refusal to negotiate or make a certified agreement, and the IRA does not include as "invalid" reasons discriminatory reasons of political opinion, national extraction or social origin.[82]

The WRA and the IRA provide similar protection from "unlawful" termination for temporary absence from work due to illness or injury due to cases of absence for no greater than 3 months absence in a 12 month period.[83] The WRA excludes the significant protection provided by the IRA, from dismissal within 12 months after the date of an injury for which workers' compensation is payable, for reason of the injury.[84]

The IRA provides employees with an entitlement to notice of termination of employment or pay in lieu of notice, subject to certain exceptions.[85] The WRA does not provide an entitlement to notice of termination.

2.4.2.7 Changes to laws relating to unfair contracts

The WRA excludes remedies which are provided by the IRA in respect of unfair contracts with employees.[86]

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74 See s. 165 IRA in relation to certified agreements. Note however that QWAs operate to the exclusion of awards: s. 213(1) IRA

75 s. 349 WRA

76 s. 354 WRA. Note that pursuant to ss.354(3) WRA, protected award conditions about "outworker conditions" will apply despite any terms in the agreement which provide a less favourable outcome.

77 s. 399 WRA

78 The *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006* (Cth) amends the WRA to include prohibition against dismissal for the purpose of engaging certain persons as independent contractors: see s. 902 WRA.

79 ss. 643(10) WRA

80 ss. 643(8), (9) WRA

81 ss. 643(6), (7) WRA

82 ss. 659(2) WRA, ss. 73(2) IRA

83 ss. 73(2)(a) IRA and s. 5 *Industrial Relations Regulation 2000* (Qld), s. 659(2) WRA

84 s. 93 IRA. Note however the recently introduced provisions of s. 232B *Workers' Compensation and Rehabilitation Act 2003* (Qld)

85 s. 83, s. 84 IRA

86 s. 276 IRA, ss. 16(1) WRA. Note that the *Independent Contractors Bill 2006* (Cth) may affect the position of independent contractors in relation to unfair contracts laws at State and federal level.

2.4.2.8 Changes to laws relating to industrial disputes

The IRA and the WRA have some significant differences in relation to industrial disputes and industrial action.

Under the IRA, the QIRC has relatively wide powers to conciliate a dispute, and to arbitrate where conciliation has failed and the parties are unlikely to resolve the dispute.[87] In contrast under the WRA, the AIRC has much more limited powers to conduct dispute resolution processes,[88] and except for limited circumstances,[89] the AIRC has no power to arbitrate or make orders, compulsory directions or determinations in relation to a dispute.[90]

2.4.2.9 Changes to laws relating to industrial action

There are some noticeable differences between the WRA and the IRA in relation to the regulation of protected and unprotected industrial action.

The QIRC has a wide discretion to make any orders it considers appropriate in the case of a dispute, including orders that industrial action stop or not occur, orders or directions of an interlocutory nature or exercise power to grant an interim injunction.[91] In contrast, the AIRC is obliged to order that industrial action which appears to be unprotected stop, not occur and not be organised, including orders against third parties where substantial loss of damage to the business of a constitutional corporation is likely.[92] (The AIRC is required to determine applications for such orders within 48 hours, or to issue an interim order to stop or prevent the industrial action within that time, unless it is not in the public interest to do so).[93] Further, the AIRC is obliged to terminate or suspend a bargaining period in certain circumstances.[94]

Whilst a secret ballot may be ordered under the IRA in relation to industrial action, and may affect whether such industrial action is protected, secret ballots are generally not a compulsory pre-condition to the taking of protected action.[95] However, before industrial action by employees can be protected under the WRA, it is compulsory to make application and obtain a ballot order, conduct a secret ballot of employees and obtain prior approval of the industrial action by such ballot.[96] The cost of a compulsory secret ballot of employees under the WRA is generally borne by the applicant,[97] which is the relevant employee or employees or organisation of employees.[98]

Under the IRA, employers have a discretion to pay, or refuse to pay, an employee for a period when the employee engages in industrial action.[99] However, the WRA expressly prohibits an employer from paying an employee in relation to periods of industrial action, whether protected or unprotected.[100]

2.4.2.10 Changes in respect of apprentices and trainees

The QIRC order *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Government Entities) 2003* will operate as a NAPSA under the WRA, with a preserved APCS derived from that NAPSA. Future wages and

87 s. 230 and s. 233 IRA
88 s. 700, s. 705, s. 710
89 ss. 711(1), (2) WRA
90 ss. 701(4) and ss. 706(4) WRA
91 ss. 230(4) IRA
92 ss.496(1), (2) and (6) WRA
93 ss. 496(5), (6), (7) and (8) WRA
94 ss. 430(2), (3), (7), (8), s. 431, s. 432 and s. 433 WRA
95 s. 176 IRA (In relation to requirements for protected industrial action see s. 174-s. 178, s. 181 IRA generally; also s. 235 and s. 236 IRA in relation to orders consequent on strike action not approved by secret ballot)
96 s.445 and s. 449-479 WRA (Note that these are in addition to other requirements: see s. 435-s. 446 WRA generally)
97 s. 482 WRA, but see s. 483, s. 484 WRA
98 s. 451 and s. 455 WRA
99 s. 238 IRA
100 s. 507 WRA

conditions for apprentices and trainees will now be determined by the AFPC.[101]

Queensland Department of Employment and Training submissions suggested that apprentices and trainees now under the WRA, may generally lose the protections in relation to termination of employment previously contained in the *Vocational Education, Training and Employment Act 2000* (Qld).[102] It is arguable that their employment may now be terminated, subject to the WRA dismissal laws.

2.4.2.11 Changes in respect of representation, right of entry and freedom of association

The WRA will apply to federally registrable associations of employees, associations of employers and enterprise associations which are registered under the WRA. Associations which are not federally registered, or transitionally registered under the transitional provisions, will have no right to be recognised under the WRA.[103]

Under the WRA, organisations or parties cannot engage in "pattern bargaining" in the context of agreement making.[104]

In contrast to the relatively wide and unrestricted powers of entry allowed to authorised industrial officers under the IRA,[105] the WRA is considerably more restrictive and prescriptive in relation to powers of entry allowed to authorised officials.[106] Nevertheless, the WRA does generally allow entry for a purpose connected with state occupational health and safety laws.[107]

Both the IRA and the WRA broadly protect freedom of association,[108] however, the WRA has refined, clarified and added to protections in this regard.[109]

Whilst the IRA specifically permits Union "encouragement provisions" to be included in industrial instruments and permits specified conduct in relation to Union "encouragement provisions",[110] Union "encouragement provisions" may not be included in awards or agreements under the WRA.[111]

2.5 The Economic and Social Impact of Work Choices

2.5.1 Economic and Social Impact

A number of submissions expressed concern with regard to the wider economic impact of Work Choices. In contrast to the federal Government's predictions of more jobs and greater economic prosperity as a result of the introduction of Work Choices, the Queensland Government submission contended that the evidence suggested that further deregulation of the labour market is likely, at best, to have only minimal positive economic impact, while creating the social risk of greater inequity and wage disparities.[112] The evidence to support this contention is said to come from the Organisation for Economic Co-operation and Development (OECD) Employment Outlook Report for 2006 (as discussed further in Part 2.5.1.1);[113] cross-country comparisons of economic performance and productivity showing that countries with highly regulated labour markets record similar productivity levels to those countries with much less regulation;[114] and the New Zealand experience of labour

101 s. 197, s. 221, s. 23(d), WRA, see also s. 202(2)(c) WRA
102 Queensland Department of Employment and Training Submission p 3
103 see s. 4 WRA definition of "organisation", and generally ss. 32(a) and (c) Registration and Accountability of Organisations Schedule, Schedule 1 WRA
104 s. 421 and s. 431 WRA
105 s. 372 and s. 373 IRA
106 See generally Part 15 WRA
107 s. 756 WRA and see s. 755-s. 759 WRA generally
108 See generally Chapter 4 IRA and Part 16 WRA
109 For example, see s. 789, s. 790, s. 791, s. 804
110 s. 110 IRA
111 *Workplace Relations Regulations 2006*, Chapter 2, Reg.8.5(2)
112 Queensland Government Submission p 15
113 ibid pp 15-17
114 ibid pp 17-18

market deregulation.[115] From this the Queensland Government submission argues that economic performance rests on other factors.[116]

In addition, the Queensland Government submission contests the claim that changes to the unfair dismissal laws will create jobs. They see the claim as lacking in evidence and that the changes will only result in high social costs and lack of job security for workers.[117] In concluding this section, the submission stated:

> *"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.".*[118]

Similarly, the AWU submission questions whether any positive impact will be felt from Work Choices. They see the erosion of workers' rights and conditions as causing hardship for communities and families.[119] The QCU submission also suggested that the economic impact of Work Choices will be negative for many in the workforce but particularly for more vulnerable groups in the labour market and in regional areas. The QCU submission suggested that the negative effects of Work Choices will be disproportionately felt in regional areas due to such things as the size of the workforce, limited available industries, lack of economic mobility in and out of regions and fewer employment opportunities.[120]

This concern with potential negative outcomes is then reflected in the concern expressed in a number of submissions with regard to the uneven impacts of Work Choices and the related social impacts. The Queensland Government submission suggested that Work Choices is likely to have greatest adverse consequences for those people in particular sections of the workforce who have more limited bargaining power including groups such as young workers, women, low skilled workers, workers in rural and remote areas, workers from non-English speaking backgrounds and workers with family responsibilities.[121] A number of submissions contend that this situation will be exacerbated by the removal of the no-disadvantage test and altered unfair dismissal laws. The Queensland Government submission also shows that the Department of Employment and Workplace Relations' (DEWR) own research suggested that AWAs do little to help workers balance their work and family responsibilities[122] and highlights the potential negative impact of this for families and communities.

2.5.1.1 OECD Employment Outlook 2006

The Queensland Government's submissions referred to the most recent report from the OECD[123] in which three particular findings were made. These were that:

> *"Collective bargaining is strongly related to low unemployment;*
> *Minimum wages do not harm employment; and*
> *Employment protection legislation (unfair dismissal laws) does not cost jobs".*[124]

115 ibid pp 19-22
116 ibid p 23
117 ibid pp 25-27
118 ibid p 27
119 AWU Submission p 3
120 QCU Submission pp 7-11
121 Queensland Government Submission p 30
122 ibid p 32
123 OECD Employment Outlook 2006
124 Queensland Government Submission, 21 July 2006, p 15

The Queensland Government asserts that the findings were significant in that:

> *"The key findings from the report discredit much of the economic argument advanced by the federal Government to explain the Work Choices reforms; second, this is particularly significant coming from the OECD, which is a leading body in the field of economic and labour market policy and which for much of the 1990s itself advocated a much more deregulatory approach to the labour market; and third, the findings add to and confirm much of the earlier evidence in this area.".*[125]

It is contended that previously, the OECD economic strategy for the labour market included, amongst other things, a focus upon making wage and labour costs more flexible by reassessing the role of statutory minimum wages and by easing the stringency of employment protection legislation in areas such as termination of employment (i.e. dismissal laws). The OECD had previously expressed the view that employment protection legislation had increased costs for employers and had created barriers to hiring employees.[126]

However, after consideration of the most recent OECD Report, the Queensland Government stated that:

> *"…the OECD, which has been at the forefront in the last decade of the push to deregulate, has looked at these issues afresh, based on the evidence available. In the 2004 edition of its Employment Outlook, the OECD observes that a single approach aimed at creating a flexible labour market in the style of the US may not be sufficient or even necessary to promote economic growth and decrease unemployment. While the OECD still promotes some reduction in employment regulation, it now acknowledges the importance of addressing issues such as job security, wage inequality, and provisions for a good working life - such as work and family policies.".*[127]

It is further contended that, within the OECD Report, there is evidence to show that in countries with higher Union density and involvement in the bargaining process, "overall wage dispersion" has increased and also that the centralisation and co-ordination of wage bargaining has been strongly associated with lower wage inequality.[128]

2.5.2 Australian Fair Pay Commission

Section 2.4.2.1 of this Report provides an overview of the changes to the setting of basic rates of pay and casual loading under the WRA. This discussion includes some detail with respect to the AFPC and the AFPCS. A number of submissions before the Inquiry raised concerns in relation to the impact of the role of the AFPC and AFPCS on the wages and conditions of employment of employees. An overview of these main concerns is provided in this part of the Report.

As discussed in the earlier section, the AFPC is a legislative body which was established in 2006 under the federal Government's Work Choices legislation. It is a body established to set the minimum rate of pay for employees covered by Work Choices. Its role is to adjust the standard FMW; determine or adjust special FMWs; determine or adjust basic periodic rates of pay and basic piece rates of pay and determine or adjust casual loadings. Effectively, the AFPC replaces the AIRC in its previously held role of setting minimum rates of pay for employees.

125 ibid p 15
126 ibid p 16
127 ibid p 16
128 ibid p 16; OECD Report, p 83

In performing its role, the AFPC must have regard to:

- the capacity for the unemployed and the low paid to obtain and remain in employment;
- provide a safety net for the low paid; and
- provide minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

As pointed out in section 2.4.2.1 of this Report, these objectives are substantially different to those imposed on the QIRC. In exercising its role in determining matters, including basic wage rates, together with other rates of pay, the QIRC must have regard to the Objects of the IRA as follows:

> *"The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by -*
>
> *(a) providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers; and*
> *(b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and*
> *(c) preventing and eliminating discrimination in employment; and*
> *(d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and*
> *(e) helping balance work and family life; and*
> *(f) promoting the effective and efficient operation of enterprises and industries; and*
> *(g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and*
> *(h) promoting participation in industrial relations by employees and employers; and*
> *…*
> *(j) promoting and facilitating the regulation of employment by awards and agreements; and*
> *(k) meeting the needs of emerging labour markets and work patterns; and*
> *(l) promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs; and*
> *…*
> *(n) assisting in giving effect to Australia's international obligations in relation to labour standards.".*[129]

The QIRC must also "*be governed in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of (a) the persons immediately concerned; and (b) the community as a whole*".[130]

The Queensland Government submission expressed concern that the wage-fixing parameters for the AFPC have been set by the federal Government in such a way as to encourage lower real wages over time, particularly given there is no requirement in the federal legislation for wages to be fair.[131] The submission also expressed concern that the AFPC has no capacity to hear equal remuneration applications as the federal legislation explicitly overrides laws that provide for state courts and tribunals to make equal remuneration for work of equal value orders (s. 16C).[132]

129 s. 3 IRA
130 s. 320 IRA
131 Queensland Government Submission, 21 July 2006, p 31
132 ibid p 31

The submission by YWAS claims that the "*AFPCS essentially lowers the bar in terms of the standards of treatment toward employees. This in turn gives employers greater opportunity to treat employees unfairly*".[133] Similarly, the AWU submission considers that the practical effect of the legislated AFPCS "*is to reduce the previous protection provided, to a now small non-prescriptive set of standards that do not reflect the community standards in most circumstances*".[134]

The submission of the TCFUA provides the example of maximum ordinary hours of work as way of illustration of their points in regard to the lack of protections for employees under the AFPCS. They argue that although the AFPCS appears to institute a maximum ordinary hours of work of 38 hours per week, this is not actually the case as it allows the 38 hours to be averaged over 12 months and for "reasonable" additional hours to be worked without the need for any overtime payments.[135] They see this as undermining common community standards of work.

Together these submissions express serious concerns that the AFPC and AFPCS will have the effect of producing downward pressure on wages and conditions, especially for previously award reliant employees.

2.5.3 Welfare to Work Changes

A number of submissions also referred to the intersection between the Work Choices changes and the welfare to work changes. The interaction between these two sets of work related changes were seen to impact significantly on more vulnerable workers.

The Welfare Rights Centre (WRC) submission[136] noted that the *Welfare to Work Bill* was announced in the 2005 federal Budget and passed through the Senate in December 2005 being effective from 1 July 2006. The people targeted in this legislation are people of "workforce age", in particular: parents from low income families in receipt of a welfare payment whose youngest child is six years of age or older; people with a disability or chronic medical condition who are deemed able to work for more than 15 hours a week; sole parents whose youngest child is eight years or older; and mature aged unemployed. The changes in the welfare to work initiative include new applicants in the targeted groups being put onto the Newstart Allowance (with lower payments) rather than a pension type payment. These people will be required to satisfy the activity test and must not refuse any suitable work.

The WRC submission quoted Australian Council of Social Services (ACOSS) research which estimates that in Queensland the new measures will add some 52,300 parents and people with a disability seeking part-time work over the next three years. WRC believe that the industries most likely to be affected are "*Childcare (particularly Family Day Care); Cleaning Services; Community Services (Care Work); Hospitality; Manufacturing (Production Work) and Retail*".[137] The submission also highlighted the barriers to work facing many of these workers including lack of child care; lack of education, skills and qualifications; lack of transport and/or mobility issues; and caring responsibilities.[138] The impact of the imposition of penalties for non-compliance with agreed job seeking activity is also seen to have potentially significantly adverse effects for individuals including exclusion from payments for an eight week period.

133 YWAS Submission p 9
134 AWU Submission p 7
135 TCFUA Submission p 2-3
136 WRC Submission, p 3
137 ibid p 3
138 ibid p 4

The WRC submission fully supported the notion that people are better off in the paid workforce than on a welfare payment, however, they express concern that many of the people in the targeted groups will have little training and/or education and that their capacity to compete for a fair days pay will be restricted. The submission called for safeguards to ensure that vulnerable workers will be able to access fair and reasonable conditions of employment including a reasonable and fair minimum wage which takes into consideration living standards; the maintenance of universal provisions which support a balance between work and caring; and a reassurance that all workers will be provided with equal opportunities in the workforce.[139] The issues raised in the WRC submission were supported in other submissions, in particular that of QWWS.[140]

2.5.4 Occupational Health and Safety Issues

A number of participants before the Inquiry expressed concern about occupational health and safety issues at the workplace which have most recently impacted upon employees. It is submitted that these concerns have been exacerbated with the introduction of Work Choices.[141] Much of the evidence centred around the new restrictions placed upon Union representatives' access to worksites where their members are employed.

This point is highlighted in submissions made by Mr H. Williams, Secretary of the Transport Workers' Union of Australia, Union of Employees (Queensland Branch) (TWU).

Mr Williams referred to the campaign the TWU had been involved in for the previous 6 or 7 years aimed at ensuring that employers complied with occupational health and safety regulations. Of major concern were the hours being worked by drivers within the trucking industry. The TWU had been besieged with complaints from employees claiming that they had been required to work approximately 18 hours in one day.[142]

Mr Williams referred to the investigation the TWU had undertaken with a Brisbane trucking company. Complaints had been made by employees concerning the work practices of this company. Consequently, the TWU had visited the site to inspect time and wages records. Because of difficulties encountered in going on site for the inspections, the TWU brought the matter before the QIRC. The right to enter the site was confirmed by the QIRC. After inspecting the time and wages books of the company, the TWU brought the matter to the attention of the Queensland Department of Transport and the company was prosecuted for various breaches of the award, amongst other things. The company pleaded guilty to approximately 700 charges and was found guilty of some 1,000 charges of breaching fatigue and driving hours regulations.[143]

In a number of cases to which Mr Williams referred, deaths had occurred as a consequence of fatigue on the part of drivers who were working well beyond the regulatory hours of work. Reference was made to other successful prosecutions made against trucking companies for similar breaches. Mr Williams stated that the monitoring of this situation occurred through right of entry provisions contained within awards prior to the event of the Work Choices legislation.[144]

Under Work Choices, Mr Williams stated that his officials were required to provide written notice to the employer 24 hours in advance of a visit but no more than 14 days in advance of the visit. He stated that by nominating the day of entry, he believed that some employers had sought to shred documentation which would show that they were non-compliant with required standards. Mr Williams stated that:

> *"the right of entry ... is absolutely imperative, very important and we must at all - in all particular methods retain that ability of ourselves to go to these workplaces and make sure that we can stamp out these illegal driving hours of these parasites and criminals.".*[145]

139 ibid p 7
140 QWWS Submission, 20 July 2006, p 8
141 QCU Submissions, 21 July 2006, p 10
142 TWU Submissions, 22 August 2006, p 57
143 ibid p 58
144 ibid p 64
145 ibid p 64

Submissions from participants before the Inquiry showed that employees were reticent about raising workplace health and safety issues through fear of termination of employment. This fear was exacerbated with the loss of unfair dismissal protections after the commencement of Work Choices.[146]

A number of the points raised by Mr Williams are supported by the submission of Professor Michael Quinlan, School of Organisation and Management, University of New South Wales. In his submission Professor Quinlan stated that research undertaken with workplace health and safety inspectors from various inspectorates in Queensland, New South Wales, Victoria, Tasmania and Western Australia has suggested that a number of employees dismissed for a range of reasons, may actually have been dismissed for raising health and safety issues.[147]

Prior to the introduction of Work Choices, awards contained many workplace health and safety provisions. This however has now changed with awards containing only minimum conditions.[148]

Professor Quinlan referred to examples which showed that many employees who worked part-time, as casual workers and as labour hire workers, often had a second job to supplement their income. This in itself, it was submitted, pointed to health and safety risks associated with longer working hours, moving between jobs and inadequate supervision on each job site. Within this context, Professor Quinlan referred to the emerging trend of what is termed "presenteeism" whereby an employee attends at work through fear of placing their job in jeopardy regardless of the state of their health.[149]

For many years, Unions have undertaken the role of ensuring that workplace health and safety representatives had undergone the appropriate training. The de-unionisation of the workplace, according to Professor Quinlan could lead to a lessening of occupational health and safety standards at the workplace. This coupled with lower job security was argued to jeopardise health and safety standards in the workplace.[150]

2.5.5 Regional Issues

The Inquiry was concerned from the outset to ensure that regional interests were represented. To that end, it was decided to undertake hearings in a range of regional locations throughout the state. In addition, a number of concerns with regard to regional issues were raised in submissions. These issues are overviewed here, with excerpts from direct evidence heard in regional hearings included in support of the submissions.

QCU submission contended that "*one of the strengths of the state industrial relations system is its responsiveness to regional needs*".[151] They also contend that the impact on rural communities will be disproportionate given the higher unemployment rate in regional Australia and the limited mobility of many regional workers.

Similarly, the Queensland Government's submission contended that in a decentralised state such as Queensland the recognition of the requirements of employees and employers in regional areas is particularly important.[152]

Significant interest was forthcoming from regional areas, to the extent that 44% of witnesses who gave evidence to the Inquiry came from outside the Brisbane metropolitan area.

The Inquiry, apart from taking evidence, was also provided with extensive submissions which related to the varying circumstances of each of the regional locations.

146 Professor M. Quinlan, Transcript 23 November 2006, p 767
147 ibid p 760
148 ibid p 770
149 ibid p 771
150 ibid p 778
151 QCU Submission, 21 July 2006, p 7
152 Queensland Government Submission, 21 July 2006, p 12

In particular, submissions before the Inquiry from Bundaberg, Hervey Bay, Cairns and the Gold Coast provided an insight into difficulties encountered by employees where limited employment opportunities were available if one's employment was ceased under Work Choices or if one refused to accept terms of employment that were being forced upon them.

Extracts from the aforementioned submissions included:

Bundaberg and Hervey Bay

"With the transient nature of the workforce, the concentration of seasonal work, and where those workers are employed, suggests to me that they would have little knowledge of the impact of Workchoices.

This means that they would not really know if they are getting dudded or not on what the employer offers them.

Remember that this workforce is moving on when the season is finished. And a lot of them do not return for the next season.

As such it is likely that they would accept whatever employment arrangement is offered to them without challenge.

If they were to challenge there would always be someone else looking for short term work.".[153]

Cairns

"*The Cairns region as the above data suggests has a cross-sectional employment base coupled with a degree of transience in employment attached to the tourism sector. It also has a mixed age group, with older residents (and workers) who have a connection with the area, and younger workers whose commitment to the region reflects a temporary employment arrangement.*

There is also that mix that comes with the rural meeting urban.

My assessment is that the knowledge base of Workchoices, outside of the public sector area, is low here. Most likely this is because of the seasonal, casual and transient nature of the workforce. These workers have precarious employment at the best of times.

It is also the case that in the service sector there are a lot of young workers.

The impact of Workchoices really only comes to light when these workers are confronted by an adverse situation. However with the growing population here, and the capacity to access an alternate labour force from those short term visitors to the city, it really means that being unhappy about your working conditions just means you get the sack.".[154]

Submissions were also received from the AWU District Secretary for that region, Mr Brischke which supported the views expressed by the QCU representative. Mr Brischke discussed the level of confusion experienced by workers in this region with regard to Work Choices. He also referred to the restrictions placed upon Union

153 QNU Submission, p2
154 QCU Submission, p3

representatives in accessing work sites where Union members were employed. This restriction exacerbated the level of confusion experienced by employees about their workplace rights and conditions. References were also made to the nature of work within this region with a high percentage of employees being engaged in the casual hospitality industries. Because of the transient nature of work in these industries, employees were often not in the position to debate or question their terms and conditions of their employment.[155]

Gold Coast

> *"In an economy where employment options say in the construction industry give you the opportunity to find alternate employment, the resile [sic] option is a feasible one. There is alternate employment.*
>
> *In the instance of those workers in the tourism industry, principally young workers notably employed in the retail trade; and accommodation, cafes and restaurants there* [sic] *strength to deal with adverse work situations can be marginal. Yes there will be examples of those who confront. Those stories have come to light during the course of the Brisbane sittings of the Inquiry. However, it is the case that young workers, employed on a casual basis, with limited alternate options for employment, are inclined to take the resile [sic] option.*
>
> *The Gold Coast City is like other centres in Queensland. Scratch the surface of what appears to be an idyllic setting and the adverse impact of Workchoices are exposed.".*[156]

A common thread that emerged in the course of the regional hearings related to concerns in respect of possible ramifications "job wise" for those coming forward to give evidence to the Inquiry.

2.5.6 Positive Responses to Work Choices

The Inquiry received one submission strongly supportive of Work Choices which was provided by The Restaurant and Caterers' Employers Association of Queensland, Industrial Organisation of Employers (RCEAQ). The submission stated their support for Work Choices in broad terms arguing that the strong emphasis on bargaining at the workplace and individual level allowed for increased efficiency, flexibility and productivity.[157] The submission suggested that "*Work Choices is a far less intrusive form of workplace bargaining than its counterpart in the State system*".[158]

More specifically, the submission highlighted the high number of small businesses in the industry and the regional location of a significant number of these businesses. It was argued that many of the RCEAQ's members were moving to incorporate their sole trader, partnership and trust businesses to take advantage of the opportunities offered by Work Choices. It was also submitted that the RCEAQ had recently been in receipt of DEWR funding "*to take Work Choices to those members who are interested and require a further level of understanding*"[159]. The submission notes a high level of interest in the seminars run on Work Choices and in collective agreement making but also notes that "*the RCEAQ supports the uniform approach of a classification structure in its agreements*".[160]

155 AWU Submission, 2 October 2006, Transcript pp 469-476
156 QCU Submission, p 4
157 RCEAQ Submission, 9 October 2006, p 1
158 ibid p 3
159 ibid p 2
160 ibid p 3

The submission noted the high proportion of wage costs as a proportion of operating costs in the industry and suggested that wages needed to be in the vicinity of 32%-34% to ensure financial viability.[161] Work Choices was seen as being particularly important in this regard and able to "*actually assist employers to control the wages bill and in many cases bring it down*".[162] It was also argued at the same time, however, that the introduction of a certified agreement or AWA "*is not an exercise in reducing wages to employees*" but rather an exercise in ensuring the long term viability of the business and the retention of good employees.[163]

The submission also contended that the removal of the threat of unfair dismissal action (for employers with less than 100 employees) will support further employment opportunities and encourage more permanent employment.[164] The submission concludes that there are great benefits to RCEAQ members in moving to Work Choices and that significant flexibilities will be able to be achieved.

A further submission by the Local Government Association of Queensland (LGAQ) did not embrace Work Choices but did welcome reforms that would lead to a single employer being captured by a single jurisdiction as well as the potential for the modernisation and harmonisation of employment conditions.[165] The submission argued that "*[l]ocal government has, prior to the advent of Work Choices, been beset with a miscellany of awards and agreements*".[166] The submission also supported the review and reformation of pay and classification scales, which were considered necessary reforms emanating out of the Work Choices reforms, but which were seen as also possible under previous legislation.

The submission also noted a number of concerns in relation to the removal of the no-disadvantage test and changes to unfair dismissal laws. Although LGAQ had previously called for reform in the handling of unfair dismissals, most notably from a procedural perspective, the submission did not consider that the current arbitrary cut-off of 100 employees appropriate or fair. The submission noted that there is currently no reformation of procedures pertaining to unfair dismissal for employers with more than 100 employees.[167] In addition, the LGAQ submission did not support the removal of the no-disadvantage test from agreement making. The submission took the view that the preservation of this test would have assisted in the successful application of reforms in agreement making which are part of Work Choices.[168]

The submission made clear that local government and its constituent councils are committed to being ethical employers. It was stated that it is "*[i]n best interest of local government employers to provide attractive industrial relations arrangements if they wish to survive challenge of labour and skills shortages*".[169] The submission goes on to assert 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.[170] Also noted is the accommodation, by the LGAQ, of legitimate input from unions representing their members in the period since the introduction of Work Choices and the likely continuation of that practice.[171]

The LGAQ submission recommended a collegial relationship between DEWR and Department of Industrial Relations as a way of "*more than adequately provid[ing] an avenue of regular advice to the Queensland Government pertaining to performance of Queensland constitutional corporations operating in the federal jurisdiction*".[172] In summary, the submission argued that "*[i]f the High Court upholds constitutional validity of the corporations powers, … any duplication of functions or roles attached to the QIRC would be unnecessary; and would complicate rather than simplify industrial relations*".[173]

161 ibid p 3
162 ibid p 3
163 ibid p 3
164 ibid p 4
165 Local Government Association Queensland Submission p 15
166 ibid p 3
167 ibid p 9-10
168 ibid p 10
169 ibid p 3
170 ibid p 12
171 ibid p 13
172 ibid p 15
173 ibid p 16

2.6 Part 2 Conclusion

The Inquiry has been required to consider the outcomes of the High Court decision for Queensland workplaces, employees and employers. As well, the Inquiry has been asked to consider the general implications of the High Court decision for those Queensland workplaces, employees and employers previously regulated by state industrial laws who are now regulated by the WRA as a result of Work Choices.

Importantly, the High Court decision relates only to the constitutional validity of the Work Choices legislation and does not consider social, economic or any other impacts of Work Choices.

In upholding the constitutional validity of the Work Choices legislation the High Court has not resolved the uncertainty in the community around the question of what constitutes a "constitutional corporation". The High Court did not consider the type of corporation which falls within that definition. There remains a considerable amount of confusion in Queensland workplaces around this question. As stated in the Recommendations to this Report, the Inquiry recommends the establishment of a separate statutory body which will undertake, amongst other things, an educative role in addressing these and other concerns associated with the introduction of the Work Choices legislation.

The Inquiry notes that as a consequence of the Work Choices legislation there will be significant changes to the manner in which work is performed and conducted within Queensland. These changes are far reaching. The Inquiry has not observed any advantages to employees emanating from the outcomes derived thus far from the introduction of Work Choices. It should also be noted that there is no evidence before the Inquiry of any advantages to employers arising from Work Choices, other than the enhanced capacity to reduce wages costs through removal of what were previously standard award entitlements such as penalty payments, overtime rates, shift loadings, annual leave loadings and casual loadings.

A longer period of time will be required in order to fully assess the real impact of Work Choices upon Queensland workplaces, employees and employers. To this end, the Inquiry recommends the establishment of a separate statutory body to monitor outcomes as they unfold.

At this point in time, what is of grave concern to the Inquiry is the impact that this deregulated regime will have and appears to have had upon employees throughout Queensland. Examples of this include:

- creating an environment of economic uncertainty for employees and their families because of the removal of unfair dismissal laws and the decrease in wages and conditions of employment through AWAs;
- uncertainty experienced by employees in the following areas:
  - financial difficulty meeting rental and mortgage payments with no recourse to unfair dismissal legislation;
  - a reduction in living standards for many employees;
  - the inability to undertake future financial planning; and
  - a loss of a meaningful work and family life balance;
- the potential for this type of environment to seriously impact upon employees and their families through uncertainty around rates of pay; hours of work; days required to work; shift work; penalty rates and other previously held award conditions;
- placing vulnerable employees in the precarious position of having to "take it or leave it" with regard to conditions of employment under AWAs and other types of workplace agreements; and
- reducing the monitoring of workplace health and safety through restrictions placed upon employee representatives' rights of entry into work sites and removing health and safety training provisions from industrial instruments governing the employment of workers.

The economic and social impact of Work Choices is far reaching. The Work Choices legislation has been in operation since March 2006 and there is evidence and submissions before the Inquiry which suggests a very strong trend that employees, and especially those in less skilled employment will fare badly as a consequence of Work Choices. The material put before the Inquiry in the form of AWAs shows a real lowering of wages and conditions of employment for employees. There has been no evidence to show that any of the altered conditions provide greater productivity or efficiency for the employer. The only outcome appears to be lower wages and conditions for employees.

The Inquiry believes that these trends must be monitored through an independent statutory body and that public awareness of what constitutes fair, appropriate and reasonable workplace practices, must be raised.

Part 3

Reporting Mechanisms Available to Employees Post Work Choices

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.[174] 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*".[175]

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[176]
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.[177] 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.[178]

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.

	2004-2005	**2005-2006**
Wage complaints finalised	8,254	6,453
Amount of unpaid wages adjusted on behalf of employees (2004-2005 excluded $1.3m audit adjustments)	$9.88m	$10.16m
Amount of unpaid wages recovered through court proceedings	$0.88m	$0.65m
General audits conducted - workplaces	2,781	2,241
Wage recovery investigations completed within three months	73%	69%
Legal proceedings completed - employers	239	160
Success rate in court hearings	96%	96%
Level of customer satisfaction in relation to wage complaints	97%	97%
Trading hours inspections	11	23

Table 1: Department of Industrial Relations, Industrial Inspectorate Results[179]

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[180].

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*".[181] 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.[182]

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.[183] 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.[184]

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.[185] 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)*".[186]

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*".[187] 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*".[188]

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.[189] An article by Chapman (2006) also suggested that remedies for an anti-discrimination claim are slow and relatively ineffective.[190] 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*".[191] 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.

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.*"[192] 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*".[193] 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.[194]

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*.".

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 QGIG 718 and 177 QGIG 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.[200] 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.[201] 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*".[202]

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.[203]

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.[204] 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.[205] 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
203 Queensland Government Submission, 21 July 2006, p 35
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.[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.[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.[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.[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.[210]

According to the OEA web-site, the primary role of the OEA is to accept lodgements of workplace agreements. In doing this, "*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*".[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*".[212]

206 ibid p 2
207 ibid p 3
208 YWAS Submission p 5
209 ibid pp 5-7
210 CFMEU Submission p 11
211 http://www.oea.gov.au (accessed 4 December 2006)
212 CFMEU Submission p 11

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.[213]

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*".[214] 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*".[215] 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*".[216]

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*".[217]

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*".[218]

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.[219]

213 ibid p 9
214 http://www.ows.gov.au (accessed 4 December 2006)
215 CFMEU Submission p 10
216 ibid p 10
217 ibid p 10
218 ibid p 11
219 Queensland Government Submission p 35

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.[220]

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:

> *"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.".*[221]

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.

220 ibid p 35

221 CFMEU Submission p 9

Part 4

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

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.".*[222]

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 442

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-parties[232] 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 coercion[237] 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.

235 s. 142 IRA
236 s. 144(5) IRA
237 s. 156(1)(b) IRA
238 s. 156(1)(g) IRA
239 s. 156(1)(h) 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. 191(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 Regulation 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 QCU[251] and the Queensland Government submissions[252] 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]

250 Regulation 15 *Industrial Relations Regulation 2000* (Qld)
251 QCU Submission, 21 July 2006, p 6
252 Queensland Government Submission, 21 July 2006, paras 26, 61 and 62
253 ibid para 63
254 Queensland Government Submission, 21 July 2006, para 33
255 Transcript, 6 December 2006, p 807
256 LGAQ Submission, p 12

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.[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),[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.[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.[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.[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.[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.

257 Transcript, 6 December 2006, pp 807-808
258 TCFUA Submission, para 9
259 TCFUA Submission paras 8-10
260 ibid paras 12-16
261 YWAS Submission p 9
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 TCFUA 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".

Evidence was given to the Inquiry of AWAs being used to reduce conditions of employment as follows:[267]

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[268] 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.

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.

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.

In evidence to the Inquiry, Mr Damien Davie[269] of the LHMU highlighted a further example of an AWA being used to reduce conditions of employment:

267 Exhibit 25 [Suppressed]

268 *Australian Liquor Hospitality & Miscellaneous Workers' Union Queensland Branch, Union of Employees v Wilsons Parking Australia 1992 Pty Ltd* (2002) 171 QGIG 323

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[270]

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[271]

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.

270 Queensland Government Submission, 21 July 2006, pp 40-41
271 ibid p 42

Spotlight[272]

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*".[273]

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.[274]

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

- restrictions on the use of casual employment are removed and protections for permanent staff members in relation to being replaced by casual employees are removed;
- a minimum three hour engagement for part time employees is removed.[276]

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 have 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]

281 ibid p 44
282 TCFUA Submission paras 29-42
283 ABS TCFL Employment. ANZIC 4d by Financial Year
284 TFIA, *The Australian TCF Industry - A Profile*, http://www.tfia.com.au NB: Includes leather
285 Monash University, WAGE, Centre for Work and Society in the Global Era, *The Long Goodbye, TCF workers, unemployment and tariff deregulation*, August 2003
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".*[296]

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.[297]

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".*[298]

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.

296 ETU Submission p 1
297 Exhibit 19 paras 7-9; Transcript 316-317
298 Exhibit 19 para 10

> *"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 Government[313] and the WRC[314] 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 leads* [sic] *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.".*[315]

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".*[316]

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.

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 is 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.

BRUNING, Avril Ann[317]
Occupation: Residential Property Manager Industry: Real Estate

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".*[318]

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.

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.[319] 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.[320]

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.".*[321]

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[322]
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 its 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[323]
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".

323 Mr 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[324]
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 enquires, 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[325]
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.".*

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[326]
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[327]
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.".*

326 Ms Ismail, Evidence, 31 August 2006, Transcript pp 356-358
327 Ms Munro, Evidence, 29 August 2006, Transcript pp 267-272

URQUHART, Heather Margaret[328]
Occupation: Sales Assistant Industry: Retail

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.

NAME SUPRESSED
Occupation: Personal Assistant/Secretary Industry: Architecture

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.

328 Ms Urquhart, Evidence, 18 October 2006, Transcript pp 639-645

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".*[329]

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*".[330]

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.[331]

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".[332]

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[333]
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 essentially 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 that 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 co-ordinating 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.

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

PENNY, Christopher Noel[346]
Occupation: Security Screen Assembler Industry: Furniture Manufacturing

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.".*

346 Mr Penny, Evidence, 9 October 2006, Transcript pp.578-583

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[347]
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:[348]

"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.

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.[351] 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,[352] 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.[353] 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.[354] 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.

Part 5

Other Inquiries of Relevance

OTHER INQUIRIES OF RELEVANCE

The imminent and actual introduction of the Work Choices legislation led to the establishment of a number of Inquiries into the impact of the legislation, including this Inquiry. Accordingly, the Directions guiding this Inquiry required it to consider the investigations and outcomes of similar Inquiries in other states and territories. A number of submissions addressed this aspect of the Directions. These included those by the Queensland Government, the AWU and the CFMEU. Those submissions noted the following Inquiries as being of particular relevance to this Inquiry:

- the New South Wales Parliamentary Inquiry;
- the Labor Parliamentary Taskforce on Industrial Relations; and
- the Select Committee on Working Families in the ACT.

Also considered of relevance was the Tasmanian Parliamentary Inquiry, however, the timing of that Inquiry has meant that no report was available at the time of writing this Report so only limited consideration has been able to be given to that Inquiry. The Senate Inquiry into the *Workplace Relations Amendment (Work Choices) Bill* also has some relevance to this Inquiry, however, given the brevity and timing of that Inquiry (prior to the introduction of Work Choices) it was considered that the other Inquiries identified above bore greater direct relevance. This section of the Report provides a brief summary of the key Inquiries mentioned above in terms of their relevance to this Inquiry and draws on the materials contained in submissions to this Inquiry which addressed the relevance of other Inquiries.

5.1 New South Wales Parliamentary Inquiry

The New South Wales (NSW) Parliamentary Inquiry was conducted by the Social Issues Committee of the NSW Legislative Council. The Social Issues Committee is one of three Standing Committees. Each Standing Committee consists of six members, comprising three government members, two opposition members and one cross bench member. The Chair of the Social Issues Committee for the purposes of the Inquiry was the Honourable Jan Burnswoods MLC (ALP, Legislative Council).[356]

The Inquiry was referred to the Committee by the Honourable John Della Bosca MLC, Minister for Industrial Relations, on 28 March 2006. The terms of reference directing the Inquiry were:

- That the Standing Committee on Social Issues inquire into and report on the impact of Commonwealth Work Choices legislation on the people of NSW, and in particular:
  - the ability of workers to genuinely bargain, focussing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment;
  - the impact on rural communities;
  - the impact on gender equity, including pay gaps;
  - the impact on balancing work and family responsibilities;
  - the impact on injured workers; and
  - the impact on employers and especially small businesses.

- That the committee report by Thursday 23 November 2006.[357]

356 Queensland Government Submission p 59

357 New South Wales, Parliament Legislative Council, Standing Committee on Social Issues, *Inquiry into the impact of WorkChoices legislation* [report] p iv

Submissions to the Inquiry were called for on 8 April 2006 and closed on 26 May 2006, nine weeks after the Work Choices legislation came into effect. In total, 52 submissions were received and a number of these were published on the NSW Parliament web-site. These submissions were from a range of organisations and individuals including unions, employers, church organisations, Government, community organisations, and individuals affected by the legislation. Most submissions specifically addressed the terms of reference set out for the Inquiry but focussed on those issues within their particular spheres of interest.[358]

Two days of public hearings were held on 19 June 2006 and 20 June 2006 with additional hearing days held on 17, 18, 27 and 28 July 2006. The process adopted for the hearings was a non-adversarial process where witnesses were invited to give evidence based on their written submissions to the Inquiry. Witnesses were questioned only by members of the Committee and were not represented. The Committee made its final report available 23 November 2006.[359]

Although the findings of the NSW Inquiry were not available at the time of development and receipt of submissions to this Inquiry, the Queensland Government submission held that the findings of the NSW Inquiry would hold direct relevance to the Queensland Inquiry. This was argued to be the case because the impact of Work Choices was considered likely to be similar for both states given the similarities between the respective state industrial relations jurisdictions. It was noted by the Queensland Government submission that in NSW, as in Queensland, there has historically been a significant percentage of the NSW workforce under the state jurisdiction. It was also noted that for much of the past decade, NSW and Queensland shared a similar industrial relations framework in terms of enterprise bargaining, unfair dismissal laws, award making, and the role of the Industrial Relations Commission. Given these similarities, the Queensland Government submission contended that the transfer of large parts of the state jurisdiction into the federal jurisdiction was likely to have similar impacts in both states.[360]

The CFMEU recommended that the Inquiry remain aware of the reporting date and if timely and appropriate to include any relevant material from the NSW Inquiry into the final report.[361] The AWU submission simply suggested that the Inquiry have regard to the NSW Inquiry due to its relevance to employees and employers in Queensland.[362]

As the findings of the NSW Inquiry were not available at the time, the Queensland Government submission drew attention to a number of submissions to the NSW Inquiry that they considered highlighted areas of interest to this Inquiry and/or which held particular relevance to the Queensland situation. These included submissions by church groups, which were based on their experiences as providers of services to the most marginalised members of society and also on their role as employers. These submissions highlighted the rights of workers to dignity in their labour and to fairness in wages and conditions of employment. As employers, they highlighted the complexity of the legislation and jurisdictional confusion. The Queensland Government highlighted the similarity between the operations of these groups in both states and therefore the likely similarity in terms of the impact of Work Choices.[363]

Submissions received from community groups representing marginal groups in society highlighting the likely detrimental impact on these groups were also seen as relevant to the Queensland situation. These focussed on the greater vulnerability of young workers, workers from non-English speaking backgrounds and women in individual bargaining situations and the likely exacerbation of the already poor labour market outcomes for these groups. A number of submissions also pointed to the severe curtailment of the ability to run equal remuneration cases under Work Choices.[364]

358 Queensland Government Submission p 60
359 Queensland Government Submission p 60
360 ibid p 60
361 CFMEU Submission p 48
362 AWU Submission p 14
363 Queensland Government Submission pp 60-61
364 ibid pp 62-63

The two employer organisation submissions to the Inquiry were also seen as relevant to the Queensland situation. These submissions were critical of the impact of Work Choices on their membership and on small business generally and highlighted the complexity and cost of implementing the legislation, the removal of employment flexibility in some areas, and the confusion surrounding jurisdiction for a number of small businesses. Also highlighted were the competitive pressures raised by those employers who unfairly treated employees and the important role of collective bargaining and union representation.[365]

The Union submissions to the NSW Inquiry were strongly opposed to Work Choices and drew on academic research commissioned by the Union peak body. The research considers the experience in other jurisdictions of deregulated industrial relations systems in terms of impacts on the workforce and communities more generally in drawing predictions as to the likely impact of Work Choices in Australia. As the focus of this research was Australia wide, it was seen as being equally relevant to the Queensland situation. In summary, the research suggested that Work Choices will result in the growth in low paid jobs and will have adverse impacts for families and communities.[366]

The NSW Government submission to the NSW Inquiry was considered to bear direct relevance to the Queensland Inquiry given the similarity in industrial relations between the two states mentioned earlier. The NSW Government submission contended that Work Choices will result in reduced wages and conditions of employment (particularly among more vulnerable groups of workers), will exacerbate social and economic disadvantage in rural and regional communities, will lead to a widening of the gender pay gap, further disadvantage workers with responsibilities, will be detrimental to workers injured at work, and will be confusing, costly and complex for many employers.

The final report of the Inquiry included 9 recommendations, these were:

Recommendation 1

That the NSW Government call on the federal Liberal/National Coalition Government to repeal the *Workplace Relations (Work Choices) Amendment Act 2005* immediately.

Recommendation 2

That the NSW Government, in consultation with other states and territories, investigate whether it should provide additional resources to the Anti-Discrimination Board and the courts - notably the Chief Industrial Magistrates Court - to deal with unfair dismissal claims.

Recommendation 3

That the NSW Government establish an Office of the Workplace Rights Advocate, similar to that in Victoria, as an independent statutory body to assist employees, employers and independent contractors to negotiate pay and conditions under the new federal industrial relations system and to monitor unfair and illegal industrial practices.

Recommendation 4

That the NSW Government consider the provision of additional resources to the Office of Industrial Relations in order to boost its inspectorate and to enable the Office to provide advice and training seminars, and information and resource kits for community legal centres. The Committee encourages the Office to target training, information and support to rural and regional New South Wales in order to increase the participation and skills of people living in these areas.

Recommendation 5

That the NSW Government should consider developing a longitudinal study tracking wages and conditions of work in NSW, and consult with other states about achieving a common approach to this study.

365 ibid 63-64

366 Queensland Government Submission pp 65-66

Recommendation 6

That in establishing an Office of the Workplace Rights Advocate, as set out in Recommendation 3, the NSW Government ensure that the Office pays explicit attention to the needs of disadvantaged groups.

Recommendation 7

That in examining the provision of additional resources to the Office of Industrial Relations, as set out in Recommendation 4, the NSW Government specifically consider the needs of disadvantaged groups.

Recommendation 8

That in considering the development of a longitudinal study tracking wages and conditions in NSW, as set out in Recommendation 5, the NSW Government also consider the capacity to monitor effects specifically in relation to disadvantaged groups.

Recommendation 9

That the NSW Government call on the federal Liberal/National Coalition Government to amend s. 151(2) of the WRA to include people with a disability amongst the list of workers in a disadvantaged bargaining position.[367]

It is considered that the third of these recommendations, "*to establish an Office of Workplace Rights Advocate, similar to that in Victoria*" has particular relevance to this Inquiry.

5.2 Labor Parliamentary Taskforce on Industrial Relations

In December 2005, the federal Parliamentary Labor Party elected an Industrial Relations Taskforce to investigate the adverse effects of Work Choices. The stated reason for doing so was that the federal Government had rushed the legislation through the House of Representatives and the Senate without the opportunity for proper analysis and community comment. The report stated that the investigation sought to fulfil this role. The terms of reference of the Taskforce were to:

- establish the adverse effects of the Government's extreme industrial relations changes on individuals, families and communities, in particular:
  - the adverse effects on women;
  - the adverse effects on young people;
  - the adverse effects on regional communities; and
  - identify specific cases of the abuses of these laws.

The Inquiry conducted public hearings in 20 federal electorates in each state and territory and heard the concerns and experiences of 147 witnesses. Given the wide coverage of the hearings, the Queensland Government submission to this Inquiry contended that the outcomes of the Taskforce are relevant to Queensland. An interim report of the Taskforce was released on 20 June 2006 as the Work Choices amendments had only been operational for a short period of time. The interim report suggested that it will be necessary to assess the longer term effects of the legislation over the course of the federal parliamentary term. The interim report devotes a chapter to the impact of Work Choices on each of work; family and community; women; young people; rural and regional areas; and other matters.

367 New South Wales, Parliament Legislative Council, Standing Committee on Social Issues, *Inquiry into the impact of WorkChoices legislation* [report] p xiv

The interim report lists 7 preliminary findings:

Preliminary Finding 1

With the abolition of the no-disadvantage test and thereby removing the protection of the award minima, Work Choices has stripped away safeguards relied upon by employees when negotiating with their employer. The use of the five statutory minimum conditions in awards had also permanently lowered the starting point for negotiation, presenting even less opportunity to negotiate fairly.

Preliminary Finding 2

The removal of the right to challenge unfair dismissal and skewing of bargaining power in favour of employers means that in businesses with less than 100 employees, permanent employees effectively no longer have any more rights than casuals. Employees in larger business also face more precarious employment as the legislation allows larger employers to sack employees on the basis of "operational" requirements.

Preliminary Finding 3

The AFPC has been established to drive down minimum wages and has already delayed the first national wage decision, denying the lowest paid a wage increase.

Preliminary Finding 4

Many small businesses are concerned about the impact of Work Choices on their employees and business. They fear that the use of Work Choices by their competitors will force them to choose between their employees' employment conditions and the future of their business. Furthermore, the Taskforce found that many employers consider Work Choices to be prescriptive, confusing and complex.

Preliminary Finding 5

By limiting the right of entry to workplaces and prohibiting union-based training clauses, the Government is putting ideological hostility towards unions ahead of death or injury in Australian workplaces.

Preliminary Finding 6

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

Preliminary Finding 7

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

The AWU, in their submissions, supported these preliminary findings and submitted that they were relevant to employees and employers in Queensland. The AWU submission, noted in particular, that the combination of the removal of the no-disadvantage test and the removal of unfair dismissal laws for the majority of employees make genuine negotiations between an employer and his or her employees impossible.

5.3 Select Committee on Working Families in the ACT

On 5 May 2005, the Legislative Assembly for the Australian Capital Territory (ACT) resolved to establish a Select Committee on Working Families in the ACT, with the Select Committee to be composed of two members nominated by the Government and one member nominated by the Opposition. The initial terms of reference for the Committee were very broad and required the Committee:

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

An interim report was released in March 2006, and concluded that "*time and evidence are needed to reliably and validly determine the effects on working families in the ACT of reforms to the industrial relations system and to confirm or deny the speculative effects mentioned above [in the report]*" (p 65). As a result, a key outcome of the interim report was that the terms of reference were amended to the following:

- to examine the effect on working families in the ACT of changes to industrial relations legislation, with particular reference to:
  - the *Workplace Relations Amendment (Work Choices) Act 2005*;
  - the *Building and Construction Industry Improvement Act 2005*;
  - the *Workplace Relations Amendment (Better Bargaining) Bill 2005*;
- the impact of these changes on current or potential ACT legislation; and
- other related matters.

The date for the final report was also changed to August 2007.

The CFMEU submission was the only submission to directly address the ACT Inquiry and noted that the key outcome of the Inquiry was in accordance with the CFMEU view that the full effects of the legislation will not be felt for some time. The CFMEU submission also noted that "*the most illustrative aspect of all these Inquiries is the fact that each has delayed making final decisions until further impact of the Work Choices legislations can be felt. The CFMEU submits that the Queensland Industrial Relations Commission should also consider the need to wait until the full impact of Work Choices has been established to ensure a comprehensive analysis is achieved*".

5.4 Other Inquiries

The Tasmanian House of Assembly has also established a Select Committee to inquire into and report upon the effect of recently enacted Commonwealth industrial relations legislation. Submissions to the Inquiry closed on 17 November 2006 with a report expected in 2007. Although the findings of this Inquiry will be available too late for consideration by this Inquiry, they are likely to be of interest to participants in this Inquiry.

5.5 Part 5 Conclusion

A number of similar Inquires, investigating the impact of Work Choices, have been conducted in other Australian states and territories. This Inquiry notes that the terms of reference for each of these Inquiries differed quite significantly to the Directions guiding this Inquiry. The Directions for this Inquiry are specific, whereas the terms of reference for the other similar Inquiries can be considered to be more broadly focussed on the impact of Work Choices. This Inquiry accepts, nonetheless, the submissions of the Queensland Government, the AWU, and the CFMEU that the investigations and, where available, outcomes of these Inquiries have direct relevance to this Inquiry. As such, where available the Inquiry has considered the evidence before it in light of the evidence before those similar Inquiries. This Inquiry notes the considerable support that evidence lends to the evidence in this Inquiry and, in particular, notes little contradiction in the evidence as to that before this Inquiry. The Inquiry also notes that it is only with time that the full impact of Work Choices will be felt and accepts that ideally there should be some mechanism by which a longer term Inquiry into the impact of Work Choices in Queensland can be achieved.

Part 6

Summary of Findings and Recommendations

SUMMARY OF FINDINGS

6.1 Overview

This section of the Final Report draws together the conclusions from each of the preceding sections (Parts 2 to 4), in order to provide an overview of the findings of significance from this Inquiry. This section then considers the final submissions of the participants to the Inquiry which primarily addressed the two Directions related to recommendations for processes to monitor and report on the impact of Work Choices on Queensland workplaces, employers and employees. From this discussion, the final Recommendations are drawn and presented.

6.2 Summary of Findings on Part 2 (The Impact of Work Choices)

The Inquiry has been required to consider the outcomes of the High Court decision for Queensland workplaces, employees and employers. As well, the Inquiry has been asked to consider the general implications of the High Court decision for those Queensland workplaces, employees and employers previously regulated by state industrial laws who are now regulated by the WRA as a result of Work Choices.

Importantly, the High Court decision relates only to the constitutional validity of the Work Choices legislation and does not consider social, economic or any other impacts of Work Choices.

In upholding the constitutional validity of the Work Choices legislation the High Court has not resolved the uncertainty in the community around the question of what constitutes a "constitutional corporation". The High Court did not consider the type of corporation which falls within that definition. There remains a considerable amount of confusion in Queensland workplaces around this question. As stated in the Recommendations to this Report, the Inquiry recommends the establishment of a separate statutory body which will undertake, amongst other things, an educative role in addressing these and other concerns associated with the introduction of the Work Choices legislation.

The Inquiry notes that as a consequence of the Work Choices legislation there will be significant changes to the manner in which work is performed and conducted within Queensland. These changes are far reaching. The Inquiry has not observed any advantages to employees emanating from the outcomes derived thus far from the introduction of Work Choices. It should also be noted that there is no evidence before the Inquiry of any advantages to employers arising from Work Choices, other than the enhanced capacity to reduce wages costs through removal of what were previously standard award entitlements such as penalty payments, overtime rates, shift loadings, annual leave loadings and casual loadings.

A longer period of time will be required in order to fully assess the real impact of Work Choices upon Queensland workplaces, employees and employers. To this end, the Inquiry recommends the establishment of a separate statutory body to monitor outcomes as they unfold.

At this point in time, what is of grave concern to the Inquiry is the impact that this deregulated regime will have and appears to have had upon employees throughout Queensland. Examples of this include:

- creating an environment of economic uncertainty for employees and their families because of the removal of unfair dismissal laws and the decrease in wages and conditions of employment through AWAs;

- uncertainty experienced by employees in the following areas:
  - financial difficulty meeting rental and mortgage payments with no recourse to unfair dismissal legislation;
  - a reduction in living standards for many employees;
  - the inability to undertake future financial planning; and
  - a loss of a meaningful work and family life balance;
- the potential for this type of environment to seriously impact upon employees and their families through uncertainty around rates of pay; hours of work; days required to work; shift work; penalty rates and previously held award conditions;
- placing vulnerable employees in the precarious position of having to "take it or leave it" with regard to conditions of employment under AWAs and other types of workplace agreements; and
- reducing the monitoring of workplace health and safety through restrictions placed upon employee representatives' rights of entry into work sites and removing health and safety training provisions from industrial instruments governing the employment of workers.

The economic and social impact of Work Choices is far reaching. The Work Choices legislation has been in operation since March 2006 and there is evidence and submissions before the Inquiry which suggests a very strong trend that employees, and especially those in less skilled employment will fare badly as a consequence of Work Choices. The material put before the Inquiry in the form of AWAs shows a real lowering of wages and conditions of employment for employees. There has been no evidence to show that any of the altered conditions provide greater productivity or efficiency for the employer. The only outcome appears to be lower wages and conditions for employees.

The Inquiry believes that these trends must be monitored through an independent statutory body and that public awareness of what constitutes fair, appropriate and reasonable workplace practices, must be raised.

6.3 Summary of Findings on Part 3 (Reporting Mechanisms available to Employees post Work Choices)

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:

> *"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.".*[368]

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.

368 CFMEU Submission p 9

6.4 Summary of Findings on Part 4 (Incidents of Unlawful, Unfair or Otherwise Inappropriate Industrial Relations Practices Post Work Choices)

6.4.1 Conclusions on "The Reduction of Wages and Conditions of Employment Through Australian Workplace Agreements and other Collective Agreements"

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.

6.4.2 Conclusions on "Discrimination, Harassment and Denial of Workplace Rights"

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.

6.4.3 Conclusions on "Unfair Dismissal or Other forms of Unfair or Unlawful Treatment of Employees"

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.

6.4.4 Conclusions on "Additional Issues arising from the Evidence"

Arising from the evidence and submissions made to the Inquiry, a number of major issues of concern have emerged.

With the introduction of Work Choices, for approximately 62% of the Queensland workforce, fundamental changes have occurred which will impact upon the terms and conditions of employment for employees and the manner in which employers conduct their businesses.

The Work Choices legislation will see awards reduced to minimum conditions of employment. The focus will shift to the ability of individual employees to bargain for themselves to ensure appropriate terms and conditions of employment.

The Inquiry is concerned that many of the Work Choices changes will impact severely upon the more vulnerable employees within the workforce. Within this group are young employees, women, those for whom English is not their first language, those from culturally different backgrounds, employees within regional and rural areas, employees with disabilities and those who may be dependant upon income support. It would be extremely difficult for these employees to individually bargain for their terms and conditions of employment.

With restrictions placed upon the right of entry of Union officials to worksites, the Inquiry is concerned that many workplace health and safety requirements will not be met by some employers. Much of the workplace health and safety training undertaken by employees has been shown to have occurred as a result of Union encouragement and provisions contained within awards and pre Work Choices agreements. There has been evidence before the Inquiry to show that serious workplace health and safety problems would have continued but for the scrutiny and active involvement in the workplace of Union officials.

The AWAs viewed by the Inquiry have not contained any provisions which address productivity and flexibility outcomes for both employees and employers. The common feature in all of the AWAs before the Inquiry has been a lowering of wages and a decrease in conditions for employees.

An added concern to the Inquiry was the plight of employees who believed that their employment had been unfairly terminated. For those employees, employed by a corporation employing less than 100 employees, there was no avenue for review of their termination, except in some particular circumstances. Those employees who had been subject to termination of employment for alleged "misconduct", faced the prospect of being denied Centrelink payments for a period of 8 weeks. The only apparent "review" of their termination of employment was left to employees within a Government department.

The Inquiry acknowledges that there are many employers within Queensland which provide a fair and safe work environment for their employees. However, in any unequal bargaining situation, the less powerful are exposed to a "take it or leave it" environment. With less bargaining power, many employees, of the type identified above, will simply have to "take it".

6.5 Summary of Participants Final Submissions

6.5.1 Introduction

A common feature of submissions to this Inquiry, particularly by the Queensland Government and the QCU, is strong support for the appointment of an independent "fair employment" or "workplace rights" advocate in Queensland.

In this section, the Inquiry will consider the submissions in this regard.

6.5.2 Submissions in relation to "Fair Employment" or "Workplace Rights" Advocate (Queensland)

Written submissions to the Inquiry included the following submissions in relation to the appointment of an independent "fair employment" or "workplace rights" advocate in Queensland.

6.5.3 Queensland Government

The Queensland Government final submission included recommendations:[369]

- for a mechanism to be established on an ongoing basis;
- for a new, independent statutory body with clear powers to help address issues of unlawful, unfair, or otherwise inappropriate treatment in Queensland workplaces on an ongoing basis;
- for establishment in Queensland of a body (similar to bodies established by Governments in Victoria, South Australia and the Northern Territory to investigate and monitor unfair industrial practices) to assist workers facing unfair or unlawful treatment and to ensure that all Queensland workers have access to good information on their rights and obligations, irrespective of whether they are covered by the state or federal jurisdiction;
- that the functions and activities undertaken by such a body could include the provision of advice and information, the promotion of fair industrial relations practices and the investigation of illegal, unfair or inappropriate industrial relations practices;
- that it would also be expected that such a body would raise public awareness of matters where workers are disadvantaged through the media and regular reports to the Parliament and the Minister;
- that such a body could have the power, where appropriate, to refer people to enforcement agencies such as the OWS, the Queensland Department of Employment and Industrial Relations, the ADCQ or Workplace Health and Safety Queensland; and
- that it could also have the power to refer complaints to a range of organisations, including the QWWS and the YWAS, that provide information, advice and advocacy services to vulnerable Queensland workers disadvantaged by Work Choices.

The Queensland Government final submission also supported a program of ongoing research into and monitoring of the impact of Work Choices and noted various initiatives already implemented in that regard (paragraphs 99 to 103).[370]

6.5.4 Queensland Council of Unions

Recommendation 1 of the final submissions and recommendations of the QCU included recommendations:[371]

- for establishment by the Queensland Government of a Fair Employment Office with a Fair Employment Advocate to:
  - operate as an investigatory service into the industrial relations practices of Queensland employers;
  - facilitate and encourage the fair industrial treatment of workers;
  - promote informed decision making by workers, independent contractors and employers in relation to employment practices;

369 Queensland Government Submission, 7 November 2006, paras 94-98
370 ibid paras 99-103
371 QCU Submission, 10 November 2006, pp 7-9

  - establish mechanisms to ensure that workers and independent contractors are fully informed of the implications of their agreements, how these may affect their terms and conditions of employment and other workplace issues;
  - intervene in court proceedings or related forums and tribunals to make submissions about the general rights and responsibilities of workers, independent contractors and employers;
  - monitor and report to the Minister for Industrial Relations on related issues; and
  - advise the Minister in general about work-related matters;
- that it is feasible within the Queensland context, that the Office could be established to take advantage of current structures. This could be achieved through the establishment of the Advocate within the Department of Industrial Relations, wherein the staff of the Department were utilised. However, the QCU recommends that if the current structures were utilised there would need to be a holistic overview of the way investigations occur. In the current industrial environment a more lateral and proactive approach to dealing with complaints and issues needs to operate. This means that the old ways of taking a complaint and assessing the likelihood of resolving the matter is not sufficient;
- that in the alternate, a separate and distinctive structure could be developed within its own statutory framework similar to the Victorian model. In either instance, the model that appears at this stage to be achieving the most proactive approach to workplace complaints would be the Victorian model; though a hybrid of the South Australian and Victorian models would result in a more robust and far-reaching service;
- that the principal focus of the service should be on investigating employer's industrial relations practices (the QCU noted that as evident in the witness statement of various Department of Industrial Relations witnesses, the capacity to deal effectively with complaints through existing Queensland Government information services has been substantially diminished); and
- noted the CFMEU in their submission, refer to the establishment of a Queensland Industrial Complaints Registry as a mechanism to address this dearth of support.

Recommendation 2 of the final submissions and recommendations of the QCU included recommendations for:[372]

- adoption of a set of standards that would be used as a benchmark for fair workplace practices for businesses in Queensland;
- adoption of a Community Endorsed Fair Employer Scheme for businesses in Queensland;
- adoption of a set of standards that would be used as a benchmark for fair workplace practices for businesses tendering for government work; and
- application of these standards to public sector agreements including those operating with GOCs.

In relation to the development of such standards, the QCU recommended:[373]

- that such standards are in effect a "fair standard" of employment conditions and practices that would operate for Queensland businesses; and
- that development of such standards could be achieved through a co-operative and collaborative approach between unions, employers and government, but in particular the development of these standards not be the role of the Workplace Rights Advocate.

In relation to the suggested Community Endorsed Fair Employer Scheme, the QCU recommended:[374]

372 ibid p 9
373 ibid p 9
374 ibid p 9

- that the Scheme would be a mechanism to identify fair employers. These employers can send a message to the community that they respect workers rights and oppose laws that weaken their community by undermining job security. Fair employers would not join the race to the bottom in lowering existing wages and employment conditions. Fair employers will become part of a fair employer's network and will be identified on a databank as well as through [sic] their shopfront; and
- that the Scheme could be a component of the Workplace Rights Advocacy Service.

Recommendation 3 of the final submissions and recommendations of the QCU included recommendations for:[375]

- investigation of complaints about unfair or unlawful work practices to be undertaken by the Workplace Rights Advocate.

6.5.5 Australian Workers' Union of Employees

The AWU submissions included recommendations:[376]

- for an information network that will enable employees to have a "one stop shop" wherein workers will be able to record all relevant information in respect to incidents of unfair treatment as a result of the introduction of Work Choices;
- such information network will also provide employees with information and advice in respect to current award entitlements, assistance in comparing current award entitlements with a proposed AWA, advice on issues that need to be considered before signing an AWA, and advice and assistance in respect to current award entitlements, assistance in comparing current award entitlements with a proposed AWA, advice on issues that need to be considered before signing an AWA, and advice and assistance in respect to an individual losing their current rights or entitlements under a proposed AWA; and
- recommends that such an information network may be achieved and financed by merging the existing government information and advice services in to one service providing a reporting mechanism for employees to record all relevant information in respect to incidents of unfair treatment as a result of the introduction of Work Choices, education and assistance on the above.

6.6 Overview of *Workplace Rights Advocate Act 2005* [Act Number 100/2005]

Submissions to this Inquiry in relation to the appointment of an independent "fair employment" or "workplace rights" advocate in Queensland, suggest a role similar to such a role currently performed in two states and one territory in Australia, particularly the role currently performed by the Workplace Rights Advocate (Victoria) (WRAV).

Accordingly, the Inquiry will examine the statutory duties and functions of the WRAV, and activities and initiatives undertaken by the WRAV since the office was created on 1 March 2006. Information set out below is taken largely from a submission to the Inquiry by the WRAV.

375 ibid p 10

376 AWU submission, p 8

6.6.1 Appointment of Workplace Rights Advocate (Victoria)

In response to Work Choices, the Victorian Government enacted the *Workplace Rights Advocate Act 2005* (Vic) (WRAA) which came into operation on 1 March 2006.

The purpose of the WRAA is as follows:

> *"The main purpose of this Act is to establish the Office of the Workplace Rights Advocate to provide information about, and promote and monitor the development of, fair industrial relations practices in Victoria.".*[377]

The WRAA provides for the appointment of a person as WRAV by the Governor in Council, for a term not exceeding 3 years, but eligible for appointment for a further term of up to 3 years[378]. Mr Tony Lawrence was appointed to the position of WRAV on 29 May 2006.

Section 8 of the WRAA provides for the employment of staff or the appointment of persons to assist the WRAV in the performance of his or her functions and the exercise of his or her powers.

6.6.2 Functions and powers of Workplace Rights Advocate (Victoria)

The functions and powers of the WRAV are set out in s. 5 of the WRAA, which relevantly provides:

"(1) The WRA [In the extracts of the WRAA, 'WRA' means Workplace Rights Advocate appointed under section 4']*[379] has the following functions -*

(a) to inform, educate and consult with Victorian workers, employers and their representatives about rights and responsibilities in relation to work-related matters;
(b) to facilitate and encourage the fair industrial treatment of workers in Victoria;
(c) to promote informed decision-making by Victorian workers and employers;
(d) to investigate illegal, unfair or otherwise inappropriate industrial relations practices in Victoria;
(e) to make representations to an appropriate person or body in relation to work-related matters;
(f) to monitor and report to the Minister and Parliament on industrial relations practices in Victoria;
(g) to investigate and report to the Minister on the impact of any aspect of the industrial relations arrangements affecting Victorian workers or employers;
(h) to advise the Minister generally about work-related matters;
(i) to advise the Minister on the operation of this Act;
(j) to request assistance or information from any public entity within the meaning of the Public Administration Act 2004 and provide information about work-related matters to any such entity at the request of the entity or when the WRA thinks appropriate;
(k) any other function conferred on him or her by or under this or any other Act.

(2) The WRA may carry out his or her functions and exercise his or her powers at the request of the Minister or of any other person or body or on his or her own motion.

(3) The WRA has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

(4) Without limiting sub-section (3), the WRA may intervene in a proceeding in any court at any time, despite any provision to the contrary made by or under any Act.

(5) The WRA is responsible to the Secretary to the Department of Innovation, Industry and Regional Development for the general conduct and management of the functions and activities of the WRA and must advise the Secretary in all matters relating to that conduct and management.".

377 s. 1 WRAA
378 s. 4 and s. 6 WRAA
379 s. 3 WRAA

The powers and functions of the WRAV under the WRAA can essentially be categorised as follows:

(i) providing information and education to employees and employers in Victoria;
(ii) facilitating and encouraging fair industrial treatment of employees in Victoria;
(iii) investigating illegal, unfair or otherwise inappropriate industrial relations practices in Victoria;
(iv) monitoring industrial relations practices in Victoria; and
(v) reporting on industrial relations practices in Victoria and on their impact to the Minister and Parliament.

The power of the WRAV specified in s. 5(1)(d) of the WRAA to "*investigate illegal, unfair or otherwise inappropriate industrial relations practices in Victoria*" is drawn in broad terms. It is not confined to the operation of Work Choices, but extends to industrial relations practices applying generally in Victoria.

The WRAV contrasts its wide investigation powers to that of the federal OWS on the basis that the WRAV has powers to investigate industrial relations practices that may be legal under Work Choices but are nonetheless unfair or otherwise appropriate, however, the focus of the OWS is solely upon the investigation of suspected illegality and possible prosecution of illegal practices under the WRAA.

Although the WRAV has power to intervene in proceedings, it does not have power to initiate legal proceedings, whether by way of enforcement or otherwise, or to provide legal representation to complainants.

Importantly, the WRAA also makes provision for the Governor in Council to make regulations relevant to the powers and functions of the WRAV.

Relevantly, s. 13 of the WRAA provides:

"(1) The Governor in Council may make regulations for or with respect to -
(a) the development and making by the WRA of codes of practice, whether mandatory or not, relating to recruiting workers or negotiation for, entering into or varying agreements dealing with matters pertaining to the relationship between an employer and worker;
(b) providing for a code referred to in paragraph (a) to apply, adopt or incorporate (with or without modification) a standard or other document prepared or published by a body specified in the code, as in force at a particular time or as in force from time to time;
(c) requiring employers to give information to the WRA and prescribing the content and manner of giving that information;
(d) prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
(2) The regulations -
(a) may be of general or limited application;
(b) may differ according to differences in time, place or circumstances;
(c) may impose a penalty, not exceeding 20 penalty units, for a contravention of the regulations;
(d) may confer a discretionary authority or impose a duty on a specified person or body or specified class of person or body.".

In addition, the WRAV has certain powers and functions under the *Public Sector Employment (Award Entitlements) Act 2006* (Vic) (PSEA). Under Part 3 of the PSEA, the WRAV must, in the context of a proposed public sector agreement, apply a prescribed fairness test (similar to the no-disadvantage test applied under the WRA prior to Work Choices) and make a determination as to whether the proposed agreement passes the test.

Pursuant to s. 11 of the WRAA, the WRAV is required to submit a report to the Minister for Industrial Relations relating to the operation and performance of the WRAV as if it were an annual report of operations under Part 7 of the *Financial Management Act 1994* (Vic). The Minister is required to lay this report before each House of the Victorian Parliament on or before 31 October each year.

Section 12 of the WRAV specifically prohibits victimisation of a worker or a person associated with a worker because the worker, or a person associated with the worker, has informed the WRAV of any matter or exercised a power or right under the WRAV.

6.6.3 Initiatives undertaken by Workplace Rights Advocate (Victoria)

Initiatives undertaken by the WRAV include the following:

6.6.3.1 Provision of information and education to employees and employers in Victoria

The WRAV has established the Workplace Rights Information Line (WRIL) which provides information to Victorian employees and employers about Work Choices in particular and industrial arrangements in Victoria in general. Amongst other things, the WRIL provides information to employees who are, or who may be, dealing with changes to their terms and conditions of employment as a result of Work Choices. For example, if an employee has been asked to sign a workplace agreement, the WRIL can provide a comparison of the employee's existing entitlements under the relevant federal award or agreement and what is being offered under the proposed workplace agreement or contract of employment. The WRIL can also provide information to employers about fair and cooperative industrial relations practices.

Subject to an individual's agreement, some matters raised in calls to the WRIL are referred to the WRAV for further consideration and investigation where appropriate.

The WRAV has also set up a web-site[380] which currently provides information about Work Choices via fact sheets, responses to frequently asked questions and brochures for employees and employers.

The WRAV has also conducted seminars across Victoria to inform and educate employees and employers about the application of Work Choices in Victoria, and how the WRAV may provide assistance with relevant issues.

6.6.3.2 Facilitation and encouragement of fair industrial treatment of employees in Victoria

Apart from facilitating and encouraging fair industrial treatment through provision of information and education, the WRAV has identified the potential to facilitate and encourage fair industrial treatment through avenues such as the development and implementation of:

(a) mandatory or voluntary codes of practice to remedy unfairness or inappropriateness in industrial relations practices in Victoria; and
(b) a formal recognition and accreditation program for Victorian employers who demonstrate a commitment to the maintenance of fair industrial relations practices in their workplaces.

The WRAV is not empowered to, and does not, directly represent employees in negotiations about their employment terms and conditions, nor advise employees to sign or not to sign workplace agreements.

The WRAV has referred cases of suspected illegality to relevant authorities for appropriate action.

380 www.workplacerights.vic.gov.au

6.6.3.3 Investigation of illegal, unfair or otherwise inappropriate industrial relations practices in Victoria

Cases investigated by the WRAV pursuant to s. 5(1)(d) of the WRAA include employer proposals for new workplace agreements which incorporated reduced terms and conditions of employment.

The practice of the WRAV is to provide a report detailing the WRAV's findings arising from an investigation.

6.6.3.4 Monitoring and reporting of industrial relations practices in Victoria

The WRAV collates, analyses and reports on data received through WRIL and other research.

RECOMMENDATIONS

The Inquiry recommends that:

Recommendation 1

The establishment by the Government of a separate statutory body similar to that of the Victorian Workplace Rights Advocate.

Recommendation 2

The statutory body provides advice and information to the public regarding the promotion of fair industrial relations practices.

Recommendation 3

The statutory body is required to raise and contribute to public awareness of fair, reasonable and appropriate workplace practices.

Recommendation 4

The statutory body provides a "one stop shop" for the gathering, recording, referral and dissemination of information concerning unfair, unreasonable and inappropriate work practices.

Recommendation 5

The statutory body provides a "networking" facility for the sharing and referral of matters to appropriate bodies.

Recommendation 6

The statutory body provides a mechanism for referring the complaints of individuals to a range of appropriate organisations, for example, Unions, the ADCQ and QWWS.

Recommendation 7

The statutory body makes representations on general issues relating to workplace matters to other relevant bodies, for example, the QIRC and/or the Australian Industrial Relations Commission (AIRC).

Recommendation 8

The statutory body is not empowered to, and will not, directly represent individual employees in proceedings/negotiations about their employment terms and conditions and should not be empowered to advise employees to sign or not to sign workplace agreements.

Recommendation 9

The statutory body refers matters to appropriate enforcement agencies.

Recommendation 10

The statutory body engages in research relating to industrial relations matters, and disseminates that research to relevant bodies.

Recommendation 11

The statutory body monitors and collects information about workers under subclass 457 visas and those who are adversely affected by programs such as Welfare to Work, and refers such issues to appropriate bodies.

Recommendation 12

The statutory body liaises with like statutory bodies in other states, and other relevant organisations, for the purpose of sharing information and where possible, resources.

Recommendation 13

The statutory body conducts a public information campaign which informs and educates employees and employers as to their rights under appropriate legislation and in the workplace.

Recommendation 14

The statutory body regularly monitors health and safety considerations in the workplace, and the impact of any changes since the commencement of Work Choices and other related regimes, on the health and safety of workers.

Recommendation 15

The statutory body regularly monitors the employment conditions of those vulnerable groups of workers identified in this Report.

Recommendation 16

The statutory body regularly reports to the relevant Government Minister upon all of these issues.

Appendices

APPENDIX 1

MINISTERIAL DIRECTIVE ISSUED 13 JUNE 2006

ATTACHMENT 2

DIRECTIVE UNDER SECTION 265(3)(b)

Pursuant to section 265(3)(b) of the *Industrial Relations Act 1999* (IR Act), I, Tom Barton, MP, Minister for Employment, Training and Industrial Relations and Minister for Sport, hereby direct the Queensland Industrial Relations Commission to hold an inquiry to examine the impact of the federal Government's Work Choices Amendments to the *Workplace Relations Act 1996* on Queensland workplaces, employees and employers.

The inquiry will commence as soon as practicable but at least within one month of the date of this directive.

In particular the Commission is to:

a. consider mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices; and
b. inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including:
   - the reduction in wages and conditions through Australian Workplace Agreements (AWAs) or other collective agreements;
   - discrimination, harassment or the denial of workplace rights; and
   - unfair dismissal or other forms of unfair or unlawful treatment of employees.
c. consider the investigations and outcomes of similar inquiries in other states and territories in terms of their relevance to Queensland;
d. recommend a process for:
   - facilitating the regular reporting and examination of incidents of unfair treatment as a result of the introduction of Work Choices; and
   - monitoring and reporting to the Minister, on a regular basis, on industrial relations practices under Work Choices including their impact on employees and employers.

To facilitate the inquiry the commission is to establish a process for:

- receiving and examining incident reports from individuals and organisations;
- undertaking workplace inspections, if considered necessary;
- identifying remedies or options for further action in respect of specific incidents;
- promoting the purpose of the inquiry through media outlets and regional visits;
- submitting regular reports on major trends and developments under Work Choices;

The Commission is to provide;

- an interim report and recommendations under section 265(4) of the IR Act within three (3) months of the commencement of the inquiry; and
- a final report and recommendations under section 265(4) of the IR Act within six (6) months of the commencement of the inquiry.

DATED this 13 day of June 2006

TOM BARTON MP
Minister for Employment, Training and Industrial Relations and Minister for Sport

APPENDIX 2

LEGISLATION

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 265 - commission's jurisdiction

265 Commission's jurisdiction

(3) The commission -

(a) may hold an inquiry into or about an industrial matter on application by an interested person or on its own initiative; and

(b) must hold an inquiry into or about an industrial matter if the Minister directs.

(4) The commission must report the result of the inquiry, and make recommendations, to the Minister.

APPENDIX 3

MINISTERIAL DIRECTIVE ISSUED 13 NOVEMBER 2006

Hon John Mickel MP
Member for Logan

Queensland Government

Minister for State Development,
Employment and Industrial Relations

Our Ref: PSIRP/1607

13 NOV 2006

Deputy President Swan
Queensland Industrial Relations Commission
GPO Box 373
BRISBANE QLD 4001

Dear Deputy President

Re: Inquiry into the Impact of Work Choices on Queensland workplaces, employees, and employees (INQ/2006/1)

I am writing to expand the terms of reference for the Inquiry and to extend the date for the final report of the Inquiry to be presented in order for the Commission to consider the outcomes and implications of the High Court challenge to Work Choices.

As you are aware, under the terms of the Directive issued on 13 June 2006 for this Inquiry to be held, the Commission is required to provide a final report and recommendations under section 265(4) of the *Industrial Relations Act 1999* within six months of the commencement of the Inquiry. However, given that a decision from the High Court on the constitutional challenge to Work Choices is yet to be handed down, and in light of the significance of this decision and its implications for Queensland workplaces, employers, and employees, it would be appropriate for the Inquiry to give consideration to the decision of the High Court as part of its terms of reference and to delay releasing its final report accordingly.

I therefore direct that:

1. the terms of reference for the Inquiry be extended to require the Commission to take into account the outcomes of the High Court decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees, and employers; and
2. the due date for the final report of the Inquiry be extended so that the final report is delivered within a reasonable time after the High Court hands down its decision, but no longer than two months after the decision.

Yours sincerely

JOHN MICKEL
Minister for State Development,
Employment and Industrial Relations

Level 12 Executive Building
100 George Street Brisbane
PO Box 15168 City East
Queensland 4002 Australia
Telephone +61 7 3224 4610
Facsimile +61 7 3224 4781
Email SDEIR@ministerial.qld.gov.au
ABN 65 959 415 158

APPENDIX 4

METROPOLITAN AND REGIONAL NEWSPAPER ADVERTISEMENTS

Queensland Industrial Relations Commission

Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers

The inquiry, set up under s. 265(3)(b) of the *Industrial Relations Act 1999* at the direction of the Minister for Employment, Training and Industrial Relations and Minister for Sport, Mr Tom Barton, will examine the impact of the federal Government's Work Choices Amendments to the *Workplace Relations Act 1996* on Queensland workplaces, employees and employers.

10am Friday 23 June Preliminary sitting of inquiry
Queensland Industrial Relations Commission
Level 13, Central Plaza 2, Cnr Creek & Elizabeth Sts, Brisbane.

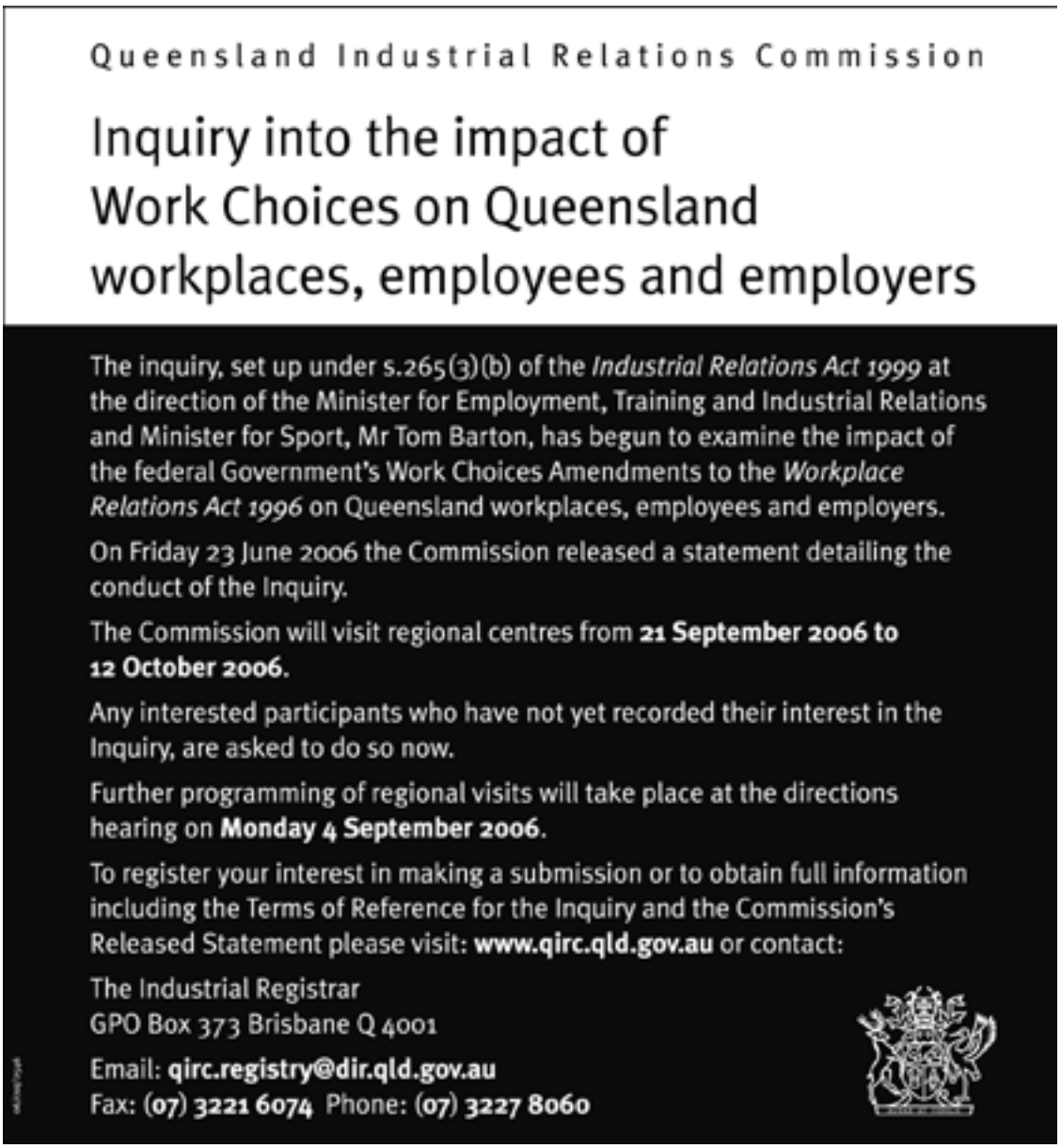
The inquiry will also visit regional and provincial centres throughout Queensland from July to October 2006. The inquiry will be finalised by 23 December 2006.

Employees, employers, organisations, community groups and other interested parties are invited to indicate their interest in the inquiry.

To register your interest please contact:
The Industrial Registrar
GPO Box 373, Brisbane Q 4001
Email: qirc.registry@dir.qld.gov.au
Fax: (07) 3221 6074 Phone: (07) 3227 8060

Further information and the Terms of Reference are available at: **www.qirc.qld.gov.au**

APPENDIX 4 (continued)



Queensland Industrial Relations Commission

Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers

The inquiry, set up under s.265(3)(b) of the *Industrial Relations Act 1999* at the direction of the Minister for Employment, Training and Industrial Relations and Minister for Sport, Mr Tom Barton, has begun to examine the impact of the federal Government's Work Choices Amendments to the *Workplace Relations Act 1996* on Queensland workplaces, employees and employers.

On Friday 23 June 2006 the Commission released a statement detailing the conduct of the Inquiry.

The Commission will visit regional centres from **21 September 2006 to 12 October 2006.**

Any interested participants who have not yet recorded their interest in the Inquiry, are asked to do so now.

Further programming of regional visits will take place at the directions hearing on **Monday 4 September 2006.**

To register your interest in making a submission or to obtain full information including the Terms of Reference for the Inquiry and the Commission's Released Statement please visit: **www.qirc.qld.gov.au** or contact:

The Industrial Registrar
GPO Box 373 Brisbane Q 4001

Email: **qirc.registry@dir.qld.gov.au**
Fax: **(07) 3221 6074** Phone: **(07) 3227 8060**

APPENDIX 5

INQUIRY WEB-SITE

Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers

Interim Report | Statement released | Timeline | Registration of Interest | Submissions & Affidavits | Locations | Transcripts

The Inquiry, set up under s. 265(3)(b) the *Industrial Relations Act 1999* at the direction of the Minister for Employment, Training and Industrial Relations and Minister for Sport, Mr Tom Barton, will examine the impact of the federal Government's Work Choices Amendments to the *Workplace Relations Act 1996* on Queensland workplaces, employees and employers.

Please click here to view related documents:

- **Terms of Reference**
- **Amended Terms of Reference (16 November 2006)**
- **Statement released** - The preliminary sitting of Inquiry was held 10am Friday 23 June 2006
- **List of registered parties**
- **Daily transcript of sittings**

Timeline

For logistical purposes, the Inquiry will be conducted according to the following schedule.

- For any other interested participants who have not yet recorded their interest in the Inquiry, they are requested to do so by **7 July 2006** to the Industrial Registry.
- For participants whose wish to be heard in Brisbane and who wish to express any concern about Work Choices, their statements of evidence and/or their submissions are to be filed by 4.00 p.m. on **Friday 21 July 2006**. Please click here for Directions regarding giving of evidence and/or the making of submissions.
- Further Directions Hearings will take place in Brisbane on **Tuesday 1 August 2006** and **4 September 2006** at 10.00 a.m. on each day.
- Evidence of those who wish to express a concern about Work Choices will be heard in Brisbane at 10.00 a.m. each day from **Monday 21 August 2006 to Friday 1 September 2006**. Please click here for a copy of the Directions Order setting out the timetable for Sittings.
- A directions hearing to schedule the second round of sittings in Brisbane for those participants with a positive or neutral view of Work Choices Legislation and for the receiving of final submissions from all participants, will be held before Deputy President Swan, Commissioner Asbury and Commissioner Thompson at Queensland Industrial Relations Commission, Level 13, Central Plaza 2, 66 Eagle Street, (corner Creek & Elizabeth Streets), Brisbane, on **Wednesday 20 September 2006** at sittings commencing at 10:00am. Further Directions Order regarding filing of evidence and/or submissions.
- The dates for the regional visits will be from **21 September 2006 to 12 October 2006**.
- Please click here for a copy of the Further Directions Order setting out the timetable for Regional Sittings.

- The Inquiry will continue in Brisbane on **Monday 16 October 2006** commencing at 10.00 a.m. for the purpose of hearing evidence from or the making of submissions by those participants who wish to express positive views of the Work Choices Legislation. The Inquiry will listen to such evidence/ submissions from **16 October 2006 until 30 October 2006**. Likewise, during that time slot, participants who wish to express a neutral view will be heard.
- On **Thursday 18 October 2006**, the Inquiry stated that any interested party wishing to give evidence in relation to issues surrounding Dartbridge Welding Pty Ltd and Kador Engineering engaging their employees utilising s.457 visa arrangements and any issues associated with employees wages and employment conditions is to notify the Industrial Registrar by 4:00pm **Friday 20 October 2006**. The timetable for the giving of evidence will be determined at a later date. Please click here for a copy of the Further Directions Order issued on 19 October 2006.
- All participants file in the Registry final submissions and/or recommendations by 4:00pm **Tuesday 7 November 2006** and a directions hearing to schedule the hearing of final submissions and/or recommendations from all participants be held on **Monday 13 November 2006** at sittings commencing at 10.00am. Please click here for a copy of the Further Directions Order issued on 31 October 2006.
- Those participants who wish to present final submissions and/or recommendations about Work Choices will be heard before Deputy President D.A. Swan, Commissioner I.C. Asbury and Commissioner J.M. Thompson at the Queensland Industrial Relations Commission, at Sittings from **Monday 20 November 2006** through to **Friday 24 November 2006**, in accordance with this Order.
- Please click here for a copy of the Further Directions Order setting out the timetable for final submissions sittings.
- On the 13 November 2006, Minister of Employment and Industrial Relations directed that the terms of reference be amended. Participants who wish to be heard in relation to the amended terms of reference are to file submissions in the Industrial Registry by **4.00pm** on **Monday 27 November 2006**.
- Please click here for directions relating to the amended Terms of Reference.

Please note: This schedule will be subject to change dependent on the progression of the Inquiry. Any changes will be notified to all participants who have registered an interest in the Inquiry and will be posted on the Inquiry's website, as soon as it becomes available.

Register your interest

Employees, employers, organisations, community groups and other interested parties are invited to indicate their interest in the Inquiry. Please click on the **Registration of Interest form** and return via email.

Or contact:
The Industrial Registrar
GPO Box 373
Brisbane Q 4001
Email: qirc.registry@dir.qld.gov.au
Fax: (07) 3221 6074
Phone: (07) 3227 8060

Submissions and Affidavits
Click here to view **Final Submissions** filed.
Click here to view **Submissions** filed.
Click here to view **Affidavits** filed.
Click here to view **Regional Affidavits** filed.

Participants who wish to make a statement and/or submission about Work Choices should forward such material by e-mail [qirc.registry@dir.qld.gov.au] or by Fax [07-32216074] or alternatively forward such material to the Industrial Registry.

All participants should indicate on their statement and/or submission **whether they are not agreeable** to having such statements of evidence and/or submission reproduced on the Inquiry's website. In light of this choice, because all statements/submissions may not be on the web site, such material may be viewed at the Industrial Registry.

Please click here for Directions regarding giving of evidence and/or the making of submissions.

Regional locations

The following is a revised list as of **5 September 2006** of the dates and towns where the Inquiry will be visiting:

DATE	CITY/TOWN	VENUE	TIME
Friday 22 September 2006	Toowoomba	Toowoomba Court House 159 Hume Street TOOWOOMBA QLD 4350	10.00am
Tuesday 26 September 2006	Hervey Bay	Witness(s) to give evidence in Bundaberg or to give telephone evidence to be heard from Brisbane	10.00am
Wednesday 27 September 2006 & Thursday 28 September 2006	Southport	Southport Court House Cnr Davenport & Hinze Streets SOUTHPORT QLD 4215	10.00am each day
Monday 2 October 2006	Cairns	Cairns Court House Sheridan Street CAIRNS QLD 4870	10.00am
Tuesday 3 October 2006	Townsville	Townsville Court House 31 Walker Street TOWNSVILLE QLD 4810	10.00am
Wednesday 4 October 2006	Mackay	Mackay Court House 67 Victoria Street MACKAY QLD 4740	10.00am
Thursday 5 October 2006	Rockhampton	Rockhampton Court House Cnr East & Fitzroy Street ROCKHAMPTON QLD 4700	11.00am
Friday 6 October 2006	Gladstone	Witness(s) to be heard in Rockhampton or to give telephone evidence to be heard from Brisbane	10.00am

Monday 9 October 2006	Bundaberg	Bundaberg Court House 44 Quay Street BUNDABERG QLD 4670	10.00am
Tuesday 10 October 2006	Caloundra	Caloundra Court House 3 Gregson Place CALOUNDRA QLD 4551	10.00am

If sufficient interest is identified in any other region, then the Inquiry will give due consideration to visiting such region. This decision will be subject to the submissions made by interested persons to the Inquiry.

APPENDIX 6

REGISTRATION OF INTEREST - NOTICE OF LISTING

Queensland Industrial Relations Commission

NOTICE OF LISTING

LISTING DETAILS

Matter Number:	INQ/2006/1
Matter Details:	S265(3)B - Inquiry into industrial matter QIRC inquiry to examine the impact of the federal Government's Work Choices Amendments to the Workplace Relations Act 1996 on Queensland workplaces, employees and employers
Listing Type:	Preliminary Sitting
Listing Time:	10:00 AM
Listing Date:	23 June 2006
Listing Location:	Queensland Industrial Relations Commission, Level 13 66 Eagle Street Brisbane Qld, 4000
Member:	Deputy President Swan, Commissioner Asbury, Commissioner Thompson

ALL PARTIES NOTIFIED OF THE MATTER

Registered Industrial Organisations of Employers
Registered Industrial Organisations of Employees
Attached Organisations

ADDITIONAL LISTING INFORMATION

ANY ENQUIRIES REGARDING THIS NOTICE SHOULD BE DIRECTED TO AARON CLARK ON (07) 3227 8782

G.D. Savill,
Industrial Registrar.
15 June 2006

Industrial Registry, 18th Floor, Central Plaza 2
66 Eagle Street, (Corner Elizabeth and Creek Streets), BRISBANE QLD 4000
Postal Address: GPO Box 373, BRISBANE QLD 4001
General Enquiries: (07) 3227 8060 Facsimile: (07) 3221 6074 www.qirc.qld.gov.au

APPENDIX 7

REGISTRATION OF INTEREST

Queensland Industrial Relations Commission

Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers

REGISTRATION OF INTEREST		
Name		
Organisation (if applicable)		
Mailing Address		
Telephone Number		
Facsimile Number		
Email address		
Level of participation:		
I/we would like to provide evidence to the inquiry	Yes *	No *
I/we would like to make a submission to the inquiry	Yes *	No *
I/we would like to receive notices of inquiry proceedings	Yes *	No *
Would you like the inquiry to visit a particular town/city [This will be dependent upon the level of interest in that town/city]	Yes *	No *
I would like the inquiry to visit the following town/city:		

If you would like to make further comments, please do so.
Comments

_____

_____

_____

Please return this form by fax to **07 3221 6074**

APPENDIX 8

STATEMENT 1 FROM THE INQUIRY RELEASED 23 JUNE 2006

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 265 - commission's jurisdiction

INQUIRY INTO THE IMPACT OF WORK CHOICES ON QUEENSLAND WORKPLACES, EMPLOYEES AND EMPLOYERS (INQ/2006/1)

DEPUTY PRESIDENT SWAN
COMMISSIONERS ASBURY AND THOMPSON 23 June 2006

STATEMENT

By a direction dated 13 June 2006, pursuant to s. 265(3)(b) of the *Industrial Relations Act 1999*, the Minister for Employment, Training and Industrial Relations and Minister for Sport directed the Queensland Industrial Relations Commission to conduct an inquiry to examine the impact of the federal Government's Work Choices amendments to the Commonwealth *Workplace Relations Act 1996*. A copy of this document is Exhibit 1.

The Inquiry given the task of complying with the Minister's direction comprises Deputy President Swan and Commissioners Asbury and Thompson. Commissioner Thompson is unavoidably absent today. The Inquiry is being conducted pursuant to the *Industrial Relations Act 1999* and it will be conducted in accordance with the Commission's normal practices.

Notification of the Inquiry was advertised in the Courier Mail of Wednesday 21 June 2006 and a web-site has also been established with a link from the Commission's home page [www.qirc.qld.gov.au]. A copy of this advertisement is Exhibit 2.

We would now call upon all those who wish to participate in this Inquiry (in whatever form) to announce their appearances.

In the Courier Mail advertisement a wide cross section of the community was invited to register their interest in the Inquiry. Interested persons will, naturally, have a view of the legislation and its impact. If they wish the Inquiry to consider that view, it will be necessary for them to attend and give the Inquiry such relevant information as they may have. We expect a wide range of perspectives about the impact of Work Choices and these will realistically include comments from those positive to Work Choices legislation, those holding negative views about it and those who simply wish to express a more general perspective.

It is expected that employer and employee organisations will place material before the Inquiry saying how the Work Choices legislation has impacted on their members. Also, individual members of society, perhaps those who are not members of either an employer or employee organisation, may wish to tell of their experiences. These people are welcome to contact the Industrial Registry in accordance with the advertisement and arrangements will be made for appropriate assistance to be given to them. The assistance could involve the preparation of statements and the presentation of evidence.

Should a prospective witness not wish to be identified, mechanisms exist for the protection of that person's identity. The Inquiry will consider applications for evidence to be given *in* "*camera*" and for the suppression of identifying details. Such persons should contact the Industrial Registry who will make the necessary arrangements.

It is expected that statistical data and reports will be received from a range of sources.

Community groups, including church groups, will be another source of information pertinent to the terms of reference of the Inquiry.

For completeness, the Commission will access relevant academic circles for the benefit of the conclusions reached by those who have made a study of the issues with which this Inquiry is concerned.

The Commission's charter is to examine the impact of the federal legislation.

This is exclusively a fact finding exercise. The Commission is entirely independent and will report on the facts as they are presented to the Inquiry. The Commission is not concerned with the many controversies surrounding this legislation except to the extent that aspects of them may be relevant to the matters into which the Commission is to enquire.

Any person wishing to make a submission to the Inquiry or to give evidence will submit a statement of that evidence to the Industrial Registry by the date stipulated. Where natural justice requires it, or where the Inquiry considers it desirable, copies of such statements of evidence may be distributed to persons with an interest in the details of the statements.

> **Note:** The Inquiry does not wish to categorise participants, however, for logistical purposes some general categorisation is required if all participants are to be heard within reasonable timeframes.

For logistical purposes, the Inquiry will be conducted according to the following schedule:

- For any other interested participants who have not yet recorded their interest in the Inquiry, they are requested to do so by 7 July 2006 to the Industrial Registry.
- For participants who wish to be heard in Brisbane and who wish to express any concern about Work Choices, their statements of evidence and/or their submissions are to be filed by 4.00 p.m. on Friday 21 July 2006. It would be preferable to forward such material by e-mail [qirc.registry@dir.qld.gov.au] or by Fax [07-3221 6074] or alternatively forward such material to the Industrial Registry.
- Evidence may be taken "*in camera*".
- All participants at this stage can indicate on their statement and/or submission whether they are not agreeable to having such statements of evidence and/or submissions reproduced on the Inquiry's web-site [www.qirc.qld.gov.au].
- In light of this choice, because all statements/submissions may not be on the web-site, such material may be viewed at the Industrial Registry.
- **Further Directions Hearings** will take place in Brisbane on Thursday 27 July 2006 and 4 September 2006 at 10.00 a.m. on each day.
- Evidence of those who wish to express a concern about Work Choices will be heard in Brisbane at 10.00 a.m. each day from Monday 21 August 2006 to Friday 1 September 2006.
- Those who wish to express a positive view of the Work Choices legislation will be heard in Brisbane after the Inquiry has visited regional areas.
- When the Inquiry visits regional areas, then all participants of all persuasions will be heard during the time allocated for each regional area.
- The following is a list of the towns and regions where the Inquiry envisages participants may wish to be heard:
  - Brisbane
  - Cairns
  - Townsville

- Mt Isa
- Mackay
- Emerald
- Rockhampton
- Maryborough/Hervey Bay
- Bundaberg
- Gladstone
- Sunshine Coast
- Gold Coast
- Toowoomba
- Roma

The locations indicated will be subject to change dependent upon the level of interest in such areas. If sufficient interest is identified in any other region, then the Inquiry will give due consideration to visiting such region. This decision will be subject to the submissions made by interested persons to the Inquiry.

When a clearer picture emerges with regard to the location of Inquiry sittings outside of Brisbane, a schedule of those locations, with appropriate dates, will be made available to all interested persons.

The dates for the regional visits will be from 21 September 2006 to 12 October 2006.

The Inquiry will continue in Brisbane on Monday 16 October 2006 commencing at 10.00 a.m. for the purpose of hearing evidence from or the making of submissions by those participants who wish to express positive views of the Work Choices legislation. The Inquiry will listen to such evidence/submissions from 16 October 2006 until 30 October 2006. Likewise, during that time slot, participants who wish to express a neutral view will be heard.

Similar processes will be available to these participants as were made available to all other participants.

We remind all participants that this schedule will be subject to change dependent on the progression of the Inquiry.

Any changes will be notified to all participants who have registered an interest in the Inquiry and will be posted on the Inquiry's web-site.

All participants and those interested in the Inquiry should refer to the Inquiry's web-site for on-going information.

D.A. SWAN, Deputy President

I.C. ASBURY, Commissioner

J.M. THOMPSON, Commissioner

APPENDIX 9

STATEMENT 2 FROM THE INQUIRY RELEASED 10 JULY 2006

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 265 - commission's jurisdiction

INQUIRY INTO THE IMPACT OF WORK CHOICES ON QUEENSLAND WORKPLACES, EMPLOYEES AND EMPLOYERS (INQ/2006/1)

DEPUTY PRESIDENT SWAN
COMMISSIONERS ASBURY AND THOMPSON 10 July 2006

DIRECTIONS

RELATING TO THE GIVING OF EVIDENCE AND/OR THE MAKING OF A SUBMISSION

This direction relates to the giving of evidence and/or the making of submissions (as referred to in our Statement dated 23 June 2006).

It is the preference of the Inquiry that evidence be given in the following form, save for **"special circumstances":**

An interested participant wishing to give evidence to the Inquiry shall:

- submit their evidence to the Inquiry in affidavit form;
- personally attend the Inquiry;
- may give their evidence "*in camera*";
- will not be cross-examined by any party;
- may be asked questions by Inquiry members.

In **"special circumstances"** an interested participant may give their evidence to the Inquiry without the requirement to submit an affidavit.

In **"special circumstances"** (e.g. where an interested participant lives in an area not to be visited by the Inquiry) an interested participant may give their evidence via the telephone.

An interested participant wishing to make submissions to the Inquiry shall:

- make written submissions.

In **"special circumstances"** an interested participant may make their submissions orally.

Where a witness identifies another employer/employee, then that employer/employee may also give evidence or make submissions to the Inquiry within the same guidelines.

We reiterate to interested participants the comments made in our Statement of 23 June 2006 that:

"All participants at this stage can indicate on their statement and/or submission whether they are not agreeable to having such statements of evidence and/or submissions reproduced on the Inquiry's web-site [www.qirc.qld.gov.au].

In light of this choice, because all statements/submissions may not be on the web-site, such material may be viewed at the Industrial Registry.".

This statement applies to all statements/submissions other than "*in camera*" material.

"Special circumstances" will be considered by the Inquiry as and when they arise. These could include the situation where an interested participant is unable to provide an affidavit through an inability to acquire appropriate assistance in creating such a document or where distance and convenience prevent the interested participant in attending personally at the Inquiry. In such cases, telephone evidence/ submissions may be made. These are examples only and the Inquiry will hear the views of interested participants whenever such issues arise.

To facilitate participants who may not be able to attend the Inquiry during normal sitting hours (10.00 a.m. to 4.15 p.m. on each sitting day), the Inquiry will give consideration to expanding such hours in special circumstances. Prior notice of at least 48 hours should be given to the Inquiry of this requirement.

D.A. SWAN, Deputy President

I.C. ASBURY, Commissioner

J.M. THOMPSON, Commissioner

APPENDIX 10

STATEMENT 3 FROM THE INQUIRY RELEASED 1 AUGUST 2006

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s. 265 - commission's jurisdiction

INQUIRY INTO THE IMPACT OF WORK CHOICES ON QUEENSLAND WORKPLACES, EMPLOYEES AND EMPLOYERS (INQ/2006/1)

DEPUTY PRESIDENT SWAN
COMMISSIONERS ASBURY AND THOMPSON 1 August 2006

DIRECTIONS

These directions relate:

(1) only to the hearing of evidence and/or submissions to be made in Brisbane from Monday 21 August 2006 to Friday 1 September 2006; and
(2) only to those participants who wish to express any concern about Work Choices.

After today's further directions hearing, a formal Directions Order will be issued by the Inquiry on Friday 4 August 2006.

What we will do today is flag our proposed agenda for the Brisbane hearings - but the formal Directions Order will not issue until Friday 4 August 2006.

Because participants may not receive the Court transcript prior to that date, each participant will be provided today with a brief summary of times and dates and a check list from which to work.

Before we do that, we raise the following matters:

- In accordance with the Statement issued by the Inquiry on 23 June 2006, the date for the receipt of affidavits and/or submissions for the initial Brisbane sittings was 21 July 2006; and
- A significant number of affidavits and submissions have been received by the Inquiry in relation to the initial Brisbane sittings. Unless otherwise indicated by participants, these affidavits and submissions will be available on the Inquiry web-site.

Some participants have asked for, and been granted, extra time in which to submit their affidavits and submissions for these sittings. All participants are afforded this extra time.

Some participants have determined to give their evidence "*in camera*". This process will be facilitated by the Registry and a particular day will be set aside for the giving of such evidence before the Inquiry.

At this point in time, there are a considerable number of witnesses who will give evidence before the Inquiry during the initial Brisbane sittings. However, it is expected that this number will increase when all affidavits have been received.

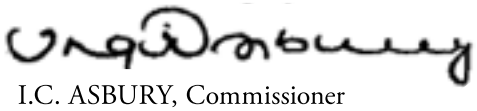
It may eventuate that other employees/employers who have been mentioned in the affidavits (other than "*in camera*" evidence) may wish to submit an affidavit and/or submissions to the Inquiry, and arrangements will be made for that to occur during the second Brisbane sittings to be held from 16 October 2006 to 30 October 2006 inclusive.

There have been 10 days set aside for the initial Brisbane sittings (21 August 2006 to 1 September 2006 inclusive).

Time will also be set aside during that time frame for the initial Brisbane sittings for participants submissions to be read. These submissions will also be reproduced on the Inquiry web-site.

The course of proceedings we now propose for the first Brisbane sitting is now flagged only and we are open to suggestions from any participant as to whether a different course should be adopted.

D.A. SWAN, Deputy President



I.C. ASBURY, Commissioner

J.M. THOMPSON, Commissioner

APPENDIX 10 (continued)

DIRECTIONS ORDER ISSUED 4 AUGUST 2006

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 – s.265(3)(b) – Inquiry into industrial matter

INQUIRY TO EXAMINE THE IMPACT OF THE FEDERAL GOVERNMENT'S WORK CHOICES AMENDMENTS TO THE WORKPLACE RELATIONS ACT 1996 ON QUEENSLAND WORKPLACES, EMPLOYEES AND EMPLOYERS (INQ/2006/1)

DIRECTIONS ORDER

FURTHER to the directions hearing before the Inquiry in the above matter on Tuesday 1 August 2006, IT IS ORDERED:

1. That those participants who wish to express any concern about Work Choices will be heard before Deputy President D.A. Swan, Commissioner I.C. Asbury and Commissioner J.M. Thompson at the Queensland Industrial Relations Commission, Level 13, Central Plaza 2, 66 Eagle Street, (Cnr Elizabeth and Creek Streets), Brisbane, at Sittings from Monday 21 August 2006 through to Friday 1 September 2006, in accordance with this Order.

2. That those participants who wish to **make submissions** expressing any concern about Work Choices will be heard at Sittings **commencing on Monday 21 August 2006 through to Thursday 24 August 2006**, commencing at 10:00 a.m. and finishing at 4:15 p.m. each day.

3. That those participants who wish to **give evidence** in relation to any concern about Work Choices will be heard at Sittings commencing in accordance with the following schedule:

Monday 28 August 2006

10:00 a.m. Department of Industrial Relations

Tuesday 29 August 2006

10:00 a.m. Department of Industrial Relations
2:00 p.m. Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees

Wednesday 30 August 2006

10:00 a.m. The Electrical Trades Union of Employees Queensland
2:00 p.m. The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland

Thursday 31 August 2006

10:00 a.m. Queensland Services, Industrial Union of Employees
11:00 a.m. Queensland Working Women's Service
12:00 p.m. Young Workers Advisory Service
2:00 p.m. Queensland Council of Social Services
3:00 p.m. Department of Employment and Training
5:00 p.m. to 7:00 p.m. Witness evidence outside of normal hours

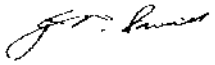
4. That those participants who require **additional time for further direct evidence or further submissions** will be heard at Sittings commencing at 10:00 a.m. on **Friday 1 September 2006.**

5. The Principal Registry Officer serve by facsimile a copy of this Order on all participants who have expressed an interest in this Inquiry.

6. That the Industrial Registrar post a copy of this Order on the Commission's website at: www.qirc.qld.gov.au.

7. That any other Directions stand over.

Dated 4 August 2006.



G. Savill
Industrial Registrar

APPENDIX 11

STATEMENT 4 FROM THE INQUIRY RELEASED 24 AUGUST 2006

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1999 - s.265(3)(b) - Inquiry into industrial matter

INQUIRY TO EXAMINE THE IMPACT OF THE FEDERAL GOVERNMENT'S WORK CHOICES AMENDMENTS TO THE WORKPLACE RELATIONS ACT 1996 ON QUEENSLAND WORKPLACES, EMPLOYEES AND EMPLOYERS (INQ/2006/1)

DEPUTY PRESIDENT SWAN
COMMISSIONER ASBURY
COMMISSIONER THOMPSON

24 August 2006

STATEMENT

The Directive under section 265(3)(b) states, *inter alia*, that:

"*to facilitate the inquiry the commission is to establish a process for:*

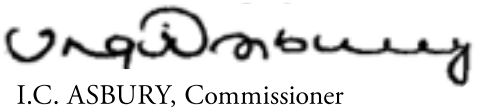
...

undertaking workplace inspections, if considered necessary …".

The Inquiry advises all participants that if any workplace inspections are requested, the Inquiry will give due consideration to such request. As well, the Inquiry may, at any stage, instigate workplace inspections as it sees fit.

If participants wish to respond to these matters and put specific requests to the Inquiry, then they may do so at the next Directions Hearing to be held on 4 September 2006.

D.A. SWAN, Deputy President



I.C. ASBURY, Commissioner

J.M. THOMPSON, Commissioner

APPENDIX 12

SCHEDULE OF REGIONAL HEARINGS

Date	Regional Venue	Commencement of Sittings
Thursday, 21 September 2006	Roma Court House, 141 McDowall Street ROMA QLD 4455	10.00 a.m.
Friday, 22 September 2006	Toowoomba Court House, 159 Hume Street TOOWOOMBA QLD 4350	10.00 a.m.
Monday, 25 September 2006	Emerald Court House, Egerton Street EMERALD QLD 4720	9.00 a.m.
Tuesday, 26 September 2006	Hervey Bay Court House, Freshwater Street HERVEY BAY QLD 4655	10.00 a.m.
Wednesday, 27 September 2006 Thursday, 28 September 2006 Friday, 29 September 2006	Southport Court House Cnr Davenport & Hinze Streets SOUTHPORT QLD 4215	10.00 a.m. each day
Monday, 2 October 2006	Cairns Court House, Sheridan Street CAIRNS QLD 4870	10.00 a.m.
Tuesday, 3 October 2006	Townsville Court House, 1 Walker Street TOWNSVILLE QLD 4810	10.00 a.m.
Wednesday, 4 October 2006	Mackay Court House, 67 Victoria Street MACKAY QLD 4740	10.00 a.m.
Thursday, 5 October 2006	Rockhampton Court House Cnr East & Fitzroy Street ROCKHAMPTON QLD 4700	11.00 a.m.
Friday, 6 October 2006	Gladstone Court House, 14 Yarroon Street GLADSTONE QLD 4680	10.00 a.m.
Monday, 9 October 2006	Bundaberg Court House, 44 Quay Street BUNDABERG QLD 4670	10.00 a.m.
Tuesday, 10 October 2006 Wednesday, 11 October 2006	Caloundra Court House, 92 Bulcock Street CALOUNDRA QLD 4551	10.00 a.m. each day
Thursday, 12 October 2006	Mt Isa Court House, Isa Street MT ISA QLD 4825	1.00 p.m.

APPENDIX 13

FINAL SCHEDULE OF REGIONAL HEARINGS

Date	Regional Venue	Commencement of Sittings
Friday 22 September 2006	Toowoomba Court House 159 Hume Street TOOWOOMBA QLD 4350	10.00 a.m.
Wednesday 27 September 2006 Thursday 28 September 2006	Southport Court House Cnr Davenport & Hinze Streets SOUTHPORT QLD 4215	10.00 a.m. each day
Monday 2 October 2006	Cairns Court House Sheridan Street CAIRNS QLD 4870	10.00 a.m.
Tuesday 3 October 2006	Townsville Court House 31 Walker Street TOWNSVILLE QLD 4810	10.00 a.m.
Wednesday 4 October 2006	Mackay Court House 67 Victoria Street MACKAY QLD 4740	10.00 a.m.
Thursday 5 October 2006	Rockhampton Court House Cnr East & Fitzroy Street ROCKHAMPTON QLD 4700	11.00 a.m.
Monday 9 October 2006	Bundaberg Court House 44 Quay Street BUNDABERG QLD 4670	10.00 a.m.
Tuesday 10 October 2006	Caloundra Court House 3 Gregson Place CALOUNDRA QLD 4551	10.00 a.m.

APPENDIX 14

LIST OF SUBMISSIONS

Interim Submissions

- The Australian Workers' Union of Employees, Queensland
- Department of Employment and Training
- Queensland Council of Unions
- Queensland Government
- Queensland Teachers Union of Employees
- Textile, Clothing and Footwear Union of Australia, Queensland Branch, Union of Employees
- Welfare Rights Centre
- Young Workers Advisory Service

Further Interim Submissions

- Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
- The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
- Department of Industrial Relations (Public Sector Industrial and Employee Relations Division)
- The Electrical Trades Union of Employees Queensland
- Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees
- Transport Workers' Union of Australia, Union of Employees (Queensland Branch)

Other Interim Submissions

- Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
- The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
- Department of Industrial Relations (Public Sector Industrial and Employee Relations Division)
- The Electrical Trades Union of Employees Queensland
- Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees
- Transport Workers' Union of Australia, Union of Employees (Queensland Branch)
- Dymock, Bruce

Research Papers

- Professor Russell Lansbury Submission/Research Papers
  - Rethinking Employment Relations After WorkChoices
  - Workchoices: Myth Making at Work by Bradon Ellem, Marian Baird, Rae Cooper, Russell Lansbury
- Wayne Swan MP, Shadow Treasurer, Member for Lilley
  - Copy of OECD Employment Outlook 2006 (Chapter 7 - Reassessing the Role of Policies and Institutions for Labour Market Performance: A Quantitative Analysis)

Submissions

- Abigroup
- Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland (Re: Dartbridge)
- Civdec Constructions
- John Della Bosca MLC NSW
- Local Government Association of Queensland (Incorporated)

- Phillips Fox
- Queensland Council of Unions (Re: Dartbridge)
- Queensland Anti Discrimination Commission
- The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers
- Workplace Rights Advocate Victoria
- Australian Industry Group, Industrial Organisation of Employers (Queensland) (Re: Dartbridge)

Final Submissions

- The Australian Workers' Union of Employees, Queensland
- Queensland Council of Unions
- Queensland Government (including supplementary submissions in response to Phillips Fox)
- Phillips Fox
- Professor Michael Quinlan, School of Organisation and Management, University of New South Wales
- The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers
- Dr Gillian Whitehouse, School of Political Science & International Studies, University of Queensland
- Professor David Peetz, Griffith Business School, Griffith University
- Queensland Council of Social Services
- Queensland Services, Industrial Union of Employees

APPENDIX 15

LIST OF APPEARANCES

Organisation	Date	Appearance
Minister for Industrial Relations	23/06/06 01/08/06 21/08/06 19/10/06 13/11/06 20/11/06 29/11/06	Mr T. Shipstone & Mr D. Matley Mr T. Shipstone
Department of Industrial Relations	23/06/06 01/08/06 04/09/06 20/09/06 22/09/06 27/09/06 28/09/06 02/10/06 04/10/06 05/10/06 10/10/06 12/10/06 18/10/06 19/10/06 24/10/06 13/11/06	Mr B. Feldman
Queensland Council of Unions	23/06/06 01/08/06 21/08/09 31/08/06 04/09/06 20/09/06 22/09/06 28/09/06 02/10/06 03/10/06 05/10/06 09/10/06 10/10/06 12/10/06 19/10/06 13/11/06 20/11/06 29/11/06	Ms G. Grace Ms D. Ralston Mr B. Crotty Ms D. Ralston Ms D. Forsyth Mr W. Giordani Ms G. Ross Ms V. Smyth (of QNU) Ms D. Ralston Ms A. Threlfall Ms D. Ralston

Organisation	Date	Appearance
The Australian Workers Union of Employees, Queensland	23/06/06 01/08/06 21/08/06 28/08/06 04/09/06 20/09/06 22/09/06 02/10/06 03/10/06 09/10/06 10/10/06 12/10/06 24/10/06 13/11/06 21/11/06 29/11/06	Mr P. Eldon Mr D. Broanda Ms S. Schinnerl Mr P. Eldon Ms T. Sharpe Mr E. Brischke Mr R. Stockham Mr K. Ballin Ms M. Duffy Mr P. Eldon Mr D. Broanda Mr P. Eldon
Livingstones Australia (for Australian Community Services Employers Association)	23/06/06	Mr L.E. Moloney
Anti-Discrimination Commission (Queensland)	23/06/06	Mr P. Guilfoyle
Agforce Queensland, Industrial Union of Employers	23/06/06	Mr W. Turner
Carne Reidy Herd (for Australian Institute of Employment Rights)	23/06/06 01/08/06	Mr S. Reidy Mr D. Quinn
Australian Industry Group (Queensland) Branch	23/06/06 13/11/06	Mr D. Hargraves Ms S. Stubbings
Automotive, Metals, Engineering and Printing and Kindred Industries Industrial Union of Employees, Queensland	23/06/06 24/08/06 19/10/06	Mr E. Moorhead Ms K. Allen
Australasian Meat Industry Union of Employees	23/06/06	Mr C. Buckley
Australian Mines and Metals Association	23/06/06	Ms K. De Lange
Australian Sugar Milling Association, Queensland, Union of Employers	23/06/06 01/08/06	Mr P. Warren
Jones Ross (for Building Service Contractors Association of Australia, Queensland Division, Industrial Organisation of Employers)	23/06/06	Mr C. Pollard
Construction, Forestry, Mining and Energy Union and Federated Engine Drivers and Firemens' Association of Queensland	23/06/06 22/08/06 01/08/06 30/08/06	Mr J. Stein Ms M. Kiely Mr J. Stein
Department of Employment and Training	01/08/06 21/08/06 04/09/06 20/09/06	Mr R. McColm Mr K. Krebs Mr R. McColm
The Electrical Trades Union of Employees, Queensland	24/08/06 30/08/06	Ms K. Inglis

Organisation	Date	Appearance
Hall Payne Lawyers	23/06/06	Ms T. Butler
Local Government Association of Queensland	23/06/06 01/08/06 20/09/06	Mr T. Goode Mr K. Ryalls & Mr R. Clough Mr K. Ryalls
Liquor, Hospitality and Miscellaneous Union of Queensland Branch, Union of Employees	23/06/06 01/08/06 12/10/06	Ms A.J. Threlfall
Phillips Fox Solicitors	04/09/06 12/10/06 13/11/06	Mr P. Cousins Mr A. Collins
Prior and Associates	23/06/06	Ms K. Prior
Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers and Queensland Road Transport Association Industrial Organisation of Employers	23/06/06	Mr S. Pawlowski
Queensland Council of Social Services	06/12/06	Ms M. Robertson
Queensland Hotels Association Union of Employers	23/06/06	Mr J. Moore
Queensland Independent Education Union of Employees	31/08/06	Ms S. Ismail
Queensland Motel Employers Association, Industrial Organisation of Employers	23/06/06	Ms C. Beavis
Queensland Nurses Union of Employees	23/06/06	Ms G. McCaul
Queensland Services, Industrial Union of Employees	23/06/06 06/12/06	Ms M. Robertson Ms K. Nelson
Queensland Teachers Union of Employees	23/06/06 24/08/06 13/11/06	Mr K. Bates
Queensland University of Technology	23/06/06	Dr P. McDonald
Queensland Working Women's Service	23/06/06	Ms K. Dear
The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	23/06/06	Mr K.J. Law
The Registered and Licensed Clubs Association of Queensland, Union of Employers	23/06/06	Mr J. Mitchell
Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	23/06/06 22/08/06	Ms P. Town Mr D. Gaffey
Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees	22/08/06	Mr J. Morel

Organisation	Date	Appearance
Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	22/08/06	Mr H. Williams
Welfare Rights Centre	01/08/06 25/08/06	Ms A. Tu Ms G. Middleton
Young Workers Advisory Service	23/06/06 01/08/06	Mr A. Allegretto

Other:

- Ms K. Garner, Counsel.
- Professor M. Quinlan, School of Organisation and Management, University of New South Wales - 23/11/06.
- Dr G. Whitehouse, School of Political Science & International Studies, University of Queensland – 06/12/06.
- Professor D. Peetz, Griffith Business School, Griffith University – 06/12/06.

APPENDIX 16

LIST OF WITNESSES

Date	Name	Details (Position/Previously held Position)	Location
25 August 2006	Mr Michael Ravbar	Assistant State Secretary, CFMEU	Brisbane
28 August 2006	Mr Robert Campbell	Sales Contractor	Brisbane
	Mr Sterling Crossingham	Builder	Brisbane
	Ms Jill Lang	QCOSS	Brisbane
	Mr Ronald Southwell	Cook/Kitchen hand	Brisbane
29 August 2006	Ms Therese Rybarczyk	Administration Manager	Brisbane
	Mr Paul Crowther	Managing Director, The Image Group (AUST) Pty Ltd	Brisbane
	Mr Richard Heslop	Factory Hand	Brisbane
	Mr Murray Hammond	Master/Engineer	Brisbane
	Ms Marja-Riitta Munro	Counter hand, Airport Retail Enterprises Pty Ltd	Brisbane
	Mr Damien Davie	Organiser, LHMU	Brisbane
	Ms Leonie Wong	Junior Shop Assistant	Brisbane
	Ms Viki Westerberg	Domestic	Brisbane
	Mr Wayne Jurd	Process Worker	Brisbane
	Ms Tessa Barker	Assistant Child Care Worker	Brisbane

Date	Name	Details (Position/Previously held Position)	Location
30 August 2006	Mr James Newman	Electrician	Mackay
	Mr Allen Hicks	Organiser, ETU	Brisbane
	Mr Shane King	Substation Trade Technician	Brisbane
	Mr Peter Simpson	Assistant State Secretary, ETU	Brisbane
	Mr Peter Close	Assistant State Secretary, CFMEU	Brisbane
	Name Suppressed	Building Industry	Brisbane
	Name Suppressed	Senior Technician	Brisbane
	Name Suppressed	Research Co-ordinator	Brisbane
31 August 2006	Ms Michelle Robertson	Advocate, Queensland Services, Industrial Union of Employees	Brisbane
	Mr Aaron Allegretto	Co-ordinator, QWWS and YWAS	Brisbane
	Name Suppressed	Teachers Assistant	Brisbane
	Ms Sophie Ismail	Industrial Services Officer, QIEU	Brisbane
	Name Suppressed	State Manager	Brisbane
	Name Suppressed	Filing Clerk	Brisbane
	Name Suppressed	Civil Engineer	Brisbane
	Mr Darren Galetti	Truck Driver	Brisbane
	Mr Dean Groves	Driller's Offsider	Brisbane
22 September 2006	Mr Shane Linton	Farm Labourer	Stanthorpe
	Mr Timothy Sullivan	Western District Secretary, AWU	Charleville
	Name Suppressed	Administration Officer	Jandowae
	Ms Monique Duff	Bar maid/waitress	Dalby
27 September 2006	Name Suppressed	Interstate Truck Driver	Gold Coast
	Mr Jai Williams	Spray painter	Gold Coast
	Name Suppressed	Personal Assistant/Secretary	Gold Coast
28 September 2006	Ms Catriena Tesoriero	Receptionist	Brisbane
	Ms Avril Bruning	Residential Property Manager	Brisbane

Date	Name	Details (Position/Previously held Position)	Location
2 October 2006	Mr Ian Peddey	Truck Driver	Cairns
3 October 2006	Mr Daryl Harrison	Organiser, AWU	Mt Isa
	Mr Kevin Brown	Labourer	Townsville
	Ms Ann Hiscox	Assistant Manager	Ayr
4 October 2006	Mr Lance Allan	Carpet Cleaner	Mackay
5 October 2006	Name Suppressed	Plant Operator	Moura
9 October 2006	Mr Keith Ballin	Central District Secretary, AWU	Bundaberg
	Mr Christopher Penny	Security Screen Assembler	Bundaberg
	Mr David Bunyoung	Counter Officer	Bundaberg
	Mr Geoffrey Hills	Mining Auto Electrician	Bargara
10 October 2006	Mr Robert Calman	Horticulturalist	Woombye
	Ms Mandy Walker	Office/Retail Administration Manager	Kilcoy
	Mr Allan Hawken	Engineering Technologist	Toowoomba
18 October 2006	Name Suppressed	Administration Manager	Sunshine Coast
	Name Suppressed	Shop Assistant	Bundaberg
	Name Suppressed	Travel Consultant	Sunshine Coast
	Ms Heather Urquhart	Sales Assistant	Townsville
24 October 2006	Mr Wayne Mills	Organiser, AWU	Brisbane
	Ms Suellen Mason	Customer Service	Gold Coast
	Ms Gisela Child	Short Order Cook	Bundaberg
	Mr John Daley	Spare Parts and Operations Manager	Moura
	Ms Lesley Pullan	Sales Person	Brisbane
	Mr Stuart Campbell	Automotive Technician	Hervey Bay
	Ms Sharon Fowler	Electrical Assembler	Brisbane

APPENDIX 17

REGIONAL OVERVIEWS

Queensland Council of Unions

Location	Name	Position/Organisation	Written overview provided	Oral overview
Mackay	Ms D. Ralston	QCU	✓	
Bundaberg	Ms V. Smyth	QNU Organiser	✓	✓
Cairns	Ms D. Forsyth	President of QCU Cairns Provincial Labor Council	✓	✓
Emerald	Mr J. Yvanoff	CFMEU (Mining) Union Official	✓	
Gold Coast	Ms D. Ralston	QCU	✓	✓
Mt Isa	Mr P. Lubke	Secretary of Mt Isa Provincial Labor Council	✓	
Rockhampton	Ms G. Ross	QNU Organiser	✓	✓
Sunshine Coast	Ms D. Ralston	QCU	✓	✓
Toowoomba	Mr B. Crotty	Queensland Teachers Union of Employees Organiser	✓	✓
Townsville	Mr W. Giordani	ETU Organiser	✓	✓

Australian Workers' Union of Employees, Queensland

Location	Name	Position/Organisation	Written overview provided	Oral overview
Bundaberg	Mr K. Ballin	Central District Secretary, AWU		✓
Cairns	Mr T. Brischke	District Secretary, AWU		✓
Townsville	Mr R. Stockham	Official and Acting District Secretary, AWU	✓	✓

APPENDIX 18

CORRESPONDENCE TO CENTRELINK

Industrial Registry

Industrial Court of Queensland and Queensland Industrial Relations Commission

Mr Jeff Whalan
Chief Executive Officer
Centrelink
PO Box 7788
Canberra BC ACT 2610

Dear Mr Whalan

In June 2006, the Queensland Government, through the Minister for Industrial Relations, established through the *Industrial Relations Act 1999*, an Inquiry to examine the impact of the federal Government's Work Choices Amendments to the *Workplace Relations Act 1996*, on Queensland workplaces, employees and employers. I have attached a copy of the full terms of the Inquiry for your information.

In the course of the conduct of that Inquiry, evidence has come before the Inquiry with respect to the Employment Separation Certificate (ESC). The ESC is a form that Centrelink requires to be completed by a person's previous employer if that person is seeking to claim Newstart Allowance. The evidence before the Inquiry is that an employer is solely responsible for indicating the reason for separation of employment and that if the reason stipulated for separation is "misconduct" or "ceased work voluntarily", then an eight week non-payment period applies. Furthermore, even where the employee disputes the stated reason for separation of employment, the eight week penalty may still apply resulting in considerable financial and emotional hardship.

Of concern to the Inquiry is the possibility that, in the absence of an unfair dismissal remedy for employees in workplaces with fewer than 100 employees, employers may arbitrarily determine the reason for separation of employment with little or no regard for the consequences for the employee.

In response to this evidence, the Inquiry has undertaken its own research with respect to the ESC. A summary of the findings of that research are attached to this letter.

The Inquiry panel would appreciate your review of that information and an indication of the accuracy of the material presented. The Inquiry panel would also extend an invitation to you to make submissions to the Inquiry on the material presented.

Yours Sincerely

G D Savill
Industrial Registrar
31 October 2006

Industrial Registry, 18th Floor, Central Plaza 2,
66 Eagle Street, (Corner Elizabeth and Creek Streets), BRISBANE QLD 4000
Postal Address: GPO Box 373, BRISBANE QLD 4001
General Enquiries: (07) 3227 8060 Facsimile: (07) 3221 6074 www.qirc.qld.gov.au

Industrial Registry, 18th Floor, Central Plaza 2
66 Eagle Street, (Corner Elizabeth and Creek Streets), BRISBANE QLD 4000
Postal Address: GPO Box 373, BRISBANE QLD 4001
General Enquiries: (07) 3227 8060 Facsimile: (07) 3221 6074 www.qirc.qld.gov.au