Queensland Industrial Relations Commission

20 September 2006

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

Volume 1

Pursuant to s. 265(4) of the *Industrial Relations Act 1999* the Commission is to provide an interim report and recommendations to the Honourable Tom Barton MP, Minister for Employment, Training and Industrial Relations and Minister for Sport.

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

Queensland Industrial Relations Commission

20 September 2006

Dear Minister

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

In accordance with your direction for the Commission to conduct an **Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers** and your specific direction to provide an interim report and recommendations under section 265(4) of the Industrial Relations Act 1999 within three (3) months of the commencement of the Inquiry, we herewith provide to you the interim report.

D.A. SWAN, Deputy President

I.C. ASBURY, Commissioner

J.M. THOMPSON, Commissioner

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

Part A

Table Of Contents

Appendices

PART B

EXECUTIVE SUMMARY

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

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

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

INQUIRY PARTICIPANTS

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

FUTURE PROGRAMMING FOR THE INQUIRY

Regional sittings

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

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

Logistical considerations

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

Further Brisbane sittings

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

SUMMARY OF POINTS RAISED IN EVIDENCE AND INTERIM SUBMISSIONS

Unfair dismissals

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

Evidence adduced in the Brisbane sittings highlighted the following:

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

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

Australian Workplace Agreements and/or other collective agreements

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

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

Removal of choice for Queensland employers and employees

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

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

Complexity of the Work Choices legislation

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

Transmission of business

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

The emergence of new participants in the workforce - "guest labour"

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

Vulnerable workers

- Legislation providing for social security benefits for unemployed workers has been amended so that persons who refuse to agree to an Australian Workplace Agreement, which may provide lesser conditions, face an 8 week penalty period before they can obtain employment benefits;
- young workers are vulnerable to exploitation in the workforce as a consequence of unequal bargaining power and general lack of education concerning rights;
- vulnerable workers may be described as people:
  - *"with skills and attributes that are not in demand;*
  - *who are from culturally and linguistically diverse backgrounds;*
  - *who live in regional and remote areas with little opportunity to work;*
  - *with child care responsibilities and who can not find quality child care;*
  - *who are reluctant to work unsociable hours as this will mean less time with their family;*
  - *who are responsible for children over 11 years of age and are unable to commit to out of hours work as they are unable to support their children and supervise their activities;*
  - *with a disability who may be judged by their disability prior to being given an opportunity to prove their worth in the workplace"*[1]*;*

1 Submissions of Welfare Rights Centre Inc., "Vulnerable Queenslanders".

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

The removal of protection for "contractors" and "sub-contractors"

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

Restrictions on "right of entry" for employee organisation representatives at workplaces

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

Queensland Industrial Relations Commission

Participants have made submissions to the effect that:

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

Statistics relating to Queensland industrial relations outcomes

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

Social and economic impact of Work Choices

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

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

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

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

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

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

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

Apprenticeships

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

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

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

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

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

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

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

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

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

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

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

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

OVERVIEW OF INQUIRY

THE DIRECTIVE

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

Essentially, the Directive required the Commission to:

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

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

PROCESSES FOR THE CONDUCT OF THE INQUIRY

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

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

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

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

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

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

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

SITTINGS FROM 21 AUGUST 2006 TO 1 SEPTEMBER 2006

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

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

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

IMPACT OF WORK CHOICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INCIDENTS OF UNLAWFUL, UNFAIR OR OTHERWISE INAPPROPRIATE INDUSTRIAL RELATIONS PRACTICES

Reduction in wages through Australian Workplace Agreements or other collective Agreements

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

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

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

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

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

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

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

> "Unauthorised absence is not permitted unless approved by the Department Manager.".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Investigations and outcomes of similar inquiries in other States and Territories

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

PART C

COMMENTARY ON DIRECTIVE (TERMS OF REFERENCE)

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

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

Queensland

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

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

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

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

Reporting mechanisms in other states and territories

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

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

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

Victorian Workplace Rights Advocate

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

> *"Section 1. Purpose*
> *The main purpose of this Act is to establish the Office of the Workplace Rights Advocate to provide information about, and promote and monitor the development of, fair industrial relations practices in Victoria.".*

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

> *"Section 5. Functions and powers of WRA*
> *(1) The WRA has the following functions -*
> *(a) to inform, educate and consult with Victorian workers, employers and their representatives about rights and responsibilities in relation to work-related matters;*
> *(b) to facilitate and encourage the fair industrial treatment of workers in Victoria;*
> *(c) to promote informed decision-making by Victorian workers and employers;*
> *(d) to investigate illegal, unfair or otherwise inappropriate industrial relations practices in Victoria;*
> *(e) to make representations to an appropriate person or body in relation to work-related matters;*
> *(f) to monitor and report to the Minister and Parliament on industrial relations practices in Victoria;*
> *(g) to investigate and report to the Minister on the impact of any aspect of the industrial relations arrangements affecting Victorian workers or employers;*
> *(h) to advise the Minister generally about work-related matters;*
> *(i) to advise the Minister on the operation of this Act;*
> *(j) to request assistance or information from any public entity within the meaning of the Public Administration Act 2004 and provide information about work-related matters to any such entity at the request of the entity or when the WRA thinks appropriate;*
> *(k) any other function conferred on him or her by or under this or any other Act.*
>
> *(2) The WRA may carry out his or her functions and exercise his or her powers at the request of the Minister or of any other person or body or on his or her own motion.*
> *(3) The WRA has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.*
> *(4) Without limiting sub-section (3), the WRA may intervene in a proceeding in any court at any time, despite any provision to the contrary made by or under any Act.*
> *(5) The WRA is responsible to the Secretary to the Department of Innovation, Industry and Regional Development for the general conduct and management of the functions and activities of the WRA and must advise the Secretary in all matters relating to that conduct and management.".*

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

Northern Territory Workplace Advocate

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

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

South Australian Employee Ombudsman

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

"Section 60 Independence of the office
The Employee Ombudsman is not subject to control or direction by the Minister.

Section 62 General functions of Employee Ombudsman

(1) The Employee Ombudsman's functions are -

(a) to advise employees on their rights and obligations under awards and enterprise agreements; and

(b) to advise employees on available avenues of enforcing their rights under awards and enterprise agreements; and

(c) to investigate claims by employees or associations representing employees of coercion in the negotiation of enterprise agreements; and

(d) to scrutinise enterprise agreements lodged for approval under this Act and to intervene in the proceedings for approval if the Employee Ombudsman considers there is sufficient reason to do so; and

(e) to represent employees in proceedings (other than proceedings for unfair dismissal) if -

(i) the employee is not otherwise represented; and

(ii) it is in the interests of justice that such representation be provided; and

(f) to advise individual home-based workers who are not covered by awards or enterprise agreements on the negotiation of individual contracts; and

(g) to investigate the conditions under which work is carried out in the community under contractual arrangements with outworkers and other examinable arrangements; and

(h) to provide an advisory service on the rights of employees in the workplace on occupational health and safety issues.

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

(3) A delegation under this section -

(a) is revocable at will; and

(b) does not derogate from the Employee Ombudsman's power to act personally.

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

Section 63 Annual report

(1) The Employee Ombudsman must, before 30 September in each year, prepare a report on the work of the Employee Ombudsman's office during the financial year that ended on the preceding 30 June and forward copies of the report to the Presiding Members of both Houses of Parliament to be laid before their respective Houses at the earliest opportunity.

(2) The report must contain particular reference to any investigation made by the Employee Ombudsman into the conditions under which work is carried out by outworkers (or others) under examinable arrangements.".

DIRECTIVE B. INQUIRE INTO INCIDENTS OF UNLAWFUL, UNFAIR OR OTHERWISE INAPPROPRIATE INDUSTRIAL RELATIONS PRACTICES INCLUDING:

- THE REDUCTION IN WAGES AND CONDITIONS THROUGH AUSTRALIAN WORKPLACE AGREEMENTS (AWAs) OR OTHER COLLECTIVE AGREEMENTS;
- DISCRIMINATION, HARASSMENT OR THE DENIAL OF WORKPLACE RIGHTS;
- UNFAIR DISMISSAL OR OTHER FORMS OF UNFAIR OR UNLAWFUL TREATMENT OF EMPLOYEES.

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

NAME SUPPRESSED

Occupation: Engineer

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

Paragraphs 34 and 35 of his affidavit state:

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

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

CROSSINGHAM, Sterling Michael

Occupation: Builder

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

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

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

GROVES, Dean Patrick

Occupation: Drillers offsider

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

At paragraph 21 of his affidavit he stated:

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

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

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

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

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

HAMMOND, Murray Ian

Occupation: Master/Engineer

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

> *"19. My employment was terminated on 10 July 2006.*
>
> *20. My employment was terminated because my refusal to have my employment circumstances and duties changed from one of instead of working principally as Master/Engineer to one where I was now collecting tolls from passengers, cleaning toilets, deckhand duties, discharging and loading of motor vehicles and cleaning the deck of marine vessel.".*

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

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

NEWMAN, James

Occupation: Electrician

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

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

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

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

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

SIMPSON, Peter John

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

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

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

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

> *"13. When disputes arise, discussions take place quickly. If the matter is not able to be resolved within the reasonable period of time, it is referred to the QIRC for conciliation. Usually the QIRC has been able to respond with a conference listing within 1 or 2 days, and sometimes, when the matter is urgent, the dispute has been listed for conciliation on the same day as notification was given.*
>
> *14. For the most part, disputes have been resolved by conciliation, and generally all parties have adhered to any recommendations, directions or orders issued by the Commission. Where necessary, we have been able to rely on the QIRC being able to arbitrate a dispute, or interpret an industrial instrument.".*

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

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

WONG, Leonie Anne

Occupation: Junior Employee, Ice Cream Parlour

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

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

At paragraphs 46 and 47 of her affidavit she states:

> *"46. [The employer] then said to me in words to the following effect:*
>
> *'If you don't have the AWA on my desk signed by Monday then there is no job for you. I would have to let you go.'.*
>
> *47. [The employer] then seemed to hesitate and said to me in words to the following effect:*
>
> *'Oh no. I have to let you view it for 5 or so days, so have it to me at the end of those days or I'll have to let you go.' ".*

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

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

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

LANG, Jill

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

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

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

Such people were identified as:

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

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

The concerns were identified as:

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

ROBERTSON, Michelle Louise

Occupation: Advocate, Queensland Services, Industrial Union of Employees

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

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

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

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

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

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

ALLEGRETTO, Aaron

Occupation: Co-ordinator, Young Workers Advisory Service

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

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

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

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

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

NAME SUPPRESSED

Occupation: Qualified Chef

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

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

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

The impact on his family life was described as:

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

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

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

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

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

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

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

NSW Parliamentary Inquiry

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

"*Terms of Reference*

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

(a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact upon wages, conditions and security of employment,

(b) the impact on rural communities,

(c) the impact on gender equity, including pay gaps,

(d) the impact on balancing work and family responsibilities,

(e) the impact on injured workers, and

(f) the impact on employers and especially small businesses.".

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

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

Labour Parliamentary Taskforce

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

"TERMS OF REFERENCE

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

1. *Establish the adverse effects of the Government's extreme industrial relations (IR) changes on individuals, families and communities, in particular:*
   i. the adverse effects on women;
   ii. the adverse effects on young people;
   iii the adverse effects on regional communities; and

2. *Identify specific cases of the abuses of these laws.".*

Preliminary Finding 1:

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

Preliminary Finding 2:

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

Preliminary Finding 3:

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

Preliminary Finding 4:

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

Preliminary Finding 5:

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

Preliminary Finding 6:

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

Preliminary Finding 7:

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

Senate Inquiry

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

Tasmanian Inquiry

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

ACT Inquiry

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

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

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

Terms of Reference

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

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

2 http://www.aph.gov.au/senate/committee/eet_ctte/wr_Work Choices05/submissions/sublist.htm date accessed 7 August 2006. Submission No 175

3 http://www.cch.com.au/fe_email_login.asp?p_r=f_n&d_i=79767&t_c=9&c_c=0&u_i=53752 date accessed 7 August 2006

DIRECTIVE D. RECOMMEND A PROCESS FOR:

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

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

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

Research

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

PART D

ANALYSIS - DIFFERENCES BETWEEN WORK CHOICES AND THE QUEENSLAND INDUSTRIAL RELATIONS ACT 1999

WORKPLACE AGREEMENTS (INDIVIDUAL)

Industrial Relations Act 1999

- Individual workplace agreements (Queensland Workplace Agreements or QWAs) are provided for in the Act.
- They may be negotiated between employers and employees over the age of 18 (s. 192).
- QWAs come into operation for new employees once a filing receipt is issued by the Registrar or Chief Inspector and, for existing employees, once an approval notice is issued by the QIRC (ss. 190, 195). The QIRC must ensure that *all* QWAs meet the statutory requirements, including the "no disadvantage" test (s. 203).
- QWAs displace any award or agreement that would otherwise apply (ss. 209, 213). QWAs made after 1 September 2005 may also displace a number of "default" statutory minimum conditions by expressly varying or removing them. The default minima include maximum working hours, penalties for overtime and shift work, rest breaks, casual loadings (s. 9A), annual leave loading (s. 13A), jury service leave (s. 14A), paid public holidays (s. 15) and redundancy payments (s.85A). QWAs cannot displace the basic statutory entitlements to a minimum wage, sick leave, annual leave, parental leave, carer's leave, bereavement leave (s. 41) or long service leave (s. 43).
- Due to their ability to override basic minimum conditions established under collective industrial instruments, QWAs cannot operate unless they pass the "no disadvantage" test (ss. 203, 209). This test compares the terms and conditions of the QWA with the entitlements and protections that would apply to the employee in the absence of the agreement - if the QWA would result in an overall reduction in the employee's terms and conditions, it fails the "no disadvantage" test and cannot be approved (ss. 203, 209).
- In addition, QWAs must not be inconsistent with statutory protections in relation to equal remuneration and anti-discrimination (s. 193), may not unfairly or unreasonably discriminate between employees (s. 202) and may not be contrary to the public interest in light of factors such as the bargaining power of the parties and the needs of low paid and vulnerable workers (s. 203).
- QWAs have a nominal expiry date of 3 years unless a shorter period is stipulated in the agreement (s. 194). They continue to operate until they are replaced by a new agreement or terminated (s. 195).
- During a QWAs operation, it can be amended or terminated by consent of the parties (ss. 197, 198) and on approval by the QIRC (ss. 204, 205). After the QWAs nominal expiry date, it may be terminated by either party giving notice to the other and filing a notice of termination (s. 198), which takes effect 28 days later.
- When a QWA has been terminated, the employees revert to their relevant award or certified agreement and any new QWA must pass the "no disadvantage" test in relation to that instrument.
- New employees must be given at least 5 days to consider a QWA. Existing employees must be given at least 14 days (ss. 187, 202). The employer must explain the terms and effect of the QWA as soon as practicable after giving the employee a copy of it (s. 202).
- Employees must be advised of their right to appoint a bargaining agent (which may or may not be a union) to negotiate a QWA (s. 196).

Work Choices

- Individual workplace agreements (Australian Workplace Agreements or AWAs) are provided for in the Act.

- They may be negotiated between employers and employees (s. 326). Persons under 18 years of age require "an appropriate person" over 18 (e.g. a parent) to sign the AWA (s. 340).
- AWAs come into operation once they are lodged with the Employment Advocate (s. 347), even if the requirements of the legislation have not been met (s. 347). The Employment Advocate is specifically not required to ensure that the statutory requirements have been complied with when an agreement is lodged (s. 344(5)).
- AWAs displace any award or agreement that would otherwise apply (ss. 348, 349), including "protected award conditions" (other than outworker conditions) if the agreement explicitly varies or removes them (s. 354(2)(c)). The protected award conditions are rest breaks, incentive payments or bonuses, annual leave loadings, paid public holidays, certain types of monetary allowances, loadings for overtime and shift work, penalty rates and outworker conditions.
- AWAs cannot displace the Australian Fair Pay and Conditions Standard, which currently comprises a minimum wage, maximum working hours, annual leave, personal leave and parental leave.
- AWAs must be consistent with statutory protections in relation to anti-discrimination (Regulations, Ch.2, Reg 8.6) and freedom of association (Regulations, Ch.2, Reg 8.5(7) and s.810). They must not contain prohibited content (s. 357). Prohibited content for AWAs is the same as for collective agreements.
- There is no "no disadvantage" test.
- AWAs have a nominal expiry date of 5 years unless a shorter period is stipulated in the agreement (s. 352). They continue to operate until they are replaced by a new AWA or terminated (s. 347).
- During the AWA's operation, it can be varied (Part 8, Div. 8) or terminated (Part 8, Div. 9) by consent of the parties. A variation comes into effect once the variation is lodged with the Employment Advocate, even if the statutory requirements for variation, such as employee approval, have not been met (s. 380). A termination comes into effect in similar circumstances (s. 398).
- For terminations after the nominal expiry date, a party to the agreement may terminate unilaterally by giving 90 days written notice to the other party and lodging a declaration with the Employment Advocate (s. 393).
- When an agreement has been terminated, the employees are entitled to the AFPCS and any of the protected award conditions which were contained in the award that would have previously applied to the employee (s. 399). This becomes the starting point for negotiations on any new agreement.
- To commence negotiations for an AWA, the employer must take reasonable steps to ensure that all employees to be covered by the agreement have 7 days to consider it and must provide an information statement containing information about when and how approval will be sought (s. 337). There is no requirement that the terms and effect of the agreement be explained to employees. Employees may also waive the 7 day consideration period (s. 337(5)).
- Employees must also be advised of their right to be represented by a bargaining agent during negotiations (s. 337). The agent need not be a union.

MINIMUM SAFETY NET ENTITLEMENTS

Industrial Relations Act 1999

Wage setting

- The IR Act provides employees with a minimum wage that is not less than the Queensland minimum wage declared by a general ruling of a Full Bench of the QIRC (s. 8A). The Full Bench must make a ruling for a Queensland minimum wage at least once each calendar year (s. 287), and conducts a public hearing in which industrial stakeholders have the opportunity to make submissions.
- In setting award rates, the QIRC must provide "for secure, relevant and consistent wages and employment conditions"; "fair standards for employees in the context of living standards" and take into account "the efficiency and effectiveness of the economy" (s. 126). The decisions of the QIRC must also provide support for training arrangements, where possible (s.126) and must structure wages in a way that encourages employees' skill development (s. 8A).
- All employees must be paid at least the Queensland minimum wage.

Penalty rates and allowances

- A number of minimum penalties and allowances apply to employees covered by industrial instruments made after 1 September 2005, unless their industrial instrument specifies otherwise. These are:
  - casual loading of 23%;
  - annual leave loading of 17.5%;
  - shift work allowance of 12.5% of ordinary time wages for an afternoon shift and 15% of ordinary time wages for a night shift;
  - weekend penalty rates of 25% in addition to the ordinary hourly rate for work on Saturday and 50% in addition to the ordinary hourly rate for work on Sunday;
  - overtime rates of time and a half, or double time for shiftworkers, for working in excess of a 38 hour week or 7.6 hour day.

Working time provisions

- Maximum hours of work for employees on industrial instruments made on or prior to 1 September 2005 are (s. 9):
  - no more than 6 days in any 7 consecutive days;
  - no more than 40 hours in any 6 consecutive days;
  - no more than 8 hours in any day.
- For employees on industrial instruments made after 1 September 2005, maximum hours of work are (s. 9A):
  - no more than 6 days in any 7 consecutive days;
  - no more than 38 hours in any 6 consecutive days;
  - no more than 7.6 hours per day unless the instrument provides otherwise.
- Hours worked in excess of these hours must be paid at overtime rates. Where practicable, a paid rest pause of 10 minutes for every 4 hours worked is to be taken.

Annual leave

- Employees are entitled to at least 4 weeks annual leave for each completed year of employment (5 weeks for shift workers) (s. 11). Annual leave is cumulative unless an industrial instrument provides otherwise.

- Leave loading of 17.5% applies to employees on industrial instruments made after 1 September 2005 unless the instrument provides otherwise.

Personal leave

- Sick leave - 8 days paid sick leave per year, accrued at 1 day for every six weeks worked. Medical certificate or other satisfactory evidence of illness is required if taking more than 2 days sick leave at any one time (s. 10).
- Carer's leave - up to 10 days of accrued sick leave may be taken as carer's leave (s. 39). Up to 2 days of unpaid carer's leave in each instance may be taken when paid leave entitlements have run out.
- Section 39A and B also provide for long- and short-term casuals to have access to unpaid carer's leave, and specify that an employer must not fail to re-engage a casual employee only because the casual employee has taken carer's/bereavement leave under these clauses.
- Section 40 allows 2 days of paid bereavement leave for permanent employees for each instance. It also allows unpaid bereavement leave to long-term casuals.
- Up to 5 days unpaid cultural leave each year is provided for under s. 40A.

Family leave

- The Act provides family leave for employees, including casuals, with at least 12 months continuous service.
- The Act provides up to 52 weeks of unpaid parental leave, which can be extended to a maximum of 104 weeks by agreement (s. 29A). An employee and his or her spouse must not both be on long family leave at the same time.
- The Act does not specify a maximum combined total of leave that an employee and their spouse may take, but does stipulate that both partners must not be on long family leave at the same.
- An employer must not dismiss an employee because the employee or their spouse is pregnant or has applied to adopt a child. Female employees have an entitlement to be transferred to a safe job (s. 34).
- An employee is entitled to return to their previous position after parental leave or, if the position no longer exists, another position for which the employee is qualified and capable of performing that is comparable in status and remuneration.
- The employer must advise employees on family leave of any significant changes that take place in the workplace, where possible before such change is implemented, and give the employee a reasonable opportunity to discuss the effect of such changes on their position (s. 38A). Employees have a corresponding obligation to keep their employer informed about changes, e.g. address changes or changes to their leave conditions.

Work Choices

Wage setting

- The Australian Fair Pay Commission (AFPC) will set and adjust the Federal Minimum Wage (FMW), the rates of pay in Australian Pay and Classification Scales (APCSs), and the rates for juniors, trainees, employees with disabilities, piece workers, and decide upon casual loadings (ss. 22, 172, 186).
- In performing its wage-setting function, the AFPC is instructed to consider the following (s. 23):
  (a) the capacity for the unemployed and low paid to obtain and remain in employment;
  (b) employment and competitiveness across the economy;
  (c) providing a safety net for the low paid;
  (d) 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.

  The AFPC must also apply equal remuneration and anti-discrimination principles and take family responsibilities into account (s. 222).

  There are no requirements for the AFPC to consult with stakeholders or follow any particular process, although it must provide reasons for its decisions (ss. 24-27).

- Work Choices establishes five legislated minimum entitlements under the Australian Fair Pay and Conditions Standard (s. 171) - these being:
  - basic pay rates and casual loadings
  - maximum ordinary hours
  - annual leave
  - personal leave
  - parental leave.

  Award terms that are more generous than these standards will continue to apply as "preserved award terms" (ss. 529-530).
- To derive minimum wages, Work Choices provides for Australian Pay and Classification Scales (APCSs). Employees covered by a pre-reform award or law (federal or state) will be covered by an APCS (ss. 204-208) with a rate of pay and classification level as per the relevant pre-reform award or law (ss. 208, 214). The AFPC will also create new APCSs for employees (s.214) and may revoke and adjust existing ACPSs (s. 215).
- Within the first year, the AFPC will adjust existing APCSs in line with the AIRC's Safety Net Review Case 2005 (s. 218). The AFPC must not adjust an APCS so as to reduce the basic wage for any employee below the rate that applied at the start of Work Choices (s. 190).
- Employees in the federal jurisdiction who are not covered by an APCS are entitled to the more generous of the FMW of $12.75 per hour or the state minimum wage that applied at reform commencement; after the AFPC's first decision to set the new FMW, the new FMW will apply.
- The AFPC may also set piece rates and casual loadings for APCS employees.
- Employees are entitled to a casual loading, which is the higher of the statutory casual loading of 20% (which may be adjusted by the AFPC) or the loading provided in their APCS (ss. 185 -187).
- Other minimum entitlements, known as "protected award conditions", may apply to employees if they are or were (immediately prior to reform commencement) covered by an award containing those conditions. The protected award conditions are public holidays, rest breaks including meal breaks, incentive payments and bonuses, annual leave loading, penalty rates and overtime and shift loadings (s. 354). These conditions can be expressly modified or excluded by a workplace agreement (s. 354).

Working time provisions

- Employers must not require employees to work more than 38 hours per week, which can be averaged over a period of up to 12 months, plus reasonable additional hours at ordinary rates (or the rate specified in the relevant award or agreement) (s. 226).
- Factors which must be taken into account to determine if extra hours are "reasonable" include:
  - the health and safety of the employee
  - the employee's personal circumstances including family responsibilities
  - the operational requirements of the business
  - the amount of notice given by the employer requesting the employee work additional hours, and the amount of notice given by the employee of their intention to refuse working additional hours
  - whether the additional hours fall on a public holiday; and
  - the hours worked by the employee in the 4 week period immediately prior to the additional hours.

Annual leave

- Section 232 provides permanent employees with 4 weeks annual leave for each completed year (5 weeks for regular shift workers), to be paid at ordinary rates (s. 235). There is no provision for loading.
- Section 233 entitles an employee under a workplace agreement to cash out up to 2 weeks annual leave each year.

Personal leave

- Full-time employees accrue 10 days per year of paid personal/carer's leave (s. 246). An employee must present reasonable proof of reasons for absence on sick or carer's leave if the employer requests it (ss. 254 and 256).

- Only sick leave is cumulative (ss. 246-249).
- An employee may take up to 10 days of accrued carer's leave per year (s. 249). After this amount of leave has been taken, an employee is entitled to a period of up to 2 days unpaid carer's leave for each permissible occasion (s. 250). Unpaid carer's leave is available to casuals (s. 239).
- A period of 2 days of compassionate leave is available for each occasion a member of an employee's family dies or is life-threateningly ill (s. 257). This leave is contingent on the employee providing any evidence that the employer requires.

Family leave

- The Act deals with maternity, paternity and adoption leave separately. It provides up to 52 weeks of unpaid leave per year for employees, including casuals, with 12 months' continuous service. The 52 weeks is reduced by other authorised leave that the employee/s avail themselves of at the time, such as annual leave and long service leave (ss. 266, 283, 301).
- Pregnant employees have an entitlement to be transferred to a safe job (s. 268).
- Sections 273 and 274 require an employee to take ordinary maternity leave of at least 6 weeks, starting from the date of birth of the child, and require the employee (if asked and if she is entitled to ordinary maternity leave) to present the employer with a medical certificate 6 weeks prior to the expected date of birth indicating whether she is fit to work.
- An employee is entitled to return to their previous position after parental leave or, if the position no longer exists, another position for which the employee is qualified and capable of performing that is comparable in status and remuneration (ss. 280, 296, 314).
- There is no duty on the employer to advise employees on family leave of any significant changes that take place in the workplace.

COLLECTIVE BARGAINING

Industrial Relations Act 1999

- Collective bargaining is recognised by the IR Act, which includes in its objects: "promoting participation in industrial relations by employees and employers; and encouraging responsible representation of employees and employers by democratically run organisations and associations" (s. 3).
- There is no "right' to bargain collectively, in that employers are under no obligation to enter into collective agreements with employees. However, employers may not unfairly "pick and choose" which groups of employees will be subject to a collective agreement and which group will not (s. 157(6)).
- The Act continues and maintains the traditional conciliation and arbitration model of industrial relations regulation. For collective bargaining, the most significant by-product of this system is awards. The award process is the primary means by which unions raise issues of a collective nature affecting workers in specific categories or across industry or occupational groupings (e.g. awards for employees in the clothing trades).
- The QIRC may make an award of its own initiative or on application by the Minister, an industrial organisation, an employer or another person (s. 125). The award can be about any industrial matter.
- An award is legally binding on the parties named in it (s. 123) although employers are free to offer "above award" terms and conditions. Awards can be limited to a class of employees, one or more employers or one or more parts of Queensland (s. 124).
- Collective bargaining is also recognised at the enterprise level. Enterprise agreements may be negotiated by employee organisations or by groups of employees (s. 142). They may be negotiated for individual enterprises, joint ventures or multiple businesses run by related corporations or engaging in similar work (multi-employer agreements) and projects (for example in the building and construction industry) (s. 141). See the section on **workplace agreements (collective)** for further information.
- Agreements negotiated by employee organisations cover members of the organisation as well as employees who, while not members, are eligible to be members (s. 142).
- Agreements may complement an award or displace its operation, but are subject to a "no disadvantage" test. Agreements cannot be displaced during their period of operation by an individual agreement (Queensland Workplace Agreement) unless the collective agreement expressly allows this to occur (s. 213).
- Employees are able to exert collective bargaining power through collective action. The only, completely legitimate type of collective action recognised by the Act is action taken for the purposes of negotiating a certified agreement, which is protected from any legal action other than action resulting in personal injury, wilful or reckless damage to property or the unlawful use or keeping of property (s. 174). All employees to be covered by the agreement may participate in protected action.
- The Act does not render all unprotected collective action unlawful *per se*. Depending on the particular circumstances of the case, the QIRC may refuse to order that the action stop and an employee dismissed for participating in the action may still have a case for unfair dismissal. See the section on industrial **disputes and industrial action** for further information.
- The freedom of association provisions in Chapter 4 protect an employee's right to belong to an employee organisation and to participate in lawful collective bargaining. In particular, s. 104 prohibits an employer from retaliating against an employee because the employee is a member of an employee organisation, has participated in a secret ballot for collective action, is entitled to the benefit of an industrial instrument, is a member of an organisation that is seeking better industrial conditions or is engaged in lawful activity to further or protect the industrial interests of an employee organisation.
- Although "closed shop" practices are not permitted, awards and agreements may contain clauses which encourage employees to belong to a union (s. 110).

Work Choices

- Work Choices recognises collective bargaining but only at the individual workplace or enterprise level. The objects in section 4 require the Act to ensure that, as far as possible, the primary responsibility for determining employment matters rests with the employer and employees at the workplace or enterprise

(s. 3(d)) and that the right to take collective action at the workplace level must be balanced with the public interest and appropriately deal with illegitimate and unprotected collective action (s. 3(i)).

- There is no "right" to bargain collectively, in that employers are under no obligation to enter into collective agreements with employees. However, employers must not discriminate between union members and non-members when negotiating agreements (s. 402).
- Employee organisations have no ability to establish national employment standards or secure awards covering an industry or occupation. There is no provision in the Act for making new federal awards other than as part of the award rationalisation process (ss. 539-540) and, in the context of agreement making, such conduct would be pattern bargaining, which is not permitted (s. 431).
- Awards existing prior to Work Choices continue (Schedule 6), subject to modification and rationalisation by the AIRC under Ministerial direction as to timing, content and process (s. 534). A number of matters in awards have been removed by Work Choices and no longer operate. There is no requirement for employee or employer organisations to be consulted about the changes to awards made by the rationalisation process or to initiate changes to terms and conditions.
- The role of employee organisations in maintaining effective safety net minimum wages and conditions has been taken over by the Australian Fair Pay Commission. There is no requirement in the Act for employees or employee organisations to be represented on or consulted by the Commission.
- Workplace agreements may be negotiated by employees directly (s. 327) or by employee organisations if the organisation has at least one member who will be covered by the agreement (s. 328). Collective agreements negotiated by employee organisations cover the employees nominated in the agreement (ss. 328, 351). See the section on **workplace agreements** for further information.
- A collective agreement is deemed to be collectively approved either by vote of the majority to be covered by the agreement, or when "the majority of those persons decide that they want to approve the agreement" (s. 340). However, agreements are effective on lodgment even if employee approval has not been validly given (s. 347(2)).
- Collective agreements may be negotiated for individual enterprises, joint ventures or multiple businesses run by related corporations or engaging in a common enterprise (ss. 322, 331). Pattern bargaining is not permitted (s. 431).
- Collective agreements completely displace the operation of awards (s. 349).
- Employees are able to exert collective bargaining power through collective action. The only legitimate type of collective action recognised by the Act is protected action in support of negotiating a collective agreement, which is protected from any legal action unless it involves personal injury, wilful or reckless damage to property or the unlawful use or keeping of property (s. 447). The AIRC may order protected action to stop in a broad range of circumstances, including where it threatens to cause significant harm to a third person (s. 433) (see **Industrial disputes and industrial action** for further information).
- For agreements negotiated by an employee organisation, only the members of that organisation are entitled to take part in collective action (s. 435(2)). For agreements negotiated directly by employees, all employees may take part.
- The Act treats as illegitimate all collective action that is not protected action, by requiring the AIRC to order that such action stop or not occur or not be organised (s. 496).
- The freedom of association provisions in Part 16 protect an employee's right to belong to an employee organisation and to participate in lawful collective bargaining. In particular, section 793 prohibits an employer from retaliating against an employee because the employee is a member of an employee organisation, has participated in a secret ballot for collective action, is entitled to the benefits of an industrial instrument, is a member of an organisation that is seeking better industrial conditions or is engaged in lawful activity to further or protect the industrial interests of an employee organisation and has the express authorisation of the organisation to engage in such activity.
- Union encouragement clauses are prohibited in agreements (Workplace Relations Regulations 2006, Chapter 2, Reg. 8.5(2)).

TERMINATION OF EMPLOYMENT

Industrial Relations Act 1999

- Most employees are protected from dismissals that are harsh, unjust or unreasonable (**unfair dismissal**) (s. 73). Excluded employees (s. 73) are:
  - those on high incomes (over $98,200 per year) other than public servants and employees covered by an industrial instrument;
  - probationary employees during the first 3 months of employment (or other reasonable probationary period as agreed in writing);
  - apprentices and trainees (who are protected by specific laws for apprentices and trainees in Chapter 5, Part 5 and under the *Vocational Education, Training and Employment Act 2000* – see **Apprentices and Trainees**);
  - short-term casuals (less than 12 months' service);
  - employees hired for a fixed period or task.
- All employees are protected from dismissals for an invalid reason, other than apprentices and trainees (who are protected by specific laws for apprentices and trainees) (s. 72). Invalid reasons for dismissal (s. 73) are because:
  - the employee is temporarily absent from work because of illness or injury;
  - the employee is temporarily and reasonably absent from work to perform duties associated with emergency relief;
  - the employee is a member or officer of a union;
  - the employee is not a member of a union;
  - the employee has filed a complaint or been involved in legal proceedings against an employer;
  - the employee has made a complaint to a health commission or a public interest disclosure;
  - the employee has refused to negotiate or make a certified agreement or AWA under the Commonwealth Act;
  - the employee or their spouse is pregnant, has adopted a child or applied to adopt a child;
  - the employee has applied for or is away on parental leave;
  - the reason is discriminatory.
- Employees who are injured and entitled to workers' compensation are protected from dismissal for 12 months after the date of injury (Workers Compensation and Rehabilitation Act, ss. 232A-232G).
- Most employees are entitled to **minimum notice periods** prior to dismissal (s. 84), i.e.
  - Service of not more than 1 year – notice is 1 week;
  - Service of more than 1 year but not more than 3 years – 2 weeks;
  - Service of more than 3 years but not more than 5 years – 3 weeks;
  - Service of more than 5 years – 4 weeks;
  - An additional 1 week applies if the employee is: 45 years old or over and has completed at least 2 years of continuous service with the employer (s. 84).

  The categories of employees who are not entitled to minimum notice periods are similar to the categories excluded from unfair dismissal (see s. 72(3)). Employees who engage in serious misconduct are also not entitled to notice.
- Most employees may also apply for orders under Articles 12 and 13 of ILO Convention 158 in the event of being made **redundant** (Chapter 3, Part 4). Where an employer decides to make 15 or more employees redundant, the employer must notify the Commonwealth unemployment agency and the relevant union/s as soon as possible after making the decision. The relevant union/s must be given an opportunity to suggest ways to avoid or minimise the dismissals and their adverse effects.
- Applicants seeking a remedy for unfair dismissal must apply to the QIRC within 21 days of the dismissal.

- The QIRC must attempt to settle the application by conciliation (s. 75). If conciliation fails, the QIRC may settle the matter by arbitration (s. 76).
- The primary remedy for unfair dismissal is reinstatement. If reinstatement to the employee's particular job is impracticable, the employee may be re-employed in another suitable position (s. 78). The QIRC may only order compensation if reinstatement or re-employment would be impracticable (s. 79).
- Compensation limits are 6 months' wages for employees on award and agreements and $49,100 (from 11 August 2006) for "non-award" employees (s. 79).
- If an employee is stood down during December and re-employed by the same employer before the end of the next January, the employee must be paid for Christmas Day, Boxing Day and the New Years Day public holidays between the stand down and the re-employment (s. 97).

Work Choices

- Some employees are protected from dismissals that are harsh, unjust or unreasonable. The major exceptions are where the business has 100 employees or less (s. 643(10), where reasons of an economic, technological, structural or similar nature formed part of the reason for dismissal (s. 643(8)) and where the employee has been employed for less than 6 months (s. 643(6)). Other excluded employees (s. 638) are:
  - those on high incomes (over $98,200 per year) other than employees on conditions derived from an award;
  - probationary employees whose probationary period is 3 months or, if greater, the probationary period is reasonable having regard to the nature and circumstances of the employment (this provision operates independently of the 6 month qualifying period);
  - trainees whose traineeship is for a specified period;
  - short term casuals (less than 12 months' service);
  - employees engaged for a fixed period or task;
  - seasonal workers (s. 659(2));
  - any other categories specified by the Regulations.
- All employees are protected from dismissals for an unlawful reason. The unlawful reasons are similar to the invalid reasons under the IR Act, except that refusal to negotiate or make a certified agreement is not an invalid reason and temporary absence from work due to illness or injury only covers a 3 month absence in a 12 month period (as opposed to the protection from dismissal for 12 months provided in the Workers' Compensation and Rehabilitation Act (Qld). Discriminatory dismissals in the WR Act are wider, in that they include dismissal for political opinion, national extraction or social origin.
- Unfair and unlawful dismissals must both occur "at the initiative of the employer" (s. 642(1)), defined in s. 642(4) as including a resignation "if the employee can prove, on the balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of conduct, or a course of conduct, engaged in by the employer".
- Most employees are entitled to **minimum notice periods** calculated on the same basis as applies in Queensland (s. 611(2)). The employees who are not entitled to notice periods are the same as those excluded from federal unfair dismissal, as well as all casual employees, daily hire employees in the building and construction and meat industries and weekly hire employees in the meat industry who are terminated because of seasonal factors (s. 638). Employees who engage in serious misconduct are also not entitled to notice (s. 611(1)).
- Employees have no right to apply for orders to give effect to Articles 12 and 13 of ILO convention 158. **Redundancy pay** is an allowable award matter for employees in businesses employing 15 or more employees (s. 513(1)(k) and 513(4)). Where an employer decides to make 15 or more employees redundant (other than the categories of employees excluded for unfair dismissal), the employer must notify the Commonwealth unemployment agency. There is no requirement to consult with unions about proposed redundancies.
- Applicants seeking a remedy for unfair dismissal must apply to the AIRC within 21 days of the dismissal (s. 643(14)).

- The AIRC must attempt to settle the application by conciliation (s. 650(1)) but can deal with jurisdictional objections on the part of employers "on the papers" (s. 648).
- If a dismissal is found to be for genuine operational reasons, the Commission must dismiss the application to the extent that it is made on operational reasons (s. 649(2)).
- If conciliation fails, the AIRC may settle the matter by arbitration (s. 652).
- The primary remedy for unfair dismissal is reinstatement. If reinstatement to the employee's particular job is impracticable, the employee may be redeployed to another suitable position (s. 654). The AIRC may only order compensation if reinstatement or redeployment would be impracticable (s. 654).
- The AIRC is expressly prohibited from awarding compensation for "shock, distress or humiliation or other analogous hurt, caused to the employee by the manner of terminating the employee's employment" (s. 654(9)).
- Compensation limits are 6 months' wages for employees on award-derived conditions and $49,100 for "non-award" employees (s. 654(12)).
- Compensation must be reduced where the employee's misconduct contributed to the termination (s.654(8)).

INDUSTRIAL DISPUTES AND INDUSTRIAL ACTION

Industrial Relations Act 1999

- For industrial disputes and industrial action, the object of the Act is to provide for the "effective, responsive and accessible support for negotiations and resolution of industrial disputes" (s. 3).
- Industrial action in Queensland falls into two categories: protected and unprotected. Protected action is available for employees negotiating certified agreements, subject to any industrial action having been preceded by a genuine attempt to reach agreement with the employer. All other collective action is unprotected, although unprotected action is not unlawful per se.
- All industrial disputes between employers, employees and industrial organisations must be immediately notified to the Industrial Registrar by the disputants if the parties have genuinely, but unsuccessfully, attempted to settle the dispute (s. 229).
- The QIRC must take the steps it considers appropriate to prevent or promptly settle the dispute and may act on its own motion, whether or not it has been notified of the dispute (s. 230).
- The QIRC must attempt to conciliate the dispute in the first instance (s. 230). It may also mediate the dispute at the request of the parties or if the QIRC considers that mediation is desirable in the public interest (s. 231).
- If conciliation fails, the QIRC may move to arbitration (s. 230) and may make any order it considers appropriate, including directing that the industrial action stop or not occur, making interlocutory orders, granting injunctions (s. 230) and ordering the parties to attend a conference (s. 232).
- Failure by an industrial organisation to abide by an order of the QIRC may result in a range of penalties, including fines, amendment of an industrial instrument to which the organisation is a party, amendment of the organisation's eligibility rules and suspension or termination of the organisation's registration (s. 234).
- The QIRC may order a secret ballot of employees to determine support for a strike (s. 236). If the secret ballot indicates that a majority of employees do not support a strike, the Industrial Registrar may direct that it be discontinued (s. 236).
- An employer has a discretion whether to pay striking employees and no industrial action may be taken against an employer who refuses to pay (s. 238).
- Employees have a right to refuse to perform work if it would create an imminent risk to the employee's health or safety (s. 241).

Protected action

- Protected industrial action is available to parties negotiating a certified agreement (Chapter 6).

- No action lies at law against a person who participates in protected action, unless the action involves or is likely to involve personal injury, wilful or reckless damage to property or the unlawful taking, keeping or use of property (s. 174).
- To commence negotiations for a certified agreement, the initiating party must give 14 days' notice to the other party/parties (s. 143) (multi-employer and project agreements require 21 days' notice). 21 days must elapse from the giving of the notice before any industrial action can be taken or the QIRC's assistance is sought (s. 147).
- Protected action must not be taken before the nominal expiry date of a certified agreement (s. 181).
- The parties negotiating for an agreement must act in good faith (s. 146).
- If negotiations for an agreement break down, the QIRC's assistance may be sought (s. 148). The QIRC may assist with conciliation and, as a last resort, arbitration (s. 149). Industrial action taken or continued when the QIRC moves to arbitrate a matter is not protected.
- The QIRC may intervene of its own accord in protected action which has been protracted or which threatens to cause significant damage to an enterprise, to employees or to a part of the economy or threatens to endanger the personal health, safety or welfare of the community (s. 149).
- When arbitrating a dispute involving protected action, the QIRC may make a determination which operates in a similar manner to a certified agreement by settling the rights and obligations of the employer and employees (s. 150).

Work Choices

- For industrial disputes and industrial action, the objects of the Act are to "ensure that, as far as possible, the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level", "supporting harmonious and productive workplace relations by providing flexible mechanisms for the voluntary settlement of disputes" and "balancing the right to take industrial action for the purposes of collective bargaining at the workplace level with the need to protect the public interest and appropriately deal with illegitimate and unprotected industrial action".
- Like Queensland, industrial action in the federal sphere falls into two categories: protected and unprotected. Protected action is available for employees negotiating collective agreements, subject to any industrial action having been preceded by a genuine attempt to reach agreement with the employer. All other collective action is unprotected and the AIRC must order it to stop.
- The AIRC can only assist in the resolution of particular types of disputes, which are specified in the Act. These are disputes about the AFPCS (s. 172), an award (s. 514), a workplace determination (s. 504), a preserved state agreement (Schedule 8, cl.15A) and a NAPSA (Schedule 8, cl. 35). In all of these cases, the model dispute resolution procedure (model DSP) must be used. The AIRC may also assist in the resolution of disputes about federal workplace agreements, where the agreement specifies the AIRC as the dispute provider (s. 699), and also where the agreement does not contain a dispute resolution procedure (in which case the model DSP applies – s. 353). The AIRC may also assist in resolving disputes arising during a bargaining period if all parties agree to the AIRC's involvement (s. 704).
- Under the model DSP, the parties must genuinely attempt to resolve the dispute at the workplace level (s. 695). Where the dispute cannot be resolved at the workplace level, the parties may refer the matter to an alternative dispute provider (s. 696), which can be the AIRC (s. 699) or a private arbitrator (Part 13, Division 6). If the parties cannot agree on the dispute provider, the matter can be referred to the AIRC (s. 696).
- The AIRC, in assisting to resolve disputes, does not have the power to compel any party to do anything (s. 706).
- If industrial action occurs, the AIRC does have coercive powers. The AIRC must order industrial action to stop, not occur or not be organised if it considers that the action would not be protected (s. 496). It must make this order within 48 hours of an application being made under s. 496 and, if this cannot be done, must make an interim order to stop or prevent the action. The AIRC must also order industrial action by non-federal system employees to stop, not occur or not be organised if the action would be likely to have the effect of causing substantial loss or damage to the business of a constitutional corporation (s. 496(2)).

- The AIRC must also suspend (or in some cases, terminate) bargaining periods (so that protected action cannot be taken) in a number of situations, including where:
  - the parties have not genuinely tried to reach agreement (s. 430(2));
  - the action could threaten to endanger life or the personal safety, health or welfare of the population or significant damage to the Australian economy or an important part of it (s. 430(3));
  - the action is being taken to support or advance claims in respect of employees who are not eligible members of the union (for union agreements) (s. 430(7));
  - the action relates to a significant extent to a demarcation dispute (s. 430(8));
  - pattern bargaining is occurring (s. 431);
  - suspension is appropriate having regard to whether it would assist in resolving the dispute, the duration of the action and whether suspension would be contrary to the public interest or inconsistent with the objects of the Act (s. 432);
  - a third person directly affected by the action applies for suspension and the AIRC considers that the action is threatening to cause significant harm to any third person (s. 433).
- The federal Minister is also empowered to terminate bargaining periods if the action threatens to endanger life or the personal safety, health or welfare of the population or significant damage to the Australian economy or an important part of it (s. 498).
- Employers must deduct a minimum of four hours' pay from employees who participate in industrial action (including protected action). For industrial action lasting more than a day, wages must be deducted for the whole period of the industrial action (s. 507).
- Work Choices provides that during a dispute, employees must continue to work in accordance with their contracts of employment, unless there is a reasonable concern about an imminent risk to the employee's health or safety (s. 697).

Protected action

- Protected industrial action is available to parties negotiating a collective agreement (Part 9, Division 3).
- No action lies under any state or Territory law against a person who participates in protected action, unless the action involves or is likely to involve personal injury, wilful or reckless damage to property or the unlawful use or taking of property (s. 447). However, defamation actions may still be taken (s. 447).
- Industrial action in support of a collective agreement may be taken 7 days after giving notice of an intention to commence bargaining (s. 427) and 3 days after giving notice of an intention to take industrial action (s. 441). For employee action, a majority of employees must approve the action in a secret ballot (s. 445) prior to giving the 3 days' notice. Secret ballots must be approved by the AIRC and employers have a right to make submissions (ss. 457-458). Employees or their organisation must pay 20% of the ballot cost. For union agreements, the action must also be authorised by the union's committee of management (s. 446) and only union members can take part in the action (s. 438). The 3 days' notice and secret ballot requirements are waived for action taken in response to industrial action (ss. 441, 445).
- If negotiations for an agreement break down, the AIRC can be called upon to assist, provided the parties agree (s. 704), but cannot make orders (s. 706). The AIRC can only make orders if it has suspended or terminated the bargaining period because it threatens to endanger life or the personal safety, health or welfare of the population or significant damage to the Australian economy or an important part of it.
- Industrial action is not protected if:
  - it is taken in order to include prohibited content in an agreement (s. 436)
  - if the bargaining period has been suspended (s. 437)
  - it involves persons who are not protected for that action (s. 438)
  - it is taken in support of pattern bargaining (s. 439)
  - it is taken before the nominal expiry date of an agreement (s. 440)

- the industrial action is taken by a member of an organisation while the organisation fails to comply with an order of the AIRC (s. 443)
- the action (other than action in response to a lockout) has not been authorised by secret ballot (s. 445)
- the committee of management of a relevant industrial organisation has not approved the action or given written notice of its authorisation to the Registrar (s. 446).

WORKPLACE AGREEMENTS (COLLECTIVE)

Industrial Relations Act 1999

- Collective workplace agreements (certified agreements) may be negotiated between employers and employees or employee organisations (s. 142).
- They may be negotiated for individual enterprises, joint ventures or multiple businesses run by related corporations or engaging in similar work (multi-employer agreements) as well as for projects (e.g. in the building and construction industry) (ss.141, 143). Pattern bargaining is permitted.
- Certified agreements come into operation once they are certified by the QIRC (s. 164). In certifying an agreement, the QIRC must ensure that the statutory requirements governing certified agreements have been met (ss. 156-158). Unions with coverage at the workplace are entitled to be heard on applications for certification.
- Agreements prevail to the extent of an inconsistency with an award that would otherwise apply (s. 165). Agreements made after 1 September 2005 may also displace a number of "default" statutory minimum conditions by expressly varying or removing them. The default minima include maximum working hours, penalties for overtime and shift work, rest breaks, casual loadings (s. 9A), annual leave loading (s. 13A), jury service leave (s. 14A), paid public holidays (s. 15) and redundancy payments (s. 85A). Agreements cannot displace the basic statutory entitlements to a minimum wage, sick leave, annual leave, parental leave, carer's leave, bereavement leave or long service leave.
- Due to their ability to override awards and some statutory minima, agreements cannot operate unless they pass a "no disadvantage" test (ss. 156(1)(h)). This test compares the terms and conditions of the agreement with the entitlements and protections that would apply to the employee in the absence of the agreement - if the agreement would result in an overall reduction in the employee's terms and conditions, it fails the "no disadvantage" test and cannot be certified (ss. 156(h), 160).
- Agreements are subjected to a number of other tests, including consistency with equal remuneration, anti-discrimination and freedom of association principles (s. 157), whether the agreement unfairly excludes a group of employees who ought rightly to be covered and whether the employer discriminated between unionists and non-unionists during the negotiations (s. 157). Certification can still occur if appropriate undertakings are given.
- Agreements have a nominal expiry date of 3 years unless a shorter period is stipulated in the agreement (s. 156). They continue to operate until replaced by a new agreement or they are terminated (s. 164).
- During the agreement's operation, it cannot be amended or terminated unless the employer and a majority of employees agree (ss. 169, 172). The QIRC must approve such amendments and terminations and must be satisfied that a valid majority of employees have consented (ss. 169, 172).
- After the agreement's nominal expiry date, it may be terminated on application to the QIRC, provided any pre-conditions to termination in the agreement have been met. If there are no pre-conditions, the QIRC may terminate the agreement if it is in the public interest (s. 173).
- When an agreement has been terminated (as opposed to being replaced by a new agreement), the employees revert to their relevant award. This becomes the starting point for negotiations on any new agreement and the basis of the "no disadvantage" test.
- To begin negotiations for an agreement, the initiating party must give 14 days' notice to the other party/parties (s. 143) (multi-employer and project agreements require 21 days' notice). 21 days must then elapse before any industrial action can be taken or the QIRC's assistance is sought (s. 147).
- For non-union agreements, employees must be advised of their right to be represented by a union during the negotiations (s. 144). The identity of employees who appoint a union to represent them can be protected (s. 152).
- The parties negotiating for an agreement must act in good faith (s. 146).
- Employees must be given at least 14 days to consider a proposed agreement. The employer must explain the terms and effect of the agreement to the employees, before seeking their approval, in a manner that is appropriate having regard to the persons' particular circumstances and needs, e.g. persons from a non-English speaking background (ss. 144, 156).

- Industrial action to support a party's bargaining position may be taken 21 days after the initial notice to commence bargaining and such action is protected from any legal action, other than action resulting in personal injury, wilful or reckless damage to property or the unlawful taking, keeping or use of property (s. 174). All employees to be covered by an agreement may participate in protected action.
- If negotiations for an agreement break down, the QIRC's assistance may be sought (s. 148). The QIRC may assist with conciliation and, as a last resort, arbitration (s. 149). Industrial action taken or continued when the QIRC moves to arbitrate a matter is not protected.
- The QIRC may intervene of its own accord in protected action which has been protracted or which threatens to cause significant damage to an enterprise, to employees or to a part of the economy or threatens to endanger the personal health, safety or welfare of the community and may make orders to assist the negotiation process (s. 149).

Work Choices

- Collective workplace agreements may be negotiated between employers and employees (s. 327) or employee organisations (s. 328).
- They may be negotiated for individual enterprises, joint ventures or multiple businesses run by related corporations or engaging in a common enterprise (ss. 322, 331). Employers starting a new business may also make agreements unilaterally (employer greenfields agreements). Pattern bargaining by employee organisations is not permitted (s. 431).
- Workplace agreements come into effect when they are lodged with the Employment Advocate (s. 347). They are effective even if the requirements of the legislation, such as employee approval, have not been met (s. 347). The Employment Advocate is specifically not required to ensure that the statutory requirements have been complied with when an agreement is lodged (s. 344).
- A majority of employees must approve a workplace agreement, either by a majority vote or when a "majority of those persons [to be covered by the agreement] decide that they want to approve the agreement" (s. 340).
- There is no provision for employee organisations to be involved in non-union agreements other than as bargaining agents for individual employees.
- Agreements displace the operation of any award that would otherwise apply (s. 349), including "protected award conditions" (other than outworker conditions) if the agreement explicitly varies or removes them (s. 354(2)(c)). The protected award conditions are rest breaks, incentive payments or bonuses, annual leave loadings, paid public holidays, certain types of monetary allowances, loadings for overtime and shift work, penalty rates and outworker conditions. Agreements cannot displace the Australian Fair Pay and Conditions Standard.
- In addition, agreements must be consistent with statutory protections in relation to anti-discrimination (Regulations, Ch.2, Reg 8.6) and freedom of association (Regulations, Ch.2, Reg 8.5(7) and s. 810).
- There is no "no disadvantage" test.
- Agreements must not contain prohibited content (s. 357). "Prohibited content" means clauses extraneous to the relationship of employers and employees or clauses dealing with the payment or deduction of union dues, leave to attend training provided by a trade union, paid leave to attend meetings conducted by or made up of trade union members, providing information about employees to a union, encouraging employees to join a union, the renegotiation of a workplace agreement, allowing employees to take industrial action, providing a remedy for unfair dismissal, the rights of an employee or employer organisation to participate in dispute resolution (other than where the employee or employer chooses the organisation), rights of entry, restrictions on the engagement of independent contractors or labour hire workers or the ability to enter into AWAs (Regulations, Ch.2, Part 8, Div. 7.1). It is an offence to recklessly seek to include prohibited content in an agreement (s. 357).
- Agreements have a nominal expiry date of 5 years unless a shorter period is stipulated in the agreement (s. 352).
- During the agreement's operation, it can be varied (Part 8, Div. 8) or terminated (Part 8, Div. 9) by consent of the parties. For non-union agreements, the consent of employees is either through majority vote or where a majority "decide that they want to approve" the variation or termination (ss. 373, 386

respectively). A variation comes into effect once the variation is lodged with the Employment Advocate, even if the statutory requirements for variation, such as employee approval, have not been met (s. 380). A termination comes into effect in similar circumstances (s. 398).

- For terminations after the nominal expiry date, a party to the agreement may terminate unilaterally by giving 90 days written notice to the other party and lodging a declaration with the Employment Advocate (s. 393).
- When an agreement has been terminated, the employees are entitled to the AFPCS and any of the protected award conditions which were contained in the award that would have previously applied to the employee (s. 399). This becomes the starting point for negotiations on any new agreement.
- To commence negotiations for a workplace agreement, the employer must ensure that all employees to be covered by the agreement have 7 days to consider it and must provide a statement about when and how approval will be sought and (for non-union agreements) the employee's right to request a bargaining agent (s. 337(4)). There is no requirement that the terms and effect of the agreement be explained to employees. Employees may also waive the 7 day consideration period (s. 337(5)).
- For non-union agreements, employees must also be advised of their right to be represented by a bargaining agent during negotiations (s. 337(4)). The agent need not be a union. The identity of employees who appoint a bargaining agent to initiate a bargaining period on their behalf can be protected (ss. 424, 425).
- Industrial action to support a party's bargaining position may be taken 7 days after giving notice of an intention to commence bargaining (s. 427) and 3 days after giving notice of an intention to take industrial action (s. 441). For employee action, a majority of employees must approve the action in a secret ballot (s. 445) prior to giving the 3 days' notice. Secret ballots must be approved by the AIRC and employers have a right to make submissions (ss. 457-458). Employees or their organisation must pay 20% of the ballot cost. For union agreements, the action must also be authorised by the union's committee of management (s. 446). The 3 days' notice and secret ballot requirements are waived for action taken in response to industrial action by the other party (ss. 441, 445).
- For agreements negotiated by an employee organisation, only the members of that organisation are entitled to take part in collective action (s. 435(2), 438). For agreements negotiated directly by employees, all employees may take part.
- Protected industrial action cannot be taken unless the parties have genuinely tried to reach agreement (ss. 444, 461) and can be suspended or terminated for a failure to do so (s. 430).
- Action that complies with the statutory requirements is protected from any legal action, other than action resulting in personal injury, wilful or reckless damage to property or the unlawful taking, keeping or use of property (s. 447).
- If negotiations for an agreement break down, the AIRC may suspend the bargaining period and must do so on in specific circumstances, e.g. if this would assist the parties to resolve the dispute and not be contrary to the public interest or if the industrial action threatens to cause significant harm to any person (s. 432). The federal Minister may also suspend or terminate bargaining periods (see Industrial disputes and industrial action for further information).
- When a bargaining period has been suspended or terminated because it threatens to cause significant harm to a part of the population or economy, the AIRC may settle the "matters in issue" by making a workplace determination (s. 500). A workplace determination has effect as if it were a collective agreement (s. 506).

APPRENTICES AND TRAINEES

Vocational Education, Training and Employment Act 2000

Industrial Relations Act 1999

- The terms and conditions of employment for apprentices and trainees are determined by the *Vocational Education, Training and Employment Act 2000* (VETE Act) and the *Industrial Relations Act 1999* (IR Act).
- The VETE Act primarily regulates the training contracts and arrangements of apprentices and trainees, while the IR Act primarily regulates their employment terms and conditions. However, the statutes operate interdependently because the VETE Act contemplates that training will be employment based training and the training contract is underpinned by the existence of the employment contract.
- All training contracts must be registered with the Training and Employment Recognition Council (TERC). The TERC may register a contract if it conforms to the requirements in the approved Guidelines (VETE Act, s. 54).
- Under the IR Act, the QIRC is empowered to make an order setting minimum wages and employment conditions for apprentices and trainees on the basis of age, competency or other method of progression through the training of the apprentices and trainees (s. 137). The Act provides that the QIRC's order prevails over an award to the extent of any inconsistency (s. 137). The Commission made an order, the *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003*, on 2 June 2003.
- The QIRC is empowered to make an order setting minimum wages and conditions for students under vocational placements that are for more than 240 hours a year. Vocational placements for 240 hours or less are unpaid (s. 140A).
- The QIRC may make an order setting minimum wages and employment conditions for employees participating in labour market programs on the basis of age, competency, disability, incapacity, kind of work to be done or experience to be gained (IR Act, s. 140). The Commission made an order *Community Jobs Plan Employee's Conditions* on 20 December 2002.
- The QIRC may also provide for tool allowances or the provision of tools of trade to a certain value to apprentices and trainees (IR Act, s. 138). The Commission made an order, *Supply of Tools to Apprentices*, on 19 June 1998.
- The TERC may determine probationary periods for apprentices and trainees. The current determinations are: apprentices 3 months; trainees 1 month (VETE Act, s. 50).
- Apprentices and trainees may be dismissed during their probationary period by the giving of one week's notice by either party (VETE Act, s. 51). One week's pay must be paid in lieu of notice (IR Act, s. 138A). If a training contract is not signed by the end of the probationary period and the employee is continued in employment, he/she must be paid the relevant training wage or wage applicable to the type of work the employee is doing, whichever is higher (IR Act, s. 138B).
- All time spent by an apprentice or trainee undertaking training delivered by their registered training organisation is taken to be time worked for the employer (IR Act, s. 392). This also forms part of the QIRC's order: *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003.*
- Existing employees who undertake apprenticeships or traineeships do not have their continuity of service disrupted (s. 70). In addition, if the apprenticeship or traineeship is not registered, is cancelled, is completed or ends before the probationary period ends, the employee is deemed to be reinstated to their previous position (IR Act, s. 139A).
- An apprentice or trainee cannot be dismissed unless the training contract is first cancelled or completed (IR Act, s. 139) and employers must continue to pay the wages of an apprentice or trainee until that occurs (IR Act, s. 391(2)). The TERC is the body authorised to cancel training contracts (VETE Act, ss. 63-66).
- The TERC may cancel training contracts for certain specified reasons (VETE Act, s. 66). In addition, a party to a training contract may apply to the TERC for cancellation of the contract if the party is unable to perform its obligations under the contract due to the reasons specified in the Act (VETE Act, s. 63).

- If a party cancels a training contract otherwise than in accordance with the VETE Act, the other party may apply to the TERC for an order that the training be resumed. If the TERC considers that it would be impracticable to make such an order, it may cancel the contract (VETE Act, s. 65).
- An employer may suspend an apprentice or trainee and apply to cancel the training contract if the employer believes the apprentice or trainee is guilty of serious misconduct (VETE Act, ss. 64, 71). Under s. 71, the TERC may discipline an apprentice or trainee believed to be guilty of misconduct by reprimand, order to comply with the training contract, fine, suspension for up to 30 days or cancellation of the contract.
- An apprentice or trainee may be stood down for a maximum of 30 days without pay, on approval by the TERC, if the employer is temporarily unable to provide the training required (VETE Act, s. 86).

Work Choices

- Work Choices excludes the application of the IR Act to constitutional corporations (s. 16), except where expressly permitted to operate by Work Choices. State laws with respect to apprentices and trainees are not preserved by Work Choices. However, s. 17(2) provides that federal awards and agreements are subject to state laws with respect to training arrangements, other than in areas specified by the Regulations. Regulation 1.5 specifies the following areas that may be overridden by federal awards and agreements:
  - remuneration and any other payment of an amount of money to an employee;
  - non-monetary allowances and benefits;
  - leave (whether paid or unpaid) and leave loadings;
  - public holidays;
  - hours of work;
  - types of employment (e.g. full-time, casual or shift work);
  - probationary employment;
  - termination of employment, except to the extent to which the law deals with or allows arrangements to be made for the termination of a training contract;
  - stand downs;
  - jury service;
  - superannuation;
  - dispute resolution, except to the extent to which the law deals with or allows arrangements to be made for dispute resolution processes about matters arising under a training contract;
  - the performance, conduct and discipline of an employee, except to the extent to which it deals with or allows arrangements to be made for the award of training qualifications;
  - any other matter that could be included in an award or any term or condition of employment in relation to apprentices and trainees not mentioned in the above.
- Wages and conditions for apprentices and trainees will be determined by the Australian Fair Pay Commission (AFPC). The AFPC will determine a special Federal Minimum Wage (FMW) for apprentices and trainees (s. 197) and/or an Australian Pay and Classification Scale (APCS) (s. 221). In determining the rate for apprentices and trainees, the AFPC must have regard to ensuring that they are competitive in the labour market (s. 23).
- An APCS may contain provisions that determine whether the hours an apprentice or trainee attends off the job training (supervised training) are hours for which the basic periodic rate of pay are payable (s. 202).
- Under s. 34 of Schedule 8, state awards are preserved as notional agreements preserving state awards (NAPSAs). The basic wage and classification scales under a NAPSA become a preserved APCS (s. 182). A preserved APCS is derived from the QIRC order *Apprentices' and Trainees' Wages and Conditions (Excluding Certain Queensland Government Entities) 2003*. The AFPC must not make an APCS that would result in less pay than a preserved APCS (ss. 182, 190). Other terms and conditions in NAPSAs continue (other than non-allowable matters), however these terms can be expressly modified or excluded by federal workplace agreements (s. 354).

- The WRA contains no exclusion of apprentices employed by corporations with more than 100 employees from applying for unfair termination, but it excludes trainees whose employment is for a specified period or for any reason limited to the duration of the traineeship agreement (s. 638).

RECOGNITION OF EMPLOYEE ORGANISATIONS

Industrial Relations Act 1999

- The IR Act allows employee organisations to participate in the industrial relations system, for example through applying for awards, making collective agreements, enforcing employee entitlements on behalf of their members and monitoring compliance with industrial instruments.
- The award process is the primary means under the Act through which employee organisations raise issues of a collective nature affecting workers generally, or workers in specific categories or across industry or occupational groupings (e.g. State wage case).
- The objects of the IR Act include *"promoting participation in industrial relations by employees and employers; and encouraging responsible representation of employees and employers by democratically run organisations and associations"* (s. 3).
- The right of employees to belong to an employee organisation is protected under the freedom of association provisions in Chapter 4. In particular, s. 104 prohibits an employer from retaliating against an employee because the employee is a member of an employee organisation or an organisation that is seeking better industrial conditions, or is engaged in lawful activity to further or protect the industrial interests of an employee organisation.
- "Closed shop" practices are not permitted under the IR Act, although awards and agreements may contain clauses which encourage employees to belong to an employee organisation (s. 110). Awards and agreements may also contain clauses to facilitate the involvement of employee representatives at the workplace, e.g. rights of entry, mandatory consultation clauses and involvement in disputes procedures and bargaining processes.
- The IR Act provides for the officials of employee organisations to be authorised to enter workplaces to inspect the time and wages records of members and eligible members. Authorisation is by the Industrial Registrar (s. 363). Authorities may be revoked, suspended or cancelled by the Registrar for inappropriate or unreasonable behaviour (s. 363) and it is an offence for an official to wilfully obstruct an employer or employee during an inspection. Entry must be during business hours and the official must notify the employer upon entering the premises (s. 372).
- On entering a workplace to inspect time and wage records, officials may hold discussions with employees who are members or eligible to be members about industrial matters. Other matters may be discussed in non-working time, e.g. meal breaks (s. 373(5), 373(6)).
- The *Workplace Health and Safety Act 1995* also allows officials to enter premises and inspect plant and equipment and employment records where it is reasonably suspected that a contravention of OHS laws has occurred.
- Chapter 12 of the IR Act regulates the registration of employee organisations and specifies requirements about the organisation's rules, elections, officers, membership, accounts and audits.
- Membership of employee organisations is determined by the organisation's eligibility rules (s. 416). To prevent a multiplicity of organisations and consequent overlaps in coverage, an organisation may not register if there is another organisation to which its members might belong or there is no organisation to which could conveniently belong that would effectively represent them (s. 420).
- Employee organisations must be free from control by, or improper influence from, an employer or employer organisation (s. 420).
- A Full Bench of the QIRC may deregister an organisation on broad grounds, including continued contravention of a Commission order or continued failure to prevent its members from contravening an industrial instrument, or for engaging in industrial action that is likely to have a substantial adverse effect on the safety, health or welfare of the community (s. 638).

Work Choices

- Work Choices allows employee organisations to participate in the industrial relations system, for example through making collective agreements, enforcing employee entitlements on behalf of their members and monitoring compliance with industrial instruments.
- Employee organisations cannot take action under Work Choices to address issues of a collective nature affecting workers generally, or workers in specific categories or across industry or occupational groupings. Such conduct would constitute pattern bargaining in the context of agreement making, which is not permitted (s. 431). There is no provision in the Act for making new federal awards other than as part of the award rationalisation process (ss. 539-540).
- The objects of Work Choices in section 4 provide that freedom of association is to be ensured but that, as far as possible, the primary responsibility for determining employment matters rests with the employer and employees at the workplace.
- The freedom of association provisions in Part 16 protect the right of employees to belong to an employee organisation. In particular, s. 793 prohibits an employer from retaliating against an employee because the employee is a member of an employee organisation or an organisation that is seeking better industrial conditions or is engaged in lawful activity to further or protect the industrial interests of an employee organisation who has given express authority to engage in such activity.
- "Closed shop" practices are not permitted. Union encouragement clauses may not be included in awards and are prohibited in agreements (*Workplace Relations Regulations 2006*, Chapter 2, Reg. 8.5(2)).
- Procedural clauses in workplace agreements to facilitate the involvement of employee representatives in the workplace are generally prohibited. Specifically prohibited are clauses dealing with the payment or deduction of union dues, leave to attend training provided by a trade union, paid leave to attend meetings conducted by or made up of trade union members, providing information about employees to a union, encouraging employees to join a union, allowing employees to take industrial action, the rights of an employee or employer organisation to participate in dispute resolution (other than where the employee or employer chooses the organisation) and rights of entry (Regulations, Ch.2, Part 8, Div. 7.1). It is an offence to recklessly seek to include prohibited content in an agreement (s. 357). Such clauses also cannot be included in awards.
- Work Choices provides for the officials of employee organisations to be authorised to enter workplaces if they suspect on reasonable grounds that there has been a breach of the Act or an industrial instrument to which the organisation is bound. Officials are authorised by the Industrial Registrar if they are "fit and proper persons" (ss. 740-742), a test primarily dependent on whether the official has had appropriate training on rights of entry and has ever had a permit suspended, revoked or made conditional.
- Entry can only occur if work is being carried out on the premises by at least one member of the organisation and the suspected breach is in relation to that work (s. 747). Twenty-four hours' notice is required. If entry is with regard to an AWA, the employee/s on the AWA must have specifically requested the union's presence (s. 747). While on the premises, officials may inspect the employment records of union members relevant to the suspected breach. Access to non-union employee records requires AIRC approval.
- Officials may also enter a workplace to hold discussions during non-working time (e.g. meal breaks) with employees who are members or eligible to be members.
- State laws governing right of entry for OHS purposes are allowed to continue (ss. 737, 756).
- An employer may direct an official to use a particular room or area of the premises to conduct interviews and to take a particular route to reach that room or area (ss. 751, 765).
- Schedule 1 of the Act regulates the registration of employee organisations and specifies requirements about the organisation's rules, elections, officers, membership, accounts and audits.
- Membership of employee organisations is determined by the organisation's eligibility rules. To prevent a multiplicity of organisations and consequent overlaps in coverage, an organisation may not register if there is another organisation to which its members could more conveniently belong that would more effectively represent those members (Schedule 1, cl.19).

- Employee organisations must be free from control by, or improper influence from, an employer or employer organisation (Schedule 1, cl.19).
- The Federal Court may deregister an organisation on broad grounds, including continued contravention of a commission order or continued failure to prevent its members from contravening an industrial instrument, or for hindering the achievement of Parliament's intention in enacting Schedule 1, set out in cl.5(1) of the Schedule, i.e. "to enhance relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation" (Schedule 1, cl.28).

PART E

LIST OF INDIVIDUALS/ORGANISATIONS WHO HAVE GIVEN EVIDENCE

Filed By:

- Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
- The Australian Workers' Union of Employees, Queensland
- The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
- Department of Employment and Training
- Department of Industrial Relations - *Queensland Government*
- Department of Industrial Relations - *Industrial Relations Services*
- Department of Industrial Relations - *Public Sector Industrial and Employee Relations Division*
- The Electrical Trades Union of Employees Queensland
- Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
- Queensland Council of Social Service
- Queensland Council of Unions
- Queensland Independent Education Union of Employees
- Queensland Services, Industrial Union of Employees
- Queensland Teachers' Union of Employees
- Queensland Working Women's Service
- Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees
- Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees
- Transport Workers' Union of Australia, Union of Employees (Queensland Branch) [oral submissions]
- Welfare Rights Centre
- Young Workers Advisory Service

LIST OF APPEARANCES

Organisation		Date	Appearance
Crown	Minister for Industrial Relations	01/08/06 21/08/06	Mr T. Shipstone
Crown		23/06/06	Mr D. Matley
DIR	Department of Industrial Relations	23/06/06 01/08/06	Mr B. Feldman
QCU	Queensland Council of Unions	23/06/06 01/08/06 21/08/09	Ms G. Grace Ms D. Ralston
AWU	The Australian Workers Union of Employees, Queensland	23/06/06 01/08/06 21/08/06	Mr P. Eldon Mr D. Broanda Ms S. Schinnerl
ACSEA	Livingstones Australia (for Australian Community Services Employers Association)	23/06/06	Mr L.E. Moloney
ADC	Anti-Discrimination Commission (Queensland)	23/06/06	Mr P. Guilfoyle
	Agforce Queensland, Industrial Union of Employers	23/06/06	Mr W. Turner
AIER	Carne Reidy Herd (for Australian Institute of Employment Rights)	23/06/06 01/08/06	Mr S. Reidy Mr D. Quinn
AIG	Australian Industry Group (Queensland) Branch	23/06/06	Mr D. Hargraves
AMEPKU	Automotive, Metals, Engineering and Printing and Kindred Industries Industrial Union of Employees, Queensland	23/06/06 24/08/06	Mr E. Moorhead Ms K. Allen
AMIU	Australasian Meat Industry Union of Employees	23/06/06	Mr C. Buckley
AMMA	Australian Mines and Metals Association	23/06/06	Ms K. De Lange
ASMA	Australian Sugar Milling Association, Queensland, Union of Employers	23/06/06 01/08/06	Mr P. Warren
BSCAA	Jones Ross (for Building Service Contractors Association of Australia, Queensland Division, Industrial Organisation of Employers)	23/06/06	Mr C. Pollard
CFMEU	Construction, Forestry, Mining and Energy Union	23/06/06	Mr J. Stein
	and	22/08/06	
FEDFA	Federated Engine Drivers and Firemens' Association of Queensland	01/08/06	Ms M. Kiely
DET	Department of Employment & Training	01/08/06 21/08/06	Mr R. McColm Mr K. Krebs
ETU	The Electrical Trades Union of Employees Queensland	24/08/06	Ms K. Inglis
	Hall Payne Lawyers	23/06/06	Ms T. Butler

Organisation		Date	Appearance
LGA	Local Government Association of Queensland	23/06/06	Mr T. Goode
		01/08/06	Mr K. Ryalls & Mr R. Clough
LHMU	Liquor, Hospitality and Miscellaneous Union of Queensland Branch, Union of Employees	23/06/06	Ms A.J. Threlfall
		01/08/06	
	Prior and Associates	23/06/06	Ms K. Prior
QCCI	Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers	23/06/06	Mr S. Pawlowski
	and		
QRTSA	Queensland Road Transport Association Industrial Organisation of Employers		
QHA	Queensland Hotels Association Union of Employers	23/06/06	Mr J. Moore
QMEA	Queensland Motel Employers Association, Industrial Organisation of Employers	23/06/06	Ms C. Beavis
QSU	Queensland Services, Industrial Union of Employees	23/06/06	Ms M. Robertson
QNU	Queensland Nurses Union of Employees	23/06/06	Ms G. McCaul
QTU	Queensland Teachers Union of Employees	23/06/06	Mr K. Bates
		24/08/06	
QUT	Queensland University of Technology	23/06/06	Dr P. McDonald
QWWS	Queensland Working Women's Service	23/06/06	Ms K. Dear
RCEA	The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers	23/06/06	Mr K.J. Law
RLCA	The Registered and Licensed Clubs Association of Queensland, Union of Employers	23/06/06	Mr J. Mitchell
SDA	Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees	23/06/06	Ms P. Town
		22/08/06	Mr D. Gaffey
TCFU	Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees	22/08/06	Mr J. Morel
TWU	Transport Workers' Union of Australia, Union of Employees (Queensland Branch)	22/08/06	Mr H. Williams
WRC	Welfare Rights Centre	01/08/06	Ms A. Tu
		25/08/06	Ms G. Middleton
YWAS	Young Workers Advisory Service	23/06/06	Mr A. Allegretto
		01/08/06	

REGISTRATIONS OF INTEREST

The registered participants included:

- The Minister for Industrial Relations
- The Crown
- The Department of Industrial Relations
- Queensland Council of Unions
- The Australian Workers' Union of Employees, Queensland
- Australian Industry Group, Industrial Organisation of Employers (Queensland)
- Queensland Chamber of Commerce and Industry Limited, Industrial Organisation of Employers [Initial Registration - no further involvement from 26 July 2006]

Registration List

- Anti-Discrimination Commission Queensland
- Australasian Meat Industry Union of Employees (Queensland Branch)
- Australian Institute of Employment Rights
- Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
- Australian Mines and Metals Association Inc.
- Australian Sugar Milling Association, Queensland, Union of Employers
- The Baking Industry Association of Queensland - Union of Employers
- Brisbane Multicultural Arts Centre Inc.
- Building Service Contractors' Association of Australia - Queensland Division, Industrial Organisation of Employers
- Business and Professional Women
- The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
- Carne Reidy Herd
- Consulting Surveyors Queensland Industrial Organisation of Employers
- Department of Employment and Training
- Department of Industrial Relations, Public Sector Industrial and Employee Relations
- Department of Local Government, Planning Sport and Recreation
- Eiszele, Craig Anthony
- The Electrical Trades Union of Employees Queensland
- Ethnic Communities Council of Queensland
- Federated Engine Drivers' and Firemens' Association of Queensland, Union of Employees
- Garner, Karen, Barrister-at-Law
- Gold Coast Employee Relations Pty Ltd
- Griffith University
- Hall Payne Lawyers
- Harmers Workplace Lawyers
- Hayan Business Planning
- Helen Twohill Consulting
- Hotel, Motel and Accommodation Association
- Immigrant Women's Support Service
- Kelada Bookkeeping Secretarial and Marketing
- Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
- Livingstones Australia
- LKC Consulting
- Local Government Association of Queensland Inc

- Master Plumbers' Association of Queensland (Union of Employers)
- Nathan Lawyers
- Printing Industry Association
- Prior and Associates
- Queensland Association of Independent Legal Services
- Queensland Council for Civil Liberties
- Queensland Council of Social Services
- Queensland Hotels Association, Union of Employers
- Queensland Independent Education Union of Employees
- Queensland Master Hairdressers' Industrial Union of Employers
- Queensland Nurses' Union of Employees
- Queensland Retail Traders and Shopkeepers Association (Industrial Organization of Employers)
- Queensland Services, Industrial Union of Employees
- Queensland Teachers Union of Employees
- Queensland University of Technology
- Queensland Working Women's Service Inc
- The Registered and Licensed Clubs Association of Queensland, Union of Employers
- The Restaurant and Caterers Employers Association of Queensland Industrial Organisation of Employers
- Rockhampton City Council
- Shop, Distributive and Allied Employees Association (Queensland Branch) Union of Employees
- St Vincent de Paul Society Queensland
- The Swann Group
- Textile, Clothing and Footwear Union of Australia, Queensland, Union of Employees
- Transport Workers' Union of Australia, Union of Employees (Queensland Branch)
- Turner IR Qld Pty Ltd
- University of Sydney
- Workplace Express
- Young Workers Advisory Service
- Zig Zag Young Women's Resource Centre

PART F

SELECTION OF MAJOR INTERIM SUBMISSIONS

Following initial directions the Inquiry received a number of [interim] submissions from Government, Unions and other organisations.

Whilst lack of available space prevents the publishing of all such submissions in full, the Inquiry has determined that the following submissions and extracts form part of this Report:

- 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 submissions were received from:

- 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)

THE AUSTRALIAN WORKERS' UNION OF EMPLOYEES, QUEENSLAND SUBMISSIONS

These submissions address the terms of reference outlined by the QIRC for the Inquiry. The AWU is not submitting any statements of evidence for the Brisbane proceedings. As it is the Union's intention to provide statements of evidence in the regional and remote visits programmed from 21 September to 12 October 2006, such evidence is unable to be relied on in this submission, due to the statements being incomplete.

The difficulties with the desire to bring as many examples as possible to the Inquiry of hardship and unfair treatment arising from the implementation of the Work Choices legislation, is that the new law makes it extremely easy for employers to dismiss workers, without those workers having any recourse to remedies. The fear and intimidation created by the legislation has made many workers unwilling to be identified. Additionally, unfair or unlawful cases that the Union has already proceeded with in the Australian Industrial Relations Commission have resolved themselves under confidential terms.

Despite these facts, as stated, it is this Union's intention to bring as much evidence forward from workers and union officials in relation to the impact of Work Choices to enable the Inquiry members to ascertain the actual and potential harm that this law creates.

In this context, the AWU addresses the terms of reference. The terms outlined by the QIRC are as follows:

TERMS OF REFERENCE

a. consider mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices;

b. inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including:

- *the reduction in wages and conditions through Australian Workplace Agreements (AWAs) or other collective agreements;*
- *discrimination, harassment or the denial of workplace rights;*
- *unfair dismissal or other forms of unfair or unlawful treatment of employees;*

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 WorkChoices; 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.*

The responses to the four terms are as follows:

a. Consider mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices

The Federal Government's universally proclaimed extreme and radical Industrial Relations (IR) legislation confirms the commonly held view that Australian workers' rights and conditions are being eroded to such an extent that the social and economic effect upon Australian workers is causing hardship within communities and families. This draconian legislation is having an effect upon the basic fabric of society, not only upon the individual worker, but also upon their family and their community.

Evidence has shown that the Federal Government's radical Work Choices industrial relations agenda will hurt the quality of life of millions of ordinary Australians. Workers' time with their family will be slashed as a consequence of workers being forced to trade off take home pay and conditions such as public holidays, merely to retain their jobs and sustain their families. The workplace legislation recently introduced into Federal Parliament will erode over one hundred years of respect for workers' rights, remove legal protection for many employment conditions and will set a new low for the future workplace conditions of Australian workers.

Access to unfair dismissal rights has been revoked for over 4 million workers, with individual contracts drastically slashing take home pay and basic conditions. The award safety net, which has underpinned workers' entitlements, has been removed, as has the 'no-disadvantage test', the real value of minimum wages will be allowed to fall, and workers will have no enforceable legal right to collectively bargain.

The abovementioned legislation has not only been condemned by worker's, their Unions and politicians within Australia, condemnation has also come from the International Labour Organisation (ILO), who recently agreed to list Australia's IR laws for an immediate hearing. Australia has been combined with some of the worlds worst violators of worker's rights including Libya, Uganda, Zimbabwe, Guatemala and other countries that are known as the world's worst offenders in terms of attacking the rights of workers.

Speaking recently at the ILO's annual conference in Geneva, Switzerland, ACTU President Sharan Burrow said:

> *"Australia's IR laws breach fundamental human rights by infringing on the right of working people to join a union and to bargain collectively". The ILO has previously condemned the Federal Government's Workplace Relations Act for not providing workers with adequate protection against discrimination if they choose to have their employment conditions governed by collective agreements. Ms Burrow also said, "ILO members are very concerned that as an advanced nation, Australia is increasingly out of step with its international obligations and has placed the Howard Government's laws on a list of labour rights violations cases for immediate examination".*

The Australian Workers' Union (AWU) respectfully suggests that it is incumbent upon the Queensland Government to implement its own "mechanisms", which would allow "employees to report incidents of unfair treatment as a result of the introduction of Work Choices". The AWU respectfully suggests that the Queensland Government also embarks upon a public campaign that informs and educates employees of their rights within the workplace. People are confused about how the Government's industrial relations changes will affect them and need urgent assistance and education.

To facilitate these objectives the AWU respectfully suggests the Queensland Government adopt the following mechanisms:

> That the Queensland Government facilitates 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. The 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 an individual losing their current rights or entitlements under a proposed AWA. This 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.
>
> Further, in conjunction with the industrial representatives of employees, a major information and education campaign should be conducted throughout the State of Queensland that consist of meetings, seminars and information sessions.

b. Inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including:

- ***The reduction in wages and conditions through Australian Workplace Agreements (AWA's) or other collective agreements;***
- ***Discrimination, harassment or the denial of workplace rights;***
- ***Unfair dismissal or other forms of unfair or unlawful treatment of employees.***

Before the introduction of the Work Choices legislation in March 2006, predictions were made by trade unions, politicians at the Federal level and State Governments throughout the country at the high risk of unlawful, unfair and otherwise inappropriate practices occurring under the proposed law.

Now that the laws have come into operation, be it only for just short of four months currently, the predictions are becoming reality.

Whether numerous examples of inappropriate work practices are identified in this Inquiry is not the true test of whether such behaviour is occurring. It is sufficient to consider the terms of the Work Choices legislation in determining whether such behaviour will occur. Any law that allows for abuse will result in abuse occurring. Some of the key areas of the legislation that allows such abuse or without any further intervention from employers, immediately seeks to reduce workers entitlements are:

Australian Fair Pay and Conditions Standard

The Australian Fair Pay and Conditions Standard (AFPCS) provisions purport to provide a safety net to workers that have not appeared in federal legislation previously. To accept this proposition is to be misled. The standard is to reduce what previously has been a comprehensive set of minimum wages and conditions developed. Those wages and conditions have evolved under State and Federal legislation through consultation, thorough investigation and consideration of the circumstances of particular industries and individual employers and the broader community interest.

Those conditions could not be simply removed or reduced. Protection was provided to all parties to ensure that intimidation and unequal bargaining strength could not undermine the substantive exercise undertaken throughout the years. That exercise was to ensure those standards were reasonable and suitable to the workplaces that they covered.

The practical effect of the legislated fair pay and conditions standard is to reduce the previous protection provided, to now a small non-prescriptive set of standards that do not reflect the community standards in most circumstances.

An example of this is the setting of a maximum number of ordinary hours of work. Despite setting a maximum, what the legislation then fails to provide is a legal obligation to pay any additional rate for work performed beyond those ordinary hours. This fails the workers in Queensland by allowing the employer the leverage to bargain away such fundamental entitlements. Workers now can be asked to work additional hours as overtime or weekend work or on public holidays that does not guarantee them any additional compensation for the extra work performed.

This legislation ignores the commitment and sacrifice made by workers for working these times. These are times that the worker could otherwise be engaging in social activities important to overall health, attending important spiritual activities to further their well-being, assisting in the care of elderly or disabled persons be it family members or volunteer work, and simply spending quality time with their children and partners. It is important to have this balance in life. This legislation takes for granted these important elements of people's lives and fails to at the very least compensate them for forgoing such important activities.

Further the setting of the minimum wage, adjustment to award wages and casual loading by a body separate to the authority who interprets and resolves matters in relation to those issues, creates at the very least confusion. The focus of the Australian Fair Pay Commission (AFPC) has as its objectives, principles that fail to give adequate importance to community standards and the establishment and maintenance of fair wages and conditions. These rates cannot be adjusted in a vacuum. To alter them without considering the context in which those rates were created and the flexibilities already provided for within the awards where they sat, will eventually lead to disadvantage.

The AFPC is not required to alter all or any of the wages with the primary focus in its investigations being the competitiveness of the unemployed to get jobs and the ongoing strength of the economy. Such focus in

other countries has seen workers fail to get a wage rise for the past 10 years. The United States is an example of a country that puts unemployment rates and the economy before fair wages and conditions. This philosophy can only lead to an increase in the working poor in Australia and people living in poverty. Simply having a job does not equate to the ability to maintain a standard of living that ensures that a family can educate their children, provide healthy food options and ensure that an adequate place to live is provided.

These standards as they appear in the Workplace Relations Act 1996, allow for all of these problems to arise. As stated, the number of examples of disadvantaged workers already in Queensland, is not an adequate measure for the true impact of the laws. In relation to these provisions, it will be the long term [effect] that will be so damaging to workers in Queensland after the awards are stripped back and the AFPC hold down wages.

Workplace Agreements

The most significant change in relation to the workplace agreement arrangements in Queensland is the ability for employers to override all but the AFPCS. The no disadvantage test that previously applied to workers in Queensland, either under State or Federal legislation, guaranteed that workers could not be disadvantaged as a consequence of the bargaining process. Although it is said that workers with skills are able to negotiate their terms from a position of strength the reality is that employers will still have the power in terms of the outcome. The Federal government's own statistics already show that workers are being disadvantaged under this law. With a sample of 6,263 AWA's lodged under the new provisions showing:

- 100% remove at least one award condition
- 64% remove leave loading
- 63% remove penalty rates
- 52% cut shift work loading
- 16% cut all of these conditions

This means that over 1,000 of those workers have lost all of their award conditions. This can only be considered as extremely detrimental to the worker. Conditions such as meal breaks, rest pauses and maximum hours worked, are issues that go to the heart of safety at a workplace and should not be removed. This law however explicitly allows for this to occur.

There is no acceptable number of agreements that should allow this. Prior to 27 March 2006, no agreements at law in this country could allow for this. The abuse created by this law has already led to the unfair treatment of workers and the reduction of their wages and conditions. Such reductions potentially lead to family breakdowns and the inability to feed and look after the health of themselves and others but also can result in the death of workers.

Even with the alleged safety net created by the AFPCS, the provisions in the *Workplace Relations Act 1996* specifically allows for the Employment Advocate to have no regard to compliance of adequate consultation processes and the proper acceptance of the terms of the agreement, be it collective or individual (s. 344(5) *Workplace Relations Act 1996).* This further exacerbates the problem.

Awards

The further stripping back of award contents and the removal of wages and other matters prescribed under the AFPCS will further allow for abuse by employers and loss of conditions.

Dispute Resolution Processes

The changes to dispute resolution to limit referral of bargaining matters to the AIRC only where consent of all parties exist, removes the ability to assist workers. Employers who are not bargaining in good faith and are seeking to reduce conditions in negotiations are unlikely to consent to an independent body assisting to resolve

any impasses. This results in workers having to resort to convoluted protected action processes to achieve their aim. This process not only involves approval from the AIRC but then a ballot from either the AEC or other provider. Even after the approval from the AIRC and a successful vote from the workers, the employer is entitled to three days notice before any industrial action can be taken.

The new protected action processes are deliberately intended to impede workers from taking action and furthering their claims. On the other hand, employers merely need to give three days notice and are able to lock the [entire] workforce out without pay until they concede to reducing their wages and conditions. This inconsistency between the treatment of employers and employees can only lead to employees being disadvantaged by the legislation.

Right of Entry

Changes to the *Workplace Relations Act 1996* as a consequence of Work Choices have resulted in restrictions being placed on right of entry of union officials (s.760, *Workplace Relations Act 1996*). 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.

The intent of Freedom of Association is that workers should not feel threatened or intimidated for seeking to be represented by a union or merely talking to a union. Unfortunately the Freedom of Association provisions require disadvantage to occur and that it can be proven. Much of the intimidation is done in subtle ways that cannot be proven in court. Provisions such as the Right of Entry provisions now in place allow for intimidation to openly occur.

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.

Under the Queensland *Industrial Relations Act 1999* and the *Workplace Relations Act 1996* prior to Work Choices, individual workers could claim conscientious objector status. Now workers have a situation in Queensland where the employer's religious beliefs are forced upon their workers, irrespective of whether the workers choose to be represented by a union. This entitlement under the law for employers to further restrict workers freedom of association, will lead to additional disadvantage and unfair treatment in the workplace.

Dismissals

To sum up the effect of the changes to the unfair dismissal laws on workers in Queensland it is appropriate to look at the first unfair dismissal case in this State. In 1916 a sewerage transport worker was dismissed from the Maryborough Shire Council. The AWU pursued an unfair dismissal case in the state system as it then was. The member won his case.

As 90% of businesses in Queensland are small to medium, with 100 or less employees, the majority of workers in Queensland in 2006 have less rights than workers in 1916.

90 years after that first dismissal case took place in Queensland, most Queensland workers are not eligible to pursue an unfair dismissal case if terminated. In addition changes to the unemployment benefits mean that from the beginning of July 2006, Australian workers who get sacked unfairly, face eight weeks without any

financial assistance from the Federal Government. 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.

Australia has seen group sackings of workers on permanent employment, then being offered casual employment the following day. Workers being sacked by text message, workers being sacked for allegedly sneering at the employer (accused of being disrespectful).

The Government claims that workers cannot be sacked for family reasons. However the employer does not have to give a reason, so it is extremely difficult to prove. Even if the worker could prove it, they are required under the industrial laws to file the matter through the Federal courts. The average worker cannot afford such an expensive legal process, when the maximum compensation is 6 months wages.

Recently Justice Ian Callinan of the High Court, was reported in the news as saying that "at more than $5,000 a day, litigation is becoming far too expensive for the ordinary Australian", the setting down fee in the Federal Court for an individual is $1,211 and hearing fees were usually $483 a day for individuals, the cost to corporations are higher".

It is now law that workers in businesses of 100 or less employees are excluded, in addition workers in larger businesses are excluded for their first six months of employment. Even if you manage to get over these hurdles, the employer can claim that the workers were sacked for operational reasons, and the dismissal is considered fair.

These provisions under the new Work Choices legislation are only a small sample of the significantly unfair treatment of workers and the disadvantage that will be suffered. A law that allows for such abuse will result in such abuse. Unfortunately the real effect of these changes may not be seen for some time, despite the fact that the changes are already impacting on workers lives.

c. Consider the investigations and outcomes of similar inquiries in other states and territories in terms of their relevance to Queensland

The Queensland Industrial Relations Commission (QIRC) is the only Industrial Commission to conduct an inquiry into the impact of Work Choices on employers and employees so far. Whilst the Inquiry is limited to Queensland, the effect of Work Choices will be felt by all Australians, as such it will be useful for this Commission to consider similar inquiries into the impact of Work Choices. There have been two major investigations into the impact of Work Choices. A Parliamentary Inquiry conducted by the standing committee on social issues of the New South Wales Parliament and an inquiry by the Federal Labor Parliamentary Taskforce on Industrial Relations. The AWU submit that this Commission should have regard to both inquiries, as they are relevant to employees and employers in Queensland.

The Labor Parliamentary Taskforce on Industrial Relations released an interim report into the impact of Work Choices legislation in June 2006. A copy of this report will be provided to the Commission. This report is the result of over 145 interviews with people all around Australia, including employers, employees, families, community organisations, unions, church groups, and small businesses. A substantial number of which were from Queensland.

The Taskforce was created to investigate the adverse effects of Work Choices upon families and communities and also to examine the particular effects these radical laws will have upon women, young people and rural communities.

The report outlines the way in which the new laws are designed to shift power fundamentally from employees to employers. The laws remove any lasting protections to employment conditions other than the five basic minima referred to as the Australian Fair Pay Conditions Standard. In particular, the combination of the removal of the no disadvantage test and the removal of unfair dismissal laws for the majority of employees makes genuine negotiations between an employer and his or her employees impossible. It also examines the

manner in which the Act critically weakens the Australian Industrial Relations Commission and seeks to constrain trade unions.

The AWU supports the preliminary findings of this report, which are:

Preliminary Finding 1

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

Preliminary Finding 2

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

Preliminary Finding 3

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

Preliminary Finding 4

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

Preliminary Finding 5

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

Preliminary Finding 6

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

Preliminary Finding 7

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

The Inquiry into the Impact of Commonwealth Work Choices Legislation by the Standing Committee on Social Issues of the New South Wales Parliament has concluded its investigation and hearings. The report is due to be released in November.

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.*

Previously in this submission, the AWU has put forward a suggestion that the Queensland Government facilitates an information network that will enable employees to have a "one stop shop" where 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. Further, it was put forward that the information network should 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 an individual losing their current rights or entitlements under a proposed AWA.

The union applauds the Queensland Government (Department of Industrial Relations) for already considering such an initiative in the Fair Go Queensland Advisory Service (FGQAS). The AWU acknowledges that this service provides for much, if not all, of what has been suggested. This is a clear sign that the Queensland Government is well and truly 'in touch' with the needs of this State's workforce. The key issue for the AWU is an ongoing commitment to the maintenance and review of this service.

The FGQAS is said to provide "a credible channel for employees to report cases of unfair dismissal and unfair treatment" in the workplace. Whilst this is extremely important, the following up of such reports is also highly vital. Against the service however is a perceived lack of investigative power. However, if this perception is in fact truly a perception and not based on fact, the potential for assisting Queensland workers who believe they have been unfairly treated is enormous.

Currently, the Government (by way of the FGQAS) has initiated a means of receiving complaints from individuals who believe they have been unfairly treated. The next step is the examination of such reports. If such reports are simply made, filed and forgotten, the whole initiative is simply a waste of everyone's time and provides nothing more that a false sense of hope to the aggrieved worker.

However, the thorough examination of such reports will be somewhat guided by the powers of the organisations involved. Whilst a general information search may be conducted by those officers manning the FGQAS, perhaps there needs to be a reporting mechanism to the Industrial Organisations who have the rules to cover such employees who may have the investigative powers that the service may not.

Until such time as the FGQAS is well and truly operating at full capacity, it may not be feasible for matters to be investigated on a case-by-case basis. This is where the regular reporting of complaints and incidents (at a higher level) is imperative. Through this reporting (whether this to be the QIRC or DIR), specific trends can be identified and investigations and communications targeted at the resultant groups. For instance, if in any one month period, 50 complaints are received from young casual workers in the retail industry, education programs can be directly targeted at such groups and employers of such groups. This also detracts attention from any one employee and focuses an education campaign on a specific workforce demographic.

Also of the utmost importance is the regular follow-up of such cases. This constant monitoring and review is key when considering how to report to the Minister on industrial relations practices under Work Choices including their impact on employees and employers. Simply reporting on the number of cases of unfair treatment reported to the service is simply not enough. The Minister needs to be made aware of exactly who is suffering most, what age groups, what industries, what specific employers are the regular 'offenders'. In order for the Minister to act and consider the impact of the legislation, trends in unfair treatment must be identified. Once these trends are identified, specific initiatives can be considered to counter the negative outcomes that result from the legislation.

Summary

The impact of Work Choices on society as a whole and Queensland workers will worsen over time. The broad ability under the legislation to abuse workers in areas as critical as wages, hours of work, overtime, safety, freedom of association and dismissals, will undoubtedly result in significant long term affects not only on existing workers but young people or people returning to the workforce in the future. It is imperative that the harsh practices that are currently occurring and will continue to occur be identified and publicly reported. It is only from this process that some change may occur and where possible prosecutions pursued.

DEPARTMENT OF EMPLOYMENT AND TRAINING SUBMISSIONS

Background

One of the key concerns facing the Queensland community now and over the next decade and beyond is securing sufficient skilled workers to meet the state's major infrastructure project needs to serve a growing population and economy. Apprenticeships and traineeships are a key vehicle in the development of the skills of the state's labour force to meet these needs.

To help address this skills shortage through the *Queensland Skills Plan* the Queensland Government will be providing additional 17,000 trade training places per year by 2010. This will build on the almost 80,000 apprentices and trainees that are presently in training across the state. A key consideration in securing these places is ensuring apprenticeships and traineeships arrangements that support young people and others in employed in apprenticeships and traineeships as well as meeting the needs of employers and industry.

The Training and Employment Recognition Council (TERC) has legislative responsibility for the apprenticeship and traineeship system in Queensland in accordance with the provisions of the *Vocational Education, Training and Employment Act 2000 (VETE Act).* On a day to day basis, administration of the *VETE Act* is carried out by officers of the Department of Employment and Training (DET) under TERC delegation.

It is critical that industrial relations arrangements continue to support the apprenticeship and traineeship reforms and growth that have occurred in Queensland - and will be required over the coming decade and beyond to meet the needs of a rapidly expanding population and economy. The principle focus of this submission, therefore, focuses on the effects of *Work Choices* on apprenticeship and traineeship arrangements in Queensland.

While the state's apprenticeship and traineeship arrangements have evolved to meet the needs of the Queensland labour market and economy, they have also responded effectively to, and in many cases led, the development of national reforms in areas such as accreditation, training delivery and assessment and mutual recognition processes.

Additionally, Queensland, through its industrial relations Order-making capacity, has provided national leadership in the development of innovative and comprehensive industrial instruments to underpin a range of apprenticeship and traineeship reforms. These instruments include provision for:

- Competency based training and wage progression;
- School based and part-time apprenticeships and traineeships;
- Adult and existing worker apprenticeships and traineeships; and
- Accommodating the Australian Qualifications Framework (AQF), including opportunities to achieve qualifications far beyond the traditional trade level.

Proclamation of *Work Choices,* however, has the potential to impede the necessary skills development priorities, as articulated in the *Queensland Skills Plan,* by undermining the responsive and effective state-based legislative framework that has been developed in partnership with industry and unions to underpin the development and growth of apprenticeships and traineeships in Queensland.

The key issues examined in this submission are:

- The complexity of the new federal industrial relations system and its effects on the administration of the apprenticeship and traineeship system in Queensland;
- Effects on legislative and administrative powers; and
- Effects on dismissal arrangements and the termination of training contracts.

Key Issues

The complexity of the Work Choices and its effects on the administration of the apprenticeship and traineeship system in Queensland

The three year transitional phase of *Work Choices* has created an extremely complex and confusing situation where four different employment groups are created with different legislative provisions applying, depending on:

- Whether the apprentice or trainee is employed by a constitutional corporation, non-corporation or the Queensland Government;
- The type of industrial instrument that applies at the workplace; and
- The type of provisions within that industrial instrument with particular reference to whether the instrument has exclusion provisions that override or extinguish other laws, industrial instruments and/or Acts (including the *VETE Act).*

The four different employment groups and the approximate percentage of apprentices and trainees "covered" can be broadly categorised as follows:

Group 1 - Non-corporations and employees of the Queensland Government (20%);

Group 2 - Pre-reform state industrial instruments (70%);

Group 3 - Pre-reform federal industrial instruments (8%); and

Group 4 - Post-reform *Work Choices* industrial instruments (2%).

This fragmentation of the employment "rules" governing apprentices and traineeships will create uncertainty and confusion for industry, employers and their apprentices and trainees. Already, significant numbers of employers and employees have expressed concern about this complexity and are having difficulty in understanding the far-reaching application of *Work Choices*.

The implementation of *Work Choices* is further compromised as the new federal administrators (Office of the Employment Advocate (OEA) and Office of Workplace Services (OWS)) have little experience of the necessary linkages between the training and industrial relations systems. Accordingly, the provision of authoritive advice to employers and apprentices and trainees will be further compromised.

In simple terms, the provision of accurate advice to the parties to a training contract is extremely problematic given:

- The lack of formal linkages and knowledge base between agencies such as the TERC, OEA, OWS, Wageline;
- The privacy and prohibition of disclosure provisions associated with AWA's; and
- The lack of knowledge mainly by employees about what is in an industrial instrument; and what overall impact it has on their employment and training arrangements.

The net effect of *Work Choices* is to introduce a significant element of uncertainty for all stakeholders at a time when there is a need for clear, well understood industrial arrangements to support growth in apprenticeships and traineeships.

Effects on Legislative and Administrative Powers

There has been a legislative recognition in Queensland that the training system has a symbiotic relationship with the employment and industrial relations systems.

There has been a strong inter-connected legislative relationship between the application of the *VETE Act 2000* and the *Industrial Relations Act 1999* to cater for the approximately 90% of Queensland apprentices and trainees covered by State industrial instruments.

Work Choices fundamentally undermines this effective legislative relationship and creates a framework that not only considerably weakens protective measures previously available to all apprentices and trainees in Queensland but dilutes other measures that help ensure quality training outcomes for industry and its workforce.

Four significant areas within *Work Choices* of particular concern are:

- Section 16 which excludes and extinguishes certain employment law in general and the *Industrial Relations Act 1999* (apprenticeship and traineeship provisions expressly extinguished by the exclusion of the *Industrial Relations Act 1999* for Groups 2, 3 & 4 employers are set out in Attachment 1 with the most important areas being the loss of protective measures associated with dismissals and the loss of associated entitlements);
- Clause 34 of Schedule 8 of *Work Choices*, mainly through the NAPSA-preserved generic *Order - Apprentices' and Trainees' Wages and Conditions (excluding Certain Queensland Government Entities) 2003*, that restores a number of provisions but only for Group 2 employees and only for the transition period.
- Regulation 1.5 which can be used to systematically override or exclude a whole raft of employment, and industrial relations provisions including many provisions associated with the regulation and administration of apprenticeship and traineeship contracts. Attachment 2 summarises the effects on the *VETE Act* and the delegations exercised by the TERC. In general the following arrangements for apprenticeship and traineeships are impacted:
  - Types of employment (eg. Full-time employment, casual employment including casual apprenticeships and traineeships, regular part-time employment and shift work.);
  - Probationary employment;
  - Termination of employment;
  - Stand down;
  - Dispute resolution;
  - The performance, conduct and discipline of an employee; and
  - Any other matter that could be included in an award or any term or condition of employment in relation to apprentices and trainees not mentioned above; and
- Dismissal laws where the concerns are set out below.

Effects on Dismissal Arrangements and the Termination of Training Contracts

Work Choices dismissal laws are split into three categories (unfair dismissal, unlawful dismissal and termination of training arrangements) and may all apply to apprentices or trainees depending on the circumstances of the individual case.

Such a complex scenario can only act as a major disincentive to employment and therefore is in direct conflict with the need to address skills shortages and increase the number of apprentices and trainees.

Already, there is evidence where aggrieved parties to training contracts are increasingly "jurisdiction shopping", seeking high cost common law remedies or using agencies such as the Anti-Discrimination Commission of Queensland (ADCQ) to maximise their opportunities for redress.

The employment security provided through an apprenticeship or traineeship is considered one of the trade offs against the lower wages available through these arrangements. The removal of the prohibition against termination of an apprentice's or trainee's employment (accorded by s. 139(2) of the *Industrial Relations Act 1999)* results in the loss of this traditional security of employment afforded to apprentices and trainees.

From a technical perspective the most likely practical *Work Choices* outcome will be that training contracts will become frustrated by the legal termination of the employment contract provide for under *Work Choices.*

Affected apprentices and trainees whose employment is terminated now have few options other than appeal to the QIRC with the view to being awarded compensation (including lost wages in the cancellation process) but do not have an opportunity to gain reinstatement of their employment contract as the QIRC is prevented from doing so where the employment contract is legally terminated under *Work Choices*.

There is an expectation therefore that the number of appeals to the QIRC will increase substantially.

The Hon. Tom Barton MP, Minister for Employment, Training and Industrial Relations and Minister for Sport has written to the federal Minister for Workplace Relations on the removal of what has been a fundamental feature of apprenticeship and traineeship arrangements in Queensland. Commonwealth and State officers have discussed this matter and State officers are waiting on a reply from the Commonwealth.

Conclusion

Queensland has long been recognised as being at the forefront nationally in the development and implementation of responsive and effective apprenticeship and traineeship arrangements. The Department of Employment and Training is concerned that the provisions of *Work Choices*, together with its inherent complexity, has the potential to undermine the effective industrial relations provisions that have underpinned these arrangements. More importantly they have the potential to hinder the reforms and continued growth in apprenticeship and traineeship numbers that are pivotal to meeting the critical skill shortages that the state faces over the coming years.

Attachment 1 - Apprenticeship and Traineeship Provisions Within the Industrial Relations Act 1999 Excluded by Work Choices

- Continuity of service - where the employment status changes (s. 70);
- The making of any new Order or amendment of an existing Order of the Queensland Industrial Relations Commission made after the Reform Date, setting:
  - wages, conditions of employment or tool allowances for apprentices and trainees including the requirements that Group Training Organisations pay the same wage rates and conditions relevant to the Host organisation (ss. 136-138);
  - wages, conditions of employment for employees under a Labour Market Program (s. 140);
  - remuneration for students under Vocational Placements in excess of 240 hours (s. 140A);
- Wages payable to former apprentices and trainees when a training contract is not signed by the end of the probation period (s. 138B);
- The prohibition on terminating the employment of apprentices and trainees before the cancellation or completion of the training contract (s. 139);
- Provisions reinstating persons who were an existing employee before they became an apprentice or trainee to their previous position if their apprenticeship or traineeship was completed or cancelled (s. 139A);
- Determinations of the Approving Authority (s. 162);
- The requirement that employers pay wages for their apprentices or trainees until their training contracts are completed or cancelled (s. 391);
- The payment requirements for off the job (s. 392) irrespective of the method of delivery;
- Recovery of wages and entitlements provisions (ss. 278, 399, 666, 673); and
- The QIRC's ability to give *protected action* status to apprentices and trainees involved in industrial action.

Attachment 2 - Summary of Effects on the Vocational Education, Training and Employment Act 2000

Group 1 - Non-corporations and employees of the Queensland government

Group 2 - Pre-reform State industrial instruments

Group 3 - Pre-reform Federal industrial instruments

Group 4 - Post-reform *Work Choices* awards and agreements

- Group 1 has not been included in this Table as *Work Choices* has no effect on it.
- If an employer's *federal* award or agreement is silent, *VETE Act* provisions will apply as normal.

VETE Act Section	Corporations Under Preserved State Awards or Agreements (Group 2)	Employers Under Pre and Post Reform Federal Awards or Agreements (Groups 3 & 4)
Probationary period - S 50 *VETE Act*	No change	• Can be overridden by a specific provision in a federal award or agreement under Regulation 1.5(8).
Ending apprenticeship or traineeship in probationary period - S 51 *VETE Act* - S 138A *IR Act.*	No change	• Can be overridden by a specific provision in a federal award or agreement under Regulation 1.5(8).
Registration of training contract - S 54 *VETE Act*		
• Restriction on employment of casual employees as apprentices or trainees.	No change	• Can be overridden by a specific provision in a federal award or agreement under Regulation 1.5(7).
• Part-time and school based apprentices and trainees		
– Minimum hours or days of work set by TERC.	No change	• Cannot be overridden by a federal award as it is a non-allowable award matter. • Possibly could be overridden by a specific provision in a federal agreement under Regulation 1.5(16) if it is determined it is a term or condition of employment.
– Restrictions on whether a person may be employed as a school based apprentice or trainee (including Electrotechnology Industry)	No change	• Can be overridden by a specific provision in a federal award or agreement under Regulation 1.5(7).
Cancellation for inability to perform training contract for stated reasons - S 63 *VETE Act*		
• Termination of employment	• Parties can now terminate employment contract, however, they must still apply for cancellation of the training contract. • See Note 1	• Parties can now terminate employment contract, however, they must still apply for cancellation of the training contract. • See Note 1
• Other reasons	• No change	• No change
Suspension and cancellation for serious misconduct - S 64 VETE Act	• Section 64 still applies, but employers can now just terminate an apprentice or trainee's employment contract. • Employer must still apply for cancellation of the training contract. • See Note 1	• Can be overridden by a specific discipline provision in a federal award or agreement under Regulation 1.5(14), but employers can now just terminate an apprentice or trainee's employment contract. • Employer must still apply for cancellation of the training contract. • See Note 1

VETE Act Section	Corporations Under Preserved State Awards or Agreements (Group 2)	Employers Under Pre and Post Reform Federal Awards or Agreements (Groups 3 & 4)
Council's power to reinstate training - S 65 VETE Act	• No change, but s 65(5) (impracticable to order resumption of training) would apply regardless of who (employer, apprentice or trainee) "purports" the cancellation (terminates the employment). • See on s63, • See also Note 1.	• No change, but s 65(5) (impracticable to order resumption of training) would apply regardless of who (employer, apprentice or trainee) "purports" the cancellation (terminates the employment). • See on s63, • See also Note 1.
Cancelling registration of training contract - S 66 VETE Act	• As for s 63 • See also Note 1.	• As for s 63 • See also Note 1.
Discipline - S 71 VETE Act	No change	• Can be overridden by a specific provision in a federal award or agreement under Regulation 1.5(14).
Prohibited employers - S 83 VETE Act	No change	• Cannot be overridden by a federal award as it is a non-allowable award matter. • Possibly could be overridden by a specific provision in a federal agreement under Regulation 1.5(16) if it is determined it is a term or condition of employment.
Temporary stand down under registered training contract - S 86 VETE Act	No change	• Can be overridden by a specific provision in a federal award or agreement under Regulation 1.5(10). • See Note 2
Restricted callings - S 89 VETE Act	No change	• Cannot be overridden by a federal award as it is a non-allowable award matter. • Possibly could be overridden by a specific provision in a federal agreement under Regulation 1.5(16) if it is determined it is a term or condition of employment.

Note 1

Unresolved jurisdictional issues exist about whether the notice on termination provisions in awards and agreements will apply to apprentices and trainees resulting in the frustration of the Training Contract. The Hon. Tom Barton MP, Minister for Employment, Training and Industrial Relations and Minister for Sport has written to the federal Minister for Workplace Relations. Commonwealth and State officers subsequently discussed this matter and State officers are waiting on a response from the Commonwealth.

Note 2

The same principles expressed in Note 1 apply in that the *VETE Act* deals with the stand down of the training contract which may be frustrated by a legal stand down of the employment contract.

QUEENSLAND COUNCIL OF UNIONS SUBMISSIONS

Introduction

The QCU is conscious to ensure the success of this Inquiry. To a large extent such success will be gauged by the level of interest from employees, community organisations, government bodies, employers, unions and the like, from around Queensland.

But interest comes in varying guises. There will be those employees who show no reticence in coming forward to share their issues with you. There will be other employees whose experiences suggest that to publicly expose issues may well place their continuing or future employment in jeopardy. This is particularly the case for those employees in regional Queensland, whose employment options are limited to the town they live in.

The Inquiry must be empathetic to these differing perspectives. Commission member's industrial knowledge and experience is one of the hallmarks of this Commission. It has enabled you to grapple over the decades with far ranging issues in an effective and efficient manner. This Inquiry should be no different.

To reach out to employees requires you to ensure that the mechanisms made available to those individuals to bring their "stories" to you are wide-ranging. This has been achieved to a large extent through the release on the 10 July 2006 of the *Directions relating to the giving of evidence and/or making of a submission.* We note that the Inquiry members had indicated, in their invitation to the parties to participate in the initial sitting, that the Commission is conscious to canvass a full range of views and experiences relevant to its terms of reference and that it is envisaged that the process for receiving and examining information that comes to it will include a combination of public hearings conducted throughout the state; the taking of evidence; and the receipt of oral and written submissions.

As the QCU will show during the course of this Inquiry, the contact made with individuals is sometimes serendipitous. If I can indicate an example in point.

The Commission will be aware that recently an article appeared in the Courier Mail concerning employment arrangements that were being proposed at the Willow Hotel. The detail of that particular issue came first to the QCU, not because an individual at the Willow Hotel contacted us. It was rather during the course of conversation an officer of our organisation was having dealing with a completely unrelated matter. At the conclusion of the conversation the individual indicated to this officer that it was good timing the QCU phoning because he had a question for us. The question was that he was aware that a mate of his had been offered an agreement at the Willow Hotel which reduced his employment conditions and wages substantially and he did not know what that mate could do about the agreement. Contact between the QCU and the relevant union occurred and the matter took the course that was reported in the Courier. Well how serendipitous is that.

As another example at point, the details surrounding the termination of the Cold Rock employee at Springwood came to light through that 17 year old forwarding a copy of the contract she had been required to sign to the QCU. She sought help because she saw the injustice. She was not a union member but obviously saw that the answer to her concern lay with forwarding that information to us.

Or we could look at the example of Penfold Buscombe which also had recent media coverage in the Courier Mail. In this instance the union's involvement in providing advice, assistance and representation in respect of this matter was purely coincidental. The union had arranged for existing members and workers interested in joining the union to discuss general employment issues at a meeting with the union on 2 June. At lunchtime on 2 June the union received a phone call from a member at Penfold Buscombe wanting some advice for a fellow worker (who was not a member) who had been sacked. Quite clearly in this instance the serendipity was the fact that the union was to visit the site almost at the very moment that an employee was terminated.

The examples sighted above came to light more through good fortune than good planning! And as the Commission could well imagine good fortune is subject to a lot of ebb and flow.

Individual employees need to be given the sense of reassurance from this Inquiry that their stories can be told, without retribution. This Commission I believe will experience contact not dissimilar to that which the QCU and indeed other organisations have experienced.

In the flexibility you have offered it is anticipated that this Commission will not miss the Willow Hotel, Cold Rock and Penfold Buscombe examples, that the QCU contend, are prevalent in Queensland.

The Inquiry has been given broad terms of reference 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 Minister has directed that the Inquiry:

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 within three (3) months of the commencement of the Inquiry; and
- a final report and recommendations within six (6) months of the commencement of the Inquiry.

Background

Workers and employers in Queensland are principally subject to the *Industrial Relations Act 1999* (Queensland). This legislation in its current guise was prepared subject to tripartite endorsement through a review Taskforce chaired by Professor Margaret Gardner, and involving senior representatives from Commerce Queensland (ACCI's state counterpart) and the AIGroup. Professor Ron McCallum was also a member of the Taskforce. Its deliberations were far reaching and in the context of a tripartite activity, broadly inclusive of agreement for the changes that are now a feature of the Queensland system.

Indeed that broad agreement reflects the constituency of those organisations, who have maintained an alliance with a state industrial relations system; and recognition that a substantial proportion of Queensland employees are engaged by nonincorporated entities. Preliminary data points to around 27.3% of Queensland employees engaged by non-incorporated private businesses; plus 12.8% engaged by the state government and 2.3%

engaged by local governments. Excluded from the data are 3.3% engaged by statutory authorities and 2.3% engaged by the federal government. This results in 42.4% of Queensland employees engaged by nonincorporated entities.

Within the 27.3% of non-incorporated private businesses, almost 50% of those businesses engage less than 20 employees, with almost 83% engaging less than 100 employees. When this data was collected Queensland's working population stood at 1,874,800 which would have resulted in 794,915 employees remaining within the state system. Recent statistics point to the employed workforce breaking the 2 million mark. Thus the current estimate is that 848,000 employees are reliant upon the state industrial relations system.

The greatest proportion of employees engaged by unincorporated private businesses is in the property and business services sector (43.5%); with the retail trade sector; health and community services sector; cultural and recreational services sector, and personal and other services sector all around 35%. Accommodation, café and restaurants (26.8%) and construction (30%) sectors also have substantial proportions of employees engaged by non-incorporated private businesses.

The type of industrial instrument regulating the employment conditions of employees engaged by unincorporated private businesses is primarily an award, at 41.2%. As such, a system that is designed to devolve industrial responsibility from the award structure to an agreement focus is not one supported by Queensland businesses. Those businesses have had access to an enterprise bargaining focus since the early 1990s, along with the capacity to adopt Queensland Workplace Agreements (QWA), and those businesses have chosen not to do so.

For those businesses that are incorporated but operate within the state jurisdiction, either by relying upon the award structure, or negotiating a certified agreement, have also had an opportunity to opt into the federal system. In the main those employers have not chosen to do so. They have had exposure to a streamlined, efficient and effective state system which has enabled them to settle industrial disputes, and to have matters dealt with expeditiously within a principally non-legalistic environment. This gives certainty to businesses that see simplicity as a prerequisite to effective business acumen.

They have taken the award system as their preferred system. It gives them certainty and structure. It enables them to operate efficiently and effectively with their employees. A proposition that is designed by stealth to cut away the state industrial relations system is to say to Queensland businesses, we do not trust your judgment or your preference, and we will create any mechanism possible to deny you your choice.

As has been claimed the proportion of businesses affected by multiple systems of regulation is almost certainly quite small, and restricted mainly to the well-resourced large multi-state businesses. Briggs and Buchanan in Work, Commerce and the Law: a New Australian Model? (Australian Economic Review 38) highlight the complexity of the federal system compared to the state system and assert a single unified system could thus actually create more problems for employers, especially small employers than it solves.

With around 20% of Australian employees now reliant on award rates of pay, this is almost a 50% reduction in a period of 15 years with the estimated figures in 1990 being 68% award reliance. However the figures also identify that around 38% of employees have their rates determined by collective agreements with the figure being 24% for the private sector only. (Registered collective agreements within the public sector are at 91.8% of all employees.)

With these figures there may be a presumption that the rest of the Australian workforce have their terms and conditions of employment regulated by workplace agreements (AWAs and the like). However this figure was only around 2.4%. As such the remaining 39% of Australian employees are "apparently" covered by individual contracts. Whether this figure is realistically that high is questionable. A component of the statistical data available on Australian employees factors in owner/managers who should not be categorised as employees.

Of important note in relation to the award reliance for rates of pay, are the types of businesses, and therefore employees, which rely upon an award and not agreement settlement, whether collective or individual. ABS data shows less than 10% of small business (employing less than 20 employees) in 2004 were covered by collective agreements.

The evidence of confusion for those businesses is strewn across Work Choices and perhaps no more evident than in the transitional arrangements.

Federal Intrusion

Historically industrial relations regulation has been shared between the state governments and the federal government. This shared system of industrial relations has worked effectively in Australia for over 100 years by providing balance, fairness and choice for employees and employers.

The Australian Constitution contains an explicit power concerning the regulation of industrial relations. The limited scope of the power makes it clear that industrial relations is an area where the federal government and the states have shared legislative responsibility.

Section 51(xxxv) of the Constitution provides the federal government with the 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 broad interpretation of this section of the Constitution has seen the expansion of the federal industrial relations system into many areas which may not, on the face of it, appear to be the domain of interstate disputes. By and large, however, the federal government was content to leave the state systems with room to operate.

In the drafting of Work Choices, the federal government has chosen to rely instead on the corporations' power in section 51(xx) of the Constitution. The QCU considers that the use of the corporations' power to regulate industrial relations is unconstitutional as it oversteps the intended use and purpose of the corporations' power. This matter is currently before the High Court of Australia. The QCU is an appellant in that matter.

By relying on the corporations' power in the drafting of Work Choices, the federal government has indicated its intentions regarding the regulation of industrial relations. That is, firstly, that all constitutional corporations must compulsorily move into the federal industrial relations system (even if these corporations operated in the state system and preferred to stay there) and secondly, that most state industrial laws will no longer apply to constitutional corporations and the determinations of state industrial relations tribunals will, in large part, no longer bind them.

Prior to the commencement of Work Choices most employers and some employees had the choice of operating in either the state of federal industrial relations system. This provided employers and workers with the option of using the system which best suited their needs. This choice provided balance for industrial relations stakeholders and promoted healthy competition between the industrial relations systems; a key benefit of federalism.

This revolutionary shift in the constitutional basis of Australian industrial law will, in the words of Professor Ron McCallum, Dean of Law at the University of Sydney: *lead inevitably and inexorably to the compensation of Australian labour law to the detriment of the dignity of working women and men of this country.* See his comments to the 'Fair Go or Anything Goes?' Conference in Sydney in 2005.

This is because laws made on the basis of this power would be laws about the object of the power, the corporation, rather than about the industrial relationship between parties (employers and employees and their representatives). This is likely to result in a focus on the needs and attributes of the corporation and not upon the nature of the interaction between the parties and a proper consideration of the needs and attributes of each.

This is a significant and unprecedented attempt by the federal government to 'cover the field' in industrial relations by forcing all constitutional corporations to operate in the federal industrial relations system.

Regional Issues

Work Choices does not recognise the uniqueness of regional and rural areas. Locational disadvantage has been well documented and must be considered in any changes to industrial relations laws. In particular, consideration must be given to the relative size in any region of the indigenous population, the number of households reliant on social security, the range of industries operating in any region, mobility in and out of a region. These issues will significantly alter the meaning of 'flexibility' and 'choice' for some employees and employers.

One of the strengths of the state industrial relations system is its responsiveness to regional needs. Due to Work Choices, compliance sections of the Qld Department of Industrial Relations will no longer be able to assist rural and regional businesses which are 'constitutional corporations'. These businesses will be reliant on the compliance service offered by the federal government. The federal government currently employs only 130 inspectors to cover all workplaces across Australia. This is significantly fewer compared to the state inspectors who work exclusively in Queensland. The federal government has announced that it will appoint a total of 200 inspectors based in 28 as yet unspecified locations to administer Work Choices across Australia. These inspectors are to cover about 1.2 million businesses throughout the country.

It should be noted that each year the federal government receives about 5,000 complaints from workers who have been subject to underpayment of wages, yet last year it prosecuted just seven employers for illegal behaviour.

Work Choices impact on regional labour markets cannot be examined in isolation. It is the interaction between this legislation and the federal government's 'welfare to work' policy that enables a more accurate scrutiny of the anticipated outcomes.

A recent Australian Council of Social Service (ACOSS) report examines the regional distribution of people affected by the federal government's 'welfare to work' policy agenda. The research shows that those people living in regional Australia will be disproportionately affected by the 'welfare to work' changes. From 1 July 2006 new applicants for income support will be put onto a lower Newstart Allowance rather than existing pensions of the Single Parents Payment (SPP) and the Disability Support Pension (DSP). This is likely to have a disproportionate impact on rural communities given that:

- Unemployment is higher in regional Australia, so many recipients affected by the policy would find it hard to avoid income loss by acquiring a full time job.
- Research suggests that by moving to a non metropolitan area, single parents on income support reduce their short term job prospects by half. However the main reason for moving is the unaffordability of housing in urban areas, especially once a family has split up.

Reference should be made to the Australian Council of Social Service publication Who is worse off? The regional distribution of people affected by the Welfare to Work Policy (*ACOSS Info 381* Strawberry Hills NSW).

With little or no bargaining power, the risk of losing pension benefits will force the groups targeted by welfare to work into work with potentially substandard conditions, reducing their capacity to manage their illnesses and caring.

As Briggs has indicated the welfare to work and industrial reforms forcibly generate labour supply for low paid jobs (see Federal IR reform: the shape of things to come - an acirrt publication). Creating a situation where the vulnerable in our society and those with caring responsibilities will be competing against each other for low paying jobs. These effects can only be exaggerated in rural areas where the unemployment rate is higher than in metropolitan areas.

Previously exemptions were available for activity test in regional and rural areas in recognition of higher unemployment, lack of job mobility and skills shortages. However, under the welfare to work changes, this exemption will be removed and regional and rural workers will be treated the same as metropolitan workers. It is unclear how this will be implemented.

Evidence and the Exposures

This Inquiry has the opportunity to travel to cities and towns across Queensland, listening to the concerns of employees, community organisations, government bodies, unions, employers, and other groups. The public hearings you will host will enable you to record the experiences and concerns of a large number of witnesses, more than 100 in total. A large number of these witnesses will give evidence publicly. Those that provide that evidence in camera do so for obvious reasons, none more so than the potential for repercussions in the future employment options. A real fear! The Inquiry will give a voice to both the likely victims of the extreme and unfair laws and to the persons and organisations who have serious reservations about the merits of the legislation.

The QCU contends that the type of evidence that you will hear will show that despite the rhetoric, to the contrary, Work Choices is having an adverse impact on the lives of workers. The evidence presented to this Inquiry will show that the wages of some young workers have already declined as a result of the changes. Unscrupulous employers have taken advantage of the legal protection afforded by Work Choices to institute exploitive wage arrangements. Some young workers have had to bear severe wage reductions with penalty rates scrapped. The use of AWAs and the removal of the 'no disadvantage test' are resulting in a substantial reduction in wages.

The adverse impact of AWAs is borne out when you consider that since 27 March 2006, over 6,000 AWAs have been lodged with the Office of the Employment Advocate. In Senate Estimates on the 29 May 2006 the OEA was able to provide statistics on a sample of 250 AWAs. The results showed that of these AWAs:

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

Further evidence will be presented to the Inquiry on bargaining between employers and young workers has highlighted the relative inequality between the employers and employees. For example due to the low skilled or entry level nature of jobs sought by young workers, employers are simply able to present individual contracts and coerce workers to sign without negotiation. Should the employer dismiss the worker, a replacement is not hard to find. Vacancies for low skill jobs are easily filled, and unemployment, particularly in regional areas is high. There exists no shortage of young workers willing to accept any job opportunity that arises. And indeed with the introduction of the 'welfare to work' legislation, the pressures are heightened.

As Pru Goward, Federal Sex Discrimination Commissioner from the Human Rights and Equal Opportunity Commission (HREOC) noted: *the Work Choices legislation, particularly in conjunction with the Welfare to Work changes, represents a wholesale change to the way Australian workplaces operate and, as a consequence, will have major implications for the Australian community.* See Work Choices will result in winners and losers (*On Line Opinion* 6 December 2005).

In addition HREOC has expressed "grave concerns" over the implications of *dismantling or removing any significant planks of a social, legal and economic contract in Australia, which has evolved over 100 years and around which a variety of institutions, policies, cultures and government programs have grown up*. The evidence to, and subsequent report of the Labor Parliamentary Taskforce on Industrial Relations in June 2006 (Work Choices: a race to the bottom) has highlighted concern that the combined effects of the changes have significant impacts on some of our community's most vulnerable individuals. At the heart of these concerns is the fact

that welfare agencies are withdrawing services and assistance from people with limited capacity to represent their own interests in bargaining with other parties, just at the time when the changes to industrial relations laws mean that wages and conditions will be dependent upon and individual's bargaining capacity. Work Choices ignores the reality of the huge inequality in the bargaining relationship between employers and individual employees, especially individuals with disabilities or who suffer other forms of disadvantage.

The Government's removal of award conditions from the test for suitable employment will see job seekers forced to take jobs at below award conditions under threat of having their income support stopped. The work choice for sole parents and people with a disability under this regime is exploitation or nothing.

Unemployed and many sole parents will have no option but to accept a job with bare minimum standards and a declining minimum wage. Single parents and people with disabilities are disadvantaged in finding work. In particular, childcare availability and costs, the need for family friendly hours, and special health considerations for workers with disabilities, all disadvantage these most vulnerable of workers.

The evidence of the Welfare Rights Centre will assist greatly in this regard.

The lack of knowledge of workplace rights by young people exacerbates inequality of bargaining power. The Inquiry will hear that often it is only through painful experience that young workers discover their rights. The Queensland Young Workers' Advisory Service, which has significant experience in dealing with youth employment problems, has voiced its concern at young people's lack of experience and knowledge of the 'world of work'.

Experience and knowledge are significant, as lack of either precludes young people from effectively negotiating on their own behalf. The fear that unscrupulous employers would take advantage of the inexperience of young people and impose a highly exploitive AWA, is well founded. The result is young people seeing their wages reduced and other terms and conditions of employment drastically eroded.

In the opinion of 151 Australian industrial relations, labour market and legal academics, the new industrial relations system will *exacerbate young people's high job insecurity, low and underpaid wages, poor Occupational Health and Safety, unsatisfactory working conditions, and problems such as bullying and harassment*. Refer to Research Evidence about the Effects of the 'Workchoices' Bill: A Submission to the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005.

Apprentices are particularly vulnerable under Work Choices. The Inquiry will hear of instances where apprentices were being forced onto highly exploitive individual contracts, without negotiation or having the terms and conditions of the contract explained by their employer. Young workers' ignorance of their workplace rights contributes to disadvantage and greater exploitation.

Regional Concerns

Workers throughout Queensland will have the chance to express concerns over the impact of Work Choices on their wages, conditions and job security. But while the concerns may be similar, the ramifications of the widespread use of the provisions of Work Choices in rural and regional centres are considerably greater.

A distinctive characteristic of labour markets in rural and regional centres was limited employment prospects. In particular, fewer employment opportunities mean that there is a greater downward pressure on wages and conditions. Minimum rates and conditions in awards underpinned the wages and conditions on offer in many regional centres and very often they represent the actual wage levels paid to employees. The minimums set out in awards in many cases acted as both minima and maxima. The confusions associated with the transfer arrangements under Work Choices so that an employer captured by Work Choices but previously subject to a state award is now thrown into the federal jurisdiction, creates administrative and practical confusion.

Awards have been used to establish the minimum conditions in regional Queensland but they have also become the maximum available for many. The QCU contends that the only conclusion from the evidence that

will be presented to this Inquiry will be that the removal of these minimum conditions, combined with downward wage pressure due to the lack of employment opportunities and excess labour supply, will only reduce the wages and conditions of employees in the future.

Monitoring, Reporting and Recommendations

The terms of reference provide for the Inquiry to consider a set of recommendations in relation to facilitating the regular reporting and examination of incidents of unfair treatment as a result of the introduction of Work Choices; and for 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.

This includes a process for identifying remedies or options for further action in respect of specific incidents; along with submitting regular reports on major trends and developments under Work Choices.

Both the recommendations and processes will flow from the evidence this Inquiry receives. As such it is not possible at this stage for the Queensland Council of Unions to provide to this Inquiry its suggested recommendations nor processes to meet the terms of reference. We would however request that at a suitable time, to be determined, the QCU be afforded the opportunity to place these issues before the Inquiry.

We would also request the opportunity to further develop the overview of evidence and exposures, along with the regional concerns, as the Inquiry progresses. This in itself would be a summation of issues that arise as the Inquiry makes its way around Queensland. This we contend would facilitate the development of the recommendations and processes alluded to above.

Concluding Comments

The federal Government relies upon, in Work Choices, the corporations power to support its legislation, with only minor exceptions such as transitional provisions (which will rely on the conciliation and arbitration power), unlawful dismissal and freedom of association (which will rely on the external affairs power).

A federal system reliant primarily on the corporations' power would not cover unincorporated employers; corporations that are not trading, financial or foreign corporations; unincorporated independent contractors, except insofar as they contract with constitutional corporations; and that the federal system may not be able to cover all aspects of the regulation and settlement of industrial disputes, other than disputes containing an interstate element (which would be supported by the conciliation and arbitration power).

The Queensland industrial relations system has stood the test of time. It has provided to a majority of business, whether incorporated or unincorporated, a state system that has provided certainty. It has been Queensland businesses choice to remain in the state system.

By stealth the federal Government seeks to undermine that choice and to impose an outcome not supported in Queensland. If democracy is a reflection of the people's voice then Queenslanders have spoken. There is no majority support for what is being proposed. It should not be forgotten that the basic tenet of a democratic government is the capacity to chose, not the imposition of ideology.

QUEENSLAND GOVERNMENT SUBMISSIONS

1. Introduction

1. The Minister for Employment, Training and Industrial Relations, and Minister for Sport, the Honourable Tom Barton MP, has directed the Queensland Industrial Relations Commission to hold an Inquiry to examine the impact of the federal Government's Work Choices amendments on Queensland workplaces, employees and employers. This direction has been made under the provisions of s. 265(3)(b) of the *Industrial Relations Act 1999*.
2. It is important that this Inquiry be held. Since the Work Choices amendments came into operation on 27 March 2006, the Department of Industrial Relations has received numerous reports from individual employees of alleged unfair treatment or dismissals under the new laws. Many other individuals have reported cases of alleged exploitation or disadvantage to other sources, including unions, community organisations and the media.
3. With these cases emerging on a regular basis, there are legitimate community concerns about the impact the new federal workplace laws are having on fundamental issues of take-home pay, working conditions, and job security. These are significant matters that touch on the lives of most working Queenslanders, employees and employers, and their families, and which ultimately may also impact on the performance of the Queensland economy.
4. These are not matters that should be left to the federal Government to monitor on its own. It is appropriate therefore, as a matter of public interest, for the Queensland Commission to conduct a proper, independent Inquiry into the impact of Work Choices on Queensland workplaces, employers and employees, as outlined by the terms of reference.
5. The holding of this Inquiry is also consistent with the objects of the *Industrial Relations Act 1999* to provide a framework for industrial relations that supports economic prosperity and social justice, including by ensuring wages and employment conditions provide fair standards in relation to living standards generally prevailing in the community.

Outline of submission

6. Consistent with the terms of reference for the Inquiry, the primary purpose of this submission is to bring to the attention of the bench the number of cases that have been reported to the Department of Industrial Relations regarding unfair treatment and dismissals of employees since the introduction of Work Choices. This is done within the broader context of the policy debate about why these reforms have been introduced by the federal Government and what their likely impact will be.
7. Section 1 has provided the recent background leading to the Ministerial direction for this Inquiry to be held and provides an outline of the submission that follows.
8. Section 2 provides the background to and an overview of the Work Choices amendments. This section will focus particularly on those areas of the federal laws that have the most immediate and direct implications for the wages, working conditions, and job security of Queensland employees.
9. Section 3 outlines the Queensland Government position in response to Work Choices. The Queensland Government has fundamental concerns with the direction the federal Government is taking industrial relations in this country with these new laws and does not consider they provide a viable way forward, on economic or social policy grounds. This section provides research and evidence in support of this position.
10. Section 4 sets out the Queensland Government response to Work Choices. The Queensland Government has taken action in a number of areas to help minimise the adverse impact of Work Choices and to assist Queenslanders with information and advice about the new laws. The responses include a variety of policy, legislative, and service delivery measures.
11. Section 5 discusses the impact of the new federal laws in practice since 27 March. This includes an overview of some of the more high profile cases that have attracted media attention, the results of an early sample of AWAs analysed by the federal Employment Advocate, and, in particular, the cases of unfair treatment that have been reported directly to the Department of Industrial Relations through the Fair Go Hotline and Wageline services.

12. Section 6 provides information on other inquiries that have been established to examine the impact of Work Choices, as required by the terms of reference for this Inquiry by the QIRC. At this stage, the two inquiries of interest are the Inquiry by the NSW Upper House, and the Inquiry by the federal ALP parliamentary committee.
13. Section 7 looks at various statutory and non-statutory offices that have been established in other jurisdictions in Australia to allow employees to report incidents of unfair treatment as a result of the introduction of Work Choices and to have those reports acted upon. This information is provided in order to assist the Commission to consider and recommend a process or mechanism for employees to report incidents of unfair treatment as a result of the introduction of Work Choices, as outlined by the terms of reference.
14. Section 8 concludes the submission.

2. Background and overview of Work Choices

15. The federal Government introduced the *Workplace Relations Amendment (Work Choices) Bill* into Parliament on 2 November 2005. The introduction of the Bill had been preceded by:
    - a broad outline of the federal Government's policy proposals issued by the Prime Minister on 26 May 2005;
    - the release on 9 October 2005 of a 67 page booklet containing more detailed proposals for a new federal industrial relations system known as Work Choices; and
    - a $55 million advertising campaign by the federal Government promoting the proposed new system.
16. The Bill was passed on 7 December 2005, following a severely curtailed Senate Inquiry into the amendments which gave interested parties one week to make written submissions on a 700 page bill and over 500 pages of explanatory memorandum, and which held one week of hearings in Canberra but no sittings in any other capital cities or regional centres across Australia.
17. On 14 December 2005 the Bill received royal assent becoming the *Workplace Relations Amendment (Work Choices) Act 2005*. Finally, on 27 March 2006, the new laws came into operation as amendments to the *Workplace Relations Act 1996*.
18. The major features of the new laws include:
    - a new federal industrial relations system designed to cover all businesses that are trading or financial corporations (i.e. constitutional corporations). This means that most incorporated businesses currently operating in the state industrial relations jurisdiction will be transferred to the federal jurisdiction;
    - the Australian Industrial Relations Commission (AIRC) is retained, but has lost many of its previous powers, including wage-fixing and approval of agreements;
    - a new Australian Fair Pay Commission, with a new set of wage-fixing parameters, will set and adjust the single minimum wage, minimum wages for award classification levels, and wages for junior, apprentices and trainees, employees with disabilities, piece workers, as well as casual loadings;
    - A new Australian Fair Pay and Conditions standard is established comprising a set of legislated minimum conditions providing 52 weeks' unpaid parental leave, four weeks' annual leave, 10 days sick leave, with up to 10 days being available for caring purposes, maximum ordinary hours of 38 hours a week, and the minimum wage set by the AFPC;
    - Individual and collective agreements will take effect on lodgement with the Employment Advocate;
    - agreements will only be required to meet the Australian Fair Pay and Conditions Standard. They will no longer have to pass a no disadvantage test ensuring that workers entering agreements are not worse off when compared to their award conditions;
    - agreements will be able to remove or modify current award entitlements to public holiday pay, overtime, shift loadings, annual leave loading, allowances, and penalty rates;

- the matters that can be included in awards have been reduced from 20 to 16 and an Award Rationalisation Taskforce has been appointed by the federal Government to examine ways to rationalise the number and the content of federal awards and their wage and classification structures;
- businesses with 100 or fewer employees are exempt from unfair dismissal laws; and
- a range of restrictions are placed on industrial action and union right of entry, including compulsory pre-strike ballots and a new power for the federal Minister to terminate a bargaining period.

19. Together, these changes introduced as part of Work Choices represent a fundamental overhaul of the industrial relations landscape in Australia, that breaks away from the reforms first introduced by the federal Labor Government in the 1990s.
20. The federal Labor Government made the historic shift to a formal system of enterprise bargaining in the early 1990s. This shift helped provide the impetus for a sustained period of productivity growth in Australia, but, significantly, the move towards a more decentralised bargaining system was done within the framework of a strong award system, an ongoing key role for the Commission in conciliating and arbitrating disputes and setting minimum standards, and recognising the legitimate role played by unions.
21. On coming to office, the Coalition Government sought to make major changes with the introduction of the *Workplace Relations Act 1996*. While a number of more extreme measures were not implemented as a result of Senate negotiations with the Democrats, this Act marked the first step towards a more deregulated system with the introduction of statutory individual agreements for the first time, reduced powers for the Commission, and reduced scope of the award system.
22. In the intervening nine years, the federal Government was unsuccessful in implementing more of its industrial relations agenda. For example, major 'second wave' legislation was defeated in the Senate in 1999, and a proposal in 2000 to create a national, unified industrial relations system was not followed through.
23. Having achieved control of the Senate following the 2004 federal election, the federal Government has sought to advance its industrial relations agenda much further, with the Work Choices package.
24. For the purposes of this current Inquiry and taking into account its terms of reference, there are three key elements of the Work Choices package that require further examination. These areas are highlighted because they are likely to have the most immediate and direct impact on Queensland workplaces and on the wages, working conditions and job security of Queensland employees. The three areas are discussed below.

All constitutional corporations are covered by the federal workplace laws

25. The first and most direct impact of the new federal laws is that they have changed the jurisdictional coverage of many workplaces, employers and employees in Queensland, moving them compulsorily from the state jurisdiction into the federal jurisdiction.
26. This is a major change under the new federal laws. Before the operation of the Work Choices laws, most employers and employees had the choice of operating in either the state or federal industrial relations system. This provided the parties with the option of using the system which best suited their needs.
27. These arrangements reflected the constitutional framework for industrial relations regulation in Australia, which gives the federal Government an explicit, but limited, power to make laws on industrial relations. These limitations on the conciliation and arbitration power - the industrial relations power - in the Constitution (section 51 (xxxv)) meant that in practice there has been a shared responsibility for industrial relations between the state and federal governments.
28. By contrast, the federal Government has sought to base its new Work Choices system predominantly on the corporations power in the Constitution, with the intent of covering all businesses that are constitutional corporations (defined as trading or financial corporations) in the federal jurisdiction. (The Queensland Government and others have challenged the use of the corporations power to underpin these laws in the High Court. The Court heard this matter in May 2006 and has reserved its decision in this matter, see section 4).

29. The effect of these changes has been to reduce the coverage of the state industrial relations jurisdiction from around 70% of employees in Queensland to between 35%-38% of employees. However, while these changes have forced a significant reduction in the size of the state jurisdiction, they fall well short of creating a single, national industrial relations jurisdiction sought by the federal Government. For the information of the bench, a report prepared by the Department of Industrial Relations detailing the coverage and characteristics of the current state industrial relations jurisdiction is at appendix 1.
30. The Work Choices laws have been drafted to 'cover the field' so state laws covering industrial and employee relations, and the protections they provide, will no longer apply to employers and employees in the federal system, and the decisions of state industrial tribunals will no longer bind them.
31. Under Work Choices, employers who are constitutional corporations and previously operated in the state system have a three year transitional period during which time the conditions in their state awards and/or agreements will continue to apply, unless a new federal agreement is made. The terms of state awards will transfer into the federal jurisdiction as a Notional Agreement Preserving State Awards (NAPSA) and state agreements become Preserved State Agreements (PSA) in the federal jurisdiction. However, the current terms and conditions contained in a NAPSA or PSA have effectively been 'frozen' from this point. Furthermore, any provisions that the federal legislation has deemed to be prohibited content will be unenforceable. For example, if the parties to a state agreement had previously agreed to a clause to guarantee that AWAs would not be used in future, this provision is unenforceable. It is also unclear what will happen once a NAPSA expires, if no federal agreement has been made and there is no relevant federal award that applies. This could cause further confusion and the uncertainty for many employers and employees as to what employment conditions apply.
32. Employers who are not constitutional corporations but who were already in the federal system by virtue of the conciliation and arbitration power will have a transitional period of five years during which time their current federal awards and/or agreements will continue to apply. Employers may decide to incorporate and remain in the federal system. If they remain unincorporated, they will revert to the state system after the transitional period.

Removal of the no disadvantage test for agreement-making

33. As noted above, the new laws remove the need for agreements to pass a no disadvantage test before they can be approved. This is one of the most far-reaching changes introduced under Work Choices.
34. Prior to Work Choices, the AIRC (for collective agreements) and the Office of the Employment Advocate (for individual agreements) would compare proposed agreements with the relevant award conditions to ensure there was no overall disadvantage, before being approved.
35. The no disadvantage test was a vital component of the move towards a system of enterprise bargaining that began in the 1990s. It has ensured a balance between the economic objective of providing flexibility in the agreement-making process and the social objective of ensuring there are proper protections for workers' existing wages and conditions.
36. In fact, it was the existence of the no disadvantage test that enabled the Prime Minister to make his guarantee in 1996 that no worker would be worse off under the industrial relations changes introduced at that time. Conversely, the removal of the no disadvantage test from the new laws is the primary reason the Prime Minister is no longer able to make this guarantee.
37. Under the new laws, the no disadvantage test has been replaced by a set of five minimum conditions under the Fair Pay and Conditions Standard. Employers will be required to submit a statutory declaration when agreements are lodged stating that they meet this standard and they will be automatically approved by the Office of Employment Advocate. The AIRC will no longer have any role in scrutinising agreements.
38. The removal of the no disadvantage test means there is no genuine protection for current terms and conditions in state or federal industrial instruments.
39. New agreements will be able to remove, reduce, or modify key current award entitlements to public holiday pay, overtime, shift loadings, annual leave loading, incentive bonus and payments, allowances, and penalty rates, without any compensating benefits in return. These conditions are not protected by law, as claimed by the federal Government. Only if the new agreement does not make any specific reference to these matters, will the 'protected' award provisions continue to apply.

Removal of unfair dismissal protection

40. The other fundamental change introduced by the Work Choices amendments is the removal of unfair dismissal remedies for employees of constitutional corporations with 100 or fewer employees.
41. Prior to Work Choices, employees in Queensland have had access to unfair dismissal laws either in 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.
42. In the state jurisdiction, the QIRC consistently receives fewer than 2,000 applications for reinstatement each year. This is less than ¼ of 1% of Queensland workers in the state jurisdiction. By 2004-05 the number of applications had reduced to 1469 (Industrial Court, 2005, p. 20). Of these applications, more than 98% are resolved before or after conciliation and do not proceed to formal hearing. While the numbers who actually use the laws are relatively low, the presence of unfair dismissal laws have served to ensure fair treatment and job security across the workforce and act as a deterrent to arbitrary dismissal by employers.
43. These protections have now been removed and all employees of constitutional corporations in Queensland with 100 or fewer employees can now be dismissed virtually for no reason or any reason at all. This lack of protection also has serious implications for the bargaining position of these workers and their ability to raise legitimate issues of concern in the workplace without fear of dismissal.
44. Existing unfair dismissal laws will continue to apply to businesses with more than 100 employees, but the automatic probationary period during which all employees are exempt from unfair dismissal claims has been increased from three to six months. Employees can also be excluded from seeking an unfair dismissal remedy if they have been dismissed because of the operational requirements of a business. This provision, which excludes employees who are made redundant, opens the possibility of employers manufacturing "operational reasons" as the reason for terminating employees, and thereby avoid proper unfair dismissal claims.
45. All federal employees will still have access to unlawful dismissal remedies through the courts if they have been terminated for specific, prohibited grounds such as their age, race or sex. However, this remedy is rarely used at present, is costly, and difficult to prove. Almost all claims are pursued as unfair dismissal matters through the AIRC.
46. Under Work Choices, the AIRC will make a preliminary assessment of the merits of unlawful dismissal claims and the federal Office of Workplace Services will assess whether the applicant is eligible, on the basis of financial need, for funding of up to $4,000 for legal advice. This will only provide limited assistance as the funding does not actually go towards legal representation to pursue the claim and unlawful dismissal cases typically cost up to $30,000.

3. Queensland Government position on Work Choices and labour market deregulation more generally

47. The Work Choices laws have come into operation against the background of a robust public debate about the merits or otherwise of the federal Government approach to industrial relations, and the type of industrial relations system we have in this country.
48. For its part, the Queensland Government has clearly and consistently put its position on the public record in opposition to Work Choices.
49. The Queensland Government's view is that the federal laws undermine the fair and flexible state system of industrial relations here in Queensland that has operated in the interests of employees and employers alike, and which has underpinned continuing strong economic performance and low levels of industrial disputation. The changes do not provide a simpler system, as claimed by the federal Government.

50. In particular, the Queensland Government has continually raised its concerns with those parts of the new federal legislation that remove, or permit the removal of, existing entitlements and protections for employees. As noted in the previous section, these include the removal of unfair dismissal protections for more than half a million workers in Queensland alone, and the capacity for new agreements to be made in the federal system that remove conditions such as overtime, penalty rates, and public holiday pay without any compensating benefits in return. These changes have serious and direct implications for wages, working conditions, and job security of Queensland workers and are likely to have the biggest impact on the more disadvantaged sections of the workforce. The adverse impacts are emerging already in the cases being reported to the Department of Industrial Relations. These cases are discussed in section 5.
51. Of major concern to the Queensland Government from a broader policy perspective is that these changes have been introduced with no evidence they will produce any of the economic benefits claimed by the federal Government. Instead, the rationale for their introduction rests on a number of flawed assumptions which are not supported by the evidence. The key assumptions the federal Government relies on include:
    – further deregulation of the labour market will improve economic performance and productivity;
    – the changes will produce a simpler system with more choice;
    – removal of unfair dismissal protections will create employment opportunities; and
    – minimum wages are too high and reduce employment.
52. While the evidence is very thin on the economic front that a deregulatory agenda will have any positive benefit, the only clear evidence is that the weakening and removal of employment protections is likely to have adverse social results, with greater wage dispersion and inequality and adverse impacts on particular areas and sections of the workforce.
53. These issues are discussed further below.

The benefits of the state industrial relations system are undermined

54. The Queensland Government has been a strong supporter of the benefits of the state industrial relations system and the fair, flexible, and stable industrial relations environment it has promoted in the interests of employees and employers alike.
55. Key features of this system have been:
    - a bargaining system that gives employers the flexibility to make agreements that suit their business needs, while ensuring workers are protected;
    - a strong common rule award system that protects those who are unable to bargain with their employer and which provides a level playing field for businesses;
    - the QIRC as the independent umpire to assist the parties to help parties resolve disputes if they need assistance. The QIRC also provides a responsive, low cost forum for matters such as unfair dismissal and recovery of unpaid wages;
    - a fair minimum wage updated annually and minimum conditions of employment, such as sick leave, annual leave, and family leave, which can be reviewed by the QIRC to ensure they remain consistent with community standards; and
    - a system that is quick, easy, and fair to use. For example, the state system recognises the particular requirements of employers and employees in regional areas, which is particularly important in a decentralised state like Queensland. For example, the QIRC regularly visits regional areas for hearings and to help resolve local issues, which reduces cost to business.
56. This system has covered around 70% of Queensland employees and has been a key factor underpinning Queensland's continuing strong economic performance.
57. For example, for the tenth consecutive year, the Queensland economy has outperformed the national economy. Economic growth in 2005/06 was 3.5%, compared to 2.5% growth nationally.

58. Employment growth has been strong for a number of years as unemployment has fallen to 30 year lows. The seasonally adjusted unemployment figure for the end of June 2006 was 4.6% (ABS, Cat no. 6202.0, June 2006).
59. Industrial disputation has been at historically low levels with the average quarterly strike rate for the year to March 2006 standing at just 3.5 working days lost per thousand employees, compared with the national average of 6.1 or Victoria which comes completely under the federal IR system where the rate was 9.1 working days lost (ABS, Cat no. 6321.0, March 2006).
60. Significantly, these results were not achieved at the expense of workers' entitlements and protections in Queensland. This demonstrates that strong and fair employment standards are an integral part of a successful economy; they are not an impediment to it.
61. Another point to note is that prior to Work Choices, the parties generally had a choice of which system they wished to operate in. If an employer found the state system not to their liking or if they did not want to have the situation of having state and federal awards operating side by side in a single business, they could make a federal agreement. The fact that about 70% of employees in Queensland were covered by the state system suggests that many employers found it provided a simple and straightforward operating environment that suited their needs.
62. Under Work Choices, that choice has been removed for all employers and employees of constitutional corporations in Queensland, who now find themselves in the federal jurisdiction with no choice in the matter.
63. Choice of jurisdiction is not the only choice that has been removed. For example, in the state system, parties can make agreements and awards on a wide range of industrial matters. By contrast, under Work Choices, there are more and more restrictions on the matters that parties can include in their awards and agreements, increasing the complexity of the legislation. For example, an employer might wish to include in their agreement a positive statement that employees at their workplace will not be unfairly dismissed and provide a process or a remedy to deal with such matters. Such a provision in an agreement would help reassure existing employees and attract new employees. Under Work Choices, employers would be unable to do this, even though employers and employees agreed on it. Similarly, an employer with a positive working relationship with its workforce might wish to include a commitment in the agreement to continue with collective agreements in the future, and not introduce AWAs. Again, they would be prevented from doing so under Work Choices.
64. The benefits the state system has previously provided are not being replaced by a simpler system, as claimed by the federal Government.
65. Clearly, the limitations of the corporations power means that Work Choices does not create a single, national industrial relations system. The Queensland Government estimates that up to 40% of employees in Queensland, many of whom are employed in unincorporated small businesses, remain covered by the state system, following the changes introduced under Work Choices (see appendix one). The result is a new regulatory regime clouded by jurisdictional questions and uncertainty as to who is and who isn't covered.
66. It is also worth noting that the perceived efficiency problems arising from the existence of overlapping jurisdictions were often overstated, with little evidence to support the argument that Australia's system of dual industrial relations jurisdictions had any negative impact on workplace productivity.
67. For example, the 1995 Australian Workplace Industrial Relations Survey (Morehead et al, 1997) found that in workplaces with both state and federal awards, 75% reported an increase in productivity over the previous two years, compared with 73% of workplaces that operated in only one jurisdiction.
68. More recently, Professor Wooden (2005, p. 7) questioned the federal Government's argument that the dual state/federal system had been too complex, arguing that the proportion of businesses affected by multiple systems of regulation is almost certainly quite small, and restricted mainly to the well resourced large multi-state businesses.
69. Finally, the changes introduced by Work Choices not only undermine the successful state system of industrial relations in Queensland. They also undermine the key elements of the federal system that were put in place in the early to mid 1990s, based around collective bargaining, within a framework

of decent employment rights and an independent umpire. These changes helped provide the foundation for a period of sustained economic growth, productivity growth, falling unemployment, reasonable wages growth and low inflation that continues today (although productivity growth has fallen in recent years). The Queensland Government firmly believes that moving, as Work Choices does, to a deregulated system based more and more on individual agreements, where wages and conditions can be reduced, and where there is no protection from being unfairly dismissed, threatens these advances and does not provide the way forward to continue and improve the performance of the economy. This view is supported by the national and international evidence discussed below.

The deregulatory approach has not provided the answer to improve economic performance and productivity

70. The federal Government claims that the industrial relations changes under Work Choices are necessary "*if Australia is to generate higher productivity, and, in turn higher wages and greater job security into the future for Australian workers and their families*" (Australian Government, *WorkChoices*, 2005, p. 67).
71. The best available evidence provides little support for these claims made by the federal Government. The evidence suggests 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.
72. To illustrate this point for the Inquiry, the sections that follow highlight the range of international and national evidence on this subject, including:
    - the 2006 OECD Employment Outlook report;
    - cross-country comparisons of productivity performance;
    - the New Zealand experience under the *Employment Contracts Act 1991*;
    - research at the workplace level demonstrating the benefits of collective approaches;
    - research on what factors drive productivity growth;
    - unfair dismissal laws and jobs growth; and
    - the social impact of deregulating the labour market.
73. This research suggests that Australia should be focusing on other areas to drive future economic performance, jobs growth, and productivity, rather than a narrow focus on deregulating the labour market. To the extent that industrial relations does have an impact in these areas, the evidence suggests that a deregulatory approach is not the way forward. This is clear from the aggregate data, as well as the research on what industrial relations arrangements influence productivity at the workplace level.

OECD Employment Outlook Report 2006

74. Deputy President Swan made specific reference to the *OECD Employment Outlook* report for 2006 in her opening statement on 23 June 2006.
75. This is a significant report for a number of reasons: First, 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. These issues are discussed below.
76. In short, the three key findings from the report are 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.
77. As noted above, these are significant findings and, viewed in context, they signal a substantial shift in the way the OECD now looks at these issues, based on the evidence it has conducted in recent years.

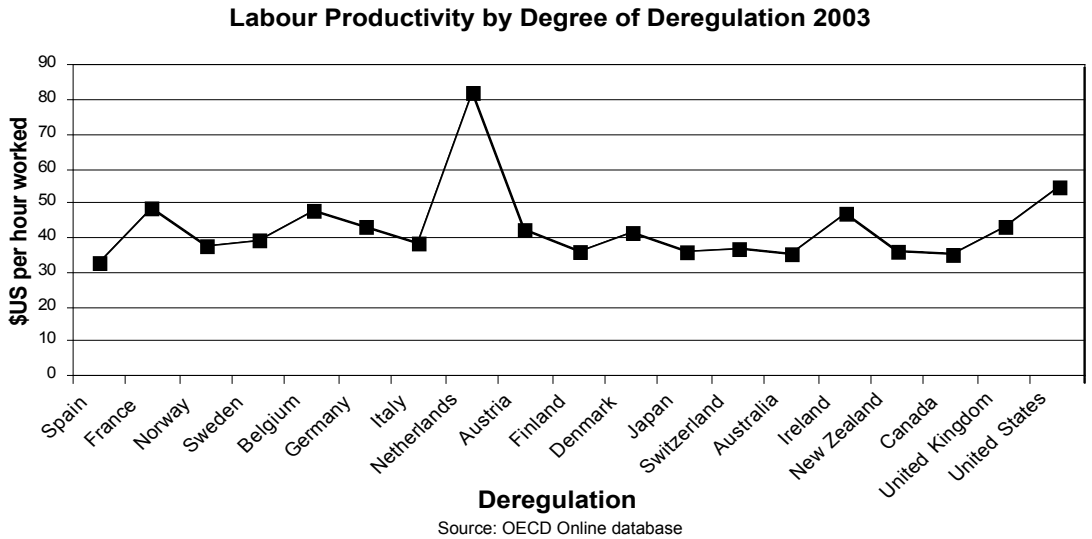
78. To provide that context, in 1994, the OECD launched its Jobs Strategy, which was developed to tackle high and persistent unemployment in OECD countries. Key elements of the strategy included:
    - making wage and labour costs more flexible by removing restrictions that prevent wages from reflecting local conditions, including a reassessment of the role of statutory minimum wages; and
    - reforming employment protection legislation (EPL) to ease its strictness to facilitate dismissals for permanent or regular contracts that are required for economic reasons without breaching unfair or discriminatory dismissal. The OECD argued that EPL increased the costs for employers and created a barrier for hiring.
79. These types of policy responses are central to the industrial relations changes introduced under Work Choices.
80. In 2004 the OECD launched a reassessment of the effectiveness of the Jobs Strategy. The OECD was of the view that there were new challenges to be met in maintaining living standards with an ageing population by creating more jobs and better jobs. Central to this theme of more and better jobs is the reconciliation of economic policy objectives with social objectives (Martin, 2004, p. 12).
81. This shows that even 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.
82. In its 2006 report, the OECD cites evidence to show that overall wage dispersion has increased in the majority of OECD countries with the shift to decentralised bargaining and it finds that high union density and bargaining coverage, and the centralisation and coordination of wage bargaining, are strongly associated with lower wage inequality (OECD, 2006, p. 83).
83. The Report also finds that highly centralised and/or co-ordinated wage bargaining systems are associated with lower unemployment (p. 85). The Report refers to the findings of 17 cross-country panel data surveys which estimated the impact of union bargaining power (measured by union density or bargaining coverage) on unemployment rates and other labour market performance indicators. Of the 17 studies only 3 found a robust association between union density or bargaining coverage and higher overall unemployment. The majority found no association between union density and labour market performance.
84. A large number of the studies also reject the hump-shaped hypothesis of Calmfors and Driffill, which suggests that intermediate level bargaining systems (which are neither fully centralised nor fully decentralised) produce the worst outcomes for the labour market. The Calmfors and Driffill theory has been used by advocates of individual bargaining to call for the full deregulation of industrial relations in Australia. A large number of studies have instead found that a high degree of corporatism (that is, coordinated/centralised bargaining) was associated with lower unemployment, and these effects are robust and statistically significant. Bassanini and Duval (2006) found that a high-coordination bargaining system lowered unemployment.
85. In relation to minimum wages, the report notes the contentious debate over the relationship between statutory minimum wages and employment and the range of results that are reported. In the latest OECD research Bassanini and Duval (2006) found no significant relationship between the minimum wage and aggregate unemployment.
86. The OECD concludes that given the fact a large number of studies have found that the impact of minimum wages on employment was modest or non-existent, there may be scope for minimum wages to form one part of a social policy focused on alleviating poverty as well as encouraging high employment growth rates. Minimum wages could also have a role in encouraging low-skilled persons to seek work and participate in the labour market (OECD, 2006, p. 86).
87. In relation to EPL, the report finds the impact of EPL on overall unemployment is probably small and recent studies have generally not found robust evidence of significant direct employment effects. It also

finds that moderately strict employment protections can help create a dynamic labour market while also providing adequate employment security to workers (OECD, 2006, p. 96).

Cross-country comparisons of economic performance and productivity

88. The Queensland Government is concerned that the federal Government is placing undue, and quite misguided reliance on labour market deregulation to provide the crucial difference to improving economic outcomes, when the international evidence is that this approach will be of little benefit.
89. Across a broad range of countries, the OECD has consistently found that there is little link between national economic performance and types of industrial relations systems (OECD 1997, 2004). This finding is repeated in the 2006 report discussed above. Deregulation is not a precondition for economic success, with research indicating a range of different industrial relations systems are capable of producing similar macro-economic outcomes.
90. This is the conclusion drawn also by Saul Eslake, chief economist at the ANZ and a 'lukewarm supporter' of Work Choices, when he noted at a conference in October last year, that: " *the international data shows, for example, that there is no obvious correlation between the degree of centralisation of wage-setting arrangements and employment growth over the past decade. It is clear some countries are able to combine relatively centralised wage setting arrangements with rapid employment growth and low unemployment*" (Eslake, 2005, p. 4).
91. Using OECD data to compare output per hour worked and the amount of deregulation across a range of countries, neither is there any evidence to support the federal Government's view that deregulation improves productivity.
92. In fact, highly regulated labour markets such as those in Norway and Sweden recorded similar productivity levels to those countries with much less regulation such as New Zealand, Canada and the United Kingdom. The Netherlands, which has a higher degree of regulation than Australia, had the highest levels of labour productivity.

Figure 1



Source: OECD Online database

Cases reported to Fair Go Hotline and Wageline

237. As discussed in section 3, it has been anticipated and unfortunately expected that the difficulties for Queensland workers with the Work Choices legislation would be experienced by those least able to protect themselves within their work arrangements. The reports received daily at Fair Go Queensland Advisory Service, Wageline and regional offices of the Department of Industrial Relations are predominantly related to unfair dismissals, but also to dismissals due to absences or injuries, dismissals due to safety issues and coercion or duress associated with agreements.

238. 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.
239. 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.
240. As an example of the types of matters being reported to the Department of Industrial Relations, the media release of the Minister for Employment, Training and Industrial Relations of 10 May 2006, titled "*More Unjust Sackings of Vulnerable Workers*" is attached at appendix 2. Provided below are additional details of these matters known to the Department of Industrial Relations, without identifying any of the parties, as examples of the types of difficulties being faced by Queensland workers, mostly without recourse.
241. The first was an adult female travel consultant at Burleigh Heads with 14 months service who was dismissed after she was told the business was being restructured. Her employer was allegedly overheard by a co-worker saying he could sack anyone he liked under the new laws. The woman was concerned that she had been unfairly targeted for dismissal. She has no remedy available to her under Work Choices as her employer has less than 100 employees.
242. The second was a Brisbane woman who lost her job as a retail sales assistant after insisting on being paid for Labour Day. She was rostered and required to work on Labour Day and attended as required to find the retail centre closed. She attended another shop location of the employer and was told it was another employee's fault that she was not informed about her usual centre being closed. After discussion the employer agreed she would be paid for the minimum casual engagement. However, the employer telephoned her later in the day and told her she had put him in a bad mood and was sacking her. It also came to light that for this and other public holidays the employee was not being paid public holiday penalty rates. Her wages matters are being investigated by the Department of Industrial Relations and the post 27 March 2006 period was referred to Office of Workplace Services. Despite having long term casual employment, the woman has no remedy under Work Choices for the dismissal as the employer has less than 100 employees.
243. In the next case, a Townsville woman with six years full time employment in retail sales, was dismissed because she was told there was a downturn in business. The woman alleged her employer was intending to employ all younger workers and phase out older staff. The woman was of the opinion the business was actually short staffed, but the employer was dismissing workers including herself and that her employer had made comments about employing younger and cheaper "kids". The woman was referred to the Queensland Working Women's Service and the Queensland Anti-Discrimination Commission but had no remedy under Work Choices.
244. Another woman at Cairns, with five years service, went on a six week holiday with approval from her employer and assurances her position was safe. When she returned, she was told the employee she trained to fill in for her whilst she was away would continue in her role, so she was no longer needed. The employer had said it was more "cost efficient". The employee was later led to believe that the woman who had replaced her returned to her own job after the worker had left, and the employer had hired a trainee, who was now doing the worker's former job. The woman was referred to the Queensland Working Women's Service and the Queensland Anti-Discrimination Commission but had no remedy under Work Choices.
245. In the next case, a young Gold Coast man was dismissed when he tried to take sick leave for an injured wrist, which was not a work injury. He informed his employer of his injury and that he was attending the doctor but was told he should stay at work and put up with it. When he told the employer he was going to take sick leave his employer immediately gave him notice of dismissal.

The worker has been told by Work Choices Infoline that he can not pursue an unlawful dismissal claim under the federal Work Choices legislation. The worker and his partner had a new baby at the time.

246. The next case concerns a woman on sick leave following surgery whose job was filled while she was getting a clearance to return to work. The woman had two years part-time service and was on sick leave and unpaid leave for just over three months following non-Work Cover surgery. On the very day the worker was obtaining a medical clearance to return to work, of which the employer was aware, the employer rang her and said 'Don't bother coming back. Your job has been filled.' The worker was given no notice and no reason for her dismissal. The woman was referred to the Office of Workplace Services for recovery of her entitlements on termination but has no remedy under Work Choices because her temporary absence was greater than three months.
247. The next was a Gold Coast Customer Service Manager who was dismissed with no warnings, for reasons that weren't made clear. The manager had been in her position for 2 ½ years and was dismissed with no clear reason given other than her employer mentioned something about getting on with other staff members. The worker has no remedy as the employer company has fewer than 100 employees.
248. The next, a Cairns woman who had over five years service as a shop assistant, believes she was dismissed for taking Anzac Day off. The employee was dismissed without being given a reason and without notice immediately after Anzac Day, which she had taken off with the knowledge and apparent approval of the employer. The woman has no remedy as the employer company has fewer than 100 employees.
249. The next, a Rockhampton man, was presented with a new employment contract and told if he didn't 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 is under an AWA, 2½ hours from Rockhampton for static security shifts at a central Queensland mine. Whilst the man had not signed the proposed AWA he was already being paid a higher flat hourly rate, but with no penalties or overtime. The man is still employed and has been referred to the Office of Workplace Services about coercion or duress related to the proposed AWA.
250. The last was a Toowoomba man who was dismissed when he was told the business was being restructured but could see no reason for this. The man felt he had been victimised by his Foreman at the workplace since the beginning of the year and in this environment he was told the business was restructuring and was being made redundant. The worker disagrees it was a redundancy and could see no evidence of restructuring in the small engineering business and did not hold a redundancy severance entitlement because of the small size of the company. He had no remedy under the Work Choices legislation.
251. These examples were quoted by the Minister from a large number of individual stories being received through the Fair Go Queensland Advisory Service and Wageline. These are only a snapshot of the hundreds of stories of difficulty being encountered by Queensland workers across the state. However, this is representative of the types of issues that individual workers will be presenting in their evidence to the Inquiry.
252. Some, but not all, of the individual workers referred to in the media release of the Minister will be giving evidence to the Inquiry. The Commission would be aware that interest was registered by the Department of Industrial Relations on behalf of sixty (60) individual workers wanting to provide evidence to the Inquiry.
253. Of these sixty (60) individual stories, fifty-four matters relate to dismissal from employment, three (3) matters relate to circumstances where workers have felt pressured into resignation, one (1) matter concerned the introduction of an Australian Workplace Agreement (AWA) despite the employee not having agreed to or signed the proposal, one (1) matter was a case of threatened dismissal after a work injury and one (1) matter related to a reduction in status of a worker from a position held prior to the commencement of a traineeship after the traineeship had been completed.
254. In relation to the dismissals, most relate to seemingly unfair or unreasonable dismissals where the workers do not have a remedy under the Work Choices legislation because their employer company

had less than 100 employees. However, some of the recurring themes related to the dismissals were: instances of dismissal because an employee would not accept a proposed AWA or new contract of employment proposing reduced wages and or conditions (7); dismissal either immediately before, during, or immediately after a period of annual leave (4); dismissal because an employee had raised an issue or complained about safety concerns (4); dismissal because an employee had been injured at work (4); and dismissal because an employee had been or was to be absent from work for sick leave due to an illness or injury.

255. In relation to the three (3) matters where workers have felt pressured to resign one matter relates to where the worker had enquired with his employer as to why occupational superannuation had not been paid on his behalf for his two (2) years of employment. This led to warnings about his performance, threats of dismissal and that at the very least a downturn in business would probably result in his hours of work being significantly reduced. The worker elected to resign and seek alternative employment.

256. Another of the workers who felt pressured to resign was a part-time employee with a year's service who received 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 her to sign a new work contract within twenty-four (24) hours or resign her position. The worker had a colleague who was also part-time and was required in similar circumstances to work full-time. This did not suit her colleague due to family commitments and her colleague was subsequently dismissed. Her colleague will also provide evidence to the Inquiry of her dismissal.

257. Another of the workers who resigned was offered an AWA on a reduced wage rate 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 rates for public holidays actually worked, and no leave entitlements.

258. A brief snapshot of each of the sixty (60) matters is provided as follows:

1 A man with more than 6½ years service dismissed instantly for refusing to change fibreglass filters in an air conditioning unit, an action which he claims was unsafe.

2 A locksmith with six (6) months service, but who had worked with the employer for various periods over 13 years, dismissed and told the employer was "eliminating" all the people the employer didn't think were appropriate for a proposed new shop.

3 A refrigeration mechanic with sixteen (16) months service was dismissed after being on Work Cover for five (5) months because his employer informed him there had been a slow down.

4 A retail assistant employed part-time in a rental store was dismissed after negotiating to sell a washing machine to a customer at the end of a three (3) year rental period by using the rental bond which was sufficient to pay out the residual value. The dismissal was despite the employer having left the employee in charge of the shop during the employer's holiday and the employee having witnessed the employer do the very same thing.

5 An automotive industry employee of eight (8) months service was dismissed by the employer on his return from a week's leave. He was given no reason and another employee had been engaged during his absence.

6 An adult male short term casual labourer in a processing shed on a fruit and vegetable growing property was hit by a knife blade on a processing machine and told the employer he believed workers should get paid danger money on the machinery. The employer told him if he was not going to perform the work he was required to leave.

7 An adult male canvass shade and sail installer of seven (7) months consulted with his employer about what industrial instrument he was being paid under and how he was being paid. He was told by his employer to leave and not return.

8 An adult male Systems Analyst with 6½ years employment was dismissed after being told the Information Technology section of his employer was being outsourced. The man is now aware that another person was employed in house and on a higher salary than him.

9 An adult male Operations Manager for a fencing company with seven (7) months service was dismissed by the company Manager for misconduct, allegedly for speaking to staff disrespectfully which he disputes and for which he received no warnings.

10 An adult male graphic designer and sign writer with two (2) years service enquired into why his occupational superannuation had been unpaid which led to warnings about his performance, threats of dismissal and him being informed that a downturn in business may result in his hours of work being significantly reduced.

11 An adult male drilling labourer with eighteen (18) months service with a water drilling company was injured when a tool used to undo drilling pipes hit his knee, which had occurred with a Work Cover injury in the same way three (3) or four (4) months earlier. His employer dismissed him because he was no good to him anymore.

12 An adult male truck driver after two (2) years employment was given approval by his state manager to take annual leave and purchased non-refundable tickets for a trip to the USA. Just prior to his leave he was told management of the company in Melbourne had rejected his leave application but he went anyway. He was told he no longer had a job on his return.

13 An adult male ferry Master/Engineer with fourteen (14) years service resigned due his to safety concerns brought about by his employer company requiring him to accept expanded duties and an excessive workload undertaking both his Master/Engineer duties and deck hand duties previously completed by another additional employee.

14 An adult female child care worker was dismissed after five (5) months part-time service after she took ten (10) weeks of unpaid leave to travel overseas. Her employer had knowledge of the leave prior to her commencing employment and prior to her travel signed a document for her employer indicating her return date and that she would resume her part-time position. She was dismissed on her return being told that she no longer had a job.

15 An adult female retail sales assistant with fifteen (15) months regular casual employment was dismissed after being rostered to work Labour Day and presenting for work to find her usual centre was closed and attending another shop of the employer. She was dismissed after seeking payment for her minimum engagement despite the employer telling her the error was caused by other employee.

16 An adult female office administrator was dismissed after nine (9) years service after being given permission by her Manager to go home after an incident with a storeman who allegedly was bullying her. On her return to work the next day the Manager alleged the interstate company directors were notified and they considered she had abandoned her employment and she was not permitted to return to work.

17 An adult male engineer with nine (9) months service was dismissed after refusing to falsify a project payment claim schedule as requested by his Project Manager.

18 An adult male courier driver with regular casual employment over a long term period was injured at work, re-injuring a previous knee injury, and was required by his employer to remain at work and attend a doctor the employer had arranged, with his supervisor present, rather than being permitted to return home and attend his own treating doctor and physiotherapist.

19 An adult male building products labourer with five (5) years service was threatened by his production supervisor and when he went to higher management he was told they supported his supervisor no matter what and that he would be sacked on the spot under the new Work Choices legislation.

20 An adult male kitchen hand with fifteen (15) months regular casual employment was dismissed from a tourist accommodation lodge after a customer complained to management about his intervention, which he states he made when a customer was breaking the rules of the establishment.

21 An adult male heavy vehicle driver with fourteen (14) months service was dismissed after being admitted to hospital with pancreatitis.

22 An adult male retail sales assistant with just over three (3) months service was dismissed after having two (2) days off due to an illness when he was told the employer had a private investigator into his place of employment and there was enough reason to sack him. His employer later changed his position to that parts of his work were unsatisfactory, he was a sub-standard salesperson and he didn't fit in with the business.

23 An adult female receptionist with 3½ months employment in a real estate office was dismissed despite being told she was doing a good job with the work she was performing but that her employer expected more of her.

24 An adult female retail sales assistant with eleven (11) months service in a health food store was on approved early annual leave and due to return to work and was dismissed despite there being talk of her promotion prior to her leave.

25 An adult female office administrator with six (6) years and nine (9) months long term casual employment with a sporting club was dismissed when a committee meeting decided on a restructure and her services were no longer required and the meeting minutes also noted that she had an unreceptive manner to parents.

26 An adult male worker with thirteen (13) years employment was dismissed after refusing to sign a new work contract presented to him which would change his status from full-time to casual with a proposed three (3) days of work but with no guarantee of hours.

27 An adult female property manager with thirteen (13) months service was dismissed without notice as she was going on annual leave.

28 An adult male truck driver with one (1) year's service was dismissed after an argument with his transport coordinator about him being unable to attend a pick up on a Monday due to his hurting his back loading his truck on the Friday.

29 An adult female retail department manager with six (6) years service had a back injury for which she was on Work Cover. After her return to work she had a disagreement with her Area Manager and was told she no longer held a department manager position and was being demoted to a sales assistant in a different department and would be under supervision.

30 An adult male retail manager with 3½ years service undertook a Traineeship for management which he successfully completed but was then reduced in his position and salary to being a retail salesperson only.

31 An adult female beauty therapist with four (4) years service was dismissed after being presented with a workplace agreement and being told if she didn't sign it she should look for other employment.

32 An adult female customer service manager with 2½ years service was dismissed with no clear reason other than a mention of not getting on with other staff members.

33 An adult female travel consultant with fourteen (14) months service was dismissed after being told the business was being restructured and that her employer could sack anyone he likes with the new Work Choices laws.

34 An adult photographic mini-lab operator with two (2) years regular casual employment was dismissed after the Manager had stated someone was stealing from the company and everyone was under suspicion. However, only the employee has been stood down and other staff have told her that all of her shifts have been covered.

35 An adult female administration manager and personal assistant to the Director in a design architecture business with six (6) months service was dismissed and told that her dismissal was due to a personality clash, that the boss didn't like her so she had to go.

36 An adult male scaffolder with four (4) years service was informed he would be dismissed and re-engaged as a casual because of economic circumstances. It appears he is also being paid on a new wages and conditions arrangement in which his employer has commented that he will not receive payment for the industry redundancy scheme and is not receiving a daily travel allowance which he previously received.

37 An adult male spray painter with five (5) months service was dismissed after he had notified his employer that he had made an appointment to see his doctor due to a sore wrist (not a work injury). His employer told him he should work and put up with it and was dismissed when he attended the doctor and informed his employer about taking sick leave.

38 An adult female child care group leader with one (1) year part-time service resigned her employment when she received a memorandum from her employer that she was required to sign a new work contract within 24 hours to work new hours not suitable to her personal

circumstances or resign her position. She was escorted off the premises after her resignation and she is aware parents at the centre were told she threatened children.

39 An adult female child care assistant (a work colleague of the group leader above) was in the process of resigning but was dismissed when she received a memorandum from her employer that she was required to sign a new work contract within 24 hours to work new hours not suitable to her personal circumstances or resign her position. She had been required to work full-time despite the employer being aware it was not possible for her to do this due to family commitments.

40 An adult male casino hospitality food waiter with 2½ years service was dismissed for an allegation of serious misconduct. He states the reason given to him was that he was supposed to have taken a piece of broccoli from a side plate of vegetables.

41 An adult female breakfast cook and room cleaner with 9¾ years service was dismissed for alleged misconduct after a disagreement with her duty manager and later the venue manager about a written warning about her performance which was given to her after she had been requested to clean a ceiling from a step ladder, a duty she had not previously been required to undertake.

42 An adult male truck driver with ten (10) months regular casual employment resigned after being offered an AWA in which he would be paid $0.24 per hour over his usual rate ($18.00 against $17.76) but which would remove weekend penalty rates and public holiday penalty rates, and restrict overtime work. Overtime would be paid at a time and a quarter only if the overtime was required by the employer, and at the flat rate of $18.00 if the employee worked overtime when necessary to finish off loads for the day but did not have specific direction from the employer.

43 An adult female shop assistant with five (5) years regular casual employment at a supermarket was dismissed after the employer told her they could not provide her with the hours, but the employee is now aware another person has been engaged doing the same position she held.

44 An adult female wholesale administrator with five (5) years service was dismissed after returning from six (6) weeks leave which she took after approval from her employer and assurances her position was safe. Upon her return she was told her position was being made redundant and the person who took her place was to continue doing her old job, but the employee is now aware the other person returned to her normal job and a Trainee has now been engaged in her former position.

45 An adult male labourer with two (2) months casual service in the fruit and vegetable growing industry was dismissed by his labour hire company employer after aggravating an injury to his back, for which he had previously been on Work Cover, when he was sent to a new job to work on the same sort of machinery which had caused his initial injury.

46 An adult female retail sales assistant with six (6) years service at a retail camping store was dismissed by her employer alleging a downturn in takings, but the employee was aware her employer was dismissing older staff and replacing them with younger and cheaper staff.

47 An adult male soil tester with two (2) years service was dismissed by his employer for allegedly not performing his soil test duties correctly, despite no warnings being given to him.

48 An adult male mine worker with three (3) months service was dismissed by his mine contractor employer after raising safety issues and being told he was being negative.

49 An adult male equipment and maintenance supervisor with approximately nine (9) months service was dismissed after he had a disagreement with his manager about his signing off on a health and safety compliance document and then being told at short notice on a Friday to attend a training course five (5) hours away on the Monday. He was told to attend the course or be fired and when he presented at his usual work location on the Monday he was dismissed.

50 An adult female heavy machinery truck driver and plant operator with eight (8) months service was dismissed immediately after a minor accident with only a small amount of damage to a B-Double heavy vehicle. However, her dismissal occurred after a long period of difficulty with a co-worker who had allegedly harassed her over her period of employment.

51 An adult male security worker with two (2) years service on mobile patrols around his home town area was presented with a new employment contract and told that if he did not sign he could look for work elsewhere. His new contract requires him to attend 2½ hours from his residence to undertake longer static security shifts and despite not signing the proposed AWA was automatically paid a flat higher hourly rate of wages but received no penalties or overtime.

52 An adult female plant operator with more than one (1) year service was dismissed shortly after a minor incident in a vehicle she was operating which hit a rock and aggravated a pre-existing neck/back injury caused from a car accident. In the intervening period between the incident and her dismissal, her hours had been significantly reduced and her rate of wages reduced.

53 An adult male motor mechanic with nine (9) months service in a vehicle dealership was dismissed shortly after he had been told he needed to increase his performance. He was not clearly aware of the comparisons being made to other employees and was not given a reason when he was dismissed.

54 An adult female retail sales assistant with approximately one (1) year service with a retail butcher was dismissed shortly after enquiring of her employer about why occupational superannuation had not been contributed for her. She was full-time prior to her enquiry and reduced to casual with one (1) week's notice and dismissed one (1) week later, allegedly due to a downturn in sales despite being recently told she would be needed for the opening of a new store.

55 An adult male farm labourer in the sugar growing industry with almost two (2) years service was dismissed after asking for a wage increase. He was given no reason for his dismissal other than that the employer has found someone else to take his place.

56 An adult male trade assistant with more than three (3) months casual employment was dismissed after having been on a period of Work Cover and having received a clearance to return to work was told his position had been filled by another person.

57 An adult male welder (unqualified) in permanent full-time employment was dismissed ten (10) minutes prior to his normal finishing time and was told he didn't have a ticket as a qualified welder and there was not enough work. He and four (4) other employees were dismissed in a similar way and he was then handed a new work contract which he was required to sign if he wanted to work for the company from the following day.

58 An adult female administration officer with just under two (2) years service was dismissed when her employer left a message on her answering machine late on a Thursday telling her she was not to turn up for work on the Friday. She was advised her position was redundant and would be paid notice and severance payment, but her position was advertised immediately after in local newspapers.

59 An adult female retail sales assistant with six (6) months service was dismissed after initially being told she had too many sick days but later that her dismissal letter stated her dismissal was due to her performance.

60 An adult male farm labourer with three (3) years service returned from paternity leave and was told that unless he accepted casual employment he would be dismissed.

259. Out of the sixty (60) matters for evidence to the Inquiry thirty-five (35) matters relate to males and twenty-five (females).

260. Out of the sixty (60) matters for evidence to the Inquiry forty-nine (49) matters relate to weekly employees and eleven (11) matters to casual employees.

261. Out of the eleven (11) casual employees, six (6) were long term casual employees and one (1) was formerly a full-time employee for just under twelve (12) months who had been given one (1) weeks notice and reduced to casual status and then dismissed one (1) week later.

262. Out of the sixty (60) matters for evidence to the Inquiry, none relate to workers under twenty-one (21) years of age.

263. These statistics demonstrate that there are difficulties being encountered by workers within Queensland to the extent that workers are losing employment which is both relatively long term and obviously critical to their family or household income.
264. There are also difficulties being encountered in high turnover service industries such as hospitality, accommodation, food services, and retail, with a significant impact on young people, women and a high proportion of casual employees in particular in these industries. However, in those industries there has been a reluctance to make formal complaints in relation to the difficulties encountered with wages and conditions or to make statements to submit evidence to this Inquiry.
265. Individual workers generally have been hesitant to make affidavits and give evidence to this Inquiry, particularly in regional areas outside of the south-east Queensland area. This hesitance has been directly explained by them as the uncertainty they have and the lack of security they have in working for companies in their local areas.
266. There is a little more capacity for workers to obtain alternative employment in the south-east Queensland labour market and in certain locations or industries elsewhere in the state but in many areas work is still difficult to obtain.
267. It is not suggested that non-compliance and unfair dismissals did not occur prior to the introduction of Work Choices. However, for dismissals the balanced system of determination of unfair dismissal applications afforded under the *Industrial Relations Act 1999* is now simply not available to a significant proportion of the Queensland workforce employed in corporations under the Work Choices legislation.
268. Some of the workers would appear to perhaps have been dismissed in contravention of some of the protections of the *Workplace Relations Act 1996* s170CK relating to unlawful termination of employment. However, the remedies available are only after application to the Australian Industrial Relations Commission for conciliation and consideration of their claim and ultimately application to the Federal Court for action against their employer.
269. Workers have been referred to the Work Choices Infoline wherever appropriate to seek information about action available to them for unlawful termination of employment. It is the consistent experience of the Department of Industrial Relations following up these matters, that workers do not wish to pursue this action and are particularly concerned about their future employment prospects and security with other companies should they do so.
270. In summary, workers contacting the Department of Industrial Relations through the Fair Go Queensland Advisory Service, Wageline and the regions are reporting significant impacts to their employment and income security with numerous dismissals and numerous examples of the intended introduction of AWAs or other work contracts with reduced or unacceptable wages and conditions. It has also been demonstrated through stories of dismissals in related circumstances that workers employment with companies is more at risk when raising safety issues, more at risk if they report and claim for work injuries, more at risk if they take sick leave for illnesses or injuries and even more at risk taking periods of annual leave because other workers are being engaged in the place of long term employees during their absences.
271. In practical terms these are stories that are not just brought to the attention of the Department of Industrial Relations. These are stories which are shared in families, in communities and in workplaces across Queensland. These are stories which are cause of legitimate concern for workers across Queensland, with an impact on their sense of security in their employment and their sense of the balance of their rights within their workplace.
272. In the same manner these are stories which would be available to employer companies across Queensland who also see media reports at higher levels of industrial relations issues in which workers do not have remedies available to them and employer companies have acted lawfully under the Work Choices legislation.
273. It is not suggested in any way that all companies or any great proportion of companies are engaged in these types of actions against their workers. However, the Work Choices legislation does little to discourage these types of actions by employer companies against workers and in some circumstances, particularly companies with fewer than 100 employees, the legislation enables seemingly unfair dismissals to occur without any right of appeal or remedy.

274. The Work Choices legislation also provides little to encourage or enable workers to easily remedy the types of circumstances being encountered within Queensland workplaces, particularly when compared to the remedies previously available to most under the *Industrial Relations Act 1999*.
275. This situation, brought about by the introduction of the Work Choices reforms and demonstrated by the many workers seeking assistance and recounting stories of their difficulties in their employment with companies, is representative of a significant shift in the balance of rights and obligations in Queensland workplaces already encountered since 27 March 2006.

QUEENSLAND TEACHERS UNION OF EMPLOYEES SUBMISSIONS

Extracts from the submission relating in particular to points 2.9 to 2.18 relating to the *Skilling Australia's Workforce Act 2005* (SAW Legislation):

2.9 The SAW Legislation, specifically, Part 2 Division 2 Clauses 12(1)(b) and (g), provides:

"**Part 2** Grants to State: capital expenditure and recurrent expenditure

Division 2 Statutory conditions

12 Condition of grant - workplace reforms

(1) The State must implement workplace reforms in the vocational education and training sector, including the following:

(b) ensuring that TAFE institutions introduce more flexible employment arrangements by offering Australian workplace agreements to staff, except where making such agreements under the *Workplace Relations Act 1996* is not possible because of the corporate status of the TAFE institution, in which case other individual agreements should be offered;

(g) ensuring that TAFE institutions' workplace agreements, policies and practices are consistent with the freedom of association principles contained in the *Workplace Relations Act 1996*. In particular, TAFE institutions must neither encourage or discourage trade union membership.".

2.10 Fundamental to the conditions imposed through the SAW Legislation is the requirement that employees engaged in the provision of vocational education and training are offered Australian Workplace Agreements (AWAs) or individual contracts where AWAs are not possible. Queensland is a case in point where the situation precludes the offering of AWAs as TAFE employees remain employees of the Crown in this state and subject to state jurisdiction in industrial relations matters.

2.11 The SAW Legislation ties Commonwealth funding in this crucial education sector to forced implementation of the Howard Government's industrial agenda. This is an unacceptable attempt to impose ideologically based requirements on institutions that are the province of state and territory governments, and by doing so, to undermine the parameters of Commonwealth-state relations within the federalist structure.

2.12 The SAW Legislation inhibits the right of education workers and state and territory governments to reach industrial agreements about a full range of matters in the collective mode of negotiation and to override such collective agreements with individual arrangements to the greatest extent possible.

2.13 The QTU is a party to awards and certified agreements that have been negotiated between the Union and the employer and represent a mutually satisfactory resolution to the various claims made by both parties to the negotiations.

2.14 It is inconsistent with the stated objects of the *Queensland Industrial Relations Act 1999* that employee, union and employer parties will be prevented from including in future collective agreements, items of business that relate to proscribed content. Examples of such content include arrangements pertaining to workplace consultation, union involvement in dispute resolution and industrial relations education leave.

2.15 Employees, the relevant industrial organisations of employees and the employer oppose measures such as those imposed by the SAW Legislation but cannot resist in the face of the prospect of the loss of almost one-third of available Commonwealth funding.

2.16 The imposition of an ideologically driven and arbitrary industrial relations agenda on vocational education and training through conditional funding will not only undermine the industrial rights of employees but may well jeopardise the maintenance of a highly qualified TAFE teaching profession.

2.17 This development is for no other reason than because the Howard Government in Canberra has determined that it should not be in our agreement? The employees want it in. The employer wants them in. The union wants them in. How can this possibly be represented as choice?

2.18 QTU members have made conscious and informed choices about the industrial instruments that govern their working conditions because, under Queensland industrial relations legislation, they are genuinely allowed to do so. Being subjected to even a limited range of elements of the Howard

> Government's industrial relations system is not in the best interests of the employees, the teaching profession or vocational education and training programs.

Further, at page 135 of transcript, QTU Advocate, Mr K. Bates, in his address to the Inquiry, stated:

> "The SAW legislation ties Commonwealth funding in its crucial education sector to forced implementation of the Howard Government's industrial agenda. This in our submission is an unacceptable attempt to impose ideologically based requirements on institutions that are the problems of State and Territory governments, and by doing so to undermine the parameters of Commonwealth/ State relations within the Federal structure, so that clearly those matters will be the subject of the High Court's decision at some point in the future.
>
> I might digress for a moment, Deputy President, and just, I guess, illustrate the point that's been made in respect of one element of experience that is in the public domain at this stage, and that is the impact of similar provisions that have been applied to higher education institutions through the HEWA arrangements as the Higher Education Workplace Relations Arrangements, and this is an extreme example I must note, but one that I think clearly illustrates the point made. And that is that the freedom of association provisions which I referred to at clause 12.1(g) have been interpreted by the Department of Employment and Workplace Relations to mean for example, where a building in a university has been funded by Commonwealth moneys, that it is a breach of the freedom of association provisions if a union wants to place union related material on a notice board which is hung on that wall.
>
> I think that illustrates quite clearly the extreme lengths to which the government through its time of funding to the industrial relations agenda is prepared to go in its anti-union measures, when clearly freedom of association should have a much broader interpretation in our submission.
>
> The SAW legislation inhibits the right of education workers and State and Territory Governments to reach industrial agreements about a full range of matters in the collective mode of negotiation, and to over-ride such collective agreements with individual arrangements to the greatest extent possible.".

TEXTILE, CLOTHING AND FOOTWEAR UNION OF AUSTRALIA, QUEENSLAND BRANCH, UNION OF EMPLOYEES SUBMISSIONS

Extracts from the submission relating in particular to paragraphs 24, 25 and 54:

3.3 How the 4 Minimum Conditions Compare to Current Award Protections

24. Below we have set out a table giving an example of the minimum entitlements of a clothing worker covered by the *Clothing Trades Award 1999*, compared to what that worker would be entitled to under Work Choices. The example clothing worker in the comparison is a lingerie/underwear machinist, who works for a clothing company with 10 employees. She has held the job for three and a half years. She works in a small factory without any dining or rest room facilities. She is the most experienced machinist, so she works as the Head of Table, in charge of a table of 5 machines. She is graded at Skill Level 2 under the *Clothing Trades Award 1999*. In the week in question she worked from 7.00am until 5.00pm each weekday. She is also the TCFUA delegate for the workplace.
25. The *Work Choices* minimums set out in the table would apply if she was working for the same employer doing the same job, working the same hours at the same times, and signed a workplace agreement with the legal minimum requirements.

Award Conditions	Work Choices Conditions
38 ordinary hours @ $13.78 = **$523.64**	45 ordinary hours @ $13.78 = **$620.01**
3 o/time hours @ $20.67 (1.5x) = **$62.01**	*No entitlement*
4 o/time hours @ $27.56 (2x) = **$110.24**	*No entitlement*
Head of Table (ready made) allowance = **$10.20**	*No entitlement*
Meal Allowance $8.30 x 5 = **$41.50**	*No entitlement*
Lack of Dining Allowance = **$3.55**	*No entitlement*
Lack of rest room Allowance = **$3.55**	*No entitlement*
17.5% leave loading = $366.55 or **$7.05** p/w	*No entitlement*
Weekly income: $761.74	**Weekly income: $620.01**
1 weeks' notice of change to working hours	*No entitlement*
1 hour unpaid meal break b/w11.30am and 2pm	*No entitlement*
3 x 10 minute paid meal breaks	*No entitlement*
4 weeks annual leave (including allowances)	4 weeks annual leave at minimum rate
8 days sick/carers' leave	10 days personal leave
Unpaid family leave	Up to 2 days unpaid carer's leave at a time
2 days bereavement leave	2 days compassionate leave
12 months unpaid parental leave	12 months unpaid parental leave
5 days Dispute Resolution training leave	*No entitlement*
Accident Make-up Pay for up to 26 weeks	*No entitlement*
3 weeks' notice of termination or pay in lieu	3 weeks' notice of termination or pay in lieu
7 weeks' severance pay if redundant	*No entitlement*
9% superannuation paid monthly	9% superannuation
Paid jury service	*No entitlement*
4 hours paid hospital leave	*No entitlement*
Protection against standowns	*No entitlement*
Payment @ 2.5% for work on public holidays	*No entitlement*

LWR Manufacturing Workplace Agreement

54. 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 a union EBA in place. The proposed agreement has not yet been distributed to workers however, set out below are just some of the features of the draft seen by the union:
    - Overtime rates for overtime, weekend work and public holidays 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 10 hour break between shifts is removed.
    - Casual loading has been reduced from 33.3% to 20%.
    - Meal allowance, training allowance and many other allowances are removed.
    - Productivity bonuses are removed.
    - Two weeks annual leave is to be paid out.
    - Beneficial long service leave provisions allowing for accumulation at a greater rate, and providing the capacity to take long service leave after 5 and 7 years are removed.
    - Steady employment of 38 hours per week for full-time employees is removed. Hours can be averaged over 12 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 work higher duties for more than one day to receive a higher pay and higher pay for the whole week no longer applies, if higher duties are performed for more than 2 days workers will only be paid for the time you perform higher duties.
    - The right to equal representation of management and employees in the single bargaining unit is removed.
    - The requirement for the employer to notify the TCFUA before changes to the method of operation occur is removed.
    - The employees' right to elect representation in 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.
    - The prevention of discrimination on the basis of colour, natural extraction or social origin is removed.
    - Restrictions on the use of casual employment are removed and protections for permanent staff members from being replace by a casual employee are removed.
    - A minimum 3 hour engagement for part-time employees is removed.

WELFARE RIGHTS CENTRE INC. SUBMISSIONS

Introduction

This submission is presented by the Welfare Rights Centre Inc. (WRC) to the QIRC Inquiry - Impact of Work Choices on Queensland workplaces, employees and employers. It has been prepared by Gail Middleton who is the co-ordinator of WRC and is focused on the nexus between the Work Choices and the Welfare to Work (W2W) legislation. It is intended to inform part "b" of the inquiries terms of reference, that is:

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, harassments or the denial of workplace rights;*
- *Unfair dismissal or other forms of unfair or unlawful treatment of employees.*

The WRC is a specialist Community Legal Centre funded under the community legal centres program that is resourced by both the Commonwealth and State Attorney Generals and Legal Aid Queensland. The centre specialises in two areas of law:

- Disability Discrimination and
- Social Security.

WRC operates on three levels; casework, law reform and community education. More than 80% of our casework relates to the application of the Social Security Act. We are of the opinion that we are in a logical position to respond to this inquiry on matters that relate to our core business, that is the impact of Work Choices on the more vulnerable people in our communities.

Our submission has been divided into four sections:

1. Welfare to Work
2. Vulnerable Queenslanders
3. Work Choices
4. The Nexus

The WRC supports the notion that people are better off working than on welfare, but given the current Industrial Relations changes we are concerned about the quality of the work and the fairness of the pay to which our more vulnerable workers will be exposed.

Welfare to Work

Like the Work Choices Legislation, the Welfare to Work Bill was announced in the 2005 Federal Budget and rushed through Parliament with little consultation. It passed through the Senate in December and the main effects came into affect on 1 July 2006.

The people targeted in this legislation are people of "workforce age". In particular:

- **Parents from low income families** that receive a welfare top up to provide an adequate disposable income and whose youngest child is 6 years of age or older.
- **People with a disability** or a chronic medical condition that are deemed able to work more than 15 hours a week.
- **Sole Parents** whose youngest child is 8 years or older.
- **Mature Aged** unemployed.

WRC fully supports the notion that people are better off in the paid workforce than on a welfare payment - but our concerns are that the work should have some quality and fairness about it. We are also concerned that the targeted groups are being used as scapegoats and will flood the labour market with 'unskilled workers' that can then be used to drag down the wage levels of the industries these people are likely to be employed. The industries we believe that are most likely to employ these former welfare recipients include:

- Childcare (particularly Family Day Care)
- Cleaning Services
- Community Services (Care Work)
- Hospitality
- Manufacturing (Production work)
- Retail

The Welfare to Work (W2W) Legislation is both complex and cunning. However the main thrust of it that should be of interest to this inquiry include:

- There will be a significant decrease in people being eligible for the security of a pension and an increase in people going onto the unemployment benefits and being required to undertake job seeking activities.
- The penalty regime and guidelines that govern "non participation" for those on the unemployment benefit have become harsh and unfair. This is particularly so for those without skills and confidence to negotiate within the industrial relations system.

These issues are explored in more detail below:

1. Job Seeking Activities

New applicants in the targeted groups will no longer be eligible for a pension type payment, which has a higher rate of pay and many other financial advantages. Instead they will be put onto the Newstart Allowance that requires activity testing. For the first time this includes parents and people with a disability. ACOSS research has estimated that in Queensland this will add 52,300 parents and people with a disability or chronic medical condition seeking part time work over the next three years.

Barriers and Productivity

Many of these people will have significant barriers to work including:

- Lack of child care
- Lack of education, skills and qualifications
- Lack of transport and/or mobility issues
- Caring responsibilities

In order to address these barriers these people will require flexible employers who are willing to accept situations where an employee may require extended periods of annual and unpaid leave so caring responsibilities and access to medical treatment can be achieved. It is highly likely that these employers will have to be more tolerant about a person's ability to be reliable. It is rare that we see either of these characteristics as adding productivity to a workplace and therefore these employees ability to negotiate improved wages on conditions (on the basis of productivity) are hindered.

Social Security Guidelines

Centrelink payments for people of workforce age are now driven by the Department of Employment and Workplace Relations (DEWR). It is no accident that Work Choices and W2W link neatly together for a government that is focused on individual economic ideologies rather than civil communities. DEWR are responsible for writing the guidelines which are the governments interpretation of the legislation and the starting point for Centrelink employees making decisions about a recipient.

The following is an excerpt from the Centrelink Social Security guidelines that summarises how an unemployed person would satisfy the activity test:

> *To satisfy the activity test, a jobseeker must be actively seeking and willing to undertake any paid work other than paid work that is unsuitable for the person.*
>
> *If a jobseeker leaves a job to claim payment or refuses to accept a job, a penalty applies (3.2.13). However, no penalty applies if the work that the jobseeker refused or left is unsuitable for the jobseeker.*

In 3.2.8.20 of the guidelines suitable work is defined as follows:

"Work may be unsuitable for a jobseeker if it:

- requires particular skills, experience or qualifications that the person does not have, and appropriate training will not be provided by the employer,
- may aggravate a pre-existing illness, disability or injury and medical evidence has been provided,
- involves health or safety risks and would contravene an occupational health and safety law,
- the jobseeker is a principal carer of a child or children under s. 5(1) of the *Social Security Act 1991* and appropriate care and supervision of the child(ren) is not available during the hours the person would be required to work,
- the terms and conditions for the work are less generous than the applicable statutory conditions,
- involves commuting from home to work that would be unreasonably difficult,
- involves enlistment in the Defence force or the Reserve forces,
- requires the person to change residence,
- is the subject of industrial dispute, or
- in the Secretary's opinion, is unsuitable for any other reason."

The highlighted definition is of most interest to this inquiry. "Applicable statutory conditions" are further defined as:

- if the work would be covered by the Australian Fair Pay and Conditions Standard, the minimum terms and conditions for the work under that Standard,
- if the work would also be covered by a transitional award - the minimum terms and conditions for the work under the transitional award, so far as the terms and conditions relate to rates of pay and casual loadings,
- if the work would not be covered by the Australian Fair Pay and Conditions Standard, the minimum terms and conditions for the work under the relevant state or territory agreement or award.

So generally speaking, as long as the work is covered by the new Industrial Relations standards it will be deemed suitable. Given the new unemployed (parents and people with a disability) will have barriers to work they are at risk of negotiating their rate of pay downwards in exchange for the flexibility and tolerance they require.

2. Penalties

If a job seeker fails to comply with the requirements of the agreed job seeking activity (without valid reason) they are deemed to have committed a "participation failure". The consequences of participation failures can be non payment of benefit until they re-engage. If they accumulate 3 failures in a twelve month period, or commit a "Serious Participation Failure" they are excluded from payment for 8 weeks. Details of "Participation Failures" are noted in 3.2.13.10 of the Social Security Guide. The following provides extracts from this guide and summarises the consequences this may have on parents, people with a disability and others who may be exploited in the workplace.

Examples of "participation failures" include:

failure, without reasonable excuse:

- To attend an interview with an employment service provider or community work coordinator
- Commence or satisfactorily participate in a programme such as Work For the Dole
- Attend a job interview
- Return a satisfactory job seeker diary
- Return a satisfactory employer contact certificate

Examples of "serious participation failures" includes:

- Refuses a suitable job offer or to sign an AWA
- Is dismissed for misconduct
- Voluntarily leaves or is dismissed from a job due to their own misconduct

Whilst this section is primarily focused on people seeking work it also governs people who may be leaving work or reducing hours of work including those who become voluntarily unemployment or are dismissed for misconduct. The guidelines are quite explicit to ensure that these insubordinate employees are at risk of being excluded from social security payments. The following are from the Social Security Guide:

> *Voluntary unemployment*
> *When a person ceases employment due to a voluntary act and claims payment the decision to cease work voluntarily must have been reasonable. The rationale for this policy is based on a community expectation that unemployment payments are to assist people in genuine need. A person who chooses to leave employment with no good reason cannot expect community assistance. In determining whether or not the person's decision was reasonable the delegate must consider whether or not the work was unsuitable for this person and must take into account the jobseeker's personal circumstances.*
>
> *Unemployment due to misconduct*
> *A person can only become unemployed due to misconduct if their misconduct occurred in the workplace. A person who was dismissed for lack of ability to do the job or even for incompetence cannot be considered to be unemployed due to misconduct unless their behaviour was clearly deliberate and within their control. The intention of this policy is not to penalise people for something over which they clearly had no control. Rather, the intention is to provide a deterrent to those who might behave inappropriately at work in order to be dismissed and avoid a penalty for leaving employment voluntarily.*

As the W2W legislation has only been enacted for 20 days we can only hypothesise as to how the Social Security penalty regime will impact on people who leave work because they fail to sign an AWA which is less favourable than the conditions under which they are currently employed, or in the worst case scenario, is used by the employer to deliver a vindictive blow to an employee/s who are organising in the workplace for collective bargaining.

Vulnerable Queenslanders

The WRC does not claim to be an expert in Industrial Relation Law but as the majority of our clients are vulnerable we are concerned that under these new laws they will be forced into unfair workplace negotiations.

By "vulnerable" we mean; people:

- with skills and attributes that are not in demand.
- who are from culturally and linguistically diverse backgrounds.
- who live in regional and remote areas with little opportunity to work.
- with child care responsibilities and who can not find quality child care.
- who are reluctant to work unsociable hours as this will mean less time with their family.
- who are responsible for children over 11 years of age and are unable to commit to out of hours work as they are unable to support their children and supervise their activities.
- with a disability who may be judged by their disability prior to being given an opportunity to prove their worth in the workplace.

The W2W focuses on people of workforce age who are not in the workforce. We view this as a focus on people who fit our vulnerable definition as people with skills and no barriers to work are more likely to be in gainful employment. With little to bargain these people, our new vulnerable job seekers, will be searching for jobs and negotiating pay and conditions in a supply driven environment. With little training and/or education their capacity to compete for a fair days pay is restricted. Yet if Work Choices was even slightly committed to ensuring the overall enhancement of the labour market and our communities it would ensure these newcomers to the system were protected with safeguards to ensure their pay and conditions allowed them to achieve a work life balance.

Safeguards are needed to ensure the following:

- The rates of pay are to remain at a level that encourages people into the workforce, keeping in mind the excessive marginal tax rates that casual and part-time employees pay as their income is topped up through the welfare system.
- Employers should ensure that all workers are given equal opportunities for progression in the workplace and, just because they have a disability they should not be overlooked for promotion and training opportunities.
- Workers with families, especially people who are caring for elderly relatives, children and family members who are ill or disabled, should have protections to ensure they are not forced to trade pay rates and job security for the necessary flexibilities to meet the family responsibilities.

Some examples include:

1. People with a disability being judged by their disability and offered AWA that anticipates a lower rate of productivity, even when this is not the case. Once this agreement has been signed it is difficult to argue for progression within the workplace unless the skill the person has is in demand.
2. Employers who have to make any workplace modification, or buy in additional support such as Auslan Interpreters, may pass on these costs back to the employee by paying at a lower rate of pay. Once the modifications have been made it is difficult for the employee to request the same government assistance for another workplace simply because they have been offered a better rate of pay or improved conditions.
3. Out of School Hours Child Care services tend to stop when a child goes to high school. Parents who have caring responsibilities for children who are over 11 years of age often need hours of work that ensures they can meet this responsibility. Seeking work that offers these flexibilities is likely to put these parents in vulnerable positions where they may well accept lower conditions of work in return for specified hours. Parents required to look for work will find an imbalance of power between them and the potential employer and will be greatly disadvantaged when trying to negotiate without the levels of support that have been available through the trade unions and other policy development and advocacy groups.
4. People with episodic medical conditions that have been refused the Disability Support Pension will be vulnerable as they seek employment in workplaces that are willing to support their differences rather than exploit them as cheap casual labour.

Cutting wages to give people a "foot in the door" is not a new concept, but at what point does a vulnerable person no longer require this foot up and be paid a fair days pay. It is vital that all people are given an opportunity to undertake decent and safe work, something we at the WRC are not convinced is being enhanced by the introduction of Work Choices and the W2W legislations.

Work Choices: As We Understand It

The WRC understands that there will be at least 85% of the workforces affected by the Work Choices legislation and that these people will be expected to undertake work in accordance with an agreement that is “negotiated” with the employer.

We understand that:

- union rights are restricted;
- bargaining power for workers will be reduced;
- flexibility and choices will be biased towards the party with the most power. In the case of unskilled and poorly educated Queenslanders this will be the employer;
- there are limited systemic checks and balances, and
- an AWA will prevail over all collective agreements

Queensland anticipates over 50,000 vulnerable people will undertake job seeking activities (or risk a non payment period with a cash value of up to $1600) over the next three years. The contents of an employment agreement is no longer protected by the no disadvantage test. Instead it will be covered by the Australian Fair Pay and Conditions Standards, which is made up of the following:

- Basic rates of pay and casual loadings.
- Maximum ordinary hours of work.
- Annual leave.
- Personal leave.
- Parental leave.

However it appears even these standards are not secure because:

- People with a disability can be exempt from the minimum wage and yet they are required to compete in the open labour market if they are able to work for more than 15 hours a week. For people in these situations there is no minimum guaranteed rate of pay.
- There are bizarre ways of interpreting pay rates and hours (such as averaging them out in a 12 month period) which means the minimum rate paid to the worker can be lost, especially for those in casual unskilled work.
- Allowing an agreement to "cash out" a standard means there is little purpose in having the standard in the first place.

It is difficult to imagine how an unskilled person with caring responsibilities and/or a disability is going to be able to negotiate a fair wage (on their own) in this environment.

Given that many of the people who will be required to look for work will need to negotiate for greater flexibility due to child care responsibilities and/or adaptations for their disability or medical conditions. It is easy to assume that these vulnerable and powerless people will negotiate (or accept) what the employer offers. Whilst we believe the vast majority of employers will do this within the realms of the Work Choices Legislation we believe the legislation is absent of safeguards and therefore many of these people will be trading dollars in return for the flexibility that they require.

The Nexus

The clear purpose of the W2W legislation is to minimise the dependency of people on income support and maximise the number of people in the workforce or the number of people available for work. Herein lies the nexus between W2W and Work Choices legislation.

Filling the job seeker market with vulnerable and primarily unskilled labour and then requiring them to negotiate pay and conditions in a highly unregulated industrial relations system is putting tipping the balance away from a fair labour market system.

In a recent edition of On Line Opinion, Des Griffin summarised and challenged the situation by noting:

> *Prime Minister Howard has seemed to suggest that the main aim of the [W2W] reforms is to get longer-term unemployed people into work. They will be prepared to accept minimum work conditions rather than lose their unemployment benefits, which they will do if they don't accept the next job offer. Is this to say that tens of millions of dollars are being spent and critical changes made to industrial relations arrangements - some of which will not affect the small business target group unless they incorporate under federal law - mainly to reduce the outlay on social security?*

The government is seeking a more flexible labour market and yet vulnerable groups are particularly restricted in their flexibility and adaptability. The following are just two possible examples of what could happen in this brave new world.

1. *Billy has worked since he left school aged 15 years in the Silver Square sugar production factory. He was earning $17.00 an hour based on his experience. Unfortunately he had a serious accident playing sport and was required to spend time in hospital and take time off work. As a casual employee he lost the shifts he had acquired and went to Centrelink in search of social security. He was put onto the Newstart Allowance and eventually assessed as being able to work 15 hours a week. He was required to look for 6 jobs a fortnight. Because of his ongoing medical treatment and his limited ability to work "as required" he found it difficult to find a job. Silver Square heard he was unemployed and contacted him as they*

were aware they could profit from his skills and knew he required no training. On the basis they knew he had to accept any suitable job offer (after all he was on the unemployment benefit) or face an 8 week non payment period they wrote to him offering $12.75 an hour for the 15 hours a week. He had to go back to work, next to his former colleagues, knowing he was earning at least $4 an hour less than those around him.

2. *Joan had survived a tough life. She had moved to Australia with her partner John and three children with an intention to provide her children with opportunities she never had herself. Unfortunately John died of cancer two years after arriving and she was forced to go on welfare payments. Eight months later, when her youngest child turned 6, she was told she had to look for work for at least 15 hours a week. She was without family and felt the under funded outside school hours care would not meet the needs of her children who were still struggling with the death of their father. She sought a variety of work focusing on her admin and organisational skills. She applied for the required 6 jobs a fortnight on a regular basis all to no avail. Her requirements, she thought were quite reasonable, she could work from 9.30am – 2.30pm 5 days a week but only during the school terms. If she had not required the extra time off she would have been snapped up but she could not do that to her children and felt vulnerable having to ask for this additional time off in an interview. Eventually an employer worked out a plan too good to refuse. She could have 12 weeks off each year if she annualised her salary. The employer offered her $12.75 an hour but would pay her for 15 hours a week. However she was required to work 19 hours a week so he could pay her during the weeks she was "having off". Perfect! She worked 19 hours a week and was paid for 15. When the Christmas break came (so she could reap her rewards) she was sacked.*

The Industrial Relations and W2W reforms are creating two societies; one for the skilled and articulate people and another for the vulnerable. But the shame of it all, which is not addressed in this submission, is that there are no strategies or pathways for the two societies to meet.

Summary of Statements

The WRC supports the notion that people are better off working than on welfare, but given the current Industrial Relations changes we are concerned about the quality of the work and the fairness of the pay to which our more vulnerable workers will be exposed. As the W2W legislation has only been enacted for 20 days we can only hypothesise as to how the Social Security penalty regime will impact on people who leave work because they fail to sign an AWA which is less favourable than the conditions under which they are currently employed, or in the worst case scenario, is used by the employer to deliver a vindictive blow to an employee/s who are organising in the workplace for collective bargaining. Cutting wages to give people a "foot in the door" is not a new concept, but at what point does a vulnerable person no longer require this foot up and be paid a fair days pay. It is vital that all people are given an opportunity to undertake decent and safe work, something we at the WRC are not convinced is being enhanced by the introduction of Work Choices and the W2W legislations.

Given that many of the people who will be required to look for work will need to negotiate for greater flexibility due to child care responsibilities and/or adaptations for their disability or medical conditions. It is easy to assume that these vulnerable and powerless people will negotiate (or accept) what the employer offers. Whilst we believe the vast majority of employers will do this within the realms of the Work Choices Legislation we believe the legislation is absent of safeguards and therefore many of these people will be trading dollars in return for the flexibility that they require.

The industrial relations and W2W reforms are creating two societies; one for the skilled and articulate people and another for the vulnerable. But the shame of it all, which is not addressed in this submission, is that there are no strategies or pathways for the two societies to meet.

YOUNG WORKERS ADVISORY SERVICE SUBMISSIONS

Reference Term B: Inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including:

2.2 Discrimination, harassment or the denial of workplace rights

By allowing exclusions in the Federal legislation for small to medium constitutional corporations (100 employees or less) from unfair dismissals, employers may be underhand and discretely discriminatory in terminating employees from their position. Removing the obligation to provide explanations for termination or follow a transparent process in dismissing an employee allows unfair treatment to perpetuate and leads to further exploitation of young workers. Under previous state and federal laws, an employer was required to provide a fair process and explain the reasons for the termination. This requirement is no longer required for organisations with less than 100 employees. Personal prejudices based on race, religion, sexuality (etc) will be undetected without recourse. There is a greater difficulty for employees to argue that the termination was for a discriminatory reason.

Under the provisions of unlawful termination contained in the WRA, it is stated that workers are protected if they are dismissed for reasons, which are discriminatory in nature, or otherwise prohibited. These are important protections, however, the value of these protections can only be measured by their effectiveness. In YWAS' experiences with clients, YWAS have observed a simplistic tendency where a genuine unlawful termination can be disguised as a dismissal for an occupational or performance related reason.

Case study 5: Eugenia

Eugenia worked in administration in the Business/ Finance sector. She was in a minor car accident on her way home from work and had to undergo physiotherapy for a back injury she sustained. She filed a claim with WorkCover. Within a week of returning to work, on light duties, and reduced hours, Eugenia was given a warning about her performance. She contested the warning verbally and in writing, expressing that she was given the same amount of work to do, but working less hours. Over the next few weeks, Eugenia was terminated. While she strongly believed that her termination resulted from her WorkCover injury, the issue of poor performance, and documentation provided by the employer deterred Eugenia from filing an application with the Industrial Relations Commission/ADCQ. She was too intimidated to engage mediation processes to a Conciliation Conference.

This report highlights that one of the main issues to be addressed is the lack of knowledge and 'mis-information' that is in the community about workplace rights. A community that is knowledgeable about their rights is an effective 'check and balance system' to ensure that employers operate within their obligations. Furthermore this will ensure that any workers who are safeguarded by legislative protections are able to pursue their right to make an application, claim or discrimination complaint with full-knowledge. It is suggested that where a young person lacks knowledge or has misconceptions, it inherently affects their right to effectively participate in the workplace, thereby affecting their citizenship.

In YWAS' experiences, where the employee who has an unclear perception of rights is unlawfully terminated, their automatic reaction to the termination is to merely accept it. Those who filter through and question the action, are confronted with the excessive terminology and confusion surrounding a "fair", "unfair", "unlawful", "excluded" and so on, and often it is too overwhelming to proceed in many cases. This is an immediate deterrent against the young worker pursuing the matter any further. YWAS' recognise that our empirical and anecdotal data is not necessarily representative of the experiences of all youth, but is alarming nevertheless. Our statistics indicate that young workers are under-informed and uninformed about their industrial rights.

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".

This woman's attitude highlights the ignorance and naïvety that exists among some of our young workers and how they view themselves in the employment relationship. The different systems, jurisdictions and increased lack of consistency between "what is right?", "what is wrong?", "in what circumstances is it considered wrong?", and "who is it wrong for?", has only compounded the already problematic level of ignorance surrounding young people's notion of industrial and human rights.

From the young people YWAS have assisted through specialised assistance on the telephone, via casework, and at schools, there is a general misconception that if you work for an employer with less than 100 employees, you simply do not have any industrial rights, and you are disposable at the will of your employer. Furthermore, this is a misconception that is perceived by employees and employers, and a very dangerous one in excusing behaviour that is substantively unlawful. Minister Stephen Smith expressed the point that:

> "How can you say in the modern Australia that if you are the 101st person on the job you have to be treated fairly, but if you're the 99th person on the job you can be treated differently and unfairly? If you're the 101st person on the job, you can turn up to work each day knowing that you have some remedy or security or recourse if you are treated unfairly, but if you're the 99th person on the job you can be treated unfairly, arbitrarily and capriciously, with no remedy.… In other words, you either say as a fundamental principle that you don't want people in the workplace being treated unfairly, you want them treated with civility and dignity...or you don't believe in that as a value and a principle."

The difficulty in the Work Choices Amendments for YWAS' clients is that if it has not created, it has defined a double standard: the message is loud and clear, "*what's wrong for one is not wrong for the other*".

Case study 7: Kelli

Kelli was pregnant, her maternity leave had been granted, on the day she planned on taking leave, her employer allegedly told her that, "[your] position is not being held for you, you are welcome to reapply, but since WorkChoices is effective, and there are less than 100 employees, I do not owe you anything." At the time Kelli did not contest this decision as she was simply perplexed.

YWAS are relieved that the women mentioned in these examples phoned to seek clarification about their rights and entitlements. These women are protected under existing legislation, yet the misconception was that being treated unfairly for a casual was acceptable; as in a less than 100 employee organisation unfair treatment was acceptable. Perhaps what is most concerning, is the rest of the young women who do not take the time to make that phone call to clarify, and who simply put faith in their employers actions. The message that our clients are hearing is that, "sometimes it's ok to be unfairly dismissed".

YWAS believes that to protect young people from falling into a more vulnerable position, young people need further education to familiarise themselves with what an unlawful termination is. It is just too optimistic and naïve to believe that a person who is dismissed will know the difference between an unfair dismissal and an unlawful termination.

The secondary problem is that the basis of discrimination is "unfair treatment on the basis of an attribute". If young people come to believe and to accept that unfair treatment is acceptable, at what point do they recognise that unfair treatment is not acceptable, based on a prohibited attribute or otherwise. From YWAS' experiences with young people, there is a transition towards rights being attached to titles, and to numbers. It is no longer understood to be a "human right" not to be discriminated against, or an "industrial right" to be protected from unfair dismissal, and not understood there are rights for permanent employees and a different set of rights for casuals and apprentices.

Case study 8: Emma

Emma was an apprentice Beauty Therapist. Her question, "Am I still allowed to be an apprentice because I just found out I' m pregnant?"

This demonstrates the incapability that exists in distinguishing between rights and protections that are fundamental (protection from being discriminated against), and rights and protections that are selective, based on the type or organisation you work for and the number of people you work with. What YWAS envisage is that in many cases, the distinction between universal and industrial rights will not be made, and young people will 'simply elect to remain silent and exploitation will continue and intensify'.

In recognising the difficulty for young people in making the distinction between an unfair and unlawful dismissal, part of the value of the Conciliation Conference at the Industrial Relations Commission was that it gave clients a formal venue to air the issues related to their dismissal. It was frequently in the preparation for the conference or at the conference itself, that invalid reasons for dismissal would be revealed. Completely removing the right to access unfair dismissal complaint procedures for such a large number of Australian employees, removes the chance of exploring perhaps hidden reasons for dismissal.

For those who choose to pursue an unlawful termination application, they must fill out an application form. For some youth with poor literacy skills, from non-English speaking backgrounds, and from culturally and linguistically diverse backgrounds, the form alone is overwhelming and some young workers simply don't have the confidence or competence to complete it. Many young people who phone YWAS, make the initial enquiry about an unlawful termination and select the option not to pursue it. This may be because they do not want to be reinstated, feel overwhelmed by process, or are simply content with printing their resume and applying for jobs elsewhere.

The features of the conciliation conference, in combination with the nature of an unlawful termination complaint, place employees, our clients in a disadvantaged bargaining position. While agreements are reached voluntarily, our clients' decisions are often influenced by the unattractiveness of alternative options.

YWAS envisage that referring an unlawful termination to the Federal Court, or Federal Magistrates Court will be an unattractive option for our clients, who, anecdotally speaking are less likely to engage in legalistic processes if they belong to minority groups. Socio-economic factors must be taken into consideration also, given that on average our clients settle matters for around $1,300 indicates that they are not seeking the level of compensation that would justify for them spending potentially $30,000 to run a case in the Federal Court or Federal Magistrates Court. Some of our callers borrow money ($51.40) for the application fee alone. For many of our clients, the crux of their complaint is a one-on-one conversation that took place behind closed doors.

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.

The lack of direct evidence to support claims of discrimination, increases the perceived risk involved for a client in spending $30,000 for a Court to decide what "*he said and what she said*". This is a deterrent against referral to the Federal Court or Federal Magistrates Court, and correspondingly reduces the effectiveness of the Conciliation Conference as it strengthens the bargaining position of the employer.

It is foreseeable, then that the following scenarios may increase in tendency:

- Employees, and particularly young employees, will feel even more apprehensive about questioning their employer about their working conditions;
- Young employees who are not aware of any 'competent administrative authorities' that may be able to deal with their complaint will be further silenced;
- Fear of (unprotected) dismissal on the grounds of making an internal enquiry or complaint about wages, discrimination, harassment or otherwise may contribute to a breakdown in enterprise-level resolution of disputes. This situation appears to directly threaten the effectiveness of enterprise-level dispute resolution and bargaining that has for some time been central to the present government's industrial relations agenda.

YWAS fears that young workers will develop a culture of acceptance, resignation and apathy about workplace rights due to this failure to protect genuine complaints and workplace-level enquiries about possible breaches of a law or industrial instrument. YWAS data demonstrates that 13.2% of callers who were dismissed between March 2002 and March 2005 believed their dismissal occurred in association with making some kind of complaint at their workplace. While, in certain cases, Anti-Discrimination legislation may cover these scenarios, given the new Workplace Relations legislation, an unscrupulous employer need only rely on their legal rights under that Act to terminate without giving a reason, or to provide a false or fabricated reason.

YWAS recognises that young women in particular are most threatened by the lack of protection against dismissal for making a complaint about their working conditions, wages or discriminatory behaviour directly to their employer (instead of to a 'competent administrative authority'). As noted earlier, YWAS clients with experiences of discrimination and/or sexual harassment were twice as likely to be female than male. Advice given by YWAS pre-Work Choices was to resolve complaints of discrimination internally, and in fact, young workers are more likely to address the issue with Human Resource representatives or member of management than to an authority such as the Anti-Discrimination Commission Queensland. Due to the new laws, YWAS intends to primarily direct clients to the relevant administrative authority to make complaints in order to protect against a possible dismissal.

Case study 10: Amanda

Amanda was terminated in February 2003 after over 2 years of permanent full time employment in a clerical role with a small to medium sized company. Amanda was given extremely trivial reasons for her dismissal, including one instance of the use of the phone for a personal call and the work email for a personal email. Amanda was almost summarily dismissed. Not long before her dismissal, however, Amanda had reported a number of instances of sexual harassment to her employer. Amanda believed she was in fact terminated so that her employer did not have to deal with these complaints. She lodged an unfair dismissal complaint in the Queensland Industrial Relations Commission on the grounds that her dismissal was harsh, unjust and unreasonable. Her complaint was resolved at conciliation. Had these events occurred after March 27, 2006, Amanda could not have lodged a complaint of unfair dismissal. Nor could she have lodged a complaint of unlawful dismissal with the AIRC, as her complaint about sexual harassment had not been made to a competent administrative authority.

Case study 11: Naomi

Naomi was employed in a full time capacity at a convenience store for approximately 3 years. Naomi suspected she was not being paid correctly and, in 2004, presented her employer with a copy of her award. Naomi had not filed any complaint with Wageline. The following day her employment was terminated – she was told her performance was no longer up to scratch. Naomi filed a complaint of unfair dismissal in the Queensland Industrial Relations Commission alleging that her termination was harsh, unjust and unreasonable. Again, had Naomi brought attention to her underpayment after March 27 2006, she would not be entitled to pursue an unfair dismissal claim.

On 8 October 2004, YWAS provided a formal submission to the Commission for Children and Young People and Child Guardian: Queensland Review of Child Labour. In the submission, YWAS outlined that,

"While approximately 13% of all 15-24 year olds are union members, young people under 18 who contact YWAS are more likely to be employed in industries and occupations that have low rates of unionisation. Of YWAS clients under 18, only 1.27% identified that they were members of a Union. Young people contacting YWAS for advice are generally provided with information about unions, and can be provided with a referral to the QCU or the ACTU Worker2worker program, which provides a website displaying up-to-date news about young workers' issues and a 'hotline' offering advice about correct rates of pay, suggestions for resolving workplace disputes and other problems, and referrals to relevant unions. The Worker2worker campaign was developed to address the poorer employment conditions experienced by younger workers, their lack of knowledge of employment rights, and their lower unionisation rates. Many of the young people under 18 who contact YWAS acknowledge that their jobs are a temporary means of earning income to enhance lifestyle. Dissatisfaction with their employment appears more likely to lead to job abandonment or change, rather than in attempts to improve conditions through industrial action."

The Work Choices amendments remove the right for many young workers to formally complain about procedural or inherent unfairness in their termination. By exploiting the ignorance of young workers, the legislation has been used by employers to justify the termination of employees, even in situations that are contrary to the legislation. Both highlight the inability of the Federal Government to provide knowledge of the changes to affected parties. Some employers of young people have preyed upon the vulnerability, lack of knowledge and inexperience of the young person to their advantage in over-representing their rights as employers.

There have been a significant number of situations where employees had the right to lodge an unfair dismissal application under the previous IR system, but now have had this right stripped away through the Work Choices amendments. A number of employers in the pre-Work Choices implementation phase were "jumping the gun" and terminating employees prior to 27 March 2006. YWAS believes that this was an indication of the general attitude of some rogue employers pre-empting the power provided under the new amendments. Employers have also gone to some lengths to confuse and mislead young workers with respect to their rights, including: changing dates of termination to be post-Work Choices, informing staff that they are terminated for 'operational requirements' because they can't keep on employees who call in sick, refusing access to other forms of leave where length of service does not allow maternity leave, asking unnecessary questions about relationship status and so on. Supporters of the legislation will comment that these employees have the right to lodge an application under the new legislation, but fail to acknowledge that for every application lodged, there are a number of employees who do not pursue their legal right.

Case study 12: Sebastian

Sebastian (20) contacted YWAS after being told by his employer that he was, "no longer needed" in the workplace. On the company letterhead provided by the employer they identified that they were a 'Pty Ltd' company, Sebastian was also regularly informed how 'great the new legislation was because employers could do what they want, when they want, and are not restricted by legislation.' An ABN search revealed that the

organisation was not a Pty Ltd company but a trust. While Sebastian did not accept the employer's termination on face value, this highlights a concern that people who are not as perceptive and judicious as Sebastian may not seek advice about the termination.

Case study 13: Juana

Juana (21) was informed that her organisation was a small employer (with less than 100 employees) so they were under no obligation to keep her position open for her to return to work after she finished maternity leave. A month prior to termination she was excluded from company activities, including training and staff social events. She was asked to train another person in her position; the company did not inform the new employee that they were a 'replacement employee' while Juana was on maternity leave. While the employer has no legal basis for the termination or not allowing Juana to return to the position she held prior to termination, this again highlights YWAS' concern about the misconceptions (deliberate or otherwise) about the WorkChoices amendments and the rights of the employees/employers.

Case study 14: Warren

Warren (19) worked as a casual 'brickies labourer' for 2 years at a medium sized company before being terminated from his position (pre-WorkChoices). He contacted his former employer for a separation certificate, whereby his employer post-dated Warren's date of termination to be after the Work-Choices date of termination to be 'excluded by the WRA'. Although Warren called about having this date checked, after further discussion with him, it was discussed that he had a right to file an application with the Industrial Relations Commission. Warren only contacted YWAS after some weeks of attempting to negotiate with the employer and speaking to other organisations about having the date on the separation certificate changed. When YWAS commented on Federal changes, Warren acknowledged that he heard the boss talking about the changes and that he had a right to do it. Warren never questioned this with other organisations. He was out of time for an application for reinstatement and was concerned about the employer's threats that if he made waves he would never work in the construction industry again.

OTHER SUBMISSIONS/RESEARCH PAPERS RECEIVED BY THE INQUIRY AND AVAILABLE ON THE INQUIRY WEB-SITE

Other interim submissions were received from:

- 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 were received from:

- 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)

APPENDIX 1

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

METROPOLITAN NEWSPAPER ADVERTISEMENT

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.

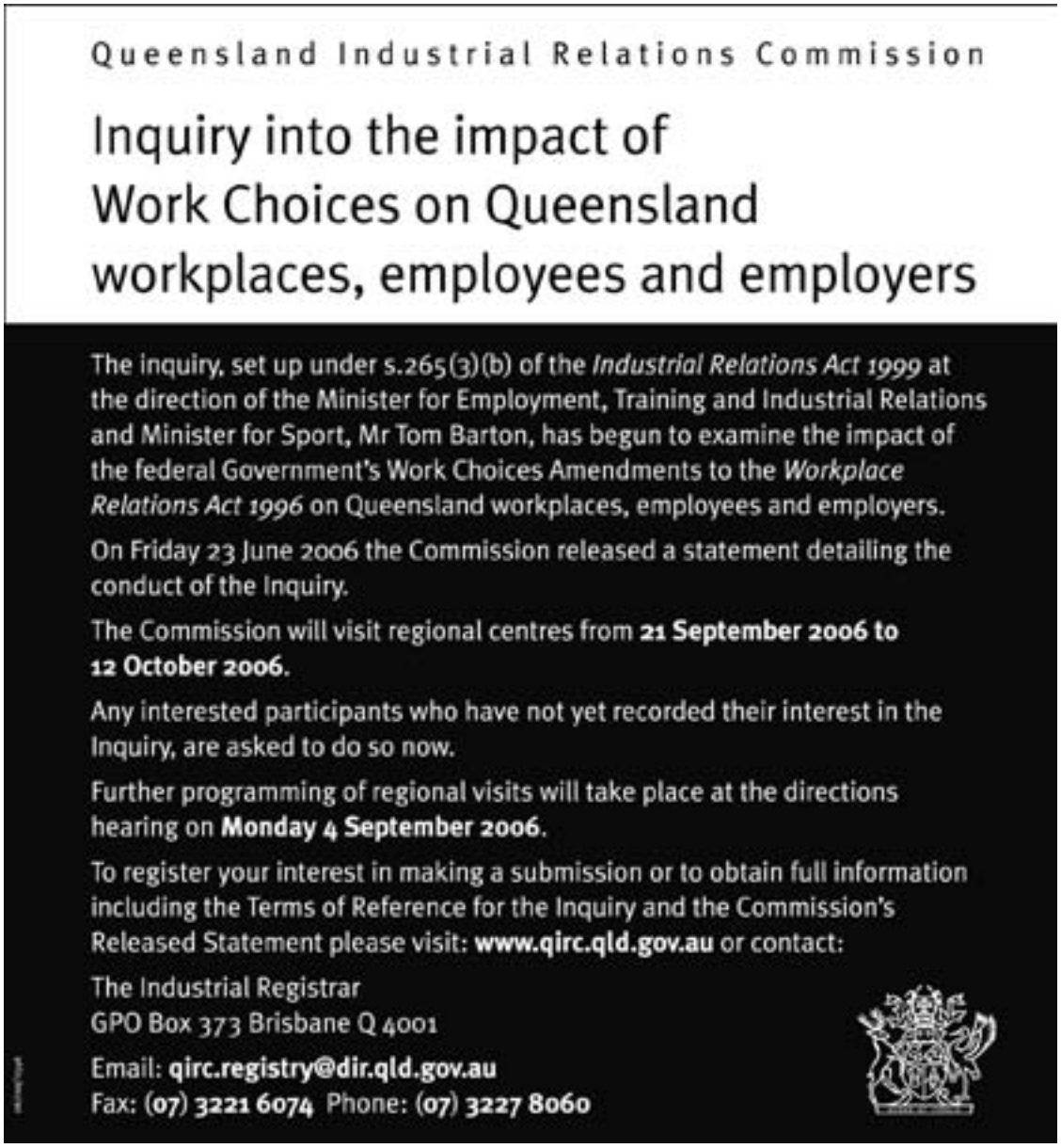
Employees, employers, organisations, community groups and other interested parties are invited to indicate their interest in the inquiry.

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 3 (continued)

REGIONAL NEWSPAPER ADVERTISEMENT



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 4

INQUIRY WEB-SITE

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

Statement released | Inquiry Terms of Reference | 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 [PDF 99kB]
- Statement released - The preliminary sitting of Inquiry was held 10am Friday 23 June 2006. [PDF 150kB]
- List of registered parties [PDF 108kB]
- 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. [PDF 119kB]
- 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**.
  NEW Please click here for a copy of the Directions Order setting out the timetable for Sittings. [PDF 112kB]
- The dates for the regional visits will be from **21 September 2006 to 12 October 2006**. See below for regional locations and dates of visits.
- 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.

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

NEW Click here to view Interim Submissions filed.

NEW Click here to view Affidavits filed.

Participants who wish to make a statement and/or submission about Work Choices should forward such material by e-mailqirc.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. [PDF 119kB]

Regional locations

The following is a revised list as of 2 August 2006 of the dates and towns where the Inquiry will be visiting:

CITY/TOWN	VENUE	DATE	TIME
Roma	Roma Court House 141 McDowall Street ROMA QLD 4455	Thursday 21 September 2006	10.00am
Toowoomba	Toowoomba Court House 159 Hume Street TOOWOOMBA QLD 4350	Friday 22 September 2006	10.00am
Emerald	Emerald Court House Egerton Street EMERALD QLD 4720	Monday 25 September 2006	9.00am
Hervey Bay	Hervey Bay Court House Freshwater Street HERVEY BAY QLD 4655	Tuesday 26 September 2006	10.00am
Southport	Southport Court House Cnr Davenport & Hinze Streets SOUTHPORT QLD 4215	Wednesday 27 September 2006 Thursday 28 September 2006 Friday 29 September 2006	10.00am each day
Cairns	Cairns Court House Sheridan Street CAIRNS QLD 4870	Monday 2 October 2006	10.00am

Townsville	Townsville Court House 31 Walker Street TOWNSVILLE QLD 4810	Tuesday 3 October 2006	10.00am
Mackay	Mackay Court House 67 Victoria Street MACKAY QLD 4740	Wednesday 4 October 2006	10.00am
Rockhampton	Rockhampton Court House Cnr East & Fitzroy Street ROCKHAMPTON QLD 4700	Thursday 5 October 2006	11.00am
Gladstone	Gladstone Court House 14 Yarroon Street GLADSTONE QLD 4680	Friday 6 October 2006	10.00am
Bundaberg	Bundaberg Court House 44 Quay Street BUNDABERG QLD 4670	Monday 9 October 2006	10.00am
Caloundra	Caloundra Court House 92 Bulcock Street CALOUNDRA QLD 4551	Tuesday 10 October 2006 Wednesday 11 October 2006	10.00am each day
Mt Isa	Mt Isa Court House Isa Street MT ISA QLD 4825	Thursday 12 October 2006	1.00pm

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 5

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 6

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 7

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.

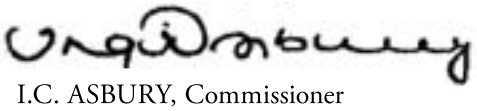
Similar processes will be available to these participants as were made available to all other participants.

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 8

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 <u>not</u> agreeable to having such statements of evidence and/or submissions reproduced on the Inquiry's web-site [www.qirc.qld.gov.au].

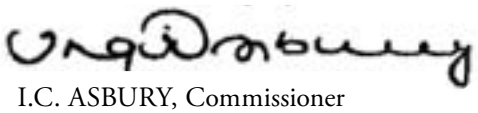
In light of this choice, because all statements/submissions may not be on the web-site, such material may be viewed at the Industrial Registry.".

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 9

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 9 (continued)

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

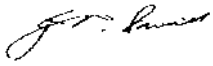
4. That those participants who require **additional time for further direct evidence or further submissions** will be heard at Sittings commencing at 10:00 a.m. on **Friday 1 September 2006.**

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 10

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 11

SCHEDULE OF REGIONAL SITTINGS

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.

interim

report

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

062531