



Legislative Assembly for the ACT

SELECT COMMITTEE ON WORKING FAMILIES IN THE
ACT
Interim Report

MARCH 2006

Report 1

Committee Membership

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Resolution of Appointment

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.¹

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 2006.²

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.³

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No. 19*, 5 May 2005, p. 169

² *ibid*, p. 169

³ *ibid*, p. 169

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

1.21 *The terms of reference for the select committee on Working Families in the ACT be amended.*

RECOMMENDATION 2

1.22 *The amended terms of reference be:*

The select committee on Working Families in the Australian Capital Territory is appointed to examine:

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

RECOMMENDATION 3

5.7 *The select committee provide its substantive report to the Legislative Assembly by the first sitting day in August 2007.*

RECOMMENDATION 4

5.8 *The committee recommends that the ACT government provide resources for research support for the Select Committee on Working Families, in order that the effects on working families in the ACT can be adequately assessed and to enable the final report to be tabled by the revised date.*

1 INTRODUCTION

- 1.1 When the Australian constitution was enacted in the early twentieth century, state industrial relations systems had already been established. The constitution gave the federal parliament the authority to make laws with respect to “the conciliation and arbitration for the prevention and settlement of interstate disputes extending beyond the limits of any one State”.⁴ Since that time, each Australian state has operated its own system of industrial relations in parallel with a federal system. Under these parallel systems, most employers and employees are regulated by state laws and state awards, while a minority of employers and employees in each state are covered under federal laws and awards. Industrial relations in Australian territories are governed by federal law.
- 1.2 Generally speaking, the federal and state systems have operated similarly. Both systems are based on compulsory conciliation and arbitration by industrial tribunals, which make awards and set minimum wages and conditions for a large proportion of the workforce. In the 1990s, both systems “shifted their emphasis away from awards and towards enterprise bargaining”.⁵
- 1.3 Early in 2005, in a speech to the Business Council of Australia, the Prime Minister, John Howard, indicated the Australian government’s intention to pursue industrial relations reform once the Coalition controlled both houses of the Australian parliament from 1 July 2005.
- 1.4 He said:

And one of the things that this control of the Senate will enable us to do...is to implement so many of the things that in the past we’ve had

⁴ Commonwealth of Australia Constitution Act 1900, Chapter 1, Part V, Section 51 (xxxv), www.aph.gov.au/senate/general/constitution/par5cha1.htm

⁵ Roth, Lenny, “The New Federal Workplace Relations System”, NSW Parliamentary Library Research Service, Briefing Paper No 2/06, p. 4

blocked in the Senate...there's no issue I've had more interest in and commitment to policy wise than reform of our industrial relations system.⁶

- 1.5 In a ministerial statement to the House of Representatives on 26 May 2005, the Prime Minister outlined the government's plan for industrial relations' reform:

The government's reform proposals include:

- New arrangements for setting minimum wages and conditions;
- A more streamlined process for the making of workplace agreements, both individual and collective;
- Greater award simplification and a more focused role for the Australian Industrial Relations Commission;
- Major liberalisation of unfair dismissal laws, which have held back job growth in Australia; and, finally
- The goal of a national industrial relations system – one that reflects the competitive national character of the Australian economy in the year 2005.⁷

- 1.6 The issue of national reform to the industrial relations system was raised in the Legislative Assembly on 5 May 2005, when Mr Gentleman's notice of motion to establish a Select Committee on Working Families in the ACT appeared on the Notice Paper.⁸

- 1.7 The Legislative Assembly resolved to establish a Select Committee on Working Families in the ACT and resolved, also, that the committee "provide interim reports on its progress".⁹

- 1.8 As required by the Legislative Assembly's resolution of 5 May 2005, this is the first interim report of the select committee.

⁶ Howard, John, Address to the Business Council of Australia, Aitken Hill, Melbourne, 3 March 2005, pp 2-3 <http://www.pm.gov.au/news/speeches/speech1263.html>

⁷ Howard, John, Ministerial Statement to the House of Representatives, 25 May 2005, p. 39 <http://www.aph.gov.au/hansard/reps/dailys/dr260505.pdf>

⁸ ACT Legislative Assembly, Notice Paper No 18, 5 May 2005, p. 266 <http://www.parliament.act.gov.au/assembly/notices/NP018.pdf>

⁹ ACT Legislative Assembly, Debates Weekly Hansard, Sixth Assembly, 3, 4, 5, 6 May 2005, p. 1844

Conduct of the Inquiry

- 1.9 At its meeting on 15 September 2005, the select committee approved a letter to stakeholders which:
- outlined the terms of reference of the inquiry¹⁰;
 - requested that submissions to the inquiry be forwarded by 3 November 2005; and
 - indicated that public hearings would be held later in the year.¹¹
- 1.10 At its meeting on 3 November, the select committee resolved to:
- extend the deadline for the receipt of submissions to 30 November 2005;¹²
 - hold public hearings on 1 December 2005 and 8 December 2005; and
 - place advertisements in *The Canberra Times* and *City News* advising the Canberra community of the public hearings.¹³
- 1.11 Advertisements appeared in *The Canberra Times* on 19 and 23 November and in *City News* on 24 November. The public hearings, and other details of the select committee's inquiry, were also advertised on the Legislative Assembly website.
- 1.12 A list of submissions received appears at Appendix A.
- 1.13 A list of witnesses who gave evidence at the public hearings appears at Appendix B.

¹⁰ Stakeholders were advised that because the Australian Government had not announced specific details of its proposed Work Choices legislation, submissions should be confined to comment on the Workplace Relations Amendment (Better Bargaining) Bill 2005 and the *Building and Construction Industry Improvement Act 2005*.

¹¹ Select Committee on Working Families in the ACT, Minutes of Meeting No 6, 15 September 2005, p 1

¹² The deadline was extended because the Australian Government introduced its Work Choices legislation on 2 November 2005 and hence details of the extent of the proposed reforms were available. Stakeholders were advised in an email from the Chair on 8 November 2005 that the deadline had been extended and that their submissions should include comment on all aspects of the inquiry's terms of reference.

¹³ Select Committee on Working Families in the ACT, Minutes of Meeting No 7, 3 November 2005, pp. 1-2

Outline of the Interim Report

- 1.14 Although stakeholders were asked to address all aspects of the inquiry's terms of reference in submissions (see footnotes 7 and 9 above) and were able to discuss any and all parts of the terms of reference during the public hearings, comments in submissions and discussion in public hearings focused on the Workplace Relations Amendment (Better Bargaining) Bill 2005, the *Building and Construction Industry Improvement Act 2005* and the *Workplace Relations Amendment (Work Choices) Act 2005*. The last of these legislative changes commanded the greatest attention in submissions and at public hearings.
- 1.15 Stakeholders did not refer to the following aspects of the Inquiry's terms of reference:
- health costs;
 - adjustments by the Commonwealth Grants Commission; or
 - the allocation of funds by the Commonwealth.
- 1.16 The ACT government's submission referred briefly to the impact on current or potential ACT legislation by the Commonwealth by way of the statement that:
- The ACT Government is currently seeking legal advice on the full impact of the Work Choices legislation on ACT legislation.¹⁴
- 1.17 A number of submissions and witnesses commented on the passage in the Australian parliament of the *Employment and Workplace Relation Legislations Amendment (Welfare to Work and Other Measures) Act 2005* (Welfare to Work), believing that this legislation, when coupled with the likely impacts of Work Choices, will have significant consequences for many in society. Issues relating to Welfare to Work will be discussed in part 4 of this report.
- 1.18 Given the above, this interim report will focus on aspects of the terms of reference raised in submissions and during the course of the public hearings.

¹⁴ ACT Government Submission to the Inquiry of the Select Committee on Working Families in the ACT into the Federal Government's Workplace Relations Amendment (Better Bargaining) Bill 2005, *Construction (sic) Industry Improvement Act 2005, Workplace Relations Amendment (Work Choices) Act 2005*, January 2006, p. 10

- 1.19 It will provide summaries of the submissions received by the committee and the evidence given at the public hearings, comment on the issues highlighted, both in the submissions and during the public hearings, and make a number of recommendations.
- 1.20 Because stakeholders appear to be interested only in certain aspects of the select committee's terms of reference, the committee recommends that the terms of reference be amended.

RECOMMENDATION 1

- 1.21 **The terms of reference for the select committee on Working Families in the ACT be amended.**

RECOMMENDATION 2

- 1.22 **The amended terms of reference be:**

The select committee on Working Families in the Australian Capital Territory is appointed to examine:

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

2 BACKGROUND

Workplace Relations Amendment (Work Choices) Act 2005

- 2.1 As noted above, the federal government released information about its industrial relations' reforms in a ministerial statement to the House of Representatives by the Prime Minister on 26 May 2005.
- 2.2 The specifics of the reforms were not disclosed until the Workplace Relations Amendment (Work Choices) Bill 2005 was tabled in the House of Representatives on 2 November 2005. The *Workplace Relations Amendment (Work Choices) Act 2005* (Work Choices) was assented on 14 December 2005. The bulk of the provisions in Work Choices will commence at the end of March 2006.
- 2.3 The major reforms under Work Choices are:
 - a) **The creation of a single national industrial relations system.** The federal government is relying on corporations powers under the constitution to transfer industrial relations coverage of corporations and their employees from the states' systems to a national system. "It is estimated that the new Federal system will cover up to 85 per cent of employees in Australia".¹⁵ The majority of the States and the ACT will challenge the constitutional validity of this in the High Court in May 2006.

According to the Business Council of Australia (BCA), the creation of a single national system of industrial relations removes duplication, cost and complexity, and reduces the "regulatory burden facing the many enterprises operating across jurisdictions and the administrative cost to

¹⁵ Roth, Lenny, "The New Federal Workplace Relations System", NSW Parliamentary Library Research Service, Briefing Paper No 2/06, p. 1

Federal and State Governments associated with the operating multiple distinct systems".¹⁶

- b) **Changes to minimum wage setting.** Prior to Work Choices, federal and state industrial tribunals set minimum wages and employment conditions for most Australian workers. Under Work Choices, the Australian Industrial Relations Commission (AIRC) will no longer have the power to set minimum wages. Minimum wages will be set by Australian Pay Classification Scales (APCS) and will be regulated by the newly established Australian Fair Pay Commission (AFPC). Under the old system, minimum wages were adjusted annually by the AIRC in "Safety Net Review wage cases".¹⁷ Under Work Choices, the AFPC will determine "the timing and frequency of wage reviews".¹⁸

The BCA welcomes this move which it believes "recognises the economic implications of wage decisions and their impact on the unemployed".¹⁹

- c) **Changes to minimum employment conditions in awards and legislation.** Prior to Work Choices, federal and state awards articulated a range of minimum employment conditions. In federal awards there were 20 allowable matters. Work Choices mandates that only the following five conditions must be part of any workplace agreement:

- **maximum hours of work** – 38 hours per week, averaged over twelve months, subject to the employee's written agreement.

The Australian Chamber of Commerce and Industry (ACCI) supports this as a "sensible approach to hours averaging, which reflects standard approaches day to day on this issue in our workplaces"²⁰;

¹⁶ Business Council of Australia, Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, pp. 2 and 9

¹⁷ *ibid*, p. 16

¹⁸ *ibid*, p. 19

¹⁹ Business Council of Australia, *op cit*, p. 4

²⁰ Australian Chamber of Commerce and Industry, Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, p. 44

- **annual leave** – four weeks paid per year, with two weeks able to be ‘cashed out’, subject to the employee’s and employer’s written agreement.
ACCI anticipates that there will be no change “in the propensity of Australian employees to seek to cash out annual leave” and that it will “remain an atypical arrangement for the small proportion of employees and employers who chose (*sic*) to agree to it”²¹;
- **personal/carer’s leave** – ten days paid per year, plus additional unpaid leave, subject to the employer’s approval.
ACCI supports this standard and believes it “balances the provision of leave with necessary proof and evidence requirements for employers”²²;
- **parental leave** – encompasses maternity leave, paternity leave and adoption leave. Up to 52 weeks of unpaid maternity leave is available to women who have completed twelve months continuous service, and up to 52 weeks unpaid paternity leave is available to men who have completed twelve months continuous service, provided his spouse is not taking maternity leave at the same time.
ACCI supports this standard as it is simply “a codification of the accepted standard for unpaid leave”²³ which currently applies; and
- **public holidays** – this condition did not form part of the original Work Choices Bill and

is not part of the Fair Pay and Conditions Standard, but it cannot be excluded by a workplace agreement. The condition is in the following limited terms: an employee can refuse to work on a public holiday if the employee has reasonable grounds for doing so. The provisions list a number of matters to be taken into account in determining whether the employee has reasonable grounds. The provisions also state that an

²¹ *ibid*, p. 45

²² *ibid*, pp. 45-46

²³ *ibid*, p. 47

employer may not dismiss or prejudice an employee on the basis that he or she has refused on reasonable grounds to work on a public holiday.²⁴

Existing award provisions relating to long service leave, superannuation, jury service, overtime loading, shift loading, penalty rates for weekends and public holidays, meal breaks, annual leave loading and notice of termination will continue to apply under existing awards, but will be excluded in new awards. Some allowable matters under the previous system (such as provisions relating to union picnic days, trade union training leave, restriction on an employer's ability to hire independent contractors and labour hire workers etc) will become unenforceable under Work Choices as soon as the legislation commences.

- d) **Changes to workplace agreements.** Workplace agreements are either collective agreements (certified agreements [CAs] or enterprise bargaining agreements [EBAs]) or individual agreements (Australian workplace agreements [AWAs]). Prior to Work Choices, all workplace agreements needed to pass the 'no disadvantage test', which ensured that workers entering into such agreements did not receive wages lower than, or have conditions inferior to, those of similar workers governed by an industrial award. Under Work Choices, workplace agreements no longer need to pass the 'no disadvantage test'.

The BCA believes that the advent of AWAs has been a positive development in workplace relations' policy in Australia because they "have played an important role in driving greater flexibility and improved enterprise productivity and performance in key sectors of the economy".²⁵

- e) **Changes to laws relating to industrial action.** Under Work Choices, industrial action is prohibited during the life of an industrial agreement, unions are required to undertake a secret ballot of members prior to initiating industrial action, and the federal Minister has authority to suspend or terminate a bargaining period if the industrial action is being

²⁴ Roth, Lenny, *op cit*, p. 41

²⁵ Business Council of Australia, *op cit*, p. 7

“taken, or is threatened, impending or probable which would cause significant damage to part or all of Australia – or even just because it would adversely effect an employer”²⁶. According to Briggs, any ‘significantly affected’ third party, any individual or business, can also apply to have the bargaining period suspended.

- f) **Changes to unfair dismissal laws.** Unfair dismissal laws were introduced in the states and federally in the 1990s and allowed employees to take a case to the AIRC or state tribunals, for conciliation and/or arbitration, if they believed their dismissal was harsh, unreasonable or unjust. Under these laws, the right to pursue conciliation and/or arbitration was open to all employees, regardless of the size of the entity for which an employee worked. Under Work Choices:

- businesses with fewer than 100 employees are now exempt from unfair dismissal laws;
- all businesses, regardless of size, are able to dismiss employees where the dismissals are for ‘operational reasons’; and
- employees wishing to bring claims of unfair dismissal against an employer must have worked for the organisation for a minimum period of six months, as opposed to three months under the prior system.

ACCI welcomes this change to unfair dismissal laws as it will increase flexibility and will encourage “employment growth in the small business sector”²⁷.

Building and Construction Industry Improvement Act 2005

- 2.4 The Building and Construction Industry Improvement Bill 2003 was introduced into the House of Representative on 6 November 2003 in response

²⁶ Briggs, Dr Chris, Australian Centre for Industrial Relations, Research and Training, “Federal IR Reform: the Shape of Things to Come”, Paper commissioned by Unions NSW, November 2005 p. 19

²⁷ Australian Chamber of Commerce and Industry, *op cit*, p. 70

to the findings of the Royal Commission into the Building and Construction Industry (Cole Royal Commission).

- 2.5 The Bill was referred to the Senate Employment, Workplace Relations and Education References Committee which reported to the Senate on 21 June 2004. The first of the Senate committee's six recommendations was:

The committee majority recommends that the Building and Construction Industry Improvement Bill be opposed by the Senate.²⁸

- 2.6 The 2003 Bill lapsed due to the 2004 federal election.

- 2.7 The Building and Construction Industry Improvement Bill 2005 was introduced into the House of Representatives on 9 March 2005. The 2005 Bill re-introduced parts of the 2003 Bill and focused on:

- characterising and defining unlawful industrial action, ascribing penalties, and commencing this section of the legislation from its introduction into the House of Representatives – that is, applying retrospectively to 9 March 2005; and
- creating the Australian Building and Construction Commission, with powers to gather information and prosecute people from the industry, if necessary.

- 2.8 The 2005 Bill was passed by the House of Representatives on 11 August 2005 and by the Senate on 7 September 2005. The *Building and Construction Industry Improvement Act 2005* (Improvement Act) was assented on 12 September 2005.

- 2.9 By far the most contentious aspects of the Improvement Act relate to 'unlawful industrial action' and the penalties involved.

- 2.10 Unlawful industrial action is identified in the Improvement Act as industrial action which:

- is taken to support or advance employees' claims against an employer;
- is taken to advance the objectives of a union;

²⁸ Senate Employment, Workplace Relations and Education References Committee, "Beyond Cole – The future of the construction industry: confrontation or co-operation?", June 2004, p. 33

- is disrupting the performance of work.²⁹

2.11 In essence, the Improvement Act makes industrial action taken by building and construction unions prior to the nominal expiry date of certified agreements unlawful and unprotected, shifts the onus onto employees to prove that a reasonable concern exists where action is taken based on an imminent occupational health and safety risk, and exposes bodies corporate and individuals to fines of \$110,000 and \$22,000 respectively for taking unlawful industrial action.

Workplace Relations Amendment (Better Bargaining) Bill 2005

2.12 Like the Building and Construction Industry Improvement Bill, the Better Bargaining Bill was initially introduced in 2003. Following its passage through the House of Representatives, it was also referred to the Senate Employment, Workplace Relations and Education Legislation Committee.

2.13 This Bill also lapsed with the proroguing of the parliament in 2004.

2.14 The Workplace Relations Amendment (Better Bargaining) Bill 2005 (Better Bargaining Bill) was introduced into the House of Representatives on 9 March 2005 and passed on 7 September 2005. It was introduced into the Senate on 12 September 2005 and had not progressed at the time of writing.

2.15 The purpose of the Better Bargaining Bill is to:

- allow the AIRC to order “cooling-off” periods where one or both of the parties to a collective bargaining process are taking protracted industrial action;
- allow a third party (neither employer nor employee) affected by the industrial action (for example, a business, consumers etc) to apply to the AIRC to have a bargaining period suspended and thus terminate protected industrial action;

²⁹ Department of Parliamentary Services, Workplace Relations Amendment (Work Choices) Bill 2005, Bills Digest, 2 December 2005, pp. 8-9

- limit protected industrial action to single employers, thereby removing the opportunities for pattern bargaining;
- deny access to protected industrial action during the life of a certified agreement; and
- confine protected industrial action to matters which pertain to the employment relationship and to deny protected industrial action to parties not directly in an employer-employee relationship.³⁰

³⁰ Department of Parliamentary Services, Workplace Relations Amendment (Better Bargaining) Bill 2005, Bills Digest, 29 April 2005, p. 2

3 SUBMISSIONS TO THE INQUIRY

- 3.1 The submissions received by the select committee are listed below in alphabetical order and summarised.

ACT Council of Social Services

- 3.2 The ACT Council of Social Services (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the ACT.
- 3.3 ACTCOSS' submission addresses the following areas:
- the labour market for low pay workers;
 - the impact of industrial relations reform;
 - people with a disability and single parents;
 - the impact of welfare reform;
 - families and children; and
 - the effect on the community sector.
- 3.4 Given the nature of the organisation, ACTCOSS' submission deals mainly with the social impact of federal reforms. It suggests that:
- unskilled, low-paid and marginalised workers and their families in the ACT are already disadvantaged;
 - the move away from industrial awards and certified agreements will affect the pay and conditions of this already disadvantaged group of workers;
 - unskilled, low-paid and marginalised workers are likely to be less educated than other members of the workforce and far less likely to be able to negotiate beneficial pay and conditions with their employers;
 - an inevitable, gradual loss of entitlements and conditions over time will have a negative impact on family life;

- the change to unfair dismissal provisions will lead to less secure tenure of employment, increase the “number of people transitioning in and out of work”³¹ and make family budgets more difficult to manage; and
 - part-time and casual workers, who currently have little access to paid leave entitlements, are likely to face a worsening of conditions under the new arrangements.
- 3.5 ACTCOSS is particularly concerned about the impact of the federal government’s industrial reforms on single parents and people with a disability.
- 3.6 In the case of single parents, ACTCOSS argues that although “single parents are in need of intensive assistance ... to overcome multiple impediments to increase their workforce participation”, the federal government’s reforms are actually placing “new hurdles in their path”.³²
- 3.7 According to ACTCOSS, people with a disability already face “discrimination, inaccessible environments and the lack of investment in employment, training, education and rehabilitation assistance” when attempting to enter the employment market, and conclude that the federal government’s reforms do little to address these issues.³³
- 3.8 While critical of the federal government’s initiatives under the Work Choices legislation because of the potential impacts on working families in the ACT, ACTCOSS is highly disparaging of the federal government’s *Employment and Workplace Relation Legislations Amendment (Welfare to Work and Other Measures) Act 2005* (Welfare to Work) and the effect this legislation will have on ACT individuals and families.
- 3.9 There is particular concern within ACTCOSS about the effect employment reforms will have on community sector organisations. It is ACTCOSS’ belief that job insecurity, the possible reduction in pay and conditions, and the

³¹ ACT Council of Social Services Inc, “Stacking the Deck: The Impacts of Federal Employment Reforms on the Disadvantaged in Canberra”, Submission to the ACT Legislative Assembly Select Committee on Working Families, January 2006, p. 10

³² *ibid*, p. 12

³³ *ibid*, p. 11

concomitant effect on family life, will increase the reliance on community services, particularly in the areas of emergency relief and crisis services.³⁴

3.10 In conclusion, ACTCOSS urges the ACT government to take steps to ameliorate the effects of federal government legislative changes. In particular, ACTCOSS requests the ACT government to:

- provide more affordable housing;
- provide further concessions (for example: public transport, motor vehicle registration) to low-income families;
- provide additional subsidies for education and training;
- implement additional employment programs;
- strengthen its discrimination laws to provide opportunities for the resolution of problems of discrimination in relation to employment;
- strengthen its human rights legislation to ensure that all provisions of the International Covenant of Social, Economic and Cultural Rights are included; and
- strengthen the ACT community sector.³⁵

ACT Government

3.11 Rather than address all aspects of the inquiry's terms of reference, the ACT government's submission confined itself to a discussion of the Better Bargaining Bill, the Improvement Act, and Work Choices.

3.12 The submission notes that the main impact of both the Better Bargaining Bill and the Improvement Act will be a reduction in the capacity of workers to bargain effectively and, consequently, this will lead to poorer industrial outcomes for workers.³⁶

³⁴ *ibid*, p. 17

³⁵ *ibid*, pp. 19-21

³⁶ ACT Government, "Submission to the Inquiry of the Select Committee on the Working Families in the ACT into the Federal Government's Workplace Relations Amendment (Better Bargaining) Bill

- 3.13 In relation to its discussion on the issues raised in Work Choices, the ACT government's submission included, as an appendix, the State and Territories Submission to the Senate Employment, Workplace Relations and Education Committee's inquiry into the Work Choices Bill, noting that the ACT Government was a contributor to the submission.
- 3.14 The ACT government supports the concerns raised by the states and territories in their joint submission to the Senate Inquiry into Work Choices.
- 3.15 In its submission to the select committee, the ACT government focused on the following matters:
- the promotion of individual contracts over collective agreements, which will result in a loss of control over rosters and hours of work, and a loss of flexibility in working arrangements;
 - the demise of the AIRC, which has played an important role in establishing protections for working parents as a group throughout its history, will force individual workers to negotiate their own family friendly provisions. Existing provisions, therefore, could be significantly reduced over time.
 - 'welfare to work' measures, which are directed at increasing workforce participation, will be at the expense of the most vulnerable – that is, those with a disability and single parents.
 - the impact on women. The ACT government argues that women, who still have primary responsibility for caring and family functioning and thus require flexible working conditions, who have yet to achieve pay parity, and who make up 48 per cent of the ACT workforce, will be "forced to trade away pay and other conditions such as leave for family purposes or flexible hours".³⁷
- 3.16 In summary, the ACT government's submission opposes the measures outlined in each piece of federal legislation, arguing that the changes will:

2005, *Construction Industry (sic) Improvement Act 2005, Workplace Relations Amendment (Work Choices) Act 2005*, January 2006, p. 5

³⁷ *ibid*, p. 8

- reduce pay, conditions and protection for workers and their families;
- increase cost and complexity for employers; and
- cause immediate harm to employment and family relationships.³⁸

ACT Human Rights Office

- 3.17 The ACT Human Rights Office is an independent statutory agency with a range of responsibilities under the *Discrimination Act 1991* and the *Human Rights Act 2004* and is responsible for the promotion of equality and human rights in the ACT.
- 3.18 Attached to its brief submission to this inquiry is a more detailed submission to an inquiry conducted by the federal Sex Discrimination Commissioner that the ACT Human Rights Office authored on behalf of other state and territory human rights agencies.
- 3.19 The submission to the federal Sex Discrimination Commissioner, entitled “Paid Work and Family Responsibilities”:
- highlights the human rights underpinnings of the ‘work and family’ policy arena, and emphasises gender equality as the primary goal of change;
 - contributes the perspective of state and territory anti-discrimination agencies on the extent and nature of the problems experienced in relation to balancing paid work and family responsibilities;
 - reflects on the strengths and weaknesses of the relevant anti-discrimination legislative provisions; and
 - proposes a more effective legislative framework for enabling women and men to combine paid work with caring responsibilities and to promote gender equality.³⁹

³⁸ *ibid*, p. 5

³⁹ ACT Human Rights Office, “Paid Work and Family Responsibilities”, October 2005, p. 4

- 3.20 “Paid Work and Family Responsibilities” makes a number of recommendations, some of which the ACT Human Rights Office suggests could be advanced in the ACT. For example, “the Discrimination Act 1991 could be strengthened in relation to employers’ obligations to accommodate employees’ family responsibilities”.⁴⁰
- 3.21 The ACT Human Rights Office expresses concern about Work Choices and suggests that the changes outlined will have a “detrimental impact on most women”⁴¹, particularly Indigenous women and women from non-English speaking backgrounds.
- 3.22 Other concerns raised by the ACT Human Rights Office in relation to Work Choices include:
- changes to minimum-wage setting, gender pay parity, the removal of the no-disadvantage test for agreements, the failure to adopt the AIRC Family Provisions Testcase decision, and the removal of unfair dismissal protection for most workers.⁴²

ACT and Region Chamber of Commerce and Industry

- 3.23 The ACT and Region Chamber of Commerce and Industry (the Chamber) is a membership based, not-for-profit organisation, representing a variety of business types and sizes in the local and surrounding area.
- 3.24 In responding to the select committee’s terms of reference, the Chamber made comment on the following matters in relation to Work Choices:
- simplified agreement making;
 - cross border simplification as a result of a national IR system; and
 - award simplification.⁴³

⁴⁰ ACT Human Rights Office, Submission to the Select Committee on Working Families in the ACT, December 2005, p. 1

⁴¹ *ibid*, p. 2

⁴² *ibid*, p. 2

⁴³ ACT and Region Chamber of Commerce and Industry, “The Workplace Relations Amendment (Work Choices) Bill 2005”, November 2005, p. 1

- 3.25 The Chamber maintains that, prior to Work Choices, it was difficult, protracted and complicated for businesses to have AWAs approved. Under Work Choices, the process is simplified with AWAs becoming legally binding once they have been lodged with the Office of the Employment Advocate (OEA). The reduction from 14 days to seven days for employees to consider AWAs also expedites the process.⁴⁴
- 3.26 Given the fact that the ACT is located within NSW, businesses, many of whom operate in both jurisdictions, have experienced difficulties in complying with the different jurisdictional requirements. Differences in pay, conditions, workers' compensation requirements, occupational health and safety obligations etcetera have made it difficult for businesses, particularly small businesses.⁴⁵ The Chamber believes a unified industrial relations system, with one set of rules for all workplaces, is a boon for its members.
- 3.27 The Chamber criticises the fact that the current award system, in a small jurisdiction such as the ACT, is particularly complex and cumbersome. In addition, the Chamber believes that the current system "fails to offer real protection to employees in relation to wages and conditions".⁴⁶ According to the Chamber, the establishment of the Australian Fair Pay Commission and the introduction of other changes under Work Choices will "greatly assist the award simplification process".⁴⁷

Australian Education Union

- 3.28 The Australian Education Union (AEU) is a federally registered trade union that represents the professional and industrial interests of public education workers in the pre-school, school and TAFE systems throughout Australia.
- 3.29 The submission from the AEU consisted of the following papers:
- (Paper 1) Australian Education Union and National Tertiary Education Industry Union Joint Submission to the Senate Employment, Workplace

⁴⁴ *ibid*, pp. 1-2

⁴⁵ *ibid*, p. 2

⁴⁶ *ibid*, p. 3

⁴⁷ *ibid*, p.3

Relations and Education Legislation Committee Inquiry into the provisions of the Workplace Relations Amendment (Award Simplification) Bill 2002, Workplace Relations Amendment (Better Bargaining) Bill 2003, Workplace Relations Amendment (Choice in Award Coverage) Bill 2004 and Workplace Relations (Simplifying Agreement-making) Bill 2004.

The Senate committee's report was tabled in the Senate on 17 June 2004.

- (Paper 2) Australian Education Union Submission to the Senate Employment, Workplace Relations and Education References Committee Inquiry into Workplace Agreements.

The Senate committee's report was tabled in the Senate on 31 October 2005.

- (Paper 3) Australian Education Union Submission to the Standing Committee on Family and Human Services Inquiry into Balancing Work and Family.

This inquiry has yet to report and remains ongoing.

- (Paper 4) Linda Gale, Federal Industrial Officer, Australian Education Union, "Industrial Relations changes, school students and work".

It is unclear for whom this paper was prepared.

- 3.30 The major concerns identified by the AEU in Paper 1 were the legislations' attempts to reduce the entitlements of employees, to weaken the collective bargaining power of employees, and to restrict the right of employees to take industrial action, which the AEU notes is "an important human right protected by Conventions of the International Labour Organisation...to which Australia is a signatory".⁴⁸

⁴⁸ Australian Education Union and National Tertiary Education Industry Union Joint Submission to the Senate Employment, Workplace Relations and Education Legislation Committee Inquiry into the provisions of the Workplace Relations Amendment (Award Simplification) Bill 2002, Workplace Relations Amendment (Better Bargaining) Bill 2003, Workplace Relations Amendment (Choice in Award Coverage) Bill 2004 and Workplace Relations (Simplifying Agreement-making) Bill 2004, p. 3

3.31 In Paper 2, the AEU argues that “individual workplace agreements are bad for education”⁴⁹ and provides the following reasons to support its argument:

- education depends on teamwork and collegiality;
- the work of education professionals is complex and varied, and not amenable to simplistic measures of performance;
- the size of the workforce makes collective bargaining the most efficient choice;
- the imbalance of bargaining power within the public education system is extreme;
- many industrial rights for education workers apply individually but depend upon system consistency of application; and
- important improvements in public education have only been achieved through collective bargaining, and could not have been addressed through individual workplace agreements.⁵⁰

The final issue raised by the AEU in Paper 2 is the consequences for education workers where AWAs have been introduced. The paper cites evidence from Western Australia and Victoria, where principals were offered AWAs in the mid 1990s, and New Zealand, where legislative change in 1991 compelled many new education workers to take up AWAs. According to the AEU:

Rights were eroded: in particular those conditions which accumulate over time, such as sick leave entitlements. There was no wage increase for teachers for three years, and large numbers of New Zealand teachers looked for work in Australia, Britain or elsewhere. New Zealand now faces a teacher shortage.⁵¹

3.32 Paper 3 outlines the Union’s desire for a national approach to work and family flexibilities, and makes a number of recommendations to the federal government. Among other things, the AEU urges:

⁴⁹ Australian Education Union Submission to the Senate Employment, Workplace Relations and Education References Committee Inquiry into Workplace Agreements, p 1

⁵⁰ *ibid*, pp. 1-6

⁵¹ *ibid*, p. 9

...the federal government to ensure that entitlements are universally accessible, are facilitated in reality as well as by policies and that part-time work options have inbuilt job security, parity in pay and career prospects, and allow predictability of hours.⁵²

- 3.33 The final paper submitted by the AEU, "Industrial Relations changes, school students and work", argues that the reforms under Work Choices will change the environment in which school students first experience the world of paid work and warns of the potential exploitation of a vulnerable and powerless group.

Community and Public Sector Union

- 3.34 The PSU Group of the Community and Public Sector Union (CPSU) represents public sector workers in the Australian Public Service, the ACT Public Service, the Northern Territory Public Service, the telecommunications sector, all call centres, employment services and broadcasting.
- 3.35 The CPSU confines its submission to a discussion of the Work Choices legislation, as it believes that this legislation is "the principal threat to working families in the ACT".⁵³
- 3.36 The CPSU is particularly concerned with the following aspects of Work Choices:
- the introduction of AWAs and their potential to undermine the principle of merit selection in the public service;
 - the potential loss of family friendly working conditions;
 - the lack of individuality of AWAs which, according to the CPSU, are "largely pro forma documents that give no capacity for employees to

⁵² Australian Education Union Submission to the Standing Committee on Family and Human Services Inquiry into Balancing Work and Family, p. 31

⁵³ Community and Public Sector Union (PSU Group), Submission to the Select Committee on Working Families in the ACT, November 2005, p. 4

negotiate any of the terms or conditions”.⁵⁴ To emphasise this point, the CPSU quotes from an information pack distributed to new Telstra staff. In response to the question, “Can I vary the wording in the AWA?”, the answer printed in the information pack is, “No. The wording in the body of the AWA must not be changed in any way.”;⁵⁵

- the increased grounds for suspension of bargaining periods which will virtually outlaw pattern bargaining in the negotiation of collective agreements. With regard to pattern bargaining, the CPSU accuses the federal government of hypocrisy, claiming that “DEWR set Policy Parameters which all Commonwealth departments and agencies must abide by in industrial negotiations...Essentially, DEWR is negotiating common wages and conditions for multiple collective agreements across the public service”⁵⁶ (an industry) while refusing to allow this to occur across other industries; and
- the reduction in allowable matters has the potential to worsen employment conditions, particularly for those employed on a casual basis.

3.37 In addition to the above, the CPSU believes that under Work Choices it will be possible for the federal government “to pressure the ACT Government to adopt a similar approach in the ACT public sector”⁵⁷ to its use of AWAs for all new starters in the public service.

Construction, Forestry, Mining and Energy Union

3.38 The Construction, Forestry, Mining and Energy Union (CFMEU) is the registered union representing all workers in construction industries (including bricklayers, carpenters, plasterers, painters, crane drivers, steel fixers, operators, and construction labourers), forestry industries, mining, oil, gas, port and power industries.

⁵⁴ *ibid*, p. 9

⁵⁵ *ibid*, p. 9

⁵⁶ *ibid* pp. 9-10

⁵⁷ *ibid* p. 4

- 3.39 Given its coverage of building and construction workers, the CFMEU's submission, unlike most others received by the Committee, focuses strongly on the Improvement Act.
- 3.40 In relation the Improvement Act, the CFMEU suggests that it is "unbalanced" and that its "exclusion of the housing industry demonstrates that the Federal Government is solely concerned with restricting the ability of unions to function, rather than dealing fairly with all parties in the industry, including employers".⁵⁸
- 3.41 The major issues raised by the CFMEU in relation to the Improvement Act are:
- its provisions are directed at one industry only, which suggests a bias on the part of the federal government;
 - its provisions are "punitive, heavy-handed and unbalanced"⁵⁹ – the Improvement Act only focuses on restricting the conditions under which industrial action may be taken. It does nothing to address issues of payment of entitlements and security of payments, and puts in jeopardy occupational health and safety standards in the workplace by shifting the onus onto employees to prove that a reasonable concern exists⁶⁰;
 - it "promotes a litigious, adversarial and costly approach to industrial relations which will hinder rather than assist good faith bargaining"⁶¹;
 - it further restricts union right of entry to the workplace; and
 - it breaches International Labour Organisation (ILO) conventions⁶² in relation to freedom of association, the right to bargain collectively and the right to organise.⁶³

⁵⁸ CFMEU ACT Branch, Submission to the Select Committee on Working Families in the ACT, November 2005, p. 3

⁵⁹ *ibid*, p. 3

⁶⁰ *ibid*, p. 4

⁶¹ *ibid*, p. 3

⁶² See Part 4 of this report for discussion of ILO Conventions and possible breaches

⁶³ *ibid*, p. 3

3.42 Concerns raised by the CFMEU in relation to the Australian Building and Construction Commission (ABCC), established under the Improvement Act, are:

- it is invested with unlimited coercive powers, having “stronger powers than any police force in the country”⁶⁴; and
- its unlimited right to intervene in court and Industrial Relations Commission hearings and to seek injunctions⁶⁵.

3.43 As well as concerns expressed by other unions, the CFMEU is concerned that the Work Choices legislation will give the federal government the potential to override ACT actual and proposed legislation, such as the *Parental Leave Act 1994*, the Fair Work Contracts Bill 2004, the planned Security of Payments legislation, and industrial manslaughter laws.⁶⁶

Liquor, Hospitality and Miscellaneous Union

3.44 The Liquor, Hospitality and Miscellaneous Union (LHMU) represents workers in a diverse range of industries and occupations, including cleaners in schools, offices, hospitals and hotels, security officers in a range of industries, carers of the young, frail, aged, ill and/or disabled, and hospitality workers in the leisure, entertainment and tourist industries.

3.45 The LHMU confines its submission to a discussion of Work Choices and the anticipated effect the legislation will have on its members who, the LHMU argues, are among the most vulnerable and “the lowest paid people in the ACT community”.⁶⁷ The LHMU’s belief is that the changes under Work Choices will further disadvantage these workers.

3.46 The LHMU is concerned about the reforms under Work Choices because the majority of its members are employed in the private service sector where the lowest wages have traditionally been paid and where employment is generally

⁶⁴ *ibid*, p. 16

⁶⁵ *ibid*, p. 16

⁶⁶ *ibid*, p. 19

⁶⁷ Liquor, Hospitality and Miscellaneous Union, ACT Branch, Submission to the Select Committee on Working Families in the ACT, December 2005, p. 2

part-time or casual. The LHMU states that the restaurant and catering industry has welcomed the Work Choices legislation because it will be able to “reduce labour costs”⁶⁸. The LHMU believes that “even those employers who do not wish to lower wages may be forced to do so in order to compete”.⁶⁹

3.47 Traditionally, workers covered by the LHMU and working in the industries identified above, are reliant on part-time or casual penalty rates to supplement their low wages. With the increased use of AWAs, expected to proliferate in the private sector, many of these workers will experience a significant reduction in wages. The LHMU claims that “workers could lose up to 30% of their wages if forced on to an AWA”.⁷⁰

3.48 In addition, many of these workers are employed by organisations that have fewer than one hundred staff and will, therefore, be exposed to the provisions of Work Choices which relate to unfair dismissal laws.

3.49 Because the conditions prescribed under Work Choices are at the discretion of the employer, the LHMU argues that a two-tiered (and possibly more) industrial relations system could exist in the ACT. Public servants employed by the ACT government will have their current entitlements preserved and will, therefore, have access to long service leave, family friendly entitlements, holiday pay, paid public holidays, leave loading entitlements etcetera. At the other end of the continuum, many workers employed in the private sector will lose these provisions.

Transport Workers Union

3.50 The Canberra Sub Branch of the NSW Transport Workers Union (TWU) represents employees, owner-drivers, contractors and small business operators in general transport and related industries across the ACT.

3.51 The TWU confines its submission to issues raised as a result of the introduction of Work Choices. Because the ACT operates under the federal

⁶⁸ *ibid*, p. 3

⁶⁹ *ibid*, p. 3

⁷⁰ *ibid*, p. 3

industrial relations system and not a state based system, the TWU is concerned that workers in its industry will feel the effect of legislative changes far sooner than their colleagues in other jurisdictions. As Work Choices will commence in March 2006, the TWU believes that:

- parental leave provisions in current enterprise bargaining agreements (EBA) which provide entitlements beyond the existing federal standard will immediately be unenforceable;
- protection from unfair dismissal will be immediately removed;
- the right to be represented by a union in dispute settlement procedures will be immediately removed; and
- protections from contracting out and the use of contract labour will be immediately removed, resulting in the job insecurity.⁷¹

3.52 According to the TWU, the transport industry is a particularly competitive industry and it argues that while the current system is far from perfect, it does provide

a decent safety net that ensures the vast majority of transport workers in the ACT are not forced to take up two jobs or work excessive and unsustainable amounts of overtime; that the vast majority of employers who choose to do the right thing by their workforce, their vehicles, equipment, commuters and the community can; that owner drivers working in the ACT can make a decent living and still maintain safe vehicles and safe and sustainable working hours; and critically, that where sustainable rates, wages and working conditions are not being maintained it provides (a) mechanism to have this addressed...Without the protection of an effective and sustainable safety net in the transport industry all of these things are up for grabs.⁷²

⁷¹ Transport Workers Union of NSW, Canberra Sub Branch, Submission to the Legislative Assembly for the Australian Capital Territory Select Committee on Working Families in the ACT, December 2005, p. 3

⁷² *ibid*, pp. 4-5

- 3.53 The TWU is concerned that in an already highly competitive industry, the effect of changes introduced under Work Choices will lead to greater competition and increased competition will compromise safety standards.

If you don't have a safety net, you don't know how much you can spend on maintaining your vehicle,...you can't figure out how much you're going to earn in a week, so you take every job going, you don't sleep, and you don't stop. You just keep going and that's when things get dangerous.⁷³

UnionsACT

- 3.54 UnionsACT (once the Trades and Labour Council) is the peak union body in the ACT. It is a collective organisation and has 22 members covering most areas of employment. It advocates on workplace issues and provides occupational health and safety training courses.
- 3.55 In its submission to the select committee, UnionsACT addresses WorkChoices, particularly as it relates to families, the Better Bargaining Bill, and the Improvement Act. Its discussion of the Improvement Act replicates the information provided by the CFMEU and so will not be discussed again.
- 3.56 UnionsACT summarises the main elements of the Better Bargaining Bill and uses a number of case studies and scenarios to highlight the Bill's effects. It makes the following observations:
- the Better Bargaining Bill will "render fair negotiations a thing of the past, with the employer holding all the cards and having all the advantage"⁷⁴;
 - because industrial action and pattern bargaining are virtually outlawed, workers will not be able to influence wage and condition outcomes, ultimately resulting in reduced wages and conditions;

⁷³ Tony Upton, owner driver, quoted in TWU Submission to the Select Committee, *ibid*, p. 6

⁷⁴ UnionsACT, Submission to the Legislative Assembly for the Australian Capital Territory Select Committee on Working Families in the ACT, December 2005, p. 13

- the most severely affected will be women, young people and low skilled workers; and
- there will be a reduction in household income resulting in “a reduction in spending on both essential and nonessential items; this will impact on the economy of the ACT and the government’s ability to manage the budget, resulting in a reduction of services to the community”.⁷⁵

3.57 In its discussion of Work Choices, UnionsACT draws the conclusion that the “harsh and complex new legislation will force wages and conditions to plummet, and will see a reduction in the standard of living of ACT working families”.⁷⁶

3.58 UnionsACT draws this conclusion after analysing the changes to existing conditions. It notes that Work Choices:

- makes “it easier for workers to be sacked” by abolishing unfair dismissal protections, by allowing all employees (regardless of the size of the workplace) to be dismissed for operational reasons, and by removing award redundancy standards⁷⁷;
- allows “employers to put workers onto individual contracts that cut take-home pay and reduce minimum standards” by reducing existing employment conditions, by reducing opportunities for true negotiation and by prohibiting certain industrial actions⁷⁸;
- changes “the way minimum wages are set to make them lower” by removing the AIRC’s authority to set minimum wages and conditions and by creating the AFPC (whose role is also to ensure a competitive economy) to assume this role⁷⁹;
- replaces “the award safety net with just five minimum conditions” which will undermine the rights and conditions workers currently enjoy⁸⁰;

⁷⁵ *ibid*, p. 13

⁷⁶ *ibid*, p. 38

⁷⁷ *ibid*, p. 38

⁷⁸ *ibid*, p. 38

⁷⁹ *ibid*, p. 39

⁸⁰ *ibid*, p. 39

- restricts “Australians’ access to unions and makes it harder for employees to bargain as a group with their employer” by reducing union right of entry to workplaces, by requiring written notice by unions to enter workplaces, by limiting access to only those employees who are union members, by removing unions from dispute resolution processes and by convoluting the process by which approval can be given to take industrial action⁸¹; and
- reduces “the powers of the independent Industrial Relations Commission” by limiting its authority to be involved in dispute resolution, by removing its authority to set minimum wages and conditions, by abolishing its ability to review awards, and by removing its power to arbitrate unfair dismissal claims in the case of an employer with fewer than 100 employees.⁸²

3.59 With its submission to the select committee, UnionsACT included an attachment, a paper prepared by the Australian Council of Trade Unions (ACTU), on the impact for families and women of Work Choices. These issues will be discussed in part 4 of the report.

⁸¹ *ibid*, pp. 39-40

⁸² *ibid*, p. 40

4 KEY ISSUES OF WORK CHOICES

- 4.1 Many issues have been raised by the submissions received, by the oral evidence given to the select committee, by the media during the debate and passage of Work Choices, and by the community in general. Most Australian workers and employers will be affected in some way by the changes to the industrial relations system as a result of Work Choices.
- 4.2 Issues and concerns relating to the introduction of Work Choices are often raised from a subjective viewpoint and it is difficult, therefore, to determine their validity. In the discussion of issues in this section, corroboration of concerns will be included wherever possible. In the main, the document, “Research Evidence About the Effects of the *‘Work Choices’ Bill*” (‘Effects of Work Choices’), will be used. This paper was authored by a group of 151 academics and submitted to the Senate Committee on Employment, Workplace Relations and Education Legislation in relation to its inquiry into the provisions of the Workplace Relations Amendment (Work Choices) Bill 2005 in November 2005.
- 4.3 This paper is used because of the expertise and diversity of its authors. As stated in the paper’s overview:

We represent a large, diverse group of Australian experts...Our experience spans several decades. We include in our number 31 Professors and 28 Associate Professors with expertise in the field of workplace issues, including the disciplines of economics, management, business, law, psychology and industrial relations. We come from 26 institutions. This group includes a substantial number of expert commentators on industrial relations and related issues internationally. We hold divergent views on many issues. Indeed, we regularly debate industrial, economic and workplace issues at national and international forums and in the Australian and international literature. We do not always agree.⁸³

⁸³ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, “Research Evidence About the Effects of the *‘Work Choices’ Bill*”, Submission to the

Australia's International Obligations

- 4.4 “Internationally, labour law is designed to protect workers from unfair exploitation and to ensure that labour market competition occurs above a platform of basic rights”.⁸⁴ As such, governments that voluntarily choose to accept these international standards have an obligation to ensure that these standards are met in domestic law and practice.
- 4.5 Legal, human rights and labour experts have argued that in its pursuit of reforms under Work Choices, the Improvement Act, and the Better Bargaining Bill, the federal government is potentially violating and contravening some of the international agreements to which it is a signatory.⁸⁵
- 4.6 The following is a synthesis of the opinion of legal, human rights and labour experts regarding Australia's contravention, by virtue of recent workplace legislative reforms, of international agreements:

- **ILO Convention 87 – Freedom of Association and the Right to Organise⁸⁶**

This convention is compromised by Work Choices' failure to encourage collective bargaining, its actual discouragement of collective bargaining, and its restrictions on union right of entry to workplaces. It is also breached by the Improvement Act and by the proposed Better Bargaining Bill.

Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, p. 4

⁸⁴ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 5

⁸⁵ Information relating to Australia's international obligations and potential breaches under recent industrial relations reforms is drawn from the National Association of Community Legal Centres' Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, pp 1-6, and International Centre for Trade Union Rights' Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, pp. 11-82

⁸⁶ Neither ILO Convention 87 nor 98 mentions the right to strike, but a long tradition in ILO jurisprudence has established the right to strike as an essential component of collective bargaining. See Swepston, Lee, "Human Rights Law and Freedom of Association: Development through ILO Supervision", *International Law Review*, 1998, Vol. 137, No. 2

- **ILO Convention 98 – Right to Organise and Collective Bargaining**

This convention is compromised by Work Choices' failure to encourage collective bargaining, its actual discouragement of collective bargaining, and its restrictions on union right of entry to workplaces. It is also breached by the Improvement Act and by the proposed Better Bargaining Bill.⁸⁷

- **ILO Convention 131 – Minimum Wage Fixing**

This convention allows, among other things, that employers and employees will be represented in the 'operation of the machinery' of minimum wage fixing in equal numbers and on equal terms, and that 'the freedom of collective bargaining shall be fully respected'. The creation of the AFPC under Work Choices does not allow 'equal numbers on equal terms' and Work Choices actively undermines respect for freedom of collective bargaining.

- **ILO Convention 158 – Termination of Employment**

This convention is breached by the unfair dismissal laws contained in Work Choices.

- **ILO Convention 156 – Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities**

This convention requires that the needs of workers with family responsibilities should be taken into account in employment contracts and that family responsibility cannot be used as a reason for terminating a worker's employment. Breaches are likely to occur because of the direct negotiation of AWAs, which will not, in many cases, include more than the minimum standards, and Work Choices' unfair dismissal provisions.

- **International Covenant on Economic, Social and Cultural Rights**

- * *Article 6 – Right to freely chosen work.*

Pressure on employees to sign AWAs may breach this article;

⁸⁷ CFMEU ACT Branch, *op cit*, p. 26

- * *Article 7 – Everyone has the right to the enjoyment of just and favourable conditions of work that ensure the provision of minimum wages, equal pay for equal work, and a decent living for themselves and their families.*

Breaches are likely to occur because (a) the transfer of the AIRC's role in setting minimum wages to the AFPC, comprised of government appointees, removes the protections guaranteed by an independent body; (b) the government cannot guarantee that no worker will be worse off under the new system; and (c) work and family balance could be undermined.

- * *Article 8 – Right to join a trade union*

This Article is breached by Work Choices' encouragement of AWAs and direct negotiation between employers and employees.

▪ **International Covenant on Civil and Political Rights**

Article 22 of this covenant allows the right to join a trade union and is breached by Work Choices' encouragement of AWAs and direct negotiation between employers and employees.

▪ **Convention of the Elimination of all forms of Discrimination Against Women**

Breaches of this convention will occur because (a) women tend to have greater family responsibilities and are, therefore, over-represented in casual and part-time jobs and more likely to be affected by the anticipated reductions in wages, penalty rates and shift allowances; (b) women tend to have less individual bargaining power and could potentially be disadvantaged in negotiations of AWAs; and (c) Work Choices will compromise work and family balance.

- 4.7 In addition, in signing its free trade agreement with the United States, both Australia and the United States agreed to "reaffirm their obligations as a members of the...ILO" and to "strive to ensure that their domestic laws

provide for labor standards consistent with internationally recognized labor principles”.⁸⁸

- 4.8 With respect to the implementation of Work Choices, the signatories to the ‘Effects of Work Choices’ conclude that it:

is in conflict with international treaties to which Australia is a party. These include not only International Labour Organisation and international human rights provisions but also the Australia-United States Free Trade Agreement.⁸⁹

The Experiences of New Zealand, Victoria and Western Australia

- 4.9 The route chosen by the federal government with respect to its industrial relations reform is not new. In the early 1990s, the New Zealand government dismantled its system of awards and industrial tribunals by the introduction of the *Employment Contracts Act (1991)* (ECA). Under the ECA, collective agreements and awards (until that time the norm) were removed altogether. New agreements only had to comply with six statutory minimum conditions – minimum wage, annual leave, sick leave, carer’s leave, bereavement leave and public holidays.

The *Employment Contracts Act (1991)* abolished the industrial tribunals and the multi-employer award system, replacing them with individual employment contracts and collective employment contracts (a contract between an employer and two or more employees), but favouring individual contracts...The ECA completely removed the legal status of trade unions, referring only to ‘employees organisations’ without according them any legal rights or requiring employers to even recognise and bargain with these organisations.⁹⁰

- 4.10 The effects of the reforms to New Zealand’s system of industrial relations were felt most strongly at the lower end of the employment market. Those in low

⁸⁸ International Centre for Trade Union Rights, *ibid*, p 12

⁸⁹ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 5

⁹⁰ Briggs, Dr Chris, *op cit*, p. 32

paid and low/unskilled jobs were particularly disadvantaged by the reforms. A longitudinal study of supermarket operators in New Zealand's retail sector by Peter Conway showed "extraordinarily large reductions in earnings for existing employees and new commencements".⁹¹ Those most seriously affected were weekend and evening workers because of the removal of penalty rates under the ECA. The study "found that earnings (including overtime) fell almost 12 per cent in real terms between 1991 and 1997".⁹²

4.11 In evidence to the select committee, the AEU provided information on the New Zealand experience for schools and teachers and reported that significant social disruption occurred as a result the ECA. The disaffection of workers under the new employment arrangements caused family upheaval and increased the number of students in schools with social problems. Schools also reported an increasingly growing number of itinerant students. These factors resulted in additional "stresses and pressures" for teachers and school counsellors.⁹³

4.12 Individual employment contracts remain the prevalent form of wage and condition setting in New Zealand today, but the notion of individual bargaining is a false one, as most individual contracts are standard in form, exclude overtime and penalty rates, and are offered on a 'take it or leave it' basis.⁹⁴

4.13 According to the signatories to the 'Effects of Work Choices':

By the end of the 1990s, New Zealand was a less equal society than ever before in terms of income distribution, it had a lower full-time participation rate, lower real wages and flatter productivity.⁹⁵

4.14 In 1993, the Victorian Government deregulated the labour market by abolishing awards and replacing them with minimum standards (Schedule

⁹¹ Quoted in Briggs, Dr Chris, *ibid*, p. 33

⁹² A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 22

⁹³ Transcript of Evidence, Thursday 8 December 2005, pp. 9 and 12

⁹⁴ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 22

⁹⁵ *ibid*, p. 22

1A) and in 1996 the Victorian Government referred its industrial powers to the federal government. In effect, therefore, a two-tiered system of wages and conditions has operated in Victoria for the last decade with around one-third of employees being covered by Schedule 1A and two-thirds being covered by federal awards. This resulted in:

an underclass of low-paid jobs...Schedule 1A workers were nearly twice as likely to be low paid compared to employees on awards; 75 per cent were not paid penalty rates for working weekends, 65 per cent were not paid annual leave loadings and only six per cent were paid shift allowances.⁹⁶

- 4.15 In 1993, the Western Australia Government introduced a system of registered individual workplace agreements, which reduced the number of statutory minimum standards. Most individual agreements offered under this system removed overtime and penalty rates, shift loadings and other sundry allowances and extended the spread of standard working hours.
- 4.16 The Australian Centre for Industrial Relations, Research and Training (ACIRT) prepared reports on the effects of individual workplace agreements for the Western Australian Commissioner of Workplace Agreements in 1996, 1999 and 2002. The reports concluded that individual contracts “did not provide a fair and equitable safety net of wages and conditions” and “invariably provided open-ended hours of work under the guise of flexibility, with management and business needs being the key drivers”.⁹⁷

Consultation

- 4.17 Many commentators were surprised and concerned by the speed with which Work Choices was devised, drafted and passed. Given the complexity of the

⁹⁶ Opposition Senators’ Report, Senate Employment, Workplace Relations and Education Legislation Committee’s Report on Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, Commonwealth of Australia, 2005, p. 72

⁹⁷ Cited in Opposition Senators’ Report, Senate Employment, Workplace Relations and Education Legislation Committee’s Report on Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, Commonwealth of Australia, 2005, pp. 73-74

changes under Work Choices many have criticised the federal government for its lack of consultation with stakeholders.

- 4.18 In evidence to the select committee, the ACT Minister for Industrial Relations said of Work Choices:

The whole process of how this legislation was put together has been very difficult for the states and territories in terms of being advised of or involved in the drafting or input into the legislation from the early days. We have a forum of workplace relations ministers called WRMC...where ministers of industrial relations meet with the commonwealth minister around a table and talk through issues of mutual issues. This would normally be the forum where some of these ideas would be progressed and certainly where some of the dialogue could occur around...the intentions of the commonwealth in this area. I have to say that forum wasn't used at all for this legislation. In fact, there has only been one meeting of that council since announcements were made. Several meetings were cancelled. At the meeting that was held there was no advice given about the legislation.⁹⁸

- 4.19 The non-government parties of the Australian parliament were among many others who also criticised for the federal government for its speed and lack of consultation.⁹⁹

- 4.20 The signatories to the 'Effects of Work Choices' conclude that:

...changes are being introduced with untimely haste. Many of us have participated in past Inquiries about industrial relations change in Australia. We are accustomed to participation in processes, which are often necessarily brisk. However, the changes now proposed are profound. They are not evolutionary. They significantly rewrite the constitutional basis of industrial regulation...They establish new

⁹⁸ Transcript of Evidence, Thursday 1 December 2005, pp. 1-2

⁹⁹ See Opposition Senators' Report (p. 47), Australian Democrats' Minority Report (p. 91) and Australian Greens' Dissenting Report (p. 135) of the Senate Employment, Workplace Relations and Education Legislation Committee's Report on Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, Commonwealth of Australia, 2005

institutions, remove rights, and amend a very complex body of existing regulation.¹⁰⁰

- 4.21 Because the ACT will be one of the first jurisdictions to feel the impact of Work Choices, the ACT Government and workers' organisations are also concerned about the sanctity of current ACT legislation¹⁰¹. There are also concerns from these groups that ACT workers will be 'guinea pigs' (along with workers in the Northern Territory and Victoria) for the new legislation¹⁰² and feel the effects far sooner than in the States that operate their own industrial relations systems.

Small and Medium Businesses

- 4.22 The changes under Work Choices have impacts for business, both positive and negative. As mentioned earlier, the ACT and Region Chamber of Commerce and Industry sees real advantages for its members as a result of the legislative changes and commented in its evidence to the select committee that the attention that Work Choices has been given has informed many business owners in the ACT of their rights and responsibilities as employers.¹⁰³
- 4.23 While few have commented on negative impacts for big business, some have suggested that small and medium businesses may face some significant imposts as a result of Work Choices.
- 4.24 In their submission to the Senate inquiry on Work Choices, the states and territories argued that choice would be limited under Work Choices. Prior to Work Choices, employers in most states could choose the system of industrial relations which best suited their business operations. The submission cites the example of NSW, where two out of three businesses chose to stay in the state

¹⁰⁰ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 4

¹⁰¹ See Transcript of Evidence, Thursday 1 December 2005, p 25, ACT Government Submission, p 10 and LHMU Submission, p. 3

¹⁰² See Transcript of Evidence, Thursday 1 December 2005, p 3, TWU Submission, p 3 and CPSU Submission, p. 4

¹⁰³ Transcript of Evidence, Thursday 1 December 2005, p. 32

system because it was “less complex and less costly”.¹⁰⁴ The submission also maintains that employers under State awards had access to a legal framework, supported by the state, which provided advice and allowed for flexibility.

4.25 Under Work Choices, choice is lost because all businesses that are classed as an employer under s4AB(1) of the legislation will immediately become part of the federal system.¹⁰⁵

4.26 Because of Work Choices’ complexity and its proscriptions, those forced to become part of the federal system are likely to expend significant time, energy and money on advice relating to the content of Work Choices. Businesses will need to understand Work Choices in order to comply with it and, more importantly, not to contravene it. For small and medium size businesses without human resources expertise, additional costs will be incurred in establishing individual agreements and in tailoring payroll systems to meet the individuality of these agreements.

4.27 In her evidence to the select committee, the Minister for Industrial Relations stated:

There’s enough evidence to support...the fact that in many cases this is going to make it a lot more complicated, particularly for small businesses, who might have to actually engage IR experts and advisers and bargaining agents in order to be compliant with a law that they know nothing about.¹⁰⁶

4.28 Similarly, the CFMEU commented that Work Choices is also going to have a huge impact on small business. It is quite common practice even today (in the building and construction industry) for people to be bullied into setting up small businesses because the principal

¹⁰⁴ Governments of New South Wales, Queensland, Western Australia, South Australia, Tasmania, The Australian Capital Territory, The Northern Territory, Submission to the Senate Employment, Workplace Relations and Education Legislation Committee’s Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, p. 31

¹⁰⁵ *ibid*, p. 31

¹⁰⁶ Transcript of Evidence, Thursday 1 December 2005, p. 13

contractor...does not want to have any employees or accept any responsibilities.¹⁰⁷

4.29 'Effects of Work Choices' argues that small and medium businesses will be further disadvantaged because they will find it more difficult to attract labour than larger employers "as employees will prefer to work in organisations where they have some protection against unfair dismissal".¹⁰⁸

4.30 In conclusion, the signatories to the 'Effects of Work Choices' state:

The management of individual contracts, which must be signed by each employee, would create additional administrative burdens for small business. The financial costs to small businesses for conducting their industrial relations will rise as they find it necessary to engage consultants and lawyers to deal with the new devolved and more complex system.¹⁰⁹

Labour Issues

4.31 In its submission to the Senate inquiry into Work Choices, the Department of Employment and Workplace Relations stated that:

A central objective of this Bill is to encourage the further spread of workplace agreements in order to lift productivity and hence the living standards of working Australians. The Government believes that the best workplace arrangements are those developed between employees and employers at that workplace...The Australian Government believes the current workplace relations system imposes a costly regulatory burden on employers and employees, inhibiting both productivity performance and employment opportunities.¹¹⁰

Workplace Agreements (AWAs) and Bargaining Power

¹⁰⁷ *ibid*, p. 17

¹⁰⁸ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 20

¹⁰⁹ *ibid*, p. 30

¹¹⁰ Department of Employment and Workplace Relations, Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, p. 6

- 4.32 Work Choices assumes that there is an equality of bargaining power between the individual employee and her/his employer.
- 4.33 Many, however, have argued, and continue to argue, that the employment relationship is decidedly unequal and, because of this, those in the workforce who are low skilled, unskilled, low paid, poorly educated, from non-English speaking backgrounds, young and/or disadvantaged tend to rely more heavily “on industrial awards and legislated protections than other workers, and changes to the award system will have a much greater effect on the pay and conditions of this group than skilled workers”.¹¹¹
- 4.34 Several submissions to the select committee’s inquiry and witnesses who appeared before the committee highlighted this issue¹¹². They stated that, because Work Choices excludes unions from negotiations, reduces minimum employment conditions, removes the ‘no disadvantage test’ and will dismantle the award system over time, the already disadvantaged in the workforce will be significantly worse off.¹¹³
- 4.35 In contrast, those with higher skills, particularly in areas of skill shortage, may be able to maximise their advantage under a system of AWAs and negotiate better outcomes for themselves.
- 4.36 According to some, this inequality of outcomes of AWA negotiations will increase inequality in the workforce. The Redfern Legal Centre argues that:
- Such divisions weaken a society and ultimately undermine economic efficiency, as social cohesion and community consensus play an essential role in economic development.¹¹⁴
- 4.37 Using data compiled by the Australian Bureau of Statistics (ABS), a survey of employers, a survey of employees and evidence from other countries, Peetz concludes that collective agreements deliver higher wage outcomes than

¹¹¹ ACTCOSS, *op cit*, p. 6

¹¹² See submissions 1, 2, 6, 8, 9 and 10 and the transcripts of evidence from ACTCOSS, AEU, UnionsACT, and ACT Minister for Industrial Relations.

¹¹³ *ibid*

¹¹⁴ Redfern Legal Centre, Submission to the Senate Employment, Workplace Relations and Education Legislation Committee’s Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, p. 6

AWAs.¹¹⁵ Peetz uses hourly rates of pay, rather than weekly rates of pay, in his analysis because evidence shows that working hours under AWAs have increased from an average of 38 per week to over 40 per week and that hours under AWAs are all paid at the single ordinary-time rate.¹¹⁶ Peetz's conclusions include:

average weekly earnings of employees on federal collective agreements were 6.2 per cent higher in May 2004 than in May 2002, average weekly earnings of employees on AWAs were 11 per cent lower in May 2004 than they were in May 2002...By March 2005, the total disadvantage to workers on...non-union agreements was 4.3 per cent – this being the amount by which cumulative wage increases under non-union agreements had fallen behind those in union agreements...Overall, the ABS data confirm the conclusions from numerous other sources and studies: unions and union-based collective bargaining, create higher wages and better conditions for workers; individual contracting creates poorer pay and conditions and does this most effectively for those with weaker positions in the labour market.¹¹⁷

- 4.38 The signatories to the 'Effects of Work Choices' conclude that AWAs "...constrain the scope of employees and unions to pursue their interests, ...(and) give great freedom to employers...This new regulation of the labour market enhances employer power and demonstrably weakens the position of employees".¹¹⁸

Productivity

- 4.39 As stated above, central to the federal government's argument for reforming industrial relations was increased productivity. The federal government, however, presents no evidence or explanation of how this will occur – it merely asserts that it will happen. Many argue that Work Choices will not

¹¹⁵ Peetz, David "The Impact on Workers of Australian Workplace Agreements and the Abolition of the 'No Disadvantage' Test", http://www.qieu.asn.au/Paper2-D_1_Peetz.pdf

¹¹⁶ *ibid*, pp. 1-2

¹¹⁷ *ibid*, pp. 4, 6 and 14

¹¹⁸ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 5

increase productivity but will, instead, increase profit by reducing the number of allowable matters and by permitting employers to reduce wages and conditions.

4.40 In evidence to the select committee, the CFMEU stated:

The only way, in our experience, that productivity increases is if the employer ensures that the employees and staff are trained or they commit to a major capital expenditure to upgrade the equipment, machinery or whatever they have to do to bring their business up to speed. Just because you reduce the rights of people does not mean to say that you are going to work any faster....We cannot see a logical reason for productivity to increase.¹¹⁹

4.41 The signatories to the 'Effects of Work Choices' conclude that "there is no persuasive evidence systematically linking industrial relations systems and industrial relations changes to productivity improvement. There are many reasons why productivity grows but industrial relations changes are not generally a source of productivity growth across OECD economies."¹²⁰

Workplace Safety

4.42 Some have suggested that the provisions in Work Choices and the Improvement Act will undermine and/or compromise safety in the workplace.

4.43 The main reasons for this suggestion are:

- the reduced capacity of workers and unions to engage in industrial action; and
- the removal of penalty rates, overtime payments and the extension to the range of normal working hours.

4.44 In the past, workers, often in conjunction with relevant unions, have taken strike action when observed safety issues have not been addressed by an employer in a workplace. Given the virtual impossibility under Work Choices

¹¹⁹ Transcript of Evidence, Thursday 1 December 2005, p. 20

¹²⁰ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 23

of taking industrial action, this avenue to highlight safety concerns will be unavailable and also exacerbated with the “onus of proof on the workers to prove imminent personal threat”.¹²¹

- 4.45 The restrictions on union right of entry to a workplace potentially remove a mechanism for identifying workplace safety issues. According to the CFMEU, this is particularly the case in small businesses:

There are quite a few small businesses which actually like the unions coming in and checking safety because it takes the responsibility and the cost away from them. We do not go in and manufacture or look for health and safety problems but, if we see them, we are certainly going to advise the employees and the employer of the potential risks at hand.¹²²

- 4.46 According to international research, working long hours presents serious risks to occupational illness and injury.¹²³ With the removal of shift penalties and overtime payments, many workers will increase their hours of work in an effort to maintain their incomes. This, coupled with the potential for ‘trading off’ rest breaks, meal breaks and annual leave by workers, is likely to result in workers who are fatigued and/or have increased levels of illness.
- 4.47 According to the TWU, there is a great risk of this occurring in the transport industry because of its extremely competitive nature. In its submission to the select committee, the TWU claims that “large segments of the industry compete on price alone. Drivers are too often forced to do whatever it takes get the job done...In short, it is too often a race to the bottom”.¹²⁴ In an industry which is already dangerous (“102 people were killed in heavy truck accidents on NSW roads” in 2004 and “in the 4 years since 1998, over 742 people were killed in truck accidents...and thousands more seriously injured”¹²⁵), the removal of an effective and viable safety net of sustainable wages and rates, working hours and conditions, will further compromise safety.

¹²¹ Australian Greens’ Dissenting Report, *op cit*, p. 138

¹²² Transcript of Evidence, Thursday 1 December 2005, pp. 18-19

¹²³ Cited in A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 40

¹²⁴ TWU, *op cit*, p. 5

¹²⁵ *ibid*, p 5

4.48 The signatories to the 'Effects of Work Choices' conclude that:

research...indicates that the benefits of 'flexible work' principally accrue to the employer...Access to OHS training and knowledge, and fear of dismissal for reporting injury or illness, are particular problems for casual, part-time and other precarious employees. The negative OHS impact of...(Work Choices) will inevitably fall most heavily on the workers who are already most disadvantaged in the labour market, and most likely to be precariously employed, especially women, the less skilled and older workers.¹²⁶

Social Issues

4.49 The anticipated negative impacts for many workers under Work Choices and the widening of the income gap between the low paid and the well paid "will change the relationship between the sphere of work, private households and the community".¹²⁷ This is particularly so for workers at the lower end of the employment market who, because of the proliferation of AWAs, are likely to suffer a reduction in total income through cuts to penalty rates, overtime rates, shift allowances etcetera, an increase in working hours and less time autonomy.

4.50 All of these factors are expected to affect work and family balance.

Work and Family

4.51 Seven out of the ten submissions received by the select committee expressed concern for work and family balance under Work Choices¹²⁸, particularly for workers in non-managerial, non-professional employment.

4.52 Research has shown that workers at the middle and upper employment levels are more able to negotiate working conditions that are conducive to a work and family balance. In the case of paid maternity leave, for example:

¹²⁶ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 23

¹²⁷ Briggs, Dr Chris, *op cit*, p. 84

¹²⁸ See submissions 1, 2, 5, 6, 7, 9 and 10

Up to 65 per cent of managers and 54 per cent of professional women have access to paid maternity leave while only 18 per cent of clerical, sales and service workers and 0.8 per cent of casual workers have an entitlement to paid maternity leave...Family friendly arrangements are more likely to be offered to better trained and higher skilled employees¹²⁹.

4.53 The Organisation of Economic Co-operation and Development (OECD) evidence suggests that where the provision of family friendly conditions is left to the market, they tend to favour middle to high income earners.¹³⁰ Under Work Choices, labour is much more market oriented and deregulated than in the past.

4.54 The Human Rights and Equal Opportunity Commission (HREOC) has expressed concern that the federal government's reforms:

do not provide sufficient protections for those with family commitments...(and) we may well see not only increasing inequalities in the labour market but also in society, with social instability becoming more likely and children in lower income families particularly at risk.¹³¹

4.55 The specifics of Work Choices that have the possibility of undermining work family balance are:

- The AIRC's loss of arbitral power, which will reduce employees' opportunities to dispute family friendly provisions. In addition, one of the recent standards adopted by the AIRC, allowing women to request additional unpaid maternity leave and the right to return to part-time work when they resume their former job, has been deemed a 'not allowable matter' under Work Choices¹³²;

¹²⁹ Human Rights and Equal Opportunity Commission, Submission to the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, p. 15

¹³⁰ OECD, "Extending Opportunities: How active social policy can benefit us all", <http://www.oecd.org/dataoecd/39/12/34607634.pdf>, pp. 6-8

¹³¹ Human Rights and Equal Opportunity Commission, *ibid*, p. 13

¹³² Governments of New South Wales, Queensland, Western Australia, South Australia, Tasmania, The Australian Capital Territory, The Northern Territory, *op cit*, p. 54

- The AFPC's role of establishing minimum wages, especially as it does this in the context of economic objectives, is likely to see a fall in real wages and will particularly affect those on low pay. Lower wages for the already low paid will lead to further income dispersion and inequality which has significant negative effects on social well being; and
- Because of the de-emphasis on allowances, penalties and loadings under AWAs, which will proliferate once Work Choices commences, working hours will increase and compromise the balance between work and family. A research paper, 'Work and Family Policies as Industrial and Employment Entitlements', produced by the Parliamentary Library in 2004 claimed that the assertion that "AWAs enhance work and family policies seems to be based on patchy evidence"¹³³;

4.56 The signatories to the 'Effects of Work Choices' note that:

Many other countries are taking a different road in response to the challenges of international competition, rising dependency ratios, labour shortages and falling birth rates. They are increasing support for working carers, ensuring that their workforce participation is underpinned by fair standards, and providing essential infrastructure like paid leave, holidays and the right to family-friendly flexibility. Equitable, family-friendly industrial conditions have not been seen as necessary trade-offs for economic growth, but as *achievable joint objectives, the one supporting the other*,¹³⁴

and conclude that:

The success of these approaches, which have been extensively reviewed, provide a more promising alternative direction for industrial reform in Australia, one which would improve the stability and well being of Australia's workers and their children and other dependents.¹³⁵

¹³³ Parliament of Australia, Parliamentary Library, "Work and Family Policies as Industrial and Employment Entitlements", Research Paper No 2 2004-2005, <http://www.aph.gov.au/LIBRARY/pubs/rp/2004-05/05RP02.htm>

¹³⁴ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 37

¹³⁵ *ibid*, p. 38

Women

- 4.57 Although women workers comprise 45 per cent of the national labour force, they occupy an inequitable and less secure position in the labour market compared to men.¹³⁶ This is of particular concern in the ACT as women comprise more than 48 per cent of the labour force, the highest female participation rate in the country.¹³⁷
- 4.58 Women, as employees, are concentrated in four main industries: retail, health and community services, education, and hospitality.¹³⁸ Many of the industries in which women work are award dependent and characterised by part-time or casual hours. HREOC claims that 71 per cent of part-time workers and 60 per cent of casual workers are women¹³⁹.
- 4.59 The growth in casual, part-time and service sector work for women has contributed to women's predominance amongst the low paid. The incidence of low pay for all female workers is 41 per cent compared with 29 per cent for all workers.¹⁴⁰ This data reflects broader gender pay inequities:
- Australian women working full time currently earn 85.1 per cent of the earnings of Australian men working full time, when comparing ordinary time earnings. Comparing full time total earnings, women earn 80.9 cents in the male dollar, a gap of 19.1 percent (*sic*), but the gap blows out to 34 per cent when comparing all employees' total earnings, when women earn 66 per cent of the male dollar.¹⁴¹
- 4.60 Under Work Choices, awards will decline in coverage and content. Given the higher rate of female award dependency, this decline in award coverage will have a significant effect on women. With a weaker bargaining position, occupying lower paid jobs and generally having responsibility for family care,

¹³⁶ Australian Bureau of Statistics, "Australian Social Trends", No 4102.0, Canberra, 2005, p. 108

¹³⁷ Governments of New South Wales, Queensland, Western Australia, South Australia, Tasmania, The Australian Capital Territory, The Northern Territory, *op cit*, p. 56

¹³⁸ Human Rights and Equal Opportunity Commission, *op cit*, p. 50

¹³⁹ *ibid*, p. 29

¹⁴⁰ Australian Bureau of Statistics, "Employee Earnings, Benefits and Trade Union Membership, Australia", No. 6310.0, Canberra, 2004, p. 10

¹⁴¹ Human Rights and Equal Opportunity Commission, *op cit*, p. 27

women are more disadvantaged by the trend towards AWAs under Work Choices.

- 4.61 For women with family responsibilities, the opportunity to access leave is an important consideration when determining employment alternatives. Of vital importance, also, are working hours.

On the matter of working hours, the key issues for women and their families are: the overall length of working hours, the rewards and disincentives for work at unsocial times, the incidence of unsocial working time, the extent of say over how hours are configured, notice about changes in hours, and the predictability of working time so that care can be organised.¹⁴²

- 4.62 In conclusion, signatories to 'Effects of Work Choices' believe that Work Choices:

can be expected to impact most negatively on those women with the least bargaining power, threatening their wages, their employment security and creating the potential for increased casualisation and unpredictability of working hours.¹⁴³

Welfare to Work

- 4.63 Work Choices are occurring against a background of changes in the welfare system. In late 2005, the Australian parliament passed the *Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Act 2005* (Welfare to Work). Several groups, both in evidence and in submission to the select committee, expressed concern about the interaction of welfare and industrial relations reform and the possible consequences for vulnerable people.
- 4.64 The changes under Welfare to Work significantly impact on two groups: those on disability support pensions (DSP) and sole parents.

¹⁴² Pocock, Barbara and Masterman-Smith, Helen, "WorkChoices and Women Workers", p 136 - supplementary paper provided to the select committee by UnionsACT

¹⁴³ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 34

- 4.65 Welfare to Work tightens the criteria to access disability support pensions – by tightening the qualification criteria for access to DSP by reducing the work capacity test from 30 hours a week down to 15 hours a week, fewer persons with a disability will be able to access DSP. The vast majority of those not able to access DSP will be provided with ‘enhanced’ New Start Allowance.¹⁴⁴
- 4.66 Welfare to Work also requires sole parents to look for paid employment of at least 15 hours per week once their youngest child turns eight. This group, also, will be covered by the ‘new start allowance’ rather than by ‘parenting payments’.
- 4.67 For both these groups, transfer to the ‘new start allowance’ results in income reduction. According to ACTCOSS, “people who would otherwise have qualified for the DSP will now receive \$46 per week less than the pension...(and for) single parents who are not employed...their weekly disposable income will be \$96 (a week) less than on the pension”.¹⁴⁵
- 4.68 Apart from lower payments, the concern for these potential employees is the ‘activity test’ under the ‘new start allowance’. Those on the ‘new start allowance’ are required to actively seek work and to accept any ‘suitable’ job offer. Currently, an unemployed person is only required to accept a job that pays award wages and adheres to award conditions.¹⁴⁶ After the commencement of Work Choices, however, ‘new start allowance’ recipients will be penalised if they refuse to accept a job on the grounds that they disagree with the conditions of work or the contents of the proposed AWA. The penalty for refusing a job is an “eight week suspension” of benefits (that is, income).¹⁴⁷ The threat of loss of income could force ‘new start allowance’ recipients into unsuitable or poor work environments. There is also concern that parents and carers will be forced into employment that does not allow them to balance work and family responsibilities.

¹⁴⁴ Department of Parliamentary Services, Employment and Workplace Relation Legislations Amendment (Welfare to Work and Other Measures) Bill 2005, Bills Digest, 6 December 2005, p. 1

¹⁴⁵ ACT Council of Social Services, *op cit*, p. 13

¹⁴⁶ Redfern Legal Centre, *op cit*, p. 7

¹⁴⁷ ACT Council of Social Services, *op cit*, p. 15

4.69 The conclusion drawn by the signatories to 'Effects of Work Choices' is that:

These workers will enter a more minimalist, individualistic system with significant care responsibilities and weak bargaining power. Their work and family protections are minimal.¹⁴⁸

Community Sector/Volunteers

4.70 The changes under Work Choices, coupled with the changes under Welfare to Work, are likely to have a significant effect on the community sector and volunteering in Australia.

4.71 ACTCOSS expects that the increase in job insecurity under Work Choices and "the increased number of people at risk of suspension will increase reliance on community service provision, particularly in the areas of emergency relief and crisis services".¹⁴⁹ ACTCOSS predicts that economic disadvantage under Work Choices will also lead to an increasing number of social problems in the wider community, including increases in number of people presenting with mental health issues, and in the occurrence of domestic violence and drug dependence. Homelessness services may also see an influx of demand as lower and more uncertain weekly wages may put families at greater risk of housing stress.

4.72 In order to respond to the expected crisis in the community sector, as a result of the anticipated negative consequences of welfare and industrial relations changes for an already vulnerable sector of the community, ACTCOSS believes governments across Australia will need to increase their level of support for community organisations and increase the number of community services.

4.73 Volunteering is an activity performed by a significant number of Australians in their free time. According to Volunteering Australia, "41 per cent of Australians volunteered in the year to January 2005, contributing a total of 836 million hours of benefit to Australian communities". Estimates of the economic

¹⁴⁸ A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market, and Legal Academics, *op cit*, p. 36

¹⁴⁹ ACT Council of Social Services, *op cit*, p. 17

value of volunteering in Australia range between “\$31 and \$42 billion dollars” per year.¹⁵⁰

4.74 It is expected that the changes under Work Choices and Welfare to Work will affect volunteering in two ways:

- volunteers, 70 per cent of whom are in paid employment, are likely to experience a reduction in free time with the move to AWAs – working hours are expected to increase and leave entitlements are expected to decrease; and
- volunteers may be forced to reduce their volunteer hours because of an increasing need to provide child or other care for working family members. Volunteering Australia believes that:

the downward pressure on wages caused by changes to the minimum wage and changes around penalty rates will render childcare increasingly expensive for Australian employees. This outcome is likely to be exacerbated by decreased predictability in rostering for some Australians which may not coincide with the availability of professional care.¹⁵¹

As a consequence, older family members, often grandparents, will assume responsibility for care arrangements.

4.75 According to ACTCOSS, volunteers are a vital component of any community services’ operation. Any drop in the number of volunteers will have a significant affect on the viability of community organisations and, therefore, on the important services they provide.¹⁵²

¹⁵⁰ Volunteering Australia, Submission to the Senate Employment, Workplace Relations and Education Legislation Committee’s Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005, November 2005, p. 2

¹⁵¹ *ibid*, p. 3

¹⁵² Transcript of Evidence, Thursday 8 December 2005, p. 25

5 CONCLUSION

- 5.1 Given the release of the Workplace Relations Regulation 2006, the federal government's Work Choices legislation will commence on Monday 27 March 2006.
- 5.2 With the exception of the prohibited matters identified below and the changes to unfair dismissal provisions, it appears that the terms and conditions of pre-reform state and federal awards and agreements will remain largely unchanged in the short term.
- 5.3 According to information available on the Australian government website¹⁵³:
- pre-reform **state awards** become 'notional agreements preserving state awards' (NAPSAs) in the new federal system of industrial relations. The terms and conditions of employment in the former state awards become preserved entitlements and remain in NAPSAs. A NAPSA will include any term and condition of employment in the original state award, with the exception of wage and classification structures¹⁵⁴;
 - pre-reform **state agreements** become 'preserved state agreement' (PSAs). A PSA will include any term and condition of employment that was in the original state agreement, with the exception of wage and classification structures;
 - employees bound by **federal awards** immediately before the commencement of Work Choices will continue to be bound by the conditions of their particular award;
 - employees bound by **federal agreements** made before the commencement of Work Choices will continue to operate under the

¹⁵³ <https://www.workchoices.gov.au/>

¹⁵⁴ Wages and classification structures for all pre-reform state and federal awards and agreements will form part of a preserved Wage and Classification Scale, administered by the AFPC, and will be unaffected by the commencement of Work Choices.

conditions of the particular agreement unless the agreement is terminated or replaced by a new agreement.

5.4 Section 7C of the Work Choices legislation suggests that the following matters “will lapse” from NAPSAs and PSAs on 27 March 2006:

- matters about an award, including the making or variation of an award;
- matters about wages, including applications to vary awards to amend wage provisions, state wages cases etcetera;
- matters about an agreement (including certification, variation);
- matters involving general dispute resolution; and
- matters about industrial action.¹⁵⁵

5.5 Section 101D of the Work Choices legislation specifically excludes the following matters in any new workplace agreement signed on or after 27 March 2006:

- allowing for industrial action during the term of an agreement;
- mandating union involvement in dispute resolution;
- restricting the use of independent contractors or on-hire arrangements;
- prohibiting AWAs;
- provisions for trade union training leave, payroll deduction of union fees, payment of union bargaining fees to trade unions, the provision of information to unions about employees, union encouragement or discouragement clauses or paid union meetings;
- re-negotiation clauses;
- providing a remedy for unfair dismissal;
- providing for union right of entry;

¹⁵⁵ Andrew, the Hon Kevin, “Work Choices and State Laws”, Media Release, 19 March 2006, <http://mediacentre.dewr.gov.au/mediacentre/MinisterAndrews/Releases/WorkChoicesAndStateLaws.htm>

- the forgoing of annual leave credited to an employee, other than in accordance with the Act;
 - terms that prevent the disclosure of details of the workplace agreement by a person bound by the agreement;
 - objectionable provisions;
 - discriminatory terms; and
 - matters that do not pertain to the employment relationship.¹⁵⁶
- 5.6 The new regulations relating to unfair dismissal commence on 27 March 2006 for all employees, regardless of the terms and conditions under which they are employed. Under these regulations any worker whose employer employs less than 100 workers can be terminated for almost any reason.
- 5.7 With the exception of changes to unfair dismissal laws, it appears that employees under pre-reform state and federal awards and agreements will not be greatly affected by the commencement of Work Choices in the short term.
- 5.8 The real concern however, is for those about to enter the work force and for those who are currently employed but who elect to change jobs. These groups, particularly the young and those forced into employment because of the Welfare to Work reforms, will, in all likelihood, be compelled to take up AWAs. The minimum employment standards (discussed in part 2) will apply to these employees, but all other aspects of their employment will need to be negotiated with their employer. This is particularly concerning as many new employees will have very limited bargaining power and lack the knowledge of what has gone before.
- 5.9 It is difficult, at this stage, to assess the direct effects of the federal government's changes to industrial relations' policy on working families in the ACT.

¹⁵⁶ Andrew, the Hon Kevin, "Work Choices and Prohibited Content in Agreements", Media Release, 19 March 2006, <http://mediacentre.dewr.gov.au/mediacentre/MinisterAndrews/Releases/WorkChoicesAndProhibitedContentInAgreements.htm>

5.10 One noticeable impact however, has been an increase in the level of fear and anxiety experienced by many groups and individuals over what the changes might mean in the longer term. These fears and anxieties have been prevalent since the announcement of industrial relations reforms and were expressed often to the select committee in the submissions received and the oral evidence given.

5.11 Below is a summary of the fears and concerns expressed to the select committee:

- the removal of the 'no disadvantage test' and the reduction in minimum standards;
- the loss of penalty rates, overtime payments and shift allowances;
- the potential for working hours to be increased;
- a reduction in the ability to balance family and working commitments;
- a loss of family friendly conditions;
- the lack of bargaining power of the average worker;
- the potential lack of job security and career prospects;
- the potential for occupational safety to be compromised;
- the removal of unfair dismissal laws for a substantial section of the work force;
- the inability to fight common concerns because of restrictions imposed on unions and new provisions in relation to industrial action;
- the reduction in the powers of the AIRC;
- the perceived lack of objectivity of the AFPC;
- the consequences for ensuing generations of workers;
- increased disadvantage for the already disadvantaged;
- an increase in social inequality and negative social outcomes;
- an increase in demand for community services and an increased load for an already overstretched community sector; and

- a reduction in the number of volunteers because of work and family pressures.

5.12 Time and evidence are needed to reliably and validly determine the effects on working families in the ACT of reforms to the industrial relations system and to confirm or deny the speculative effects mentioned above. In the Australian Democrats' Minority Report on the Senate Employment, Workplace Relations and Education Legislation Committee's Inquiry into the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005 it stated:

Evidence to the Committee made it clear that the effects of the legislation will not be felt until after the next election in late 2007. Not only will 25 to 30% of all workers remain under state systems until then, but the transitional arrangements and the continuing validity of many existing agreements...only expire in 2008.¹⁵⁷

5.13 The select committee, therefore, recommends that:

RECOMMENDATION 3

5.14 **The select committee provide its substantive report to the Legislative Assembly by the first sitting day in August 2007.**

RECOMMENDATION 4

5.15 **The committee recommends that the ACT government provide resources for research support for the Select Committee on Working Families, in order that the effects on working families in the ACT can be adequately assessed and to enable the final report to be tabled by the revised date.**

5.16 Many in the ACT community believe the work of the select committee to be important. Note, for example, the following comments:

We believe the work of the committee...is very important for the benefit of the ACT community.¹⁵⁸

¹⁵⁷ Australian Democrats' Minority Report, *op cit*, p. 95

¹⁵⁸ AEU, Transcript of Evidence, Thursday 8 December 2005, p. 5

We think this is a really important inquiry that you are undertaking...We see it as very significant, and it is incredibly important that all members of the ACT government and members of the Legislative Assembly are vocal in their criticism of the commonwealth government policy. Indeed, we would see it as part of your role in representing the people of Canberra¹⁵⁹

- 5.17 Because the work of the select committee is important to the ACT community, the committee urges the Assembly to support its continuation for a longer period in order truly assess the effects of a new era in industrial relations.

Mr Mick Gentleman MLA
Chair

March 2006

¹⁵⁹ ACTCOSS, Transcript of Evidence, Thursday 8 December 2005, pp. 27 and 31

6 ADDITIONAL COMMENTS

Mrs Jacqui Burke MLA

- 6.1 If it is the primary responsibility of the Select Committee to “examine the effect on working families in the ACT” (Select Committee’s Terms of Reference) of the federal government’s changes to industrial relations’ policy, then the Select Committee needs time to gather empirical evidence and to assess the effects.
- 6.2 To cite point 5.12 of the Interim Report:

Time and evidence are needed to reliably and validly determine the effects on working families in the ACT of reforms to the industrial relations system and to confirm or deny the speculative effects mentioned above.
- 6.3 I propose, therefore, that the Select Committee on Working Families be suspended immediately and re-established, along with the new terms of reference, in March 2007.
- 6.4 It is evident that neither the Committee nor the Committee Secretariat has at their disposal the level of resources (staff and financial) required to effectively collect and analyse evidence for use by the Committee to determine the effects of industrial relations reforms.
- 6.5 The suggestion in recommendation 4 is that resources be made available in order that the required research be undertaken, but this will take time. I do not believe that the Committee has a role to play during the evidence gathering and analysis phase and hence my proposal that the Select Committee be suspended.

Mrs Jacqui Burke MLA

Member

March 2006

APPENDIX A: List of Submissions

1. Australian Education Union (AEU)
2. Community and Public Sector Union (CPSU)
3. ACT and Region Chamber of Commerce and Industry
4. Construction, Forestry, Mining and Energy Union (CFMEU) – ACT Divisional Branch
5. ACT Human Rights Office
6. UnionsACT
7. Transport Workers Union of NSW (TWU), Canberra Sub Branch
8. Liquor, Hospitality and Miscellaneous Union (LHMU)
9. ACT Council of Social Services Inc
10. ACT Government

APPENDIX B: List of Witnesses

Public Hearing 1 December 2005

1. ACT Government

Ms Katy Gallagher MLA, Minister for Industrial Relations

Ms Margaret Cotton, Director, Office of Industrial Relations

2. CFMEU – ACT Divisional Branch

Ms Sarah Schoonwater, President

Mr George Wason, Secretary

Public Hearing 8 December 2005

1. AEU – ACT Branch

Mr Clive Haggard, Secretary

Ms Penelope Gilmour

2. TWU – Canberra Sub Branch

Mr Scott Connolly, Secretary

Mr Peter Sillis, Delegate

Mr Ray Smith, Delegate

Mr Andrew McGrae, Delegate

Mick Deedy, Delegate

Mr Allan McLean, Delegate

3. ACTCOSS

Ms Ara Cresswell, Director, ACTCOSS

Ms Llewellyn Reynders, Policy Officer, ACTCOSS

4. ACT and Region Chamber of Commerce and Industry

Ms Marion Whalan, Manager, Workplace Relations, ACT and Region Chamber
of Commerce

5. UnionsACT

Ms Linda Francis, Vice President, Unions ACT

Mr Peter Malone, Secretary, UnionsACT