Submission

to

Senate Education, Employment and Workplace Relations

Inquiry into the Fair Work Bill 2008

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Introduction

1. The Australian Municipal, Administrative, Clerical and Services Union, Central and Southern Queensland Clerical and Administrative Branch Union of Employees [ASU] represents approximately 10,000 employees in Queensland.

2. The ASU was created in 1993. It brought together three large unions – the Federated Clerks Union (Queensland), the Municipal Officers Association and the Municipal Employees Union, as well as a number of smaller organisations representing social welfare workers, information technology workers and transport employees.

3. Today, the ASU's members work in a wide variety of industries and occupations and especially in the following industries and occupations:

    - Local government (Brisbane City Council)
    - Social and community services (Private and Public)
    - Transport, including passenger air and rail transport, road, rail and air freight transport
    - Clerical and administrative employees in commerce and industry generally
    - Call centres
    - Electricity generation, transmission and distribution
    - Higher education

4. The ASU has members in Brisbane and regional Queensland.

5. The ASU has, during its existence, been an active participant in the Australian industrial relations systems at both a State and Federal level. The Union has established on behalf of its members an array of federal and state awards and agreements providing terms and conditions of employment. In the Federal system, the ASU maintains about 200 underpinning awards, supplemented by hundreds of enterprise bargaining agreements. The same has applied in the Queensland IR system.

6. Since bargaining at the workplace level has been a feature of Australia's IR systems, the ASU has actively bargained with the employers of our members for appropriate terms and conditions of employment and has fully participated in this

system, despite limitations on the ability of unions to bargain on equal terms with employers introduced particularly by the WorkChoices amendments in 2006/07.

7. The submission is authorised by the Branch Secretary of the Union.

Executive Summary

8. The ASU welcomes the Federal Government's commitment to repeal the Howard Government's WorkChoices legislation and to introduce a new national IR legislation based on the policies the ALP took to the last Federal election.

9. The WorkChoices legislation was extremely detrimental to workers and their families. It deliberately set out to strip from employees not only terms and conditions of employment by lowering or eliminating key elements of the safety net of terms and conditions of employment but to weaken the ability of employees to collectively defend and advance their interests as employees.

10. The WorkChoices legislation gave the whiphand in workplace relations to employers, particularly by promoting individual statutory contracts, the overwhelming bulk of which were 'unequal treaties' forced upon employees as 'take it or leave it' arrangements without any pretence at genuine or other bargaining. The award safety net was stripped from employees and reduced to just the five Fair Pay and Conditions Standards. Protections – such as those offered by concepts such as 'protected award conditions' were notional and frequently non existent in practice.

11. The ASU strongly supports the submissions of the ACTU with regard to the impact of the Howard government's WorkChoices legislation on Australian employees. The ASU's members suffered as a result of the previous legislation.

12. The ASU supports the passing of the Fair Work Bill, with reservations, which are noted in this submission. Some of the ASU's concerns are of particular concern to the Union and its members and the submission makes specific recommendations for improvements to the Bill.

13. The ASU and it's members were active participants in the ACTU-led 'Your Rights at Work' Campaign in the lead up to the 2007 election. The ASU spoke to its

members, workers and citizens generally to explain the pernicious, anti-worker nature of the WorkChoices legislation. The Australian people rejected that legislation in the 2007 Federal poll, and expect the Rudd Labor Government to give full effect to the abolition of WorkChoices.

14. The ASU welcomes the Government's initial moves to prevent the making of new individual statutory agreements [AWAs] [other than transitional ITEAs]. The ASU believes that individual statutory agreements should have no place in any industrial relations system in a modern democratic society. Further measures need to be taken to eliminate as soon as possible continuing sub-standard individual statutory agreements.

15. The ASU has been a full participant in the Government's award modernisation program currently being conducted by the Australian Industrial Relations Commission, although the Union is seriously concerned about the impact of this exercise on the terms and conditions of hundreds of thousands of Australian workers who are seeing their terms and conditions of employment being reduced without any demonstrable need or compensation. This issue is further dealt with below and the Union makes strong recommendations about urgent action that is necessary from the Government to address serious disadvantage to workers arising from award modernisation.

This submission deals with a number of key issues of concern to the Australian Services Union arising from the terms of the proposed Bill. The stated purpose of the IR Bill is to create a new framework for workplace relations to commence on 1 July 2009. It will:

- establish a guaranteed safety net of minimum terms and conditions;
- ensure that the safety net cannot be undermined by the making of statutory individual agreements;
- provide for flexible working arrangements;
- recognise the right to freedom of association and the right to be represented in the workplace;
- provide procedures to resolve grievances and disputes;
- provide effective compliance mechanisms;

- deliver protections from unfair dismissal for all employees;
- emphasise enterprise level bargaining underpinned by good faith bargaining obligations and rules governing industrial action; and
- establish a new institutional framework to administer the new system comprising Fair Work Australia and the Fair Work Ombudsman.

16. The ASU submits that these stated objectives are only partly met by the provisions of the proposed Bill and action should be taken by the Government now, and in the further Transition Bill, to address these deficiencies.

17. The ASU submission also deals with other key issues of concern to ASU members in particular industries and sectors, including:

- IR system coverage for local government and social and community services employees

- Multi-employer bargaining, especially in the low paid sector.

Award Modernisation

18. Awards remain very important to members of the ASU and the classes of employees covered by the ASU, notwithstanding the Union's active participation in bargaining over the past two decades. A considerable number of employees represented by the ASU are award dependent, either wholly or in part. This includes employees in business services [including clerical and administrative employees] and in social and community services. In some industries and sectors, award level wage and conditions fixing has been dominant. General award standards are important to the many workers who have common law agreements covering their employment.

19. Of course, even in sectors and occupations where enterprise bargaining pre-dominates, awards remain of vital importance, since they form the base for enterprise bargaining – although this system was partially destroyed by WorkChoices [the base being only the five conditions in the so-called Fair Pay and Conditions Standard]. The Award – combined with the National Employment

Standards - is being restored under Forward with Fairness as the basis of the "Better off Overall Test" and thus is of great importance to all Australian workers, union and non union workers alike.

20. The level of the award minimums set by the AIRC as part of the award modernisation process is therefore at the heart of the Government's promise to the Australian people to restore their industrial entitlements. Unfortunately, on the evidence and the experience so far, this promise is not being honoured by the Government's award modernisation process and the Government must take urgent action to address the serious deficiencies that have already emerged in the outcomes of the process so far.

21. The ASU has been an active participant in the award modernisation processes conducted by the AIRC.

22. The Minister's Award modernisation request required that awards not disadvantage employees and that priority awards be made by the end of 2008. The AIRC published 17 priority awards on the 19th December 2008. Amongst these was the Clerks – Private Sector Award 2010 – an award that the ASU has taken a close interest in.

23. The ASU and its members are bitterly disappointed with the outcome of the award modernisation approach with respect to this award and believes that the making of this award will seriously disadvantage thousands of clerical and administrative employees throughout Queensland. The reasons for this are as follows.

24. The Australian Industrial Relations Commission (AIRC) decision on the final form of the Clerks Private Sector Award has severely cut rates of pay and conditions for clerical workers. The cuts affect clerical workers across the country and significantly reduce their safety net contrary to Government promises that workers would not be disadvantaged.

25. For example, for the first time, clerical workers in Queensland can be required by their employers to work on Saturday mornings as part of their ordinary hours of work.

26. The AIRC has determined a loading of 25% for work on Saturday mornings but this will be cold comfort for the mainly women workers covered by this Award who will be forced to work instead of taking their children to Saturday morning sport or other family activities. The inclusion of Saturday work as "ordinary hours" will create the potential for many thousands of workers to be forced to work Saturdays as part of their normal working week in future.

27. Following the publication of the Exposure Draft of the modern Clerks Award in September, the ASU consulted members and other clerical workers about the impact of working ordinary hours on a Saturday morning. Clerical workers were horrified at the prospect and the ASU gave the AIRC the full results of that consultation, but to no avail.

28. The ASU made strong representations to the AIRC regarding a range of disadvantages that clerical employees would face if the terms of the Exposure Draft were confirmed in the final award. The Commission's decision acknowledged that:

"Extensive submissions were made about the content of the exposure draft for this award. ***The ASU identified a number of areas of disadvantage for current and future employees****."*

29. However, little note appears to have been taken of the extensive list of disadvantage if changes were not made to the draft award. In October the ASU and the Australian Nursing Federation (ANF) went public expressing strong concern about the impact of the proposed modern awards on women workers, including clerical and administrative employees and nurses. These fears have been realized.

30. A list of the key cuts in terms and conditions for clerical and administrative employees including pay rates includes:

- Saturday morning work as part of ordinary hours and extended Monday to Friday spreads of hours for many workers.

- Cuts in the level of minimum wages paid to clerks: the AIRC used the SA Clerks Award classification structure for the modern award but cut $18.10 per week (or $941.20 per annum) from the Level 1 year 1 entry rate of pay without giving any

reason or explanation. General clerical rates will now start at $20 per week or $1000 per year less than clerks under the general Retail Award.

- Casual loadings for Victorian workers have been cut from 33.3% to 25% - a cut for a casual clerk in Victoria working 30 hours per week of $45 each week or $2300 per year.

- No jury service 'make up' pay beyond the level provided in the National Employment Standard [itself inadequate on this point] despite all clerical awards having vastly superior make up pay provisions.

- Higher redundancy standards for workers under state awards have only been preserved for workers employed when the new modern award commences - new employees will lose this part of their safety net and all employees will lose it after five years.

- Additional parental leave entitlements have been lost.

31. Under the Fair Work Bill, employees guaranteed $100,000 per annum in pay will not be covered by awards. Inexplicably, the AIRC has cut this guarantee in half for clerical employees, giving way to pressure from some employers to introduce a so-called exemption rate into the modern clerical award. The Queensland Clerical Employees Award provides exemption categories however specifically states entitlements in which the employee and employer must be bound by. These include:

    - Annual leave
    - Long Service Leave
    - Sick Leave
    - Family Leave
    - Union Encouragement
    - Grievance and dispute settling procedure

- Termination change and redundancy.

32. Exemption rates are not a feature of most Federal awards. The ASU has strongly argued that they are out-dated and again severely cut the safety net for employees.

33. The AIRC has decided to impose the archaic NSW Clerical Award exemption level on all clerical employees. This means that a clerk earning as little as 15% above the highest rate in the award will not be covered by key award safety net protections.

34. The highest rate in the Clerks Award is $740 per week. Thus a clerk earning just $851 per week will be exempt from key award provisions including:

- Hours of work clauses, including spreads of ordinary hours and weekend penalty rates
- Overtime pay clauses
- Minimum engagement periods
- Part-time work arrangements
- All allowances including accident make up pay
- Shift penalties and hours arrangements
- Rest breaks

35. The only award conditions retained by an exempt employee are: Superannuation; Annual leave; Personal/carer's leave and compassionate leave; Public holidays and Community service leave award safety net protections.

36. Since, with the exception of Superannuation [which is largely a legislative entitlement anyway], all these retained conditions are provided for in the National Employment Standards, employees exempted from the operation of the award by this new exemption provision lose all award benefits [except where the award may

supplement the NES in regard to these matters]. These employees will forced to rely simply on the NES plus any limited award supplementation of NES conditions.

37. The table below shows the award terms and conditions lost by 'exempt' employees.

Award clause	**Conditions lost by employees**
Access to the Award and the NES	Right of access to a copy of the award and the NES
Consultation regarding major workplace change	Obligation on the employer to notify employees re changes that will have significant effects on employees and obligation on employer to discuss the effects of those changes and measures to avert or minimize those effects.
Dispute resolution	No access to dispute resolution procedures re disputes arising under the award **or the NES**
Types of employment	No protections for part-time employees including re pro rata entitlements; agreed hours; roster changes; minimum number of consecutive hours. Casual loading. Minimum payment guarantee for casuals.
Termination of employment	Award employment termination provisions in excess of the NES – including job search entitlement.
Redundancy	Award redundancy provisions in excess of the NES including entitlements re transfer to lower paid duties as a result of redundancy; job search entitlement [one day's leave during each week of notice]; higher redundancy pay arising from a NAPSA [transitional provision]
Allowances	Transport of employees – shiftworkers Clothing and footwear allowance Meal allowance Vehicle allowance Living away from home allowance First aid allowance Higher duties allowance District allowances – NT and WA
Accident make up pay	Accident make up pay – Victoria
Payment of wages	Provisions re frequency of payment; method of payment

Ordinary hours of work	Protection of spread of ordinary hours Monday to Friday. Notice of rostered days off
Breaks	Meal break Two 10 minute rest breaks each day
Overtime rates	Overtime rates of pay for work in excess of or ordinary hours of work and outside the spread of ordinary hours: time and a half for the first two hours and double time thereafter. Minimum of three hours overtime on a Saturday if employee works 38 hours Monday to Friday. 10 hours between duty where overtime is worked. Return to duty provisions: minimum of three hours at overtime rates. Time off in lieu of overtime
Saturday and Sunday rates	Saturday [within the spread of hours] – time and a quarter Sunday: double time. Minimum of fours hours work on a Sunday.
Shift work	Shift arrangements – no more than 10 ordinary hours on any day. Afternoon shift allowance: 15% Night shift allowance: 30% Paid meal break Overtime rates: including double time for all work on a Saturday, Sunday or public holidays if ordinary shift hours do not include such days.

38. This approach to award 'regulation' means employers will have open slather on these vital employee protections by paying rates of pay just 15% above the highest minimum rate in the award. The effect of exemption rates is magnified when the fact that many employees are paid above the minimum award rates as a result of enterprise bargaining is taken into account. This has significantly – fatally – undermined the integrity of the safety net for employees affected by this provision.

39. In certain key respects, this situation is worse for these employees than the situation that prevailed under WorkChoices and treats clerical workers unfavourably compared with all other workers in the new IR system.

40. For example and by way of comparison, the Fair Work Bill $100,000 guarantee means that employees paid this amount will not be covered by the Award. This equates to an 'exemption rate' of more than $1900 per week - and the employer must guarantee to pay this rate. **The AIRC exemption rate for clerks is half this sum, with absolutely no guarantee of any compensation other than the higher minimum rate.**

41. Clerical workers lose their award coverage and protection at a level just 44% of the Government's legislated cut off point.

42. As a result, a savage cut in take home pay for clerical workers looms as the key outcome of the award modernisation process. The ASU has repeatedly advised the AIRC and the Federal Government of the impact of award modernisation on women workers and women clerical workers in particular.

43. The Government must now take our warnings seriously and direct the AIRC to restore terms and conditions for clerical workers or face a voter backlash at the next Federal election in the key marginal seats where workers voted to restore their wages and conditions - not see them slashed.

44. The ASU submits that there is absolutely no justification for stripping award covered clerical employees of all essentially all award terms and conditions of employment at a level 44% of the legislated exemption rate. The Senate should recommend that the Minister direct the AIRC to immediately remove this anomaly from the Clerks Private Sector Award.

45. In addition, it is clear that the AIRC has taken an averaging approach to setting terms and conditions of employment in modern awards. The Commission is limited in its ability to retain terms and conditions in some Federal and State awards because of the Government's arbitrary decision that interstate differentials must be eliminated in five years time.

46. The ASU is opposed to any averaging of terms and conditions of employment – since it inevitably leads to a loss of minimum entitlements for some workers without any compensation.

47. The ASU sees no justification for the arbitrary elimination of interstate differentials, or in the averaging of terms and conditions of employment whereby workers lose entitlements without compensation. In the award modernisation process, there has been considerable discussion about a 'swings and roundabouts' approach to award modernisation. However, this is a false and inappropriate concept.

48. In all previous award restructuring exercises where conditions have been traded compensation has been available. Employees traded a condition to gain a benefit. In enterprise bargaining, employees can make conscious decisions to accept or reject bargains with gains and losses. In the current context, employees are at the mercy of the process and stand to lose conditions with no prospect of compensation.

49. The Senate should recommend that the Government move immediately to protect the terms and conditions of employees covered by awards so that they cannot be reduced below levels that are currently applying, now or in the future. This must be done with respect to all employees in a particular class of employment, where that disadvantage can be identified. This cannot be left to a case by case consideration with regard to individual employees who will simply be further disadvantaged in this process.

50. Disadvantage to employees can be identified with respect to the conditions to be lost by comparing the terms of draft modern awards with the Federal or state instruments that they will supersede. The Federal Government must act to ensure that these terms and conditions are protected for all affected employees.

51. The ASU does not accept that there is any constitutional reason why interstate differential cannot continue to exist indefinitely. Employees will see no reason why the integrity of their safety net – which they voted to protect in 2007 – is to be whittled away in the name of award modernisation to create a monolithic industrial relations system which only disadvantages them.

52. The situation facing employees now is worse with respect to Award conditions than existing under WorkChoices and award simplification. Under award simplification, employees were entitled to the preservation of certain award conditions ['preserved

award conditions'] indefinitely. Now employees stand to lose these conditions, either immediately or within five years of January 1st 2010.

Arbitration of Award and NES disputes

53. Access to binding arbitration for the purpose of resolving industrial disputes and grievances has been a central characteristic of industrial relations in Australia since the time of Federation.

54. The absence of access to binding arbitration is a central deficiency of the Fair Work Bill.

55. Arbitration has occurred in two central contexts:

- in the establishment of industrial rights in the form of industrial awards by the Federal and State IR Commissions [and State Wages Boards in Victoria and Tasmania before that]
- In the resolution of specific collective industrial disputes and individual grievances.

56. The use of the conciliation and arbitration power to determine the nature of award terms and conditions is not contemplated by the Fair Work Bill. The passing of this system should not go unremarked. While at the Federal level the resolution of industrial disputes via award making had its peculiarities as a result of constitutional requirements, the system was based upon the active participation of representative bodies of both employees and employers. Without self-directed action by these organisations, tribunals did not make awards.

57. Tribunals acted to assist these bodies resolve issues but did not take responsibility for these matters out of the hands of participants. Award making is now a devolved quasi legislative function in which 'interested parties' can be consulted but they no longer have ownership of the system or the process. This represents a weakening of the voluntary, self-help function of organisations of employees and employers and a heavy strengthening of the role of the State.

58. Awards made by the Australian Industrial Relations Commission and maintained by Fair Work Australia will typically contain a disputes settling clause in the following terms:

> In the event of a dispute about a matter under this award, or a dispute in relation to the NES, in the first instance the parties must attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor. If such discussions do not resolve the dispute, the parties will endeavour to resolve the dispute in a timely manner by discussions between the employee or employees concerned and more senior levels of management as appropriate.
>
> If a dispute about a matter arising under this award or a dispute in relation to the NES is unable to be resolved at the workplace, and all appropriate steps under clause 9.1 have been taken, a party to the dispute may refer the dispute to the Commission.
>
> The parties may agree on the process to be utilised by the Commission including mediation, conciliation and consent arbitration.
>
> Where the matter in dispute remains unresolved, the Commission may exercise any method of dispute resolution permitted by the Act that it considers appropriate to ensure the settlement of the dispute.

59. Thus arbitration of a dispute can only occur – with respect to both award issues and the provisions of the NES – with the consent of both parties. In the absence of such consent, the matter cannot be resolved by binding arbitration.

60. Enterprise agreements made under the terms of the proposed Fair Work Act must include disputes settling provisions which may include access to binding arbitration but only if the parties agree to this at the time of making the agreement. Thus, either side may prevent an agreement containing a binding arbitration clause.

61. It is clear that there were some constitutional difficulties with providing the previous Federal Commission with binding arbitration powers with regard to the settlement of some disputes, namely individual grievances. Even the settlement of disputes under the terms of agreements was considered to be the exercise of a power of private arbitration granted to the Commission by the parties. It was never entirely clear from a policy sense why this should be regarded as a private matter since the agreements made were made under statute and were required to contain provisions providing for the settlement of disputes. This would seem to be in the public domain and the public interest.

62. Nevertheless, these constitutional and other issues do appear to be present in a new Act based on the corporations power and not limited by any notion of requiring interstatedness to provide a firm basis for the exercise of an arbitral power. There appears to be no constitutional reason why Fair Work Australia cannot have the power to resolve disputes by binding arbitration as occurs in the State tribunals at present.

63. Giving either side in a dispute the power to withhold consent to binding arbitration is likely to lead to less dispute resolution, not more. Without the 'incentive' of being likely to suffer an adverse finding in arbitration a party to a dispute is less inclined to genuinely seek to resolve a matter.

64. This will work to the disadvantage of employees in most cases since it is employers who have the power to impose change in workplaces or to act in an arbitrary manner. If that employer also resists binding arbitration, they employee is left with no practical option for dispute resolution outside of costly legal proceedings which will be beyond the resources of most employees.

65. The ASU submits that it is in the public interest that Fair Work Australia have the power of binding arbitration with regard to:

- Resolution of award entitlement related disputes
- Resolution of NES entitlement related disputes
- Resolution of disputes arising under enterprise agreements

66. The resolution of such disputes appears to be a clear exercise of arbitral power, rather than judicial power and has been regularly exercised on that basis in the past.

67. The settlement of disputes is not the determination of legal rights as such and is a function that both the Federal Commission and State tribunals have extensive experience in undertaking in the past. As the ACTU submission notes, many disputes are about an employer's lawful but unfair exercise of authority. A court will be unable to deal with such matters on the basis of legal rights but there is still a need for an arbitral process to ensure fairness at work. This applies whether the dispute arises under the terms of an award, an agreement or in respect to employment-related matters not covered by either an award or an agreement.

68. Moreover, as the ACTU submission also notes, since the Bill proposes to make all industrial action during the life of an agreement [which the ACTU and the ASU opposes] it is essential that there be a way for employees to resolve disputes during the life of the agreement and in relation to matters that arise that were not contemplated in the agreement or which have emerged since.

69. It is otherwise completely unfair and contrary to principles of natural justice to make industrial action by employees in pursuit of legitimate grievances unlawful without providing any other means of resolving the dispute.

70. The determination of legal rights should be retained by the courts but courts are not expert at settling industrial disputes.

71. The Fair Work Bill provides that any non consensual resolution of a dispute must go before a Court for determination as a matter of legal rights. However, this is an impractical course of action in many cases particularly where it requires a judgement as to "reasonableness" rather than a black and white interpretation of a strict legal entitlement.

72. The Federal and State IR Commissions have proved themselves adept at resolving workplace disputes. IR tribunals have been able to work informally, emphasise conciliation [with the 'stick' of arbitration to follow to encourage settlement], act promptly and flexibly to meet the needs of parties and to work with parties to resolve grievances for the long term.

73. This is not a feature of court processes.

74. Frequently, as noted above workplace disputes do not always revolve around a question of legal rights or award or agreement entitlements but to organisational and operational matters in the workplace. These may involve such disputes are matters of:

- Bullying or harassment
- Notification and consultation regarding change
- Implementation of workplace change, including restructures
- Reasonableness of employee requests [see further below]
- Gradings and classifications
- Rosters

75. It is appropriate that there be a means of finally resolving such disputes which may not involve a determination of legal rights but of fairness or reasonableness in a workplace context.

76. The settlement of industrial disputes and grievances through Australia's industrial tribunals has normally been the preserve of lay advocates and representatives of

employee and employer organisations. While lawyers have appeared more frequently in recent times, the presumptive emphasis has remained on lay participation by direct participants in industrial situations as the best likelihood of resolving disputes. Determination of matters through court processes by lawyers is not generally productive in the first instance in terms of resolution of disputes.

77. Award disputes settling clauses also give access to employees to resolve disputes about the operation of the NES in relation to employees. Although the NES provides entitlements to employees that might be enforced through the courts, many of the NES entitlements depend on questions of reasonableness of certain actions of employers and employees.

78. The word 'reasonable' appears 23 times in the NES. While most of these refer to actions or stances of a 'reasonable person', reasonableness appears in relation to a number of entitlements.

79. For example:

- An employer may request an employee to work reasonable additional hours in the week: the employee may refuse to work additional hours if they are unreasonable – considerations of what is reasonable involve a number of factors
- Employees who are parents of non school age children can request a change in working arrangements to assist with the care of the child – the employer may only refuse the request on reasonable business grounds
- Employees who take unpaid parental leave may request and extension of that leave for a further 12 months – the employer must agree to the requested extension unless the employer has reasonable grounds for refusing
- An employer may request an employee to work on a public holiday if the request is reasonable – the employee may refuse the request if it is not reasonable or if the refusal is reasonable. A number of factors must be considered in determining whether a request or a refusal is reasonable.
- An employee engaging in an eligible community service activity is entitled to a period of absence from employment which includes:
- Reasonable travelling time

- Reasonable rest time immediately following the activity so long as the employee's absence is reasonable in all the circumstances.

80. Disputes about the reasonableness or otherwise of such requests and periods of absence are not readily amenable to a resolution by determination of legal rights but by a judgement as to reasonableness in all the circumstances.

81. Moreover, the only practical method of resolving such disputes would appear to be access to a low cost arbitral tribunal. No employee is going to risk legal expenses to determine whether an extension of parental leave is reasonable in normal circumstances. If an employer refuses binding arbitration of such NES related disputes, the employee is left with no practical way of resolving the dispute.

Status of Local Government and Social and Community Services in the new industrial relations system

82. The Federal Government has again decided to base the new Act on the Commonwealth's Corporations power. While this head of power provides adequate certainty for the Commonwealth's ability to legislate in the private sector, it does not provide that certainty for the local government and social and community services sectors.

83. **Local Government**: Since the enactment of the WorkChoices legislation, local government outside of Victoria and the NT has been subject to uncertainty as to its industrial coverage. Following the Etheridge Shire Council case decision, where the Shire was found not to be a constitutional corporation, the Queensland Government moved to settle the status of local government by clearly removing it from any suggestion that it was covered by the Federal system and placing industrial arrangements clearly in the State jurisdiction.

84. Following the Queensland Government move, the NSW Government has also acted to resolve the status of local government in that State by decorporatising it as well. The actions of the NSW Government are detailed in the submission to the Senate by the United Services Union. The ASU fully supports these submissions.

85. If the Commonwealth continues to rely on the corporations power as the basis for its industrial legislation it cannot introduce a single IR system unless the States agree to refer their constitutional powers to the Commonwealth. Uncertainty will remain in the system, which is not in the best interests of either employers or employees.

86. In any event, prior to the 2007 Federal election, the ALP Leader Kevin Rudd undertook that, if the States preferred, local government could continue to operate under State industrial relations legislation.

87. The ASU recommends that the status of local government be considered and determined on a State by State basis and where the relevant parties in the State so determine power to provide industrial laws with respect to local government should be clearly referred to that State for the avoidance of doubt.

88. This is essential since 'decorporatisation' – whether in NSW or Queensland - is only a partial solution to the problem of regulation since it is possible that local authorities may seek to arrange their affairs via outsourcing or joint ventures or the like which may have the characteristics of corporations and thus bring some elements of local government employment back within the purview of the federal system, contrary to the intention of governments. This would again lead to uncertainty and dual system coverage, which the ASU and others consider to be an unstable and undesirable state of affairs.

89. In excising councils from the Federal *Workplace Relations Act* such amendments need to include reference to the excision of both councils and associated corporations and other entities.

90. The ASU submits that action to resolve the status of local government can and should be taken on a state by State basis. This is because the situation with regard to industrial coverage is different in each state. As noted above, Queensland has moved to decorporatise local government and expressed a clear intention and desire to have local government covered by one system – the relevant State IR system.

91. **Social and Community Services:** Much the same situation applies with regard to social and community services. This sector is dominated by a range or government, not for profit community organisations but some for profit providers also exist. Based on the extensive experience of the ASU in the sector, some SACS organisations will and have been considered to be trading and therefore constitutional corporations and others will clearly be not.

92. Other SACS organisations will have a status which is unclear and uncertain and which may even alter from year `to year depending on the activities of the organisation, its funding sources and the like.

93. An example of this was a two year dispute which the ASU had with a Queensland based company known as Australian Communication Exchange (ACE) over their coverage in the State IR system. ACE provides relay services to deaf and hearing and communication impaired members of the community. Additionally, ACE sells a small amount of blank recording tapes which they claimed constitutes more than 2 % of their annual revenue. Although the company was funded by the State government they refused to negotiate a State collective agreement with the ASU due to their tape sales and contractual arrangements, which they believed deemed them to be a trading corporation. The company stalled negotiations from 2003 to 2008. As a result employees working at ACE did not receive a pay increase for over five years. Furthermore, whilst the ASU and the company were in dispute regarding the status of the jurisdiction, the company signed new employees on AWAs.

94. The ASU strongly submits that this uncertainty is unhelpful to all concerned in this vital sector and that this issue should be resolved as soon as possible.

95. Again, the most appropriate way to do this is to consider the position of the SACS sector on a State by State basis.

96. This is appropriate since SACS' funding arrangements are determined largely on a State basis, in response to State and Federal funding agreements. In addition, varying industrial instruments apply to SACS employers and employees and decisions will need to be taken on what instruments in which sector are the most appropriate to provide a fair safety net into the future.

97. SACS is important, not only because of the vital services that it provides to Australians, but because the award system is dominant. Funding agreements are normally based on award entitlements. Enterprise bargaining operates weakly in the sector, mainly for this reason. Employers and employees have no capacity to bargain above award rates and conditions, in most cases.

98. It is essential that the SACS sector be completely in the Federal system or completely in a state system and this is capable of State by State determination without adverse effects.

99. Accordingly, the ASU recommends that the Commonwealth refer its powers back to the States with regard to SACS, where the States request it.

AWAs & ITEAs – expiry and replacement

100. As a result of repeated changes to federal industrial legislation since 1996 and the previous promotion of individual agreements there are now in existence at least four kinds of individual statutory contracts with continuing legal effect.

101. They are:

- Pre-WorkChoices AWAs based on the no disadvantage test as it operated prior to WorkChoices
- WorkChoices AWAs based on a test against the Fair Pay and Conditions Standard
- WorkChoices AWAs subject to the Fairness Test introduced in 2007
- ITEAs – subject to the new no disadvantage test.

102. All these individual instruments have a different basis and provide different and possibly unfair and unequal outcomes for employees, even those in the same workplace. All such individual arrangements have a nominal expiry date – which can be up to five years in the case of AWAs or the 31st December 2009 in the case of ITEAs.

103. The Government has decided that all these agreements shall be allowed to continue to operate until their nominal expiry dates and thereafter until terminated in accordance with the law.

104. AWAs were able to be offered – and were - up to the death knell of the WorkChoices legislation with a five year life which means that some of the instruments are fully operative until early 2013. All such agreements however continue in effect until terminated or replaced. This includes ITEAs.

105. The ASU strongly submits that it is unfair and unreasonable for employees to continue to be bound by individual agreements that would not meet the tests under the new IR system to operate from 1st January 2010. Many, if not most, of these agreements were not freely entered into but were 'take it or leave it' arrangements imposed on workers at the commencement of employment and in particularly inappropriate circumstances..

106. These individual contracts were assessed under a variety of tests as noted above, but all such tests were 'point in time' tests; that is to say that the test was whether

the agreement passed the test at the time it was made and there is no obligation under such agreements to ensure that future wage increases were included or that the agreement keeps pace with improvements in the safety net, including minimum wage rates. As a result, agreements can rapidly become sub-standard over time, even if they met the test at a particular point.

Case study – sub-standard agreements in the aviation industry

Case study 1: Workplace: Aviation Ground Handling – Queensland

Industrial Instrument: ITEA

ITEA NED: 31 December 2009 however will continue to operate until it is replaced or terminated in accordance with the *WPR Act.*

Relevant Awards: Clerical employees Award- Queensland 2002
Airlines Operations (TWU) Award – 1998

Rates of pay differential between ITEA and Award:

Paid under ITEA

Customer Service Agent:	$127.86 less per week
Customer Service Supervisor:	$127.62 less per week
Ramp Baggage Handler:	$140.74 less per week
Ramp Leading Hand:	$129.30 less per week

Case study 2: Workplace: Australian Airsupport Pty Ltd (Menzies)

Industrial Instrument: ITEA

ITEA NED: 31 December 2009

Relevant Award: Airline Operation - Clerical & Administrative Award 1999

Difference between ITEA and Award:

Paid under ITEA

Customer Service Agent:	$17.21 less per week

Case study 3: Toll Dnata Customer Service Workers

History

Staff working at Toll Dnata are employed under several different workplace agreements

- Skystar Airport Services Collective Agreement – for casual staff
- Westaff Pty Ltd AWA's – for permanent staff prior to being employed by Toll Dnata.
- Toll Dnata Airport Services AWA's
- Toll Dnata Airport Services ITEA's

Consequently, there are three (3) different pay rates dependant on which agreement workers are employed.

Skystar pays the most, Westaff pays the least and Toll Dnata pays in between; which can result in the three (3) groups of workers doing the same job at the same time and being paid three (3) different amounts dependant on their agreement.

The Toll Dnata AWAs and ITEAs are identical (including spelling mistakes) apart from the changed name.

What's happened in Queensland

Staff at Brisbane Airport are predominantly upset about all being employed on different rates of pay (Skystar v Westaff v Toll Dnata) for doing the same job.

All staff are scared about speaking to ASU Officials as they have been told by their Manager, that they will be sacked if they join a Union.

Our members are terrified of management finding out who they are and despite wanting changes will not put their hand up for fear of losing their job.

ASU Officials have had numerous meetings in the airport car park and on several occasions, the Toll Dnata Manager has come out to the carpark to watch and intimidate people into not talking with us.

On one occasion, the Manager approached ASU Officials and asked for our business cards under the pretence he would like to invite us in the workplace for an official staff meeting (we are still awaiting his call). The Manager has repeatedly told staff since then, that he has invited us in and that we never show up in an attempt to discredit the ASU.

Most new staff are employed through Westaff, on the understanding that once they have finish probation, that they will be transferred over to Toll Dnata. Staff are being told that if management find out they have joined a Union they will not be employed by Toll Dnata.

Staff have been threatened with instant dismissal for placing Union notices on the staff noticeboard. An example of this is where, one staff member was issued a written warning

for placing an article from “The Australian” newspaper (in relation to Toll Dnata in Victoria and their use of ITEAs) on the staff noticeboard.

Staff members working on the Service Desk are paid at lower classification levels than the position they are actually working. The Service Desk position (PSA 2) is listed as being $29.86/hour yet staff are paid at CSO Check-In (PSA 5) rates of $22.00/hour. Their roster says “Service Desk” but payslip says PSA 5.
When they have inquired about this, they have been told “it’s a typo” on their contract which indicates that they are engaged as a PSA 2.

Other staff working higher positions have mentioned to management that they should be getting paid for the position they are working, only to find on the next roster they have been put back to doing Check-Ins (even though they have been trained and signed-off to work the higher jobs).

This company has utilised Workchoices to underpay, threaten, intimidate and deny their employees’ rights to representation.

107. The ASU recommends that these agreements be dealt with as follows:

- All individual statutory agreements continuing in force beyond 1st January 2010 should be deemed to include from that date all minimum protections afforded by the National Employment Standards and the modern award which applies to employees in the industry or occupation in which the employee works.
- Where a continuing agreement would fail the new Better off Overall Test if made on or after the 1st January 2010, the employee can make an application to have the agreement terminated. The agreement would be terminated by FWA unless it was in the public interest not to do so or if the employee would be worse off for any reason if this occurred. If the agreement is terminated, the employee would be covered by the modern award or any collective agreement operating in the workplace concerned so long as that arrangement provided a better outcome for that employee.
- When an individual agreement passes its nominal expiry date, the agreement shall automatically cease to operate and the employee covered by the NES, the modern award applicable and any agreement operating in the workplace, so long as that outcome was not detrimental to the employee concerned.

Collective Agreements – Better off Overall Test

108. Fair Work Australia (FWA) will apply the Better off Overall Test to ensure that each employee covered by the agreement is better off overall in comparison to the relevant modern award.

109. The Test will be applied as a point in time test, similar to the application of the No Disadvantage Test. Minimum wage provisions in awards or the National Minimum Wage will override less generous minimum wage provisions in an enterprise agreement, to ensure that agreements are not made with the intention of bypassing the safety net. This will mean that where minimum award rates increase during the life of an agreement to above the agreement rates, employers will have to makeup any difference.

110. The Better off Overall Test must contain procedural safeguards to ensure that employees are not disadvantaged by decisions of FWA. These safeguards must ensure that the current inadequacies in the operation of the Fairness Test are not replicated in the new arrangements.

111. The incapacity to question or challenge a decision of FWA is a significant shortcoming of the current process. There is no opportunity for a union, on a member's behalf, to explain or clarify the operation of a particular Award in the event that the Workplace Authority misinterprets or overlooks a particular clause.

112. The ASU has several examples of the Workplace Authority, relying solely on information from an employer, using the incorrect Award to determine whether a group of workers on AWAs were being properly recompensed. This occurred at Weststaff in Queensland where the Workplace Authority applied the incorrect award which meant that employees were underpaid and are consequentially still owed back payment.

113. The capacity for employers, where an agreement has been deemed not to have passed the Fairness Test, to give undertakings to the Workplace Authority without reference to the affected employee simply adds to the difficulty, for the employee or his/her representative, of establishing precisely what undertaking has been given

and from when it must apply. This obviously affects any ability to accurately calculate what is owed.

114. In addition to procedural issues there is also the question of resourcing FWA. The volume of work being handled by the Workplace Authority is well beyond its capacity to assess in a timely fashion.

115. Currently there is a significant time delay between the lodgement of agreements and the assessment by the Workplace Authority. The ASU has examples where it has taken almost eighteen months for an employee to be told that his agreement has not passed the Fairness Test. Examples of twelve month delays are not uncommon.

116. This greatly increases the likelihood of an employee having left the employ of a particular employee without knowing that his/her agreement has not met the Fairness Test. This of course complicates matters in relation to claiming any shortfall which may be due. For the employee or his/her representative, the tracking of accurate information is labour intensive and extremely time consuming.

Transmission of Business/Transfer of Business

117. **Re: section 311 (1) (b)**

118. Under this section a transfer of business will only occur if an employee goes to work for the new employer within three months. The ASU is concerned that this will encourage new employers to avoid the provisions by withholding offers of employment for 3 months or more. We submit that the 3 month period should be extended to 6 months to discourage avoidance.

119. **Re: Section 312**

120. Section 312 fails to transmit awards and enterprise agreements which are in force on 1 July 2009 through to January 2010.

121. As Section 312 fails to transmit the current awards and enterprise agreements that will be in force on 1 July 2009 through to January 2010 it is assumed that transitional provisions will come into force which will provide for the transfer of those awards and enterprise agreements which currently exist.

122. Section 312 is included and discussed below.

312 Instruments that may transfer 3

Meaning of ***transferable instrument***

(1) Each of the following is a ***transferable instrument****:*

(a) an enterprise agreement that has been approved by FWA;

(b) a workplace determination;

(c) a named employer award.

Meaning of ***named employer award***

(2) A ***named employer award*** *is a modern award that is expressed to cover one or more named employers.*

123. **Paragraph (a) of s312 limits the meaning of transferable enterprise agreement to:**

(a) an enterprise agreement that has been approved by FWA.
Enterprise agreements approved by Fair Work Australia can only come into force after 1 January 2010.

124. All existing enterprise agreements in force on 1 July 2009 through to January 2010 have not been approved by Fair Work Australia. It will be necessary therefore to make provision in the transitional provisions for all categories of enterprise agreement that existed before 1 July 2009 to be legislated as transferable instruments. (All enterprise agreements existing on 1 July 2009 through to the commencement of 2010 will either be pre reform agreements certified by AIRC or approved by either the Office of the Employment Advocate or the Workplace Authority.)

125. **Paragraph (c) of s 312 limits the meaning of transferable award defined as follows: "A named employer award** is a modern award that is expressed to cover one or more named employers.

126. Awards in force on and before 1 July 2009 through to the commencement of 2010 will not be modern awards. Modern awards can only come into force after 1 January 2010. It will be necessary therefore to make provision in the transitional

provisions for all categories of awards of that existed before 1 July 2009 through to 2010 to be legislated as transferable instruments.

127. **Legislative uncertainties in early 2009 until Transitional Provisions are known.** It is important for industrial parties subject to transfers of business around 1July 2009 that information regarding the transitional provisions for the operation of this Part is available well before 1 July 2009 if this part is to operate from 1 July 2009. This is to enable planning and provide certainty and security to transferring employees.

128. **Unfair provisions**

129. **The ASU supports the following ACTU submissions to the Senate regarding unfair provisions.**

- **Accrued leave entitlements**: the Bill allows a new employer to offer employment to a transferring employee on terms that they lose their accrued annual and personal/carer's leave entitlements. If the employee refuses this offer, it appears they will not be entitled to a severance payment from the old employer. This is unfair. Although FWA will have the power to reverse this conclusion in individual cases, we submit that it would be better to make it clear that in every case an employee is entitled to reject an offer of employment with a new employer which does not recognise his or her accrued entitlements, and to instead accept a severance payment from the old employer.
- **Unfair dismissal**: the Bill allows a new employer to require a transferring employee to re-serve a qualifying period for accessing unfair dismissal remedies. This is unfair, particularly to longstanding employees. It is also unwarranted, since the new employer can conduct its own 'due diligence' to ascertain which employees should be taken on. The provision should not be accepted.

Unfair Dismissals

130. Under the Workplace Relations Act the current unfair dismissal laws provide that an unfair dismissal application must be made within 21 days of a dismissal taking effect. However under the new workplace relations system the time limit to lodge an unfair dismissal claim will be reduced from 21 days to 7 days.

131. This reduction in time is contrary to the governments claim that the new unfair dismissal laws will deliver protections for all employees. The current system of 21 days is a reasonable period of time within which it is feasible to lodge an unfair dismissal claim.

132. The ASU has a regional office that is open only intermittently as union officials operate largely in the field. Rural and regional employees will have great difficultly in obtaining unfair dismissal advice, gaining the necessary industrial support and filing an unfair dismissal application within the 7 day time limit.

133. Employees working in small public and private sector workplaces will also experience difficult in meeting the 7 day time limit. These small workplaces are often without on-site union delegates and therefore access to unfair dismissal information will be limited.

134. The ASU is already pressed to file unfair dismissal applications within the current 21 day time limit. Therefore a move to 7 days is a severe reduction to already established legal rights.

135. The Explanatory Memorandum states the aim of the new time limit is to promote quick resolution of claims and increase the feasibility of reinstatement as an option. However the ASU believes the reduction in time will actually reduce the number of unfair dismissal claims lodged as employees will struggle to meet the 7 day time limit.

136. This will no doubt increase the number of unfair dismissal applications requesting an extension of time. Whilst Fair Work Australia (FWA) will have the ability to grant a further period, it must be satisfied that there were exceptional circumstances for the delay in lodging the application. There is no guarantee that an application lodged outside of the 7 day period will be granted an extension.

137. What might have been exceptional circumstances in the terms of a 21 day context, takes on a completely different meaning within a 7 day timeframe. Applications to allow for a further period of time will no doubt create further delays and costs for both the

employee and employer. A 7 day time limit will encourage dismissed employees to lodge claims simply to preserve their legal position while they obtain advice as to whether to proceed. This will increase work for FWA, and increase costs for employers.

138. In the period 2007-2008 the Australian Industrial Relations Commission received 6067 applications regarding termination of employment, the Queensland Industrial Relations Commission received 170 applications for reinstatement.

139. Data obtained in both the Federal and State Industrial Relations Commission Annual Reports shows a massive decline over the years in the number of unfair dismissal claims being lodged. The ASU is concerned the new time line being imposed by the government will continue this current trend, with unfair dismissal applications declining even further and potentially seeking to exist in the not too distant future.

140. The ASU firmly believes that the new time limit of 7 days is harsh, unjust and unreasonable and submits that the current system of 21 days remain intact.

Probationary/Qualifying Periods of Employment

141. The ASU supports the ACTU submissions on this point, that is

- Oppose the 6 month qualifying period of employment – support 3 months
- Oppose 12 months qualifying period for small business employees
- Allow lesser or no qualifying or probationary periods of employment by agreement at point of engagement.

Flexibility Clauses

142. The ASU supports the ACTU submissions re requiring that awards must allow a party to terminate a flexibility arrangement by giving four weeks notice.

Recommendations

143. **Award modernisation**

144. The Senate should recommend that the Minister direct the AIRC to immediately remove this anomaly [the exemption level] from the Clerks Private Sector Award.

145. The Senate should recommend that the Government move immediately to protect the terms and conditions of employees covered by awards so that they cannot be reduced below levels that are currently applying, now or in the future.

146. **Access to Arbitration**

147. The ASU submits that it is in the public interest that Fair Work Australia have the power of binding arbitration with regard to:

- Resolution of award entitlement related disputes
- Resolution of NES entitlement related disputes
- Resolution of disputes arising under enterprise agreements

148. **Status of local government and SACS**

149. The ASU submits that action to resolve the status of **local government** can and should be taken on a state by State basis. In this situation, it is appropriate and important that the key bodies representing employers and employees, in conjunction with State governments, have the ability to determine one system in which they should operate.

150. It is essential that the SACS sector be completely in the Federal system or completely in a state system and this is capable of State by State determination without adverse effects.

151. Accordingly, the ASU recommends that the Commonwealth refer its powers back to the States with regard to SACS, where the States request it.

152. **AWAs and ITEAs - expiry**

153. The ASU recommends that these agreements be dealt with as follows:

- All individual statutory agreements continuing in force beyond 1st January 2010 should be deemed to include from that date all minimum protections afforded by the National Employment Standards and the modern award which applies to employees in the industry or occupation in which the employee works.
- Where a continuing agreement would fail the new Better off Overall Test if made on or after the 1st January 2010, the employee can make an application to have the agreement terminated. The agreement would be terminated by FWA unless it was in the public interest not to do so or if the employee would be worse off for any reason if this occurred. If the agreement is terminated, the employee would be covered by the modern award or any collective agreement operating in the workplace concerned so long as that arrangement provided a better outcome for that employee.
- When an individual agreement passes its nominal expiry date, the agreement shall automatically cease to operate and the employee covered by the NES, the modern award applicable and any agreement operating in the workplace, so long as that outcome was not detrimental to the employee concerned.

154. **Enterprise Bargaining**

155. The Better off Overall Test must contain procedural safeguards to ensure that employees are not disadvantaged by decisions of FWA. These safeguards must ensure that the current inadequacies in the operation of the Fairness Test are not replicated in the new arrangements.

156. **Transfer of Business**

157. Under this section a transfer of business will only occur if an employee goes to work for the new employer within three months. The ASU is concerned that this will encourage new employers to avoid the provisions by withholding offers of employment for 3 months or more. We submit that the 3 month period should be extended to 6 months to discourage avoidance.

158. Awards in force on and before 1 July 2009 through to the commencement of 2010 will not be modern awards. Modern awards can only come into force after 1 January 2010. It will be necessary therefore to make provision in the transitional provisions for all categories of awards of that existed before 1 July 2009 through to 2010 to be legislated as transferable instruments.

159. It is important for industrial parties subject to transfers of business around 1July 2009 that information regarding the transitional provisions for the operation of this Part is available well before 1 July 2009 if this part is to operate from 1 July 2009. This is to enable planning and provide certainty and security to transferring employees.

160. **Accrued leave entitlements**: the Bill allows a new employer to offer employment to a transferring employee on terms that they lose their accrued annual and personal/carer's leave entitlements. If the employee refuses this offer, it appears they will not be entitled to a severance payment from the old employer. This is unfair. Although FWA will have the power to reverse this conclusion in individual cases, we submit that it would be better to make it clear that in every case an employee is entitled to reject an offer of employment with a new employer which does not recognise his or her accrued entitlements, and to instead accept a severance payment from the old employer.

161. **Unfair dismissal**:

162. The Bill allows a new employer to require a transferring employee to re-serve a qualifying period for accessing unfair dismissal remedies. This is unfair, particularly to longstanding employees. It is also unwarranted, since the new employer can conduct its own 'due diligence' to ascertain which employees should be taken on. The provision should not be accepted.

163. The ASU firmly believes that the new time limit of 7 days is harsh, unjust and unreasonable and submits that the current system of 21 days remain intact.

164. **Flexibility clauses**

165. The Act/Awards must allow a party to terminate a flexibility arrangement by giving four weeks notice.

Concluding Comments

166. In addition to the above submissions, the ASU supports the QCU submissions in relation to state based employees that will be disadvantaged by the proposed Bill in comparison to the Industrial Relations Act (Qld) 1999.

167. With approximately 45% of employees in Queensland covered by the State IR system, in the event that the states refer their industrial relations powers (if and

when those states do so), Queensland employees will be significantly disadvantaged including the following areas:

- Request for flexible working arrangements
- Parental leave (dismissal, reasonable business grounds)
- Content of agreements
- Arbitration

168. Employees under the state IR system who are transferred into the federal system will be covered by both federal and state legislation in relation to parental leave, where the state entitlements are more generous. This will create unnecessary confusion and leave employees under the federal system with substandard entitlements in comparison.

169. The Bill does not provide employees with protection against dismissal due to pregnancy. In comparison to the state IR system this is a huge disparity and removes job security from working women.

170. Although the Bill provides employees with the ability to extend parental leave beyond 12 months based upon the employer's decision in terms of 'reasonable business grounds', the term 'reasonable business grounds' is not explained, defined or expanded. In the absence of such definition, employers would have the ability to deny extended parental leave based upon their interpretation of "reasonable business grounds". This is inferior to the state IR system which states that employers are to consider numerous factors including the impact on the employee as a caregiver and the dependent.

171. The Bill places limitations on the content of agreements by introducing the term "permitted matters". Under the state system no restrictions are place on the content of agreements. It is of vital importance to Queensland employees that no limitations or restricts are imposed regarding the content of agreements to ensure that agreements are tailored to meet the needs of specific workplaces, industries and regions.

172. Arbitration is an essential element in resolving workplace issues in instances where negotiations and /or communication has broken down between parties. The Bill allows for arbitration by FWA in limited circumstance or by consent. In comparison

to the state system this vastly differs from the board range of matters that the QIRC can arbitrate. In addition, the ASU is concerned that the prerequisite of consent will drastically decrease the ability to arbitrate and significantly disadvantage employees.

173. The ASU calls upon the Inquiry members to recommend that the Bill is amended to incorporate parity with the state industrial relations system to ensure that employees in the state system are not disadvantaged.