Senate Education, Employment and Workplace Relations Committee

Inquiry into the *Fair Work Bill 2008*

Electrical Trades Union of Employees Queensland

Submission

January 2009

1. The Electrical Trades Union of Employees Queensland (ETUQ) is a transitionally registered association registered pursuant to the *Workplace Relations Act 1996* (Fed). The ETUQ has over 11,000 members employed in or in connection with the electrical industry in Queensland. Our membership has increased consistently each quarter from 7,661 in December 2001 to its present level.
2. Our members are employed in a range of industries, including electricity generation, transmission and supply, electrical contracting (construction), manufacturing, maintenance, lifts, state and local government, aerospace, rail, sugar, meatworks, labour hire, as well as which we have members who are apprentices across the range of industries.

3. The ETUQ was first registered in 1915 and has a long proud history of representing members in the electrical industry in Queensland.

4. The ETUQ has secured wages and working conditions of a high level for our members through:
    - Enterprise and industry bargaining;
    - Income protection;
    - Portable redundancy scheme for employees of electrical contractors;
    - Industry superannuation;
    - Occupational health and safety;
    - Industry training.

5. The ETUQ was actively involved in the review of electrical safety legislation in Queensland in 2001, the development of the Electrical Safety Act 2002, and subsequent changes to the monitoring, enforcement and investigation of safety in the electricity industry. The ETUQ is involved in consultation processes around Occupational Health and Safety generally, and electrical safety in particular.

Background

6. Prior to 26 March 2006, the majority (approximately 90%) of members of the ETU in Queensland were employed pursuant to awards and/or agreements of the Queensland Industrial Relations Commission. Their employment was regulated by the *Industrial Relations Act 1999* (Qld) (the Qld Act).

7. With the introduction of *Workchoices*, approximately 95% of members in Queensland were transferred to the federal system, resulting in significant changes to their industrial rights.

8. The ETUQ strenuously objected to the Howard government's use of the Corporations power to compulsorily transfer workers into the federal industrial

relations system. The ETUQ continues to object to this forced 'federalisation', which has necessitated the ETUQ's obtaining transitional registration pursuant to the *Workplace Relations Act 1996*, and left only those members who are state and local government employees, and a handful of members employed by other unincorporated entities, within the Queensland State Industrial Relations system.

9. The ETUQ is aware of the High Court decision that upheld the constitutional validity of *Workchoices*, and we acknowledge that as a result of that decision, employers who are constitutional corporations and (most but not all) incorporated entities are automatically covered by federal industrial legislation. However we strongly believe that State unions still have a role to play and state industrial jurisdictions should remain.

Workchoices

10. The March 2006 amendments to the *Workplace Relations Act 1996* (Workchoices), resulted in the diminution of the industrial rights and conditions of the large portion of the ETUQ's membership who subsequently fell within the purview of that legislation.

11. Our members who were covered by QIRC Certified Agreements lost:

    - Comprehensive grievance and disputes handling procedures in existing QIRC certified agreements;
    - Access to a simple and effective wages recovery process through the QIRC;
    - User friendly bargaining provisions that included a range of agreement types including project agreement and multi-employer agreements;
    - Unrestricted content in certified agreements;
    - Scrutiny of certified agreements by the QIRC against a no-disadvantage test;
    - Conciliation and arbitration in the QIRC for unfair and unlawful dismissal matters, with few jurisdictional barriers;

12. The ETUQ and its members campaigned hard against the excesses of *Workchoices*, and sought a return to a more balanced system of industrial relations that genuinely afforded industrial parties opportunity to reach agreements that were suitable to their particular workplaces, and avenues of assistance in instances where disputation existed.

13. The Federal ALP promised to provide that system. The Federal Labor Opposition promised to "tear up *Workchoices*" and bring balance into the industrial relations system.

Fair Work Bill

14. The ETUQ commends the government for the widespread consultation that was undertaken prior to the introduction of the Fair Work Bill (the *Bill*).

15. The *Bill* provides a number of significant improvements over *Workchoices*.

16. In terms of the union's ability to represent the interests of its members, the *Bill* provides:

    - Automatic recognition of a union as the bargaining representative of its members at each workplace, except where a member specifically opts out;
    - The ability of a union as a bargaining representative, to obtain an order from Fair Work Australia (FWA) to force an employer to bargain in good faith;
    - Fewer restrictions on the types of matters that can be included in agreements;
    - A union official's right of entry to a site based on the ability of that union to represent those employees, rather than based on the union being bound by an award or agreement operating at the workplace.

17. The Abolition of the Australian Pay Classification Scales (APCS), allowing for modern awards to contain classification structures and wage rates, is welcomed. The APCS were difficult to understand, used to strip awards of classification structures/career paths, and further fragmented the sources to which employees and employers had to turn to obtain information on conditions of employment.

18. The ETUQ commends the abolition of Employer Greenfield Agreements.

19. The ETUQ commends the change Employer/Union Greenfield Agreements that requires an employer to give 14 days notice to all relevant unions prior to an agreement being made. This will help to ensure that unions who represent employees who will be employed on the worksite have an opportunity to be party to the workplace agreement, and avoid exclusive agreements that effectively leave part of the workforce unrepresented.

20. The ETUQ is aware that of debate regarding whether the *Bill* addresses all of the issues raised by the International Labour Organisation (ILO) in respect of deficiencies in *Workchoices*. This submission does not provide an analysis of whether the *Bill*, if passed would meet Australia's obligations under international labour agreements. However the ETUQ would not, under any

circumstances, support any legislative provisions that breached Australia's obligations under international labour agreements.

Bargaining and Protected Industrial Action

21. Under the Qld Act, the intention to commence bargaining is notified in writing, a peace period applied, and then, provided the nominal expiry date of any previous agreement has passed, industrial action may be taken by 3 working days' notice (working day is defined as a day on which employees normally perform work).

22. *Workchoices* introduced a complex scheme for bargaining that was heavily weighted in favour of employers, in particular large employers.

23. *Workchoices* introduced the requirement for a Protected Action Ballot (PAB) to be conducted prior to employees taking protected industrial action in support of their bargaining claims. The PAB process places unfair and unreasonable barriers in the way of union members' exercising their legitimate right to use industrial action to advance their pursuit of a workplace agreement.

24. The AEC's minimum timetable for a postal ballot (the default position in the Act) is around 18 days. This is based on Australia Post published delivery times of next business day within metropolitan areas and 2nd business day in non-metropolitan areas. In many cases this is not sufficient and if relied on, disenfranchises employees. The alternative is a longer turnaround.

25. The PAB has been manipulated by employers to frustrate and delay bargaining. Employers defend PAB applications with lawyers and barristers who come armed with technical legal arguments aimed at delaying the issuing of an order.

26. If an order is issued and substantially appealed, the potential for delay is significantly greater.

27. PABs are costly to run – legal costs on the part of employers (more often than not); taxpayers' and unions' costs to fund the ballot; AIRC time spent perusing the usually substantial documentation and hearing and determining the application; pointless, as they do no more than a simple union ballot process was able to achieve previously; and stand in the way of employees' taking lawful industrial action.

28. Whilst we note that the *Bill* makes some changes in respect of obtaining a protected action ballot order, for the most part the *Workchoices* provisions are

retained. The ETUQ's submission is that there should be no requirement for a protected action ballot when union members are deciding whether to take protected industrial action in support of their bargaining claims.

Pattern Bargaining

29. Under the Qld Act there is no prohibition on pattern bargaining. The ETUQ has been able to develop claims across an industry. Employers in some industries are happy with a pattern approach to bargaining, as it ensures consistency in wages and conditions, and militates against a responsible employer who provides fair pay and good working conditions being undercut by one who gets a competitive edge at the expense of their employees' conditions.

30. *Workchoices* made pattern bargaining unlawful.

31. The *Bill* retains the definition of pattern bargaining used in *Workchoices* which is very broad, and a person may apply for an injunction to restrain a bargaining representative from pattern bargaining.

32. Where a bargaining representative is engaging in pattern bargaining, the protected status of employee claim action is removed. Furthermore, a person accused of pattern bargaining bears the onus of proving that they are genuinely trying to reach agreement with the employer.

33. The ETUQ submits that the prohibitions on pattern bargaining in the *Bill* should be removed and it should be a matter for the industrial parties to determine whether bargaining is conducted on an industry basis.

Agreements

34. The Qld Act does not place restrictions on the content of agreements

35. The content of agreements was restricted by the concept of "prohibited content", which precluded a list of items from inclusion in agreements. Seeking 'prohibited content' in negotiations for an agreement could result in fines of up to $33,000 for a union and $6,600 for an individual, and similar fines for an employer who lodged an agreement with prohibited content with the Workplace Authority.

36. The *Bill* does not retain "prohibited content", but does restrict the content of agreement to "permitted matters. The ETUQ commends the expansion of "matters pertaining" to include matters pertaining to the employer/union relationship, and the inclusion of payroll deductions as permitted matters.

37. However the ETUQ is of the view that it should not be the role of legislation to determine what should and should not be allowed/required in a workplace agreement. Provided an agreement reached is acceptable to the parties and stands up against an appropriate no disadvantage test, it should not be thwarted. Employers, unions and employees should be allowed to reach agreement on any matters that they consider relevant to their concerns. The role of FWA should be to scrutinise the document to ensure that it does not disadvantage employees.

Underpayment of Wages

38. Unpaid or underpaid wages, allowances, superannuation etc are all able to be recovered by application to the QIRC[1]. There is no filing fee, turnaround is quick, conciliation is available and most matters are resolved at conciliation, lawyers are not permitted to appear, and it is a no costs jurisdiction.

39. The Qld Act also makes provision for "Attachment notices", by which an employee could require a prime contractor to hold back payment from the employee's employer, to the value of unpaid or underpaid wages. The attached monies could be released on an order of a Magistrate or by withdrawal of the attachment notice.

40. Attachment notices prevented an employer from closing down a company to avoid paying a wages claim, which is not uncommon in some sectors of industry.

41. The *Bill* should be amended to provide some mechanism similar to attachment notices, as a protection for employee entitlements.

Termination of Employment

42. ETUQ members[2] whose employment was terminated prior to 26 March 2006 could file an application with the QIRC for reinstatement, subject to their having served a probationary period of 3 months. The application had to be filed within 21 days of termination.

43. With Workchoices, the 21 day limitation for filing an application remains, however those members transferred to the federal system have many more

[1] Claims are limited to amounts not exceeding $50,000.00

[2] Exclusions in respect of short term casuals, fixed term & fixed task employment, and employees whose wages exceeded $XXX

jurisdictional hurdles to overcome before the unfair termination of their employment can be considered by the AIRC. They are excluded if:

- They have not completed 6 months qualifying period;
- Their employer has fewer than 100 employees;
- Even a part of the reason for their dismissal is operational reasons.

44. Furthermore if their dismissal was for a prohibited reason, they are able to proceed only in the courts, which is more costly.

45. The Bill retains a qualifying period of 6 months where the employer is not a small business employer, and *increases* the qualifying period to 12 months where the employer is a small business employer.

46. We welcome the reduction from 100 employees, in the size of enterprise that can be held to account for the unfair dismissal of an employee, however the ETUQ is firmly of the view that fair treatment should not be correlated with business size. All employees should be entitled to access a remedy if they believe they have been unfairly dismissed.

47. The Bill should be amended to remove the exemption for employers with fewer than 15 employees, and remove any qualifying period beyond the original 3 month probationary period.

48. The Fair Work Bill provides only 7 days from the date the termination takes effect in which to apply to FWA for a remedy. Whilst this period may be extended by FWA in certain circumstances, 7 days does not provide anywhere near enough time for an employee to consider their circumstances and obtain legal or other advice and lodge an application.

49. Even with a 21 day window, the AIRC deals with a high volume of applications for extension of time. It follows that there would be appreciably more extension of time applications with a 7 day window.

50. The Bill should be amended to provide for an application to be made within 21 days of the day on which the dismissal took effect.

51. Under the Qld legislation, dismissed employees could elect to proceed to arbitration if conciliation was unsuccessful. There was also the capacity to appeal a decision. The Bill permits FWA to hold a hearing in respect of a termination of employment if it considers it appropriate to do so, taking into account the views of the parties and whether a hearing would be the most cost effective and efficient way to resolve the matter. Appeals are not permitted unless FWA considers it would be in the public interest.

52. The ETUQ is concerned that the employee's options are potentially restricted by these provisions.

53. The Bill should be amended to clearly give an applicant the right to elect to proceed to hearing, and to appeal a decision of FWA.