

Preface

On 23 June 2005 the Senate referred to the references committee an inquiry into the various forms of industrial agreement-making, including Australian Workplace Agreements, to ascertain whether their objectives are being met and whether the agreement-making system, including proposed government changes, meets the social and economic needs of all Australians. The committee was asked to have particular regard to:

- the scope and coverage of agreements, including the extent to which employees are covered by non-comprehensive agreements;
- the capacity for employers and employees to choose the form of agreement-making which best suits their needs;
- the parties' ability to genuinely bargain, focusing on groups such as women, youth and casual employees;
- the social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities;
- the capacity of the agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards; and
- Australia's international obligations.

The committee was asked to report by 31 October 2005.

This report in chapter 1 provides a brief overview of the history of workplace agreements since the introduction of the Workplace Relations Act in 1996, including the scope and coverage of different types of agreements. The report then critically examines the economic and social arguments which have underpinned the Government's legislative efforts in industrial relations. The argument about industrial agreement-making is about the relativities of bargaining power. The evidence showed that the Government's promotion of AWAs is designed to tilt the balance of power the employers' way. The issue of good faith bargaining and the practical effect of AWAs on workers' wages and conditions are the subject of chapter 2. The report then examines in chapter 3 the Government's central economic justification for its industrial relations changes; namely, that only through such changes will the economy grow and employment rates increase. The committee considers evidence which challenges these claims, noting that such assumptions are based less on any serious economic analysis than on unquestioning faith. Chapter 4 considers the social effects of Government policies on industrial relations, including the work and life balance issue and the gender pay gap.

Anticipation of the WorkChoices Bill

Interest in this inquiry intensified as the committee was finalising its report because of the imminent introduction of the Government's long anticipated legislation, the

Workplace Relations Amendment (WorkChoices) Bill 2005. Although the committee did not have the opportunity to examine the legislation before tabling its report, it did have at its disposal the Government's 68 page information booklet which was released when the committee was winding up its inquiry. The booklet outlined the Government's new policy, including measures which for some weeks held the attention of the media and expert commentators. The centrepiece of the WorkChoices policy is the creation of a national industrial relations system, a new wage setting body, a new safety net comprising five minimum conditions of employment and a simpler agreement-making system. The booklet described measures which were included at the last minute as a marketing tool to sway public opinion in support of the Government's agenda. It appears they were not included as serious proposals arising from an identified public policy need. The report briefly addresses these measures at the end of chapter 2.

The committee's terms of reference covered issues which the Government announced would be part of the WorkChoices Bill. The timing of this inquiry meant the committee could cast only a superficial eye over proposals to be included in the WorkChoices legislation. This, however, may be regarded in some way as a forerunner to the much more restricted inquiry which the legislation committee will conduct on the bill in November 2005. The committee was fortunate in receiving evidence that may not be forthcoming in the pending WorkChoices bill inquiry, and its experience with the workplace agreements inquiry leaves it far better informed about issues that will undoubtedly arise with the bill inquiry.

Conduct of the inquiry

The committee received and published 59 submissions, a full list of which is at Appendix 1. The committee thanks all those who made submissions. A notable omission from the expected submissions was that from the Department of Employment and Workplace Relations (DEWR), which advised the committee that its energies and resources were devoted to drafting the WorkChoices Bill, and that in view of the considerable overlap in the policy details covered by both the inquiry and the bill, could not make a submission.

The committee held public hearings in Sydney and Melbourne in September and in Perth in October. The committee thanks all those who appeared as witnesses. Later hearings anticipated by the committee for Brisbane and Canberra did not eventuate because Coalition Government senators used their Senate majority to oppose a motion by the chair to extend the reporting deadline to 28 November 2005. This was in spite of the fact that the committee had agreed that a short and reasonable extension of time to report was necessary to enable it to complete its inquiry. The committee majority's understanding was that Government senators accepted that the committee needed a few extra weeks to gather a full range of evidence, especially from employers and small business. At no time during the inquiry did Government members of the committee indicate to the chair that there were reasons why an extension should not be sought.

The committee majority notes that there have been only four occasions over the past 20 years where committees that have sought an extension of time to report have been denied it by the Senate.

The committee majority believes that the Government's decision was a subversion of due process which showed its willingness to use a slim Senate majority to prevent the references committee functioning properly. The committee majority rejects the Government's argument that it was unacceptable to expect the Senate to agree to a references inquiry into workplace agreements running concurrently with a legislation inquiry covering roughly the same policy ground. This is a lame excuse which the Government used to prevent proper scrutiny of its industrial relations policies, both old and new.

The committee majority takes seriously its obligation to properly examine issues which are included in its terms of reference and to report to the Senate. It takes the view that the curtailment of this inquiry by the Government deprived the committee of the opportunity to hear from witnesses who represent a wide spectrum of viewpoints, including those from the small business sector. They had been scheduled to appear in Brisbane, at the request of Government members of the committee. While the views of peak organisations were well represented in Sydney and Melbourne, those closer to the practical effects and implementation of the Workplace Relations Act at the workplace level were denied an opportunity to put their view. The committee majority considers that in order to discharge its responsibilities fully, evidence should have been taken from a wider variety of interested parties.

The committee majority is concerned that the Government's attitude with regard to the conduct of this inquiry has set the tone for the legislation committee's forthcoming inquiry into the WorkChoices Bill. The Government has already made up its mind about the scope and conduct of that inquiry; for example, it has decided that the inquiry will run for three weeks in November with hearings to be held in Canberra, and that it will not include issues which the Government believes have been inquired into previously. The committee majority believes that this is an unacceptably short time-frame in which to complete an inquiry of this magnitude. It believes that the Government's posturing in the lead up to unveiling its WorkChoices Bill was intended to prevent proper parliamentary scrutiny of what is a large, complex and controversial piece of amending legislation.

The committee majority, comprising Opposition and Democrat senators, commends this report to the Senate.

Senator Gavin Marshall
Chair

Senator Andrew Murray

