Submission

to

Senate Employment, Workplace Relations and Education
Legislation Committee

Provisions of the Workplace Relations Amendment (Right of Entry) Bill 2004

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Submitter: Ms Grace Grace

Organisation: Qld Council of Unions

Address: 16 Peel Street
SOUTH BRISBANE QLD 4101

Phone: 07 3846 2468

Fax: 07 3844 4865

Email: graceg@qcu.asn.au
deborahr@qcu.asn.au

Submission to the Committee
Inquiring into the Introduction of the
Workplace Relations Amendment (Right of Entry) Bill 2004

Background to the Qld Industrial Relations System

1. The current Qld industrial relations legislation is founded on a tripartite review undertaken by a Taskforce chaired by Professor Margaret Gardner. The membership of the Taskforce was drawn from employer and employee organisations, as well as from independent sources such as that of Professor Ron McCallum.

2. During the course of the 1998 review into industrial relations in Qld, the Taskforce provided an overview by way of their Issues Paper[1] of statistical data on the level of federal and state award coverage in Qld.[2]

3. At that stage of a total 1 348 200 million Qld workers, 741 500 (or 55%) were covered by state industrial instruments. If the number of workers not covered by any industrial instrument was discounted against this figure, then the number of Qld workers covered by state industrial instruments increased to a level of 66% of all Qld workers regulated by an industrial instrument.

4. The Taskforce Paper went on to contrast this level of state regulation with that operating in other jurisdictions. Although the proportion of employees covered by state awards had decreased over a period of 15 years (from 1983 though to 1998), the level of state award regulation was still the highest recorded of all the states,[3] with only a reduction of state award coverage of around 9% over that 15 year period.

5. In contrast state award coverage had diminished by 19% in Western Australia, 15% in New South Wales, and 13% in Tasmania.

6. South Australia recorded the lowest diminution at 5%, with Victoria the greatest at 25%, though the latter was a direct reflection of that states' decision to relinquish their industrial relations jurisdiction.

7. Similarly to the other states, there had been a capacity for state award employers to exit the Qld state system through the adoption of federal certified agreements, or AWAs. Such intrusion is not clearly evident and it can be validly speculated that the diminution in state award regulation corresponded with an increase in workers not regulated by any industrial instrument.

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[1] Industrial Relations Taskforce 1998 Review of Industrial Relations Legislation in Queensland Issues Paper DETIR Brisbane
[2] Refer to page 17 of the Paper
[3] Refer to Table 3 page 18 of the Paper

8. This is quite probable under the Qld state award system which allows for both award exemption (see s.132 of the *Industrial Relations Act 1999*) for certain occupations; and award regulation associated with occupational reference (see s.124).

9. The QCU contend that through this period of contrasting federal and state legislation, Qld employers who were regulated by state industrial instruments have chosen to stay primarily within the state system.

10. Such reliance on the state system has continued to be a feature since the introduction of the *Industrial Relations Act 1999*: that is, Qld employers have not sought the federal system in preference to the state jurisdiction, even though options for them to do so have existed.

11. Any activity by the federal parliament to implement legislative amendments that directly impinge on the Qld industrial relations systems have a more evident impact then for any other state. And yet the statistical data confirms that employers continue to rely on the state jurisdiction for the regulation of their workers employment arrangements.

Current Qld Legislative Framework

12. The *Industrial Relations Act 1999* provides for the rights and responsibilities of employers, workers and industrial organisations, both employer and employee focussed.

13. Section 372 provides for the right of entry provisions for authorised industrial officers; whilst s.373 provides for the right of the authorised industrial officer to inspect and request information. Sections 363 and 364 provide definitional references in relation to who is an authorised industrial officer. Section 365 provides for the revocation and suspension procedures in relation to an authorised industrial officers' permit to enter a workplace.

14. Since the introduction of these provisions in 1999, in which alteration occurred in drafting to that which appeared in the *Workplace Relations Act 1997* and *Industrial Relations Act 1990*, there has been no indication by either employers, workers, industrial organisations, or the commission, that the provisions have not worked effectively and efficiently.

15. The right of entry provision is underpinned by procedural requirements that place obligations on authorised industrial officers in regard to their rights and responsibilities in relation to workplace access. This was a feature of the Taskforce Report.[4] These requirements include notifying the employer or their representative of the officer's presence, and the production of the officer's

[4] Industrial Relations Taskforce 1998 Review of Industrial Relations Legislation in Queensland Report DETIR Brisbane

authorisation. If there is no compliance in relation to these provisions, then the officer may be treated as a trespasser (s.372(4)).

16. The maturity and goodwill of Qld employers and authorised industrial officers can be evidenced by the fact that the current provisions have worked without recourse to industrial tribunals. The QCU contends that this confirms that the provisions have not only been workable but accepted as tool to ensure effective representation at a workplace level.

17. The intrusion into the Qld industrial relations jurisdiction by the use of the corporations' powers is to impede on a system that has worked efficiently and effectively, and to which around 66% of employers and workers have chosen to continue to operate within.

Application of Qld Legislation

18. The provisions dealing with the right of an authorised industrial officer to enter a workplace have been subject to consideration within the Qld jurisdiction. In its previous guise under the *Industrial Conciliation and Arbitration Act*, the then President of the QIC referred to a number of reasons why an authorised industrial officer would seek right of entry to a workplace. Pertinently, amongst those reasons, noted in *O'Rourke v QATIS* (1987) 124 QGIG 518, was the capacity for such officer to provide advice and assistance to workers and union members :

Section 136 (now s.369) does not fall for construction in a vacuum. Speaking very broadly it is contained in a statute which governs relationships of employer and employee in the context of recognised industrial organisations. The interests of employer, employee and organisation may not always coincide and hence the statute seeks to strike a balance between them. ... rightly or wrongly an employee who feels he or she is unjustly treated may be often inhibited in approaching the union in circumstances where the employer may know he (sic) does so. ...

Federal Intrusion

19. Statistical data on the breakdown of those employers and workers who are regulated by an industrial instrument (whether Qld or federal) who are employed by constitutional corporations, is not a confirmed figure.

20. The capacity to determine level of intrusion requires the use of a range of data, including that available through the ABS and Qld Treasury.

21. Total private sector employees in Qld is currently around 1 137 200 employees. Public sector employees are not included as they are not employed by incorporated bodies. Public sector employees, including those employed by

GOCs, statutory authorities and those engaged under federal awards is around 256 000 employees.

22. This is an increase in the total Qld workforce to that recorded in the Taskforce Report, and confirms the viability of the Qld economy for attracting and retaining business, whilst growing employment: business which is largely regulated by the state industrial relations jurisdiction.

23. If it is presumed that employers employing greater than 10 employees are incorporated then the number of employees employed by businesses employing fewer than 10 employees equates to around 309 100. This would result in a figure of around 27% of Qld employees employed by non-incorporated business.

24. In the alternate if it is presumed that employers employing greater than 20 employees are incorporated then the number of employees employed by business employing fewer than 20 employees equates to around 515 600. This would result in a figure of around 45% of Qld employees employed by non-incorporated businesses.

25. The capacity to establish the number of incorporated businesses in Qld is subject to some speculation. However the figure that is often brandished by the federal government that the impact of the use of the corporations powers on state jurisdictions (the "intrusion factor") is around the 85% is clearly not validated in Qld.

26. The figure in Qld is somewhere between 27% and 45% of private sector employees who would not be captured by the federal government's proposed legislative changes.

27. These are both private sector employees regulated by federal and state industrial instruments.

28. At that level it suggests a great degree of intrusion into the Qld system, but the capacity for anywhere between 1 in every 2 employees to 1 in every 4 employees not to be affected by the federal *Bill* results in complexity in determining the operation and application of the *Bill* in Qld.

29. The adage "if it ain't broke don't fix it" should be heeded. In Qld the review process that has resulted in the development of *Industrial Relations Act 1999* suggests that nothing is "broke" here!

30. The federal *Bill* seeks to undermine the viability and robustness of the Qld jurisdiction: a jurisdiction that is preferred by a large number of Qld employers.

31. The capacity for the effective regulation of right of entry provisions to be maintained within the state jurisdiction is proven by the very nature of the current state legislation.

32. An intrusion such as that proposed by the federal government is designed only to create confusion and friction and to perpetuate what Moynihan P saw in the *QATIS matter* of ... *an employee who feels he or she is unjustly treated* as being *inhibited in approaching the union in circumstances where the employer may know he (sic) does so.* ...

33. The QCU urges the Committee to recommend that the *Bill* not be passed.