Submission by the Qld Council of Unions
to the Standing Committee on Employment, Workplace Relations and Education into the proposed amendments to the Workchoices legislation
via the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007*
and the *Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007*.

Commentary

1. The Qld Council of Unions (QCU) is the peak union body in Queensland, representing 40 affiliated unions and in excess of 350 000 union members.

2. These unions to varying degrees are impacted on by the Workchoices legislation; and the amendments proposed to that legislation via the *Workplace Relations Amendment (A Stronger Safety Net) Bill 2007* ("the government Bill") and the *Workplace Relations (Restoring Family Work Balance) Amendment Bill 2007* ("the Family First Bill").

3. The QCU notes that the Australian Council of Trade Unions (ACTU) has provided a submission to the Senate Standing Committee on Employment, Workplace Relations and Education. We have had an opportunity to read that submission and concur with it.

4. In doing so we wish to draw some particular points to the Committee member's attention. These follow.

5. However at the outset it should noted that as drafted the QCU does not support either *Bill.* This is principally on the grounds that these *Bills* will not achieve their stated objectives. The government *Bill* will not guarantee a strong safety net for working families, and the Family First *Bill* does not restore family time.

6. For the purposes of this submission, we deal specifically with the government *Bill* and rely upon the ACTU's submission in relation to the Family First *Bill*.

7. The QCU does not support the government's *Bill* for the following reasons:

    - the *Bill* does not protect employees from being disadvantaged in agreement-making
    - the *Bill* only protects certain elements of the remaining award safety net
    - the *Bill* only protects certain classes of employees from partial disadvantage
    - there is significant room for the limited protection offered by the "fairness" test to be avoided by employers
    - the *Bill* would create an uneven playing field upon which agreement-making takes place creating competitive advantage to those employers that moved to reduce wages and conditions in the period between 27 March 2006 and May 2007

8. The *Bill* and the associated tests contained within it apply to agreements lodged from the 7 May 2007. Refer to s.346E(1)(a) and s.346E(2)(a).

9. Agreements lodged between 27 March 2006 and 7 May 2007 can continue to lawfully exclude protected award matters without any monetary or other compensation.

10. This creates, and indeed expands, on the levels of unfairness evident within the Workchoices legislation and its proposed amendments.

11. The ACTU have provided some statistical data in relation to the impact of the *Bill* to highlight the impact of this *Bill* on workers. Amongst that data, to which we concur, is an estimate that 961 000 workers are covered by workplace agreements made since 27 March 2006.

12. This is calculated on the basis that 922 976 employees are covered by agreements made to March 2007, plus an estimated 38 000 covered by agreements made in the first 5 weeks of the second quarter of 2007.

13. This includes an estimated 342 000 employees on AWAs made under Workchoices to May 2007 which is calculated on the basis of 306 000 AWAs made to March 2007, plus an estimated 36 000 made in the first 5 weeks of the second quarter of 2007.

14. As the ACTU note these agreements may not expire until May 2011 and as such the employees covered by these agreements are not subject to the "test" for as long as they remain covered by the agreement.

15. This is unfair for those employees.

16. It also gives those employers who adopted those unfair agreements an ongoing competitive advantage for up to five years.

17. In addition, the exclusion of employees earning less than $75 000 from the "fairness" test (see s.346E(c)) for AWAs will preclude 1.14 million people, or 13% of employees. See ABS Catalogue No 6310 August 2006.

18. As to proposed s.246E(1)(b)(i) this provision will require the Workplace Authority Director (WAD) to determine whether an employee is employed in an industry of occupation that is "usually covered by an award".

19. The ACTU has estimated that this will exclude at least 1.16 million employees from the test.

20. Note that there is no recent publicly available data that identifies the number of award free employees; however, a government report in 2000 estimated that under the pre-reform system, 13.3% of non-farm employees were award free. At that time the number of award free employees in the federal system was estimated to be 956 000 employees.

21. There is nothing that has occurred since that estimate that would suggest it overstates the extent to which employees remain award free. If anything, the proportion will have increased as new businesses established since March 2006 have been established as award-free.

22. Potentially many more employees will be excluded as the provisions exclude any employee whose employment was, before 27 March 2006, regulated or underpinned by a state award but who has subsequently made a workplace agreement from the test.

23. This is because the reference to being "usually covered by an award" refers to federal awards (see s.4(1)).

24. There are potentially millions of employees working in industries and occupations such as the retail sector, education, nursing and local government that have been traditionally regulated at the state level, and hence those employees would not be considered to be employed in an industry or occupation usually regulated by a federal award.

25. Indeed within Queensland, the state award structure has been paramount. This has resulted in a large number of state awards operating to which a federal award may be a feature within another state jurisdiction. This includes metal manufacturing, electrical contracting, construction, hospitality, catering, cleaning; and the list continues.

26. This compounds the impact that the "usually covered by an award" reference will have on Qld workers.

27. The QCU recognises that the *Bill* attempts to deal with this in part by proposing to amend Schedule 8. We note that proposed clause 53AAA of Schedule 8 ensures that the "fairness" test applies only where, immediately before the workplace agreement is made, the employee was covered by a NAPSA.

28. Employees whose employment was traditionally regulated in the Qld system, but who have become covered by a workplace agreement since 27 March 2006 do not fall within that amendment, and will therefore be excluded.

29. The Explanatory Memorandum suggests (at 242) that the "fairness" test might still apply if a federal award were designated for the purpose of the "fairness" test. However, the WAD cannot designate an award unless first satisfied that the employee is in the class "usually" covered by a federal award (s.346K(2)(i)).

30. The QCU also notes that the proposed s.346E(1)(d) provides that the "fairness" test applies only if the agreement modifies or excludes "protected award conditions" as defined s.354(4). The test therefore does not protect employees from being disadvantaged in agreement-making in respect of other award conditions.

31. The *Bill* proposes that the WAD must undertake two decisions:

- firstly whether the agreement is required to be assessed, and
- secondly whether the agreement provides fair compensation.

32. If the agreement is required to be assessed, the WAD may be required to designate an award, and will be required to inform themselves about the work obligations of the employee or employees: see s.346M(2)(b).

33. Each decision will require the provision of information not usually contained within an agreement.

34. The QCU has serious concerns regarding the capacity of the OEA to perform this task efficiently and effectively within what we believe are realistic timeframes.

35. The ACTU has drawn attention to some of the practical difficulties that have arisen concerning time delays in other areas where similar assessments occur. We share those concerns.

Conclusion

36. The issues raised in this submission and the ACTU submission are valid concerns that should be considered by the Committee members.

37. The gulf between the stated intention of the *Bill* and its practical application denotes that it should be amended to take into account the concerns raised by the ACTU and QCU.

38. Industrial commentators have also joined the debate highlighting anomalies and inequities in the practical application of the *Bill.*

39. Based on recent history with other government legislative activity, this suggests that there are more flaws in the *Bill* than even the government could have anticipated.

40. The only answer lies in substantial amendment.