# Preface

## Reference to the committee

On 12 October 2005, the Senate resolved that upon the introduction of the Workplace Relations Amendment (Work Choices) Bill 2005 in the House of Representatives, the provisions of the bill be referred to this committee for inquiry and report by 22 November 2005. The bill was introduced in the House of Representatives by the Minister for Employment and Workplace Relations, the Hon. Kevin Andrews MP, on 2 November 2005.

The motion for referral stated that the inquiry would not consider those elements of the bill which reflect government bills previously referred to, examined and reported on by the committee; namely those elements which relate to secret ballots, suspension or termination of a bargaining period; pattern bargaining; cooling off periods; remedies for unprotected industrial action; removal of section 166A of the Workplace Relations Act 1996 (the WR Act); strike pay; reform of unfair dismissal arrangements; right of entry; award simplification; freedom of association; amendments to section 299 of the WR Act; and civil penalties for officers of organisations regarding breaches.

## Conduct of the inquiry

The committee received 202 major submissions, a full list of which is at Appendix 1. In addition, some 5400 brief submissions were received as expressions of interest. For the reason of the large number of submissions and the short time frame for the inquiry, the committee was unable to individually acknowledge all submissions, most of which were orchestrated by way of an Australian Council of Trade Unions (ACTU) 'spam' pro forma widely advertised in workplaces and beyond. The committee thanks all those who made submissions. Five public hearings were held in Canberra between 14 and 18 November 2005. A list of the 105 witnesses who appeared at these hearings is at Appendix 2.

The conduct of hearings for this inquiry has been the subject of dissension and criticism from opponents of the bill. The committee determined that the best way to use the time available was to conduct five days of hearings in Canberra. During the course of the hearings, committee members had the opportunity to hear from a diverse and balanced group of witnesses, representing more than thirty organisations with a range of interests and views. As noted above, close to five thousand written submissions have been received by the committee. It is difficult to see how the committee's deliberations could have been better informed.

When referring this bill to the committee, the Senate resolved that the committee should direct itself to examining those issues which have not previously been the subject of inquiry. Although this would appear to be a matter of common sense and efficiency, it also drew criticism. It would seem that opponents of the bill, hoping to

delay introduction of the reforms for as long as possible, would seek to revisit matters examined by this and the EWRE References committee as recently as June 2005.[1]

The Government has been determined to introduce the legislation as soon as possible. The latest economic data, particularly relating to unemployment and productivity, strongly indicates the need for expeditious reform. As discussed in detail in chapter 3, the looming demographic challenge and productivity lag points to an urgent need for extensive labour market reform. The reforms contained in the bill will play a crucial role in reversing these trends and paving the way for continued economic success.

The Government party senators strongly support the legislation before the committee. However, following both oral and written submissions received during the course of the inquiry, the committee would like the Government to consider the following amendments to the bill:

- that outworker provisions in state awards be protected and not be able to be bargained away by employees entering into federal agreements;
- that prohibited content in pre-reform federal agreements and state agreements be limited to anti-AWA clauses only;
- that the 90 day notice by an employer to terminate an agreement under the bill only be given after the nominal expiry date of that agreement;
- that trainee/apprentice provisions in federal awards will override state trainee/apprentice laws to the extent of any inconsistency and traineeships be treated on the same basis as apprenticeships;
- that the averaging of hours provisions in the bill be examined to ensure that there are no unintended consequences as a result of the operation of these provisions;
- that a full time employee who works the hours required of them is guaranteed to receive 4 weeks annual leave; and
- that a full time employee who works the hours required of them is paid for at least 38 hours per week even if the hours required of them average less than 38 hours.

## Structure of the report

This report examines the provisions of the Work Choices Bill. As noted above, the scope of the inquiry excluded those elements of the bill that had previously been the subject of inquiry and report by this committee.

The report is structured in 4 chapters. Chapter 1 outlines the policy background to the Work Choices Bill, previous workplace relations reforms, the reasons why further reform is needed, objectives of the bill and a description of the bill. Chapter 2 explores

1 *Unfair dismissal and small business employment,* EWRE References committee, June 2005

the historical context of the workplace relations system and the constitutional basis for the establishment of a national system. Chapter 3 analyses in more detail other issues of contention, while in Chapter 4 the committee majority draws its conclusions from the evidence.

## The political and social context of workplace reform

This report outlines the reasons why Government party senators support the legislation before the committee. The details are in the chapters that follow. Some brief comments on the broader political context, not dealt with in the report proper, may be noted here. What is often described as an 'evolution' of workplace relations legislation is a legislative process which has taken place over the course of the last twelve years. It is often noted that the Keating Labor Government in the early 1990s grasped the nettle in recognising the connection between productivity and economic growth on the one hand, and the need for workplace bargaining, on the other. This was reflected in legislation which provoked some dispute and recrimination in the Labor Party at the time, especially in the trade union arm of the party.

In retrospect it is clear that the Labor Party has not advanced beyond the point at which it stood a decade ago. Arguably it has regressed. Labor has opposed the Workplace Relations and Other Legislation Amendments Bill 1996, and has continued to oppose, most notably in the Senate, most of the amendment bills to the WR Act which were subsequently introduced. The contrived scaremongering and extreme language being deployed by the Labor Party in 2005 are uncannily similar to that which it used to argue against the Government's initial workplace relations reforms in 1996.

In 1996 the Leader of the Opposition, Mr Beazley, argued that:

> The Workplace Relations and Other Legislation Amendment Bill strikes at the heart of the desire by all Australians for a fair as well as a productive society. If we pass this bill into law, we will return the workplace to the battleground it used to be….
>
> …the government is attacking the very basis of people's living standards… Attack wages, and you attack families.
>
> Another group marked down for special punishment by this measure is Australian women… the more wages are removed from the arbitrated system and into the decentralised system the greater the potential for wage injustice for women. The more the commission is crippled – it is the best friend that disadvantaged Australians have in industrial relations – the more this injustice is aggravated.
>
> … the kind of low wage, low productivity industrial wasteland we see in the United States and New Zealand where jobs can be bought at bargain basement rates… straight down the American road on industrial relations legislation, straight down the American road on wages justice, and that

> produces social dislocation more than anything else. At the end of the day, guns are a symptom of that process…[2]

This line of argument is essentially the same as that being used in 2005:

> The simple fact of the matter on Industrial Relations is this: the Government does not intend a fair outcome for ordinary Australians. The Government's objective with Industrial Relations is not reform but suppression of wages. That is what they want to do. That is how they've performed when they've handled minimum wage issues in the past. They don't want a package that is about improving the economy they want a package which is about oppressing wages. Now, as far as we're concerned we see the issues of Industrial Relations lying at the heart of our democracy. The ability of the average Australian to feel that they can stand up for themselves in the workplace and have their concerns seriously dealt with. The objective of the Government is to suppress that democratic sentiment in the Australian community and we're not for it.[3]

The current Shadow Minister for Workplace Relations, Mr Stephen Smith, argued prior to the 1996 election that:

> The Howard model is quite simple. It is all about lower wages; it is about worse conditions; it is about a massive rise in industrial disputation; it is about the abolition of safety nets; and it is about pushing down or abolishing minimum standards. As a worker, you may have lots of doubts about the things you might lost, but you can be absolutely sure of one thing: John Howard will reduce your living standards.[4]

Comments such as this are effectively no different to similar comments made ten years later:

> Firstly, these changes will be unfair, they'll be divisive, and they'll be extreme. And secondly so far as they impact upon Australian employees and their families they'll have the affect of reducing their wages, stripping their entitlements, and removing their safety nets…[5]

The Labor Party's early and continued opposition to AWAs, with only muted wavering on their acceptability in very recent times, indicates the party's difficulty in accepting the irreversible changes that might place its own structures and philosophies in jeopardy. The reforms that are at the heart of the Work Choices Bill will require trade unions to change the focus of their work as simply being employee representatives in a system built around their specific requirements and to accept a changing role if they are to maintain their relevance. Work Choices will create ample

---

2 Hon. Kim Beazley MP, House of Representatives *Hansard*, 19 June 1996

3 Hon. Kim Beazley MP, Doorstop Interview, 23 May 2005

4 Hon. Stephen Smith MP, House of Representative *Hansard*, 17 October 1995

5 Hon. Stephen Smith MP, Doorstop Interview, 23 May 2005

opportunities for unions to maintain their relevance, and indeed importance, in the new system.

If unions fear marginalisation as a consequence of the passage of the Work Choices Bill, it is largely for the reason that the pace of economic and technological change, and changes in the workplace, has outstripped their ability to maintain a support base. There is a lament, voiced by some at the committee's hearings, about the decline of collectivism, in many social manifestations, as well as in union membership. The Australian labour movement's attitude and its reluctance to modernise sits in stark contrast to the views expressed by British Prime Minister Tony Blair, when he told the British Trade Union Congress in 1997 that:

> You should remember in everything you do that fairness at work starts with the chance of a job in the first place, because if we as a government and you as a trade union movement do not make Britain a country of successful businesses, a country where people want to set up and expand and a country that has the edge over our competitors, then we a re betraying those we represent…
>
> We are not going to go back to the days of industrial warfare, **strikes without ballots**, mass and flying pickets and secondary action. You do not want it, and I will not let it happen. I will watch very carefully to see how the culture of modern trades unions develops. **We will keep the flexibility of the present labour market, and it may make some shiver but, in the end, it is warmer in the real world…**

These are social changes to which workplace relations law must adapt, and the Coalition government finds itself in the position of needing to respond to the demands of the economy and the workplace and the changing relationship between employees and work. As the committee majority has noted in its previous reports, the workplace demand is now for increased flexibility. Legislation follows social and economic change: it does not drive it. Nor, in a liberal democracy, can laws prevent such changes from occurring. There is a strong case for introducing one set of national workplace rules across the country and updating the system to meet the needs of the modern workplace.

## Acknowledgements

The committee thanks all those who made submissions to this inquiry, and who were available at short notice to give evidence over the five days of public hearings. It particularly acknowledges officers from the Department of Employment and Workplace Relations who spent an extended period of time before the committee to answer technical questions on the legislation.

## Recommendation

Government party senators commend this report to the Senate and **recommend** that the Senate pass the legislation.

**Senator Judith Troeth**
**Chairman**