Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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Dear Mr Carter

SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION COMMITTEE – INQUIRY INTO THE PROVISIONS OF THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

The Liquor, Hospitality and Miscellaneous Union ("LHMU") thanks the Senate Employment, Workplace Relations and Education Committee for the opportunity to contribute to discussion on the provisions of the *Workplace Relations Amendment (WorkChoices) Bill* 2005.

The LHMU fully supports the more detailed submission lodged with the Committee by the Australian Council of Trade Unions, but seeks to address issues particularly pertinent to the large, and growing, service sector workforce. LHMU members represent the many different faces of today's labour market. LHMU members work in a diverse range of industries and occupations:

- cleaners clean offices, schools, hospitals and hotels,
- security officers guard properties and people,
- care workers attend the young, frail, aged, ill and disabled,
- hospitality workers operate across the leisure, entertainment and tourist sectors, and
- manufacturing workers produce bread, beverages, building products and other goods.

The LHMU is committed to every Australian worker being able to exercise freely and without undue effort their right to associate if they so choose and to bargaining collectively with their employer if they so wish. Further, the LHMU is committed to the pursuit of democratic union structures in the workplace as an appropriate means for workers to have genuine influence on the way their work is done and the circumstances under which it is done. For the purposes of this submission, we have assumed Committee members support these principles.

The LHMU is committed to the protection of the many thousands of low paid workers who are LHMU members. We also acknowledge that many thousands of non-members rely on, and have benefited from, the LHMU's work in maintaining minimum standards of wages and working conditions through the award system and in industry and enterprise bargaining.

We appreciate that political and economic cycles from time to time affect the extent to which the LHMU can progress the interests of its members, particularly the low paid. As a responsible democratic organisation we have a particular concern for job security and for the protection of the dignity of workers in their work environment. We are committed to combating discrimination of all kinds in the workplace and to the defence of workers who have been subjected to abuse of employer power.

Informed by these fundamental principles, we view the legislation before the committee with alarm.

Conciliation and arbitration in Australia

The systems of conciliation and arbitration developed in the Australian States and then federally following the industrial conflicts of the 1890s were an expression of the philosophy that the rule of law might replace class conflict. The system of Awards and the various decisions of the then Court, especially the *Harvester* judgment, were expressions of the philosophy that a public instrumentality should establish an appropriate level of wages and conditions based upon an assessment of what is required to live with a reasonable level of amenity in contemporary society. The intervention of the State was expected to provide a level of justice and reduce industrial warfare in a way which the operation of market forces could not.

It was through unions that awards could be made and wages and conditions varied. Unions were the custodian of awards and were recognised as the representative organisations of workers. In return, given the protections that they received as part of the system, their affairs were also regulated by legislation.

The level of minimum wages that was established was comparatively high. [1]

The award system, despite propaganda to the contrary, was in fact very flexible. It operated at industry, employer and worksite level depending upon history and circumstances. Many award clauses resulted from negotiation between the parties and

[1] This remains the case today. Figures produced by the British Low Pay Commission as at December 2004 have Australia at the top of a dozen OECD countries in the purchasing power of minimum wages and the percentage of minimum wages as against total median earnings. Nevertheless, minimum wages are modest and workers reliant on them alone face a significant economic struggle.

inserted by consent. Others were conciliated or arbitrated by the Commission, having regard to evidence of the circumstances of the industry covered by the award.

There was no collective bargaining right and there was no right to strike in the legislation. The effect of the consensus that underpinned the system, however, was that these rights were in practice not interfered with apart from the some isolated cases e.g. the penal clauses disputes in the 1960s.

Unlike the United States, the Australian conciliation and arbitration system was based on a recognition by employers that unions had a right to exist and a right to operate within the system. Apart from the 1929 attempt by the Bruce government to abolish the Commission there was an overall acceptance by employers and conservative political parties of the system.

The Breakdown of the Consensus

Support for the system broke down in the 1980s with the development of organisations such as the H R Nicholls Society which built on the Thatcherite legacy of union-busting. Gradually this anti-union agenda spread through employer ranks and the Liberal Party. By the mid 1990s the agenda had become pervasive within the Liberal Party and very influential within employer bodies, especially at the peak level.

The LHMU has been at the forefront of debates about industrial legislation and policy since the election of the Howard Government in 1996. In particular we have argued in favour of a system which:

- Restores the power of the Commission.
- Enhances the effective operation of the award system.
- Opposes Australian Workplace Agreements ("AWAs") and any individual contracts in legislation.
- Promotes collective bargaining including on an industry basis.
- Enhances the rights and protections given to union officials and delegates to organise and represent workers.

The 1996 Legislation

The LHMU was concerned about the potential impact of the 1996 legislative changes to the industrial relations landscape and expressed its concerns in a detailed submission to the Committee. The final compromise between the Howard Government and the Australian Democrats blunted the impact of the proposed changes significantly and the major fears of the LHMU arising from the original legislative proposals were not realised. It is to be remembered that the agreement between the Howard Government and the Australian Democrats retained a system based on fairness, specifically providing for the maintenance of a safety net that was "fair". The *Workplace Relations Act 1996* – as it emerged from the Australian Democrat negotiations – constituted a package of four "pillars", comprising:

- the guarantee of a safety net of fair and enforceable minimum wages based on skills, responsibility and the conditions under which work was performed through awards of the Commission;

- the guarantee that the safety net of fair minimum wages and conditions of employment would be maintained;

- an emphasis on enterprise and workplace bargaining to supplement minimum wages and conditions in the context of the specific needs of the enterprise and of the employees of the enterprise; and
- the provision of a statutory "no-disadvantage" test which used the minimum terms and conditions of the relevant safety net award as its measuring stick.

In the eight years since the implementation of the 1996 package, the LHMU has relied on the four pillars inserted at the insistence of the Australian Democrats to protect its most vulnerable, award-dependent members (and their non-member workmates). Where employers have refused to bargain the LHMU has been concerned to maintain award wages and conditions; where the LHMU has been able to organise employees we have pursued real advances in wages and conditions through enterprise bargaining. We have been constrained by the current bias in favour of employers in the highly-legalistic provisions relating to protected industrial action, but we have worked with and within the law.

But each of these four pillars is now under direct attack in the 2005 *WorkChoices* legislation. This submission will seek to illustrate the extent of the proposed attack on the workers in the industries the LHMU represents, with particular reference to the Hospitality industry by way of illustration (see Attachment 1).

After Howard

If the Howard government is successful in implementing its 2005 legislative agenda there will clearly be significant changes to the Australian industrial system. The impact of those on Australian workers will be harder to turn around the longer the new system is in operation. The main features are likely to be:

- The destruction of State industrial systems and increasing integration into a national system.
- The promotion of AWAs as the predominant form of employment regulation.
- The further erosion of wages and conditions through AWAs and the destruction of the "no disadvantage" test. This is likely to be felt most in areas such as overtime, penalty rates, minimum starts and minimum working hours.
- The relative reduction of the level of minimum wages through the operation of the "Fair Pay Commission".
- The silencing of the Commission's role in spreading improvements in standards throughout the community.
- A greater insecurity in the workforce with an increase in the prerogative of employers through the virtual unfettered right to dismiss employees and to determine unilaterally and without external review their wages and conditions.
- It will be almost impossible for workers to take industrial action without legal consequences.
- Restrictions on the right of entry of union officials.
- The promotion of a separate system of independent contractors outside the industrial system.

We will have a worse industrial system than the United States – there will be no enforceable right to a collective agreement even if a majority of workers want it.

The LHMU submission

In **Attachment 1**, the LHMU analyses the major changes to wages, working conditions and job security proposed in the Bill and illustrates their likely impact on workers in the industries the LHMU represents, with particular reference to the Hospitality industry.

In **Attachment 2**, we develop further case studies and illustrative examples of the impact of the proposed legislation on workers in modern Australian workplaces**.** Our case studies are based on real experiences. Some are presented as composites and some are presented with the identities of individuals disguised. Each is, to the best of our knowledge, relevant to an accurate and fair reading of the proposed legislation

The LHMU appreciates that the Committee has been allocated an unreasonably short time to consider this and other submissions made to it on what is likely to be the most radical change to our society and social structures since Federation. While the broad outline of the proposed legislation has been in the public domain for some months, the detail has been available only since 2 November 2005. We have had one week to digest 687 pages of legislation and the 565 page explanatory memorandum. Inevitably, our examination may have overlooked a matter of significance to our members and to Australian workers generally.

The LHMU and its members are prepared to give evidence in person to the Committee in support of their concerns about the legislative proposals and the impact they are likely to have on their lives.

No economic or social case has been made out by the Government for these proposals. They are grounded only in ideology. They will divide our society for no purpose. They will punish honest and vulnerable workers and embolden corrupt employers. Honest employers and employees will be appalled at what is about to be unleashed in their names.

We urge the Committee to recommend that the Bill be rejected. We remind the Committee that it is its solemn duty to report objectively on the dangers posed to working men and women by this Bill.

Yours faithfully

JEFF LAWRENCE
NATIONAL SECRETARY