Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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SUBMISSION BY THE NSW COUNCIL OF CIVIL LIBERTIES TO THE INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

The New South Wales Council of Civil Liberties opposes the changes being introduced by the *Workplace Relations Amendment (Workchoices) Bill* 2005. The Council believes that the thrust of the changes will deprive Australian workers of the right to freedom of association, the right to collective bargaining and the right to take industrial action where appropriate to do so. Further the stripping back of minimum award terms and conditions of employment will place low paid workers in a precarious position eroding what are now protected entitlements. Whilst the virtual abolition of unfair dismissal rights will leave many employees at the whim of unscrupulous employers. The proposed changes wind back 100 years of regulation of industrial relations which will favour employers over employees. The Council is concerned that this will disadvantage vulnerable workers, such as the low paid and the unemployed.

International law, such as the Right to Organise and Collective Bargaining Convention 1949, enshrine the rights of workers to organise and undertake collective bargaining to improve their wages and work conditions. Such rights are significantly compromised by the *Workplace Relations Amendment (Workchoices) Bill* 2005.

It is impossible in the short time between the introduction of this Bill and the deadline for submissions to deal with all matters of concern relating to this Bill. However, some of the issues which the Council identifies are set out below.

The Right to Collective Bargaining

The promotion of individual agreements, known as Australian Workplace Agreements, as the Howard Government's favoured method of regulating wages and conditions of employment. The approach ignores that many employees, if not most, are not in an equal bargaining position with their employers. Moreover, with more and more people being employed on a casual basis, the capacity of workers to negotiate is further eroded.

The Bill sets up a system that makes it relatively easy for employers to utilise this type of workplace agreement. They can be made before the commencement of employment, so the right to participate in and obtain a collective agreement can be denied new employees from the start of their employment (s96A).

Moreover, such agreements can be made even where a collective agreement or award is in place an in operation. AWAs will override a collective agreement (s100A(2)) and an award (s100B).

This means that despite a collective agreement being reached an employer can undermine such agreements by requiring an AWA. This is not the case under the *Workplace*

Relations Act 1996 currently. Section 104(6) specifically frees employers from claims of duress for requiring an employee to make an AWA a condition of employment.

It will also be difficult for employees to get advice and access to representation in such "negotiations". Employees can nominate bargaining agents in relation to AWA negotiations. A union will only be able to act as a bargaining agent if at least one person whose employment is subject to the agreement is a member of the organisation and the organisation is entitled to represent the person's industrial interests (s97). Such a restriction does not currently exist in the *Workplace Relations Act* 1996. There are no restrictions placed on who an employer might appoint as a bargaining agent. Individual employees might find themselves "negotiating" with highly skilled negotiators such as the employer's lawyer. This will only act to further tip the scales against individual workers.

The capacity for workers to get advice about AWAs or non-union collective agreements is further limited by the fact that employers need only give a copy of the agreement, or **ready access,** to the agreement in writing 7 days prior to approval (s98). Seven days is insufficient time in which employees are able to get advice, such as from their union, or to have their union or other advisor properly scrutinise the agreement and advise them of the agreement and its effect.

Such an approach also ignores the needs of people from non-English speaking backgrounds or people who are illiterate. There are no protections in the legislation for people who may be vulnerable to exploitation and victimisation.

In the new approach to agreement making, workplace agreements are lodged with the Employment Advocate. This new "streamlined process" allows agreement to take effect at time of lodgement. There is no independent scrutiny of agreements to ensure that they at least meet the legislative minimum terms and conditions or that the processes used to make the agreement were consistent with the provisions of the Act. The Employment Advocate is, by legislation, not required to consider or determine whether any of the requirements of the legislation in agreement making as to process or content have been met (s99B95)).

The scrutiny that the AIRC has currently to ensure the enterprise agreements meet the no-disadvantage test and that provisions of the Act have been complied with, and the role of the Office of the Employment Advocate to scrutinise AWAs), under the *Workplace Relations Act* 1996 is removed.

In the event that the provisions of the Act have not been complied with, such as the failure to provide employees with ready access and information statements, or failure to recognise a bargaining agent, or failure by an employer to seek approval of a union collective agreement within a reasonable period, whilst there are civil penalties attached, the only relief that can be sought is through a Court.

Any legal action in the Federal Court or the Federal Magistrate's Court is expensive and will be prohibitive for workers to pursue. In any event workers, particularly those put in a position to having to accept an AWA, if they are even aware of their rights, are unlikely to make such formal complaint and risk reprisal by their employer.

The Bill maintains the capacity for collective agreements, either union or non-union to be reached. However, as stated above, these can be overridden at any time by the introduction of AWAs.

There are also some complexities and barriers associated with obtaining a collective agreement under the new regime:

- The Bill makes provision for regulations to specify matters that are prohibited content in workplace agreements. To date we have not seen any regulations and can only speculate what the prohibited content might be. Some matters were listed in the Workplace choices documents but this was not an exhaustive list. There is no certainty in these matters as it is a relatively easy exercise for the Government to use its regulation-making power to prohibit matters from being dealt with in work place agreements that are not to its, or employers' liking. The Workplace Choices Booklet which preceded the introduction of the Bill listed as prohibited content such matters as union picnic days, paid union meetings, trade union training leave, commitment to future agreements being union ones, union involvement in dispute procedures, or that provide a remedy for unfair dismissals, restrictions on outsourcing and use of labour hire employees. These types of provisions are more likely found in agreements that are negotiated by unions. It was also proposed that any of these in existing awards and enterprise agreements will be unenforceable. This represents a fundamental stripping of conditions that strike at the heart of workers' democratic rights at work.

- The Bill also abolishes the no-disadvantage test by which agreements are measured in the current system against the relevant award. The Bill provides that the Australian Fair Pay and Conditions Standard will prevail over a workplace agreement or a contract of employment. However, various conditions can be the subject of variation. For example, s92E allows the cashing out of annual leave, which is currently not allowed under NSW law. It is not in the public interest that workers are not guaranteed a minimum 4 weeks annual leave. A developed society like Australia should not support the erosion of what should be basic conditions. It is of concern that vulnerable workers may be placed in a position where they have to give up their rights.

- Upon the termination of workplace agreements, all industrial instruments cease to apply to the employees until a new workplace agreement is made (s103R). Thus, employees are subject to the fair pay standard and effectively lose any additional rights and conditions contained in relevant awards. For many workers this will mean a loss of valuable award rights and conditions which generations of building

workers have gained over decades of struggle. The abolition of award minimums in this way is completely unacceptable.

- The Australian Industrial Relations Commission is given very broad powers to intervene and suspend bargaining periods for many reasons, including so called pattern bargaining, to limit the initiation of new bargaining periods, increase the time in which notice has to be given of protected industrial action. Further the Bill empowers the AIRC to suspend bargaining powers where industrial action impacts on a third party affected by the industrial action. In industries such as the building and construction industry, industrial action will clearly affect third parties given there are many contractors on one site. Such powers further stymie, almost completely, the capacity workers to negotiate collectively and take protected industrial action.

The Council is concerned that such barriers will work as a significant disincentive for collective bargaining and result in a loss or current conditions of employment and a lower standard of living.

Capacity To Take Industrial Action

In the current system workers are able to take legal industrial action or "protected industrial action" to further their claims. In taking this action employees and their unions are excluded from claims for damages by their employed.

The Bill puts in place a system which will reduce the capacity for workers to take effective industrial action:

- ***The necessity for a secret ballot (s109-109ZR)***- the requirement of conducting a secret ballot in the manner proposed in the legislation will discourage many workers from taking industrial action and also places their trade unions an unreasonable burden. A complex and highly technical process is involved. There is also a cost involved a percentage of which will need to be met by workers or their union. The reality is that non-unionised workers will not take industrial action.

- The failure to comply with the legislative requirements, even for very minor technical issues, may result in any action taken being rendered "unprotected" exposing individual workers and their unions to fines, and claims for damages.

- The process will also mean that employers, who are far better resourced can delay ballots, as is the case in the United States, with technical arguments and legal action and will be able to defeat the efforts of workers taking industrial action.

- The Australian Industrial Relations Commission is empowered to make orders stopping industrial action if it ***"appears"*** that unprotected action is happening, threatened, impending, or probable, or being organised. This does away with any

burden of proof required by employers to show that indeed unprotected industrial action is taking place or probable.

- If a workers takes protected or unprotected industrial action they will have their wages deducted by a minimum of 4 hours, even where the industrial action was less than 4 hours. This is highly unfair and excessive and is a further barrier to workers taking industrial action, even if is protected industrial action.

- Unions, including an organisation, officer, member or employee, face pecuniary penalties if they make a claim for payment of wages for employees which take industrial action (s114A). Unions and workers bring claims for underpayment of wages for example where employees take action that is not industrial action, for example, when workers face imminent health and safety concerns. This is often done in the course of legal proceedings, before the relevant industrial tribunal or court. If employees or unions fail in such cases, not only do workers not receive payments, but their representatives can be subject to fines as high as $33 000. Combine this with the positive burden of proof placed on employees to show that their action was based on a reasonable concern about an imminent risk to health or safety and the difficulties associated with this, the imposition of a civil penalty is highly oppressive and will inhibit meritorious claims being made.

Right to Organise and Freedom of Association Issues

The provisions dealing with Right of Entry to workplaces of authorised officers of industrial organisation will make it very difficult for trade union representative to access their members or potential members.

The Bill introduces an overly bureaucratic process in the issuing of permits (s203), with applicants and their organisation having to satisfy onerous and uncertain list of prerequisites. It obliges a registrar to judge an applicant's character and may require the disclosure of personal information that can have no bearing to the purposes for which such a permit is granted.

In revoking, suspending or imposing conditions on a permit and its holder, the industrial registrar is required to take into account matters that have happened since the issue of the permit even if they are not the subject of the complaint that gives rise to proceedings under this section against permit holders (s205). It is a concern that this may involve dubious evidence of a hearsay and defamatory nature which respondents to such proceedings will find it impossible to challenge. Such claims can be forum to do great damage to the reputation and livelihood of union representatives. The registrar should only deal with legitimate, substantiated complaints.

The provisions curtail the Registrars' discretion to impose disqualification periods by introducing mandatory minimum disqualification periods. Such a regime means the merit

of individual cases cannot be considered. The imposition of even the minimum three month ban can severely impact on the livelihood of effected individuals.

The provisions in relation to notice giving (s210) are onerous and will significantly curtail the capacity of industrial organisations to investigate breaches of industrial law on behalf of their members in a timely and immediate fashion. Unions will have a reduced capacity to recruit new members and assist their members. Further the requirement to provide particulars as to the suspected breaches, and the positive burden of proving reasonable grounds of suspected breach (s251), will result, particularly in small workplaces, in the identification of employees who might have complained to their union and make them a target for reprisal and victimisation by an unscrupulous employer.

The limitations provided in s 212 and s224 to 227, of the Bill may also operate to empower employers to circumvent the exercise of right of entry by permit holders by establishing procedures which reduce the time available for permit holders to exercise their statutory rights and the opportunity to address their areas of concerns that workers may have about their work conditions.

Further the requirement imposed by s217 of the Bill, in requiring a state permit holder to have a federal permit is onerous and prohibitive. The permits allow for certain rights in very different circumstances, the two should be treated as separate and distinct rights. The provisions of s219 may also be used to hinder unreasonably the exercise of an OHS permit holders rights. This is unacceptable and may ultimately jeopardise the lives of workers, particularly in industries like the building and construction industry where the safety risks are high. Restricting the capacity of OHS permit holders to address safety concerns may result in the death of workers.

In relation to the provisions of s221, it is a further curtailment of the capacity of trade unions to access their members and potential members, thus depriving workers of access to their trade unions, by limiting discussions with employees to those enterprises where an award or collective agreement binds the organisation. This deprives workers under non-union agreements, which are generally less advantageous than union negotiated agreements, access to their union at the workplace. It also severely restricts trade unions to recruit new members and is just another example of the thrust of this legislation to de-unionise workplaces.

The complex nature of these provisions, the entwining of the Federal system with state OHS systems and the various limitations and restrictions put in place by the Bill will severely impact on the capacity for trade unions to represent and protect their members, recruit new members and ensure that their members are not placed in unsafe situations which could threaten their lives.

Workers should be given reasonable access to trade unions, they should be able to organise. Unions should be able to access members and workers eligible to be members to protect their wages and conditions from erosion by unscrupulous employers.

Conciliation and Arbitration in workplace relations amendment (Work choices) Bill 2005

Model dispute resolution process

The Council is concerned that the manner in which the "alternative dispute resolution" process will operate unnecessarily erode the powers of the Australian Industrial Relations Commission in dealing with industrial disputes. The AIRC over the past 100 years has played a pivotal and effective role in resolving industrial disputation which is in the benefit of both employers and employees.

Proposed new Part VIIA introduces for the first time into the *Workplace Relations Act* an "alternative dispute resolution process using an agreed provider". Division 2 of Part VIIA contains a "model dispute resolution process" clause. The model clause will be contained in all Awards as well as agreements which are lodged without a dispute resolution process.

Under the clause, parties are first required to attempt to resolve the dispute between themselves. If this fails, the model clause provides that one of the parties can notify the Industrial Registrar of the dispute, but only where the parties cannot agree on who should conduct the alternative dispute resolution process. The parties must then wait 14 days (the "consideration period") before applying to the Commission to conduct the alternative dispute resolution process.

At present, the Commission is frequently able to conciliate in relation to industrial disputes within a few days, and sometimes even hours, of being notified of the existence of a dispute. The enforced delay contained in the model dispute resolution process will make it much more difficult for the parties to seek the benefit of the Commission's assistance in addressing and resolving disputes in a timely and efficient manner.

In conducting the alternative dispute resolution, the Commission may not: compel a person to do anything; make an award or order; or appoint a board of reference, even if the parties agree that the Commission should be able to do these things. The Commission can only arbitrate or otherwise determine the rights of a party if the parties agree. The Commission is not even able to make a recommendation unless the parties request the Commission to do so. Further, the process must be conducted in private.

The power of the Commission in this process will essentially be limited to arranging conferences for the parties to attend and assisting the parties to reach an agreement between themselves, unless both the parties wish the Commission to make a recommendation or decision. It appears that the Commission does not have power to compel attendance. The powers of the Commission will be much the same as those of a private mediator. At present, the Commission is able to act quickly to convene

conciliation conferences in relation to disputes. The Commission can compel attendance. This often helps resolve disputes.

The clause provides that the alternative dispute resolution process is complete when the parties to the dispute agree that the matters are resolved, or the party who elected to use the process informs the Commission that it no longer wishes to continue with the process.

Under the model clause, the process is entirely "voluntary". Where no satisfactory resolution is reached, the parties will generally have no recourse to arbitration. This will significantly disadvantage a party to a dispute where the other party does not wish to resolve the matter. Generally, the stronger party to the dispute will have little incentive to compromise.

If the parties use an alternative dispute resolution provider other than the Commission, this provider will have no powers other than to assist the parties reach an agreement amongst themselves. This again will clearly advantage the stronger party to the dispute.

Dispute resolution by the Commission under a workplace agreement

Under the proposed new s176M, the Commission must not conduct a dispute resolution process under a workplace agreement unless all the steps under the agreement have first been taken. It is often a matter of dispute between the parties as to whether the steps have been correctly followed. Presumably the Commission will have to deal with any argument in relation to this as a jurisdictional matter, before attending to the substantive matter in dispute. This will cause delay in the Commission being able to provide quick and practical assistance to the parties in resolving disputes.

Under the proposed new s176O, the Commission is required to conduct the dispute in private, and must not disclose any information or documents provided during the course of the process. Further, evidence from the dispute before the Commission is not admissible in a court. The current practice is for the parties to be able to place some matters on the public record, and also to make use of the Commission's assistance in private discussions. The amendments take these options away from the parties, and introduce a lack of transparency.

The Commission will not have power to make orders in conducting a dispute resolution procedure under an agreement. This could well affect the Commission's ability to hear evidence about the matters in dispute in a procedurally fair manner, and therefore the Commission's ability to make a recommendation or decision in a properly informed manner.

The Commission will be unable to arbitrate unless the workplace agreement specifically provides for this. This is likely to lead to complicated and time consuming jurisdictional arguments.

Dispute resolution by the Commission other than under a workplace agreement or the model clause

The Commission may only conduct alternative dispute resolution other than in accordance with a workplace agreement or the model clause if the dispute is in relation to bargaining for a proposed collective agreement and the parties agree to the Commission conducting dispute resolution. These are extremely narrow circumstances. A party in negotiation with another party who is unwilling to resolve the dispute will have no recourse to the assistance of the Commission. This would be a significant disadvantage to the party who does wish to resolve the dispute.

Under the proposed new s 176I, the commission has no power to arbitrate under these circumstances, even if the parties agree that it should. Again, the "voluntary" nature of the process will seriously disadvantage a party to a dispute where the other party does not wish to resolve the dispute.

Orders of the Commission in relation to industrial action

Under the proposed new s 111, the Commission is required to make an order to stop or prevent industrial action which is not protected, if is "appears" that the industrial action is happening, threatened, impending or probable, or is being organised. This is even the case in respect of non-federal system employees or employers if the industrial action is likely to cause substantial loss to the business of a constitutional corporation. If the Commission cannot hear and determine an application under this section within 48 hours, it must make an interim order unless this would be contrary to the public interest.

These provisions contrast sharply with the voluntary nature of dispute resolution under the proposed changes. Further, the Commission loses its discretion in respect to granting orders, and must grant the orders irrespective of the circumstances. This significantly curtails the ability of the Commission to try to resolve matters without issuing orders preventing industrial action.

The proposed Bill essentially takes away the power of the Commission to arbitrate or issue orders except in the case where unprotected industrial action is taking place, in which case the Commission is generally required to make orders to prevent it. The Commission will only have power to arbitrate subject to a workplace agreement where the agreement specifically gives the Commission that power, and even this is subject to significant limitations.

The Commission's power to conciliate in relation to disputes has also been significantly reduced. Essentially, the Commission will now only be able to conciliate where the parties agree to this course. Even then, the powers of the Commission in conciliating are subject to significant limitations.

At present, the conciliation and arbitration powers of the Commission are of great assistance to parties to industrial disputes in resolving these disputes. Under the proposed

changes, the parties will lose the benefit of this independent third party to assist in resolution of disputes unless both sides agree. This will significantly disadvantage the less powerful party to a dispute.

The proposed changes will disadvantage and weaken the bargaining position of unions, and strengthen that of employers. Unions and employees will generally not be able to force a reluctant employer to the bargaining table, even for conciliation.

The removal of the Commission's power to arbitrate except in limited circumstances means that if a party is unwilling to resolve the dispute, the weaker party will have no recourse to an independent umpire.

The requirement that the Commission issues orders to prevent industrial action generally within 48 hours will also significantly disadvantage employees and unions. It even further curtails the ability of employees to withdraw their labour in any circumstances other than negotiating for a workplace agreement.

Far from being an "alternative" dispute resolution mechanism, the new legislative regime for industrial disputes is likely to force parties into the court system in relation to breaches of laws, awards or agreements, given that participation in Commission proceedings will now be mostly voluntary. This will deprive parties of access to a quick and cost effective method of resolving disputes.

The Stripping of Award Entitlements

The Council is concerned that the move to strip back awards and to confine minimum standards of employment to the Australian Fair Pay and Conditions standard will mean a loss of pay and conditions for workers currently protected by comprehensive awards. The Council is not opposed to the principle of ensuring that all workers receive the benefit of annual leave, personal/carers leave, parental leave and not to work excessive hours, which the Australian Fair Pay and Conditions Standard. Although we are aware that the ACTU, Unions NSW and others have raised issues about whether the Standard does actually deliver what its is claimed by the Howard Government to deliver for Australian workers. Such conditions of employment can be given to all workers without having to be accompanied by a change to the award system that sees these issues stripped out of awards, particularly if industries have standards that are more beneficial than the legislated minima.

Moreover, the Council is concerned that the move to strip back award to a minimum set of entitlement will result in a loss of conditions. Workers who solely rely on awards for their minimum pay and conditions are those who lack sufficient bargaining power to negotiate better wages and conditions. The award is their safety net and it is most concerning that these workers, who represent the most vulnerable, might have their conditions reduced.

We are also concerned that there is some analysis of the bill that suggests that Award provisions such as allowing women returning from maternity leave to transfer from full-time to part-time work could be look abolished.

The Council does not support an award stripping process which erodes the terms and conditions of Australian workers.

CONCLUSIONS

These are some of the issues of concern that the Council has in relation to the change in the Australian Industrial Relations System.

We are concerned that the Bill has been introduced in such a manner to deprive interested parties to closely consider its contents, to properly debate its impact and to full understand the consequences of this very significant change to regulation of industrial relations in Australia.

Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

Submission no: 63

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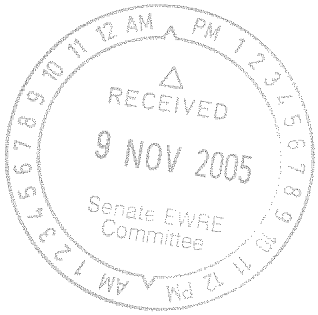

Queensland Nurses' Union

Submission to the

Senate Employment, Workplace Relations and Education Committee

INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

November 2005

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1. Introduction

1.1. The QNU condemns in the strongest terms the destruction of Australia's industrial relations system and its replacement with a complex and unjust regime that will do immeasurable harm to the working lives of nurses in Queensland and Australia.

1.2. The nursing workforce is best served by comprehensive awards and agreements overseen and/or determined by a robust industrial tribunal. It is a workforce that supports a strong professional and industrial association.

1.3. These elements are vital, not only to the nurses themselves, 93% of whom are female, but to those many individuals and communities who rely in various ways on nursing care.

1.4. The Workplace Relations Amendment (Workchoices) Bill 2005 is not in the interests of nurses or those we care for, we don't want it, there is no justification for it and Australian society will suffer as a consequence of it.

1.5. Due to the extremely limited time frame of this inquiry which, like the proposed legislation itself, has the consequence of curtailing the democratic participation of individuals in the decisions that most effect them, this submission is necessarily brief, and is in no way exhaustive in describing the myriad wrongs that will be done to nurses as a consequence of this legislation.

1.6. In making this submission the QNU has had the benefit of reading the submissions of our Federal body, the Australian Nursing Federation and we adopt and endorse absolutely those submissions and commend them to the Committee.

2. About the QNU

2.1. The QNU is the principal health union operating and registered in Queensland. The QNU also operates as the state branch of the federally registered Australian Nursing Federation.

2.2. The QNU covers all categories of workers that make up the nursing workforce in Queensland—registered nurses, midwives, enrolled nurses and assistants in nursing, employed in the public, private and not-for-profit health sectors including aged care. Our members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management.

2.3. The union has both industrial and professional objectives. We firmly see nurses and nursing as being situated within a societal context – nurses being both providers and "consumers" of health services. In recent years we have attempted to lead and contribute to the debate within nursing and the wider community about the role and contribution of nursing through the development, implementation and regular review of a *Social Charter of Nursing in Queensland.*

2.4. Membership of the QNU has grown steadily since its formation in 1982 and in June 2005 was in excess of 33,000 and still growing. The QNU represents the largest number of organised women workers of any union in Queensland. Like the nursing profession as a whole, the overwhelming majority of our members are female (93%). As nurses are the largest occupational group within health (nurses make up over 50% of the total employed health workforce and over 40% of the Queensland Health workforce), the QNU is the principal health union operating in Queensland.

2.5. The union has a democratic structure based on workplace or geographical branches. Delegates are elected from the branches to attend the annual QNU conference which is the principal policy making body of the union. As such it is ordinary working nurses who increasingly choose membership of the QNU that drive the agenda of the QNU. In addition to the annual conference the QNU has an elected council and an elected executive, which in turn have decision-making responsibilities between conferences. Council is the governing body of the union.

3. Some key issues for nurses.

3.1. *Collective and Democratic Industrial Arrangements*

3.1.1. QNU members working in Queensland Health are employed under federal industrial awards and in the private sector are employed under state industrial awards. In addition, since 1994 when no enterprise agreements were in place covering nursing workers, the QNU has become party to over 300 enterprise agreements which cover a diverse range of health facilities and other non-health establishments where nursing services are provided (e.g. schools, prisons and factories).

3.1.2. Through the democratic process of the QNU nurses have been able to participate in the development of these arrangements and seek to have them remain relevant and equitable. The representations made to industrial tribunals by the QNU and the consequent deliberations of those tribunals, are thus part of a democratic process that supports underlying principles of the nursing profession.

3.1.3. The proposed legislation destroys these democratic processes by a number of means including severely curtailing the capacity of nurses' democratic organisations to represent them, removing the capacity of industrial tribunals to make determinations based on the representation of those organisations, removing the democratic process of making collective agreements from the scrutiny of industrial tribunals and democratic representative organisations, and giving pre-eminence to individual agreements over collective agreements.

3.2. *Part time work*

3.2.1. Nearly 50% of nurses are working part time. The number of nurses employed in a part-time capacity has steadily increased in recent years. By 2003 this had increased to 49.6%.[1] At the same time the average number of hours worked per week has decreased from 32.4 hours in 1995 to 31.7 hours in 2003.[2]

3.2.2. Nurses work part time for two principle reasons. Respite from their heavy workloads and to meet their family responsibilities and achieve work family balance. Through the use of comprehensive hours of work provisions including restrictions on the maximum and minimum number of hours, the use of shift penalties, and roster notice periods, nurses are able to have certainty in their working lives.

3.2.3. These protections will be lost under the proposed legislation, either by being specifically outlawed, or through the loss of the protection of a robust industrial commission. The lack of certainty for part time work will have an adverse effect on work family balance.

3.3. *Capacity to Bargain*

3.3.1. Nursing numbers in Queensland are lower than the national average. Queensland continues to fall well below the national averages in terms of both the total number of employed nurses and total full time equivalent (FTE) employed nurses.

3.3.2. Pronounced skills shortages exist in all areas of nursing. According to the Department of Employment and Workplace Relations (DEWR) *National Skill Shortage Survey*, the depth and breadth of the skills shortages in nursing remains the greatest of all occupational groups. Workforce modeling commissioned by the recent National Review of Nursing Education predicts that there will be 31,000 nursing vacancies in Australia by 2006.

3.3.3. At the same time changes have also been occurring in the wider community and health sector that have impacted on nurses and nursing. Queensland's population growth is the highest of all states and territories in recent years. This growth, which is predicted to continue, has put significant pressure on demand for health services. The ageing of the Australian community, technological advances and reform in the health sector in recent years have all also significantly contributed to changes in care and work patterns.

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[1] AIHW (2005), *Nursing and Midwifery labour force 2003*, Canberra.
[2] AIHW (2005), *Nursing and Midwifery labour force 2003*, Canberra.

3.3.4. Contrary to government rhetoric, these dynamics serve to restrict bargaining power in nursing. This intensification of nursing work has us under pressure to meet the increased demands on health services. There is little time left for individual bargaining. The nursing profession does not operate in a free market. Health services including aged care are subject to government policy and funding. The growing disparity between wages in different sectors where nurses work that has occurred as a consequence of the deregulation of the labour market over the last decade can only be addressed through arbitrated movement in awards by industrial tribunals (see for example Nursing Homes &c., Nurses' (State) Award, Re (No 4) [2005] NSWIRComm 88).

3.3.5. In the absence of this the pressure is for nurses to do more with less and for substitution of more qualified nursing staff with less qualified nursing staff. This results in a down grading of the nursing care being provided thus placing a greater burden on family members and others.

3.3.6. A significant factor in the attraction of new recruits to nursing that is of high value to students and beginning practitioners is a perception of nursing as being a collegial profession where individual practitioners are nurtured and mentored. The attack on the collective industrial processes of nursing through this proposed legislation will result in these relationships breaking down and consequently force beginners to compete with low skilled and ill prepared categories of health workers, particularly in aged care and private hospitals. The outlawing of 'pattern bargaining' for matters such as work loads provisions, professional development provisions, training provisions and classification structure improvements will damage these important relationships.

3.3.7. The provisions relating to essential services in the proposed legislation will mean that nurses are restrained from seeking to exercise the limited bargaining power they do possess.

3.4. ***Shift Penalties***

3.4.1. The context in which nurses do their work is also highly variable – many nurses work as independent professional agents who at any one time can be caring for a number of individuals (and their families) but also do so within a team structure. Multiple transactions between individuals occur during the course of a shift, a complex range of activities are undertaken and the working environment is often unstable. The condition of patients can rapidly deteriorate, in most areas we have a number of patients in our care (all with different needs and health status) so our clinical assessment and reaction skills must be finely tuned. We must have the ability to prioritise and respond appropriately. As we work 24/7 nurses perform the principal surveillance role in the health system – it is nurses who keep patients safe.

3.4.2. We doubt that the important work achieved by the whistle blower nurses in the Bundaberg Hospital affair would have occurred if they were in the vulnerable position of being on individual contracts with restraints on the assistance they could receive from their industrial organisation.

3.4.3. The 24 hour seven day a week nature of nursing is currently recognised in part through the provision of shift penalties that often comprise up to 20 to 25 percent of a nurses income. There is no protection for these penalties in the proposed legislation and nurses are amongst the most vulnerable to loss of penalties in a bargaining environment such as that proposed.

4. Conclusion

4.1. The planned industrial relations changes will simply serve to make health workforce planning harder. The rights of health workers to take industrial action to secure improvements in wages and conditions will be significantly curtailed through the introduction of the essential services components of the legislation. Clearly the federal government views the health workforce as being somehow "different" to the broader workforce – there is a special "public interest" to protect that is seen as taking precedence over the industrial rights of workers in this sector.

4.2. How are nurses expected to now try and achieve improvements to pay and working conditions (which is certainly required if we are to attract and retain people in nursing!), let alone retain what we have.

4.3. Nursing is a collective, democratic profession vital to the well being of all Australians. The proposed Workplace Relations Amendment (Workchoices) Bill 2005 will have an adverse effect on nurses and the well being of those we care for. It should be condemned.