Submission

to

Senate Employment, Workplace Relations and Education Legislation Committee

Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005

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QUEENSLAND TEACHERS' UNION OF EMPLOYEES

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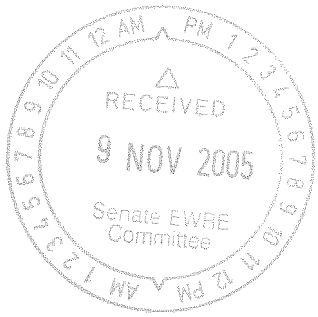

Queensland Teachers' Union

Submission to the

Senate Employment, Workplace Relations and Education References Committee

INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORK CHOICES) BILL 2005

November 2005

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1 Introduction

1.1 The QTU is a state registered industrial organisation of employees in Queensland and has been continuously registered as an industrial organisation of employees in this state since 1889.

1.2 The Queensland Teachers' Union has a membership of over 40,000 educators who work in public schools and vocational education settings across Queensland. Members include teachers and school administrators in government schools and TAFE colleges.

1.3 Some 76% of the membership of the QTU is female and the QTU has a long history of championing the right of women to equal status with males in the workplace.

1.4 QTU membership represents coverage of more than 95% of the teaching workforce in government schools.

1.5 The QTU is the largest public sector union in Queensland.

1.6 The QTU is party to the following state registered Awards and Certified Agreements:

Teachers' Award - State 2003 (Qld);
Community Teachers, Assistant Teachers - Aboriginal and Torres Strait Islander Community Schools Award - State 2003 (Qld);
TAFE Teachers' Award - State 2003 (Qld);
Senior College Teachers' Award - State 2003 (Qld);
Family Leave (Queensland Public Sector) Award - State 2004;
Department of Education Teachers' Certified Agreement 2003;
State Government Departments Certified Agreement 2003; and
TAFE Queensland Educational Staff Sub-Agency Certified Agreement 2003.

1.7 The QTU is an associated body of the Australian Education Union, a federally registered union. The AEU has a membership of over 165,000 educators who work in public schools, colleges, early childhood and vocational settings in all state and territories across Australia.

1.8 The QTU endorses the submission of both the ACTU and AEU to this Inquiry. This submission is supplementary to the ACTU and AEU submissions and focuses in particular on the potential impact of the proposed legislation on QTU members and the operations of the QTU as an education union and public sector union in

Queensland. This submission is authorised by the QTU's Committee of Management.

2 Awards

2.1 A new object of the Bill being considered by this Inquiry is to ensure that awards provide "minimum safety net entitlements for award-reliant employees" only. This object is partially realised by the further simplification of awards with a new statutory definition of just thirteen (13) allowable matters that may be the subject of the terms of an award. This procedure would have the effect of reducing the already constrained awards to instruments of little practical value in protecting the rights and working conditions of workers.

2.2 The inclusion in the Bill of a list of proscribed items that must not be included in an award is of great concern. This is particularly so given that this list has been allowed to be open-ended by means of amendment by regulation. The matters proscribed in the terms of these clauses (Part VI, Division 2, Subdivision A, c116B) create a significant disadvantage for award-reliant workers and potentially have a deleterious effect on the awards created in other jurisdictions by virtue of the intended roping-in of the state industrial relations systems.

2.3 Provisions relating to award rationalisation create the requirement for the current award system to be compacted into a hand-full of national awards covering entire industries. Specific provisions to exclude from a 'rationalised' award any mention of state specific conditions clearly indicates the intention of the Bill to the reduce the award system to an umbrella (albeit one full of holes) based on the manifestly inadequate centrally determined set of minima.

2.4 The provisions requiring the rationalisation of awards run contrary to the current Federal Government's mantra of flexibility and responsiveness to local circumstances prevailing in an industry.

2.5 Instead, they will underpin the creation by legislation of a context in which employees will be unable to resist substandard individual agreements given the more negative alternative of award coverage. This approach must be rejected.

2.6 Queensland is served by a large and geographically diverse education system that presents particular challenges and problems for the employer and employees alike.

2.7 In meeting these challenges, employer and employee parties in the Queensland public education system have chosen to use all of the means available under the Queensland Industrial Relations statutes to codify the terms of employment and working conditions of teachers. This has resulted in the majority of entitlements being contained in an award that is regularly reviewed and updated while emerging developments are contained in certified agreements.

2.8 Many of the provisions now contained in Queensland awards have been determined on the merits through matters considered by the Queensland Industrial Relations Commission after all parties have had the opportunity to put evidence. A feature of the Queensland industrial relations context, General Rulings on critical issues such as casual loading help protect the safety net provided by awards.

2.9 By way of example, the current level of casual loading in Queensland is twenty-three percent (23%) as determined by the Queensland Industrial Relations Commission. The Bill provides for a maximum casual loading of twenty percent (20%). Queensland more vulnerable workers stand to lose substantial earnings at the stroke of a pen should this Bill become law. This travesty is magnified when the circumstances of the individuals who are casual employees are added to the considerations.

2.10 All of the awards to which the QTU is a party are consent arrangements and as such represent largely negotiated outcomes in relation to each of the matters contained therein. These awards have recently been reviewed to ensure that they contain only current provisions and as such are free from superceded and obsolete content.

2.11 Each of the awards to which the QTU is a party contains significant content that would be prohibited by the operation of these provisions of the Bill. Examples of such content includes arrangements pertaining to:

Workplace consultation;
Probation;
Methodology for determining classifications for salary purposes;
Hours of duty for specified classes of employees including specialist teachers and part-time teachers;
Flexibility of school hours;

Sick leave;
Long service leave;
Industrial relations education leave;
Transfers; and
Professional development and training.

2.12 The attack on the award system that will be perpetrated by the Bill in its current form will be detrimental to workers at the federal level and have far reaching effects for workers in state jurisdictions into the future.

3 Workplace Agreements

3.1 The cynical attempt by the Government to conceal within the Bill vast changes to the industrial relations system by means of a 'smoke and mirrors' trick with the definition of the term "workplace agreements", is staggering in its audacity.

3.2 By creating a new category of agreements, workplace agreements, incorporating the individual contract or Australian Workplace Agreement (AWA), non-union collective agreements and union collective agreements (in that order), the Bill establishes the basis for substantial erosion of the employment conditions of workers.

3.3 The operation of an AWA to the exclusion of any collective agreement or award strikes at the core of democracy in the workplace and highlights the ideological motivation for the key elements of the Bill.

3.4 Collectivism and collective bargaining have been a central aspect of the Australian industrial relations system for the past one hundred years.

3.5 It is the failure by the business community to adopt the ideologically driven agenda of the Howard Government that is the key factor motivating the development of the restrictive agreement-making regime contained in the Bill.

3.6 In light of the international research that indicates that this neo-liberal, anti-union thrust is outdated and counter-product in an economic sense, it is the businesses, workers and unions in our community that should be allowed to set this agenda.

3.7 In short, the Howard Government has constructed this Bill to impose on Australia a narrow agreement-making regime that is the antithesis of the choice mantra being peddled to the public.

3.8 The removal of the requirement for agreements to be certified by the independent AIRC in favour of an automatic approval process activated by lodgement with a Government arm, the Office of the Employment Advocate (OEA), provides further evidence of the drive to remove the legislative protections for workers.

3.9 The recent very public and embarrassing failures of the OEA to carry out its statutory obligations with regard to AWA's have been overcome in the legislation by removing this onus from the regulator and placing it on the parties to an agreement to self-regulate. The next teenager who goes to work for a bakery had better make sure that they belong to a Union because the Government has abrogated its responsibility for protecting the weaker party in the employment relationship in the grossest way imaginable.

3.10 With more than $140 million dollars allocated to the enforcement of the Bill over the next four years (more than is required to maintain the seven industrial commissions with their diverse roles), the alleged purpose of the Bill in simplifying the industrial relations system to make it cheaper to operate is revealed as fallacious.

3.11 Active and informed citizenship, of which industrial citizenship has been an integral part, in this country is under direct threat from this Bill.

3.12 Actions such as making it illegal to even seek to include in an industrial agreement a matter relating to the training of employees in dispute resolution or industrial relations matters is a warning of a Government bent on disenfranchising workers.

3.13 Provisions within the Bill for financial penalties for individuals and organisations in this regard are grossly inconsistent with the alleged offences and are clearly a tactic to frighten individuals and bludgeon organisations.

3.14 Any Bill that creates a fine of $6600 for individuals and $33,000 for an organisation for simply requesting to negotiate into an agreement an issue as fundamental as job security, union involvement in dispute resolution or protection from unfair dismissal should not receive the support of the Senate.

3.15 As with awards, the QTU is a party to certified agreements that have been negotiated between the Union and the employer and represent a mutually

satisfactory resolution to the various claims made by both parties to the negotiations.

3.16 It is inconsistent with the stated objects of the Bill that Union and employer parties will be prevented from including in future collective agreements, items of business that relate to proscribed content.

3.17 This development is for no other reason than because the Howard Government in Canberra has determined that it should not be in our agreement? The employees want it in. The employer wants them in. The union wants them in. How can this possibly be represented as choice?

3.18 QTU members have made conscious and informed choices about the industrial instruments that govern their working conditions because, under Queensland industrial relations legislation, they are genuinely allowed to do so. To suggest that being delivered into the hands of the proposed federal industrial relations system is 'in our best interests' is an anathema.

4 Australian Fair Pay Commission and Australian Fair Pay and Conditions Standards

4.1 The Bill creates a new body, the Australian Fair Pay Commission (AFPC) to decide on the Australian Fair Pay and Conditions Standards (AFPCS) for a wide range of worker entitlements such as the minimum wage, classification structures, annual leave and parental leave.

4.2 As elsewhere in the Bill, the lack of detail is considered to hide significant issues of concern particularly given the enormous power and apparent lack of independence of the AFPC. The efflux of time will reveal the extent to which these fears are borne out.

4.3 Fundamental to the doctrine of the separation of powers is the independence of the judiciary. The AIRC and its state counterparts attract independent status by virtue of their standing as courts and have traditionally operated with in the judicial framework. The AFPC is appointed by the Minister for a, relatively short, fixed period, a circumstance that is not conducive to independence of operation.

4.4 It is acknowledged that the modus operandi of the AFPC is yet to be determined by the AFPC, however, the rhetoric of the Government makes it clear that the fair and balanced approach taken by the AIRC and State Commissions will not be replicated.

4.5 The failure by the Bill to acknowledge the role of organisations of employees, who represent some two (2) million workers in this country, by establishing a permanent place on the AFPC, does much to exacerbate concerns about the potential lack of fairness and balance in the outcomes of the AFPC deliberations.

4.6 The QTU rejects the AFPC and asserts that the Queensland Industrial Relations Commission is best placed to mange the industrial relations context of this state.

4.7 The QTU rejects the AFPCS as an Orwellian subterfuge, albeit a very poor subterfuge, to mask the real agenda of stripping away the basic rights and entitlements of working Australians.

4.8 The QTU rejects the notion that the statutory minima contained in the APFCS provide an appropriate safety net of working conditions for Australian workers.

4.9 The QTU rejects the baseless economic rationale for these provisions and asserts that the social and political rationale for the creation of the 'living wage' and associated working conditions standards, indeed for section 51(xxxv) of the Australian Constitution, was to protect working Australians from the worst excesses of the owners of capital. This rational remains valid and vital.

5 Industrial Representation

5.1 The Queensland Teachers Union of Employees has represented the interests of Queensland public education teachers and administrators continuously for a period of 116 years.

5.2 The Queensland Teachers Union of Employees is one of the oldest continuously registered teacher unions in this country and the world.

5.3 The QTU has an exemplary reputation as the representative of public education teachers and administrators in the industrial relations community, the education community and the community in general.

5.4 The QTU represents over 95% of the teaching workforce in public education in this state.

5.5 Members exercise a choice to belong to the QTU by virtue of the remittance of annual dues.

5.6 Members do not expect that, as will be the case under the Bill, they will have to jump through bureaucratic hoops each time they wish to access the support of their industrial organisation in their workplace.

5.7 Members do not expect that they will have barriers to being represented by their chosen industrial organisation placed before them, as will be the case with this Bill, in order to satisfy the ideological bent of the Prime Minister.

5.8 QTU members exercise their choice freely. The Bill currently before the Senate will remove choices about industrial representation from QTU members that they deserve to be able to make.

6 Prohibited Conduct

6.1 The creation by the Bill of the new offence relating to prohibited conduct is one of the most insidious attacks on workers ever perpetrated in this country.

6.2 The provisions of the Bill relating to prohibited conduct have already been identified by informed commentators as grossly biased against employees and industrial organisations of employees while providing unsustainable exemptions and protections for employers.

6.3 The net effect of making it illegal to take any action to 'coerce' a person to take an action relating to a 'workplace agreement' renders the only substantial tactic of organised labour nugatory.

6.4 Australian workers under enlightened industrial relations regimes are good industrial citizens capable of conducting business with a minimal requirement for the use of the ultimate sanction of industrial action.

6.5 The current *Workplace Relations Act 1996* has resulted in more substantial levels of industrial disputation than in the Queensland jurisdiction under the *Industrial Relations Act 1999 (Qld)*.

6.6 The Bill will provide for financial penalties to individuals and organisations that are completely inconsistent with the nature and severity of the offences alleged to have been committed.

7 Industrial Action

7.1 The right to strike is enshrined in international treaties and the impact of the current Workplace Relations Act 1996 on that right is currently underway before the International Labour Organisations compliance body.

7.2 This Bill proposes to further erode this fundamental human right by making any industrial action during the life of a 'workplace agreement' illegal.

7.3 The requirements for month long secret ballots to be conducted on each occasion that a union or group of employees chooses to exercise the increasingly limited right to strike in support of negotiations with the employer is unworkable and unsustainable.

7.4 Employers locking out employees or taking similar industrial action have accounted for the most outrageous cases of industrial thuggery in recent years.

7.5 No requirement for employers to hold a secret ballot to determine the level of support for industrial action against employees is required by the Bill.

7.6 The right to withdraw labour in the face of an imminent health and safety risk is maintained but only after the burden of the onus of proof of the safety of the worksite has been reversed from that contained in the current legislation such that the employees must prove that the worksite is unsafe.

7.7 The provisions of the Bill relating to the capacity of the AIRC to intervene to order that non-federal system employees not take, organise or threaten industrial action in their own jurisdiction is potentially the most heinous breach of the constitution contained in the Bill.

7.8 The attachment to the provisions authorising the AIRC to intervene in the affairs of a state industrial relations system, of a prohibition on the release of identifying information on the applicant for such an order from the AIRC is problematic.

7.9 Clearly the AIRC or the Registry, in the course of the hearing of the matter, would only reveal the name of the applicant to the parties to the dispute. Unless of course there is no intention of the matters being heard or of offering employee parties the right to argue their case when it is open to maintain the confidentiality of the complainant.

7.10 It is also conceivable that the intention of the Bill is to pare back the principles of natural justice by refusing the right of the accused party to know their accuser and thus consign centuries of established legal precedent to the scrap heap of history.

7.11 It is entirely consistent with the tenor of this Bill that the mandatory six month jail term for revealing the name of the applicant for an order under this section is intended to intimidate the Commissioners, Union Officials and any other party to the industrial relations process.

7.12 It is contemptible that this provision provides a veil of secrecy behind which, any person not prepared to stand by their convictions and defend their position in an impartial tribunal, may hide.

8 Unfair Dismissal

8.1 The provision of the right to contest a dismissal, where an arguable case exists that the dismissal was unfair, should be fundamental to an enlightened democracy.

8.2 The imbalance of power between employees and employers cannot be redressed in the circumstances of the ultimate sanction of dismissal but by means of the intervention of an impartial third party.

8.3 The consequences of dismissal are catastrophic in terms of loss of income, diminution of opportunity for reemployment and personal self-esteem.

8.4 The cost to society and to employers to provide a system that protects the vulnerable is of little consequence when compared to the destructive potential of a dismissal on the individual and their family in the short and longer term.

8.5 The breadth of the provisions of the Bill excising a range of employees from access to rights to contest a dismissal that is unfair, unjust or unreasonable is staggering.

8.6 In light of the other provisions of the Bill stacking the scales of industrial justice strongly in favour of employers it is entirely consistent to expect that the protection from unfair dismissal had to be removed for as many employees as possible.

8.7 There is no arguable case for the institution of these changes to unfair dismissal laws.

8.8 Legislation should not be used to provide a legitimisation of the failure of some businesses to conduct themselves in an appropriate manner in relation to the separation from employment of employees.

9 There's a Hole in the Bill Dear Senators (or more than 350 to be precise)!

9.1 Notwithstanding all of the criticisms made in this submission regarding the negative consequences of the Bill for Australian workers, the single most significant reason for the Senate to return this Bill to the drafters for more work is the more than 350 references in the Bill to detailed provisions that are to be provided in the Regulations.

9.2 Having spent $58 million dollars having this Bill drafted it might be expected that the Bill would actually contain the necessary detail to make it a workable document. It does not!

9.3 Significant provisions relating to important issues such as the content of Workplace Agreements, especially prohibited content, are left open ended and subject only to the decisions of the Minister whose responsibility it was to draft this legislation in the first instance.

9.4 There are three possible reasons for the omission of so many important details:

9.5 The Government did not want the Australian people, and the Senate for that matter, to be able to get a full picture of the true impact of this legislation and are hiding the details from us.

9.6 The Government intends to make good a whole range of further ideological bents through the flexible mechanism of the regulations rather than through the legislation that requires the support of important individuals in the Senate to be passed. They are hiding the details from us.

9.7 The Government was unable to finish the legislation in time to meet its own timetable and has taken shortcuts with the single most significant change to Australian society since Federation and so they are hiding the detail from us.

9.8 For this reason alone the Senate should reject this ramshackle excuse for a Bill and expect that the House of Review be treated with greater respect than to be subjected to dealing with such a substandard piece of legislative drafting.

10 Conclusion

10.1 The current Workplace Relations Act 1996 is over 850 pages long and contains some of the most complex legislative provisions to be found in the Australian legislative catalogue.

10.2 The amendments contained in the Workplace Relations Amendment (WorkChoices) Bill 2005 will add hundreds more pages of provisions that will be largely incomprehensible to the average citizen.

10.3 The Regulations to the Bill, yet to be written and yet to be revealed to the Australian people and their representatives, will add hundreds more pages to the industrial relations legislation at the federal level.

10.4 This Bill will not result in a simplified industrial relations system.

10.5 This Bill will not result in an industrial relations system that will be accessible to workers, small business or the general public.

10.6 This Bill will result in the demise of the Queensland Industrial Relations system, a system that is accessible and much simpler than the current or proposed federal system. This is not an outcome that is either desirable or in the best interests of the political and economic future of this country.

10.7 This Bill will result in the hard won position of women workers being dramatically eroded.

10.8 This Bill will result in the loss of the current working conditions of workers

10.9 This Bill will remove the real safety net for workers by rendering the role of the Australian Industrial Relations Commission nugatory.

10.10 It is economically unsustainable for the nation to subsidise the whims of the Prime Minister to the tune of $490 million, because that is what this Bill truly represents.

10.11 It is an embarrassment to Australia internationally that our nation is considering perpetrating such an act of treachery on its workers.

10.12 The Bill will, contrary to its stated objects, breach Australia's obligations to the international community as embodied in International Labour Organisation Conventions.

10.13 The Queensland Teachers' Union rejects the content and intent of the Bill absolutely and repudiates the ideological agenda that has brought it into being.