9 November 2005

Secretary
Senate Employment, Workplace Relations
and Education References and Legislation Committee
Department of the Senate
Parliament House
Canberra ACT 2600
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Dear Secretary,

Please find attached a copy of the Transport Workers' Union (Victorian/Tasmanian Branch) Submission to the Senate Employment, Workplace Relations and Education References and Legislation Committee regarding the *Workplace Relations Amendment (WorkChoices) Bill 2005* (Cth). An electronic copy was also emailed on 9 November 2005.

We would appreciate the opportunity to address the Committee and give evidence at a public hearing.

Should you have any queries relating to this Submission please contact Brendan Johnson in this office on (03) 8290 0600 or 0402 039 191.

Yours sincerely

WAYNE MADER
for BILL NOONAN
Branch Secretary

Submission to Senate Employment, Workplace Relations and Education References and Legislation Committee

Transport Workers' Union (Victorian/Tasmanian Branch)

Inquiry into the *Workplace Relations Amendment (WorkChoices) Bill 2005* (Cth)

November 2005

EXECUTIVE SUMMARY

The *Workplace Relations Amendment (WorkChoices) Bill 2005* (Cth) ("the Bill") represents the most fundamental attack on workers' rights in Australia in over a century. It is an ideologically driven Bill that is strictly designed to remove real choice from the lives of working Australians and drive down the real wages of low income earners. It is anathema to the well understood sense of an Australian 'fair go'.

This submission addresses the ways in which the Bill will remove any confidence workers may have in exercising genuine choice over the form or content of an industrial instrument regulating their work, and how it will allow employers to remove amongst other items, hard won benefits such as penalties, overtime, allowances, rest periods and public holidays. This Bill will remove the capacity for genuine bargaining between employers and employees and create an imbalance in favour of employers.

In Victoria under the Kennett era the Liberal/National Government experimented with a similar process and overnight swept away the established employment rights of hundreds of thousands of Victorian workers. The result was an immediate cut in wages and entitlements, a loss of control over hours of work, and a significantly detrimental impact on families. If passed in its tabled form, this Bill will have a similar effect.

In addition, this submission addresses the shameless way in which the Federal Government intends to spurn the obligations it has as a signatory to International Labour Organisation Conventions regarding the right to collectively bargain, freedom of association, and termination at the initiative of the employer.

The TWU condemns this Federal Liberal/National Government for presenting this Bill to the Parliament which seeks to strip away the rights of workers' gained over many decades, and recommends it withdraw this Bill in its entirety.

We remain willing to supplement this submission upon request.

1. The Transport Workers' Union (Victorian/Tasmanian Branch) represents approximately 22,000 workers engaged in transport or related industries including general freight, bulk milk transport, the oil and gas industry, the armoured vehicle industry, and the airline industry.

2. The Union is an organisation registered under Schedule 1B of the *Workplace Relations Act* 1996 (Cth) ("the WRA") and has standing to speak on behalf of transport industry workers.

3. The *Workplace Relations Amendment (WorkChoices) Bill 2005* (Cth) ("the Bill") has at its core an ideological pursuit of lower wages and worse conditions than currently exist for Australian workers. It relies on encouraging the primacy of individual bargaining at the expense of collective bargaining and forcing respectable and fair employers to follow the dictates of the market by driving down the real wages and conditions of Australian workers. This is the most fundamental attack on workers' rights in Australia in over a century. It is an ideologically driven Bill that is strictly designed to remove real choice from the lives of working Australians in terms of the form and content of the work bargains they may wish to strike with their employers. It is anathema to the well understood sense of an Australian 'fair go'.

4. Under the Bill the central wage-fixing role of the AIRC will be hived of to the AFPC with a resultant decrease in the rate of wage increases, unfair individual contracts will be easily introduced by any employer with impunity, no meaningful or accessible protection will exist against illegal action by employers engaging in prohibited conduct, collective bargaining will be turned into a cumbersome process stalled by bureaucratic regulation, union representation will become less attainable even for those who desire it, and the vast majority of employees will experience the possibility of being unfairly dismissed without any redress. It is difficult to see how any objective observer could conclude this Bill will improve

the lives of working Australians. It is even harder to conclude that this Bill will bring any economic benefits to the economy as a result of the unfair and pernicious changes it introduces to the regulation of Australian industrial relations.

5. The limitations that will be placed on the role of the Australian Industrial Relations Commission by this Bill are ill-conceived and will ultimately damage the Australian economy. The AIRC, originally called the Conciliation and Arbitration Commission was established for compulsory conciliation and arbitration of industrial disputes with the intention of securing industrial peace and *improving* the economy as a result. Justice Higgins recognised the importance of such a role and in the *Harvester Case* of 1907. It is worth noting the specific comments in that case and the manner in which they contrast to the morally bankrupt provisions entrenched in the Workchoices Bill. Higgins J stated:

> *The provision for fair and reasonable remuneration is obviously designed for the benefit of the employees in the industry; and it must be meant to secure to them something* ***which they cannot get by the ordinary system of individual bargaining with employers****…Applying the reasoning to the present case, I cannot think that an employer and a workman contract on an equal footing, or make a "fair" agreement as to wages, when a workman submits to work for a low wage to avoid starvation or pauperism (or something like it) for himself and his family; or that the agreement is "reasonable" if it does not carry a wage sufficient to insure the workman's food, shelter, clothing, frugal comfort, provision for evil days, etc as well as reward for the special skill of an artisan if he is one."(at 3-4)(emphasis added)*

6. This quote picks up the central elements of what this Bill provides, and why it is a bad law for all Australians. By replacing the minimum wage setting function of the Australian Industrial Relations Commission with the soon to be established Australian Fair Pay Commission the Government is dismantling a long established role of the independent umpire which has handed down decisions resulting in real wage growth in the minimum award safety net. The AFPC's wage-setting function as detailed in section 7I of the Bill allows the AFPC to (a)

conduct wage reviews; and (b) exercise its wage-setting powers as necessary depending on the outcomes of wage reviews. The wage-setting parameters are limited to four criteria being:

> *(a) the capacity for the unemployed and low paid to obtain and remain in employment;*
> *(b) employment and competitiveness across the economy;*
> *(c) providing a safety net for the low paid;*
> *(d) providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.*

7. Arguably only one of these parameters acts to provide security for the employee, being the provision of a safety net, but this will be determined by the Fair Pay Commissioner in the context of the other parameters and on an *ad hoc* basis given the timing, frequency, scope, and conduct of wage reviews will be arbitrarily set by the AFPC under section 7K of the Bill. We believe this will lead to a reduction in the real wages of low income workers over time, or at the very least a significant reduction in the rate of any increases with a reduction in real wages over time. This intention was perhaps best captured by Ian Macfarlane, Minister for Industry, Tourism and Resources who recently said:

> *"We've got to ensure that industrial relations reform continues so we have the labour prices of New Zealand. They reformed their industrial relations system a decade ago. We're already a decade behind the New Zealanders. There is no resting."*

8. It is a notorious fact that wage levels in New Zealand have trailed significantly behind Australian wage levels and has had a detrimental effect on New Zealand's society. A report prepared for New Zealand's Health Ministry in March this year titled *Decades of Disparity II: Socio-economic mortality trends in New Zealand, 1981-1999* cited the widening inequality and social dislocation caused by the radical workplace changes introduced by the conservative New Zealand government contributed to rising mortality rates and had created gaps in life expectancy between low and high-income groups.

9. In Victoria, the State Award system was abolished by the *Employee Relations Act 1992 (Vic)* and the result was an overnight reduction in wages and conditions of Victorian workers not covered by a Federal Award or Certified Agreement. The *Independent Report of the Victorian Industrial Relations Taskforce* in August 2000 found that as a result of the changes forced on Victorian workers by the Kennett Government, by July 2000 approximately sixty-seven per cent of Victorian employees had their minimum terms and conditions of employment governed by federal awards, compared with 37.9 per cent in 1990. This indicates the ultimate failure of the changes introduced by the Kennett government to provide any sort of value to employees or employers. At the heart of the *Employee Relations Act 1992* (Vic) were individual-style employment agreements and a minimum five employment conditions not dissimilar to those described in section 89(2)(a) to (e) of the Bill, being:

> *(a) basic rates of pay and casual loadings (see Division 2);*
> *(b) maximum ordinary hours of work (see Division 3);*
> *(c) annual leave (see Division 4);*
> *(d) personal leave (see Division 5);*
> *(e) parental leave and related entitlements (see Division 6).*

10. The reality under the Kennett regime of industrial relations was that no effective choice existed for employees, and the '5 minimum conditions' under Schedule 1A of the *Workplace Relations Act 1996 (Cth)* represented an unsustainable attack on workers' entitlements institutionalised by a government intent of seeking to destroy trade unions. They failed.

11. The *Independent Report of the Victorian Industrial Relations Taskforce* relies on the report prepared by the Australian Centre for Industrial Relations Research and Training, and identifies that Victoria experienced no greater jobs growth or levels of unemployment as a result of the changes implemented by the Kennett government. The Report found that:

> *“the trend patterns over the 1990s were fairly consistent for all states, with some individual nuances…While Victoria operated under a significantly deregulated labour market after 1992, there has been no significant increase in jobs growth levels or decrease in unemployment levels compared with the national average or in relation to other states. In contrast, New South Wales has had a higher proportion of its workforce operating under a more regulated state industrial relations system since 1996. Throughout this time, New South Wales has consistently enjoyed the lowest unemployment rate of all Australian states, as well as the significant jobs growth.”(at 44)*

12. Given the economic experience of Victoria after the deregulation of its industrial relations system *vis-à-vis* the rest of Australia, it is deceitful for the Federal Government to rely on a spurious economic argument claiming growth in employment will occur as a result of deregulation.

13. The Australian Fair Pay and Conditions Standard established in Part VA of the Bill will provide nothing but a skeleton of conditions against which AWAs will be tested for the no-disadvantage test. Even this process is finally recognized for what it is, and it is reduced to a sham in which AWAs will become enforceable from the time they are approved (s98C). This no longer requires any testing of the AWA for it to be enforceable at law, but only the signature of the employee and the employer, which must be witnessed. In additions employees can waive rights to information regarding variations to their AWA (s102D). This exposes vulnerable employees to the worst excesses of employer behaviour alluded to by Higgins J nearly 100 years ago. This is no more evident than in the provisions of s104(5) and s104(6) of the Bill which expressly allow duress of potential employees by requiring them to sign an AWA as a condition of employment, thereby creating an underclass of unemployed people with second-class rights purely because of their employment status. This is deplorable legislation.

14. Division 11 of Part VB of the Bill allows actions for contravention of the civil remedy provisions specified. This is a misnomer though because a workplace inspector is entitled to take over any proceeding and then discontinue that proceeding regardless of the fact they were never an initiating party. This is a

Clayton's provision. An aggrieved employee or union may therefore initiate proceedings against an employer on entirely valid grounds, such as a breach of the duress provisions in relation to AWAs under s104(3) or s104(5) and discover that a workplace inspector has invoked s105A to take over the proceeding and immediately decline to carry it on further (s105A(2)(b)). This has characteristics of government autocracy at its dictatorial worst.

15. The requirement in Division 4 of Part VC for compulsory secret ballots in order to take legal and protected industrial action is onerous and merely an attempt to frustrate legitimate means of pressing industrial claims against another party. It is balanced against the rights of employees and no equivalent impediment is placed in front of employers wishing to engage in protected industrial action.

16. The reduction in the number of allowable award matters and the number of awards will only serve to erode the safety net entitlements presently enjoyed by workers. When combined with the watered down transmission of business provisions in Part VIAA of the Bill and the ability of employers to force new employees onto AWAs, the level of "choice" for the employee begins to appear non-existent depending on the good will of their employer.

17. It is absolutely misleading to suggest entitlements such as public holidays, rest breaks (including meal breaks), incentive-based payments and bonuses, annual leave loadings, allowances, penalty rates, and shift and overtime loadings will be protected unless the employee/s agree to remove them. The reality is that employers seeking to maximize their profits will cut any labour cost possible and will impose these cuts on workers.

18. The proposed abolition under section 170CE(5E) of the rights of employees of employers with less than 100 employees to pursue and unfair dismissal claim is arguably in breach of the ILO Termination of Employment Convention, 1982. For those employees employed by employers with more than 100 employees, they can

be sacked unfairly so long as their employer says the dismissal was for 'operational reasons'. This represents an abhorrent reduction in the rights of Australian workers. When combined with the provisions regarding forcing new workers onto AWAs, limiting the access to collective bargaining, implementing mechanisms to reduce the level of increases in real wages, and the reduction in the basis upon which workplace agreements can be approved to '5 minimum conditions', these changes substantially damage the rights of workers in Australia.

19. The effect of this legislation will be to reduce rather than enhance the ability of employees to genuinely choose their form and content of employment regulation, and to substantially reduce the wages and conditions they enjoy.

20. We therefore wish to formally record our condemnation of this Federal Liberal/National Government for introducing legislation which seeks to strip away the rights of workers' gained over many decades, and we recommend it withdraw this Bill in its entirety.