WORKCHOICES

INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

CHAMBER OF COMMERCE & INDUSTRY OF WA (INC)

NOVEMBER 2005

Introduction

This Submission is made on behalf of the Chamber of Commerce & Industry of WA (Inc) (CCI). CCI is Western Australia's largest business organisation with more than 4,500 employer members across all industries.

Established in 1890, CCI as it is today was formed in 1992 by an amalgamation of the Western Australian Chamber of Commerce and Industry and the State's then largest employer organisation, the Confederation of Western Australian industry.

CCI is a non-profit organisation with membership open to businesses of any size.

CCI's members operate in all industries including mining, building, health, hospitality, services, manufacturing, engineering, wholesale and retail.

CCI has extensive involvement on behalf of its members in workplace relations matters across all of these industries.

Our Policy

CCI's workplace relations policy promotes a system characterised by decentralism and voluntarism where primacy is given to the interests of the employer and employee parties to the employment relationship.

This today is not a novel concept but for CCI this has been a long-held position developed well before this was a popular view of how Australia's workplace relations system should work.

The central planks of our policy are that employers and employees should be able to make Agreements that suit them, free from the interference of third parties. Those Agreements should be able to be either individual or collective in nature and involve Unions where the employees freely choose to do so.

Our policy has supported the need for a rationalisation of the Federal and State systems and whilst our preferred position has been for a cooperative system between Governments to be achieved through the enactment of complimentary Federal and State legislation, our policy recognises that where this isn't possible that a federal Government should pursue the same aim to the full extent available to it under the Constitution.

Under our policy, with few exceptions, conciliation and arbitration would be a voluntary process with Agreements being the centre piece subject to a set of statutory minimums. Industrial action would be available for re-negotiation of Agreements but otherwise prohibited. Indirect forms of industrial action such as secondary boycotts would be prohibited - common-law remedies would be available.

Workable practical remedies for all parties to protect their interests should be provided. Compliance would be achieved in practice not just in theory. The

emphasis for the settlement of genuine industrial disputes would be on the desirability of resolving these at the workplace level rather than through Tribunals and Courts, and preferably without recourse to industrial action.

In today's climate such an industrial relations system doesn't seem a particularly unreasonable demand. However for CCI this style of agreement-based system, that implicitly requires the end of compulsory arbitration was first promoted over twenty years ago.

CCI supports the direction of the package of reforms currently before the Senate, and in large part the detail of the Workplace Relations Amendment (Workchoices) Bill 2005 or "Workchoices". CCI urges the Senate to support the Workchoices Bill.

Of course, policy reform as contained in "Workchoices" necessitates a case for that reform being made out.

However we also believe that those who support the status quo can reasonably be asked to justify why the current arrangements should remain unchanged in the face of evidence of their flaws.

We strongly argue that there is a clear case in economics and in equity for the reforms proposed in "Workchoices" and a demonstrable practical need.

The Economic Case for Workplace Relations Reform

Summary

The key benefits of reform are:

1. It will help to revive Australia's flagging labour productivity growth, which was strong during the 1990s as a result of extensive economic reforms, but has faltered lately.

2. It will ensure the sustainability of the real wage growth that has been a notable feature of Australia's labour market in the past 15 years, in marked contrast with the falling real wages of the highly-regulated Accord years.

3. It will help those on the margins of the labour market, by removing some unnecessary costs and complications that act as disincentives to employment.

Productivity

Labour productivity in Australia has moved into reverse in recent quarters, following steady gains in the 1990s. The number of hours worked has continued to rise recently while output growth has slowed. Australia's key labour productivity index

(trend real output per hour worker in the market sector) has declined for the past four quarters, its most sustained decrease since the mid 1980s.

Labour productivity growth is highly cyclical, and its recent deceleration is probably more a reflection of the stage of the business cycle rather than a structural shift to lower ongoing productivity improvements that would signal lower potential output growth.

However, the long term potential for productivity gains are largely determined by structural factors, of which labour market flexibility is one of the most important.
In its 2004 *Economic Survey of Australia*, the Organisation for Economic Cooperation and Development (OECD) noted that productivity levels in Australia are well below those recorded in many other OECD countries, and that the national labour market would need to function more effectively in order to achieve further gains in per capita incomes and overcome future economic challenges[i].

Labour market reforms instituted by the current Coalition Government and the previous Labour Government during the early to mid 1990s have underpinned gains in labour productivity in Australia, which in turn have fostered strong and sustained economic growth.

The workplace relations reforms currently proposed in Workchoices have the potential to deliver further long term gains in productivity. Proposals that encourage the negotiation of wages and employment conditions at the enterprise and individual levels are central to this objective.

By empowering employers and employees to negotiate pay and work conditions at the enterprise level, reward for work tends to become more closely tied to productivity. This creates a more efficient and equitable labour market by increasing the incentive to improve individual productivity and performance.

The proposal to streamline the process for implementing workplace agreements and to reform the process for setting minimum wages and employment conditions should strengthen this move towards enterprise bargaining in Australia.

The reforms also promise to increase productivity in Australia by reducing the compliance costs of workplace relations regulation. The Commonwealth Government is proposing to facilitate and streamline the agreement-making process between employers and employees, simplify and rationalise awards, reduce the burden of unfair dismissals regulation on businesses and create a unified system of national workplace relations to eliminate confusion.

A recent survey undertaken by the Australian Chamber of Commerce and Industry reflects the importance of reducing labour-related compliance costs to businesses, with 73 per cent of the 800 small business operators who participated expressing concern over regulations regarding termination, redundancy and unfair dismissals. Around half of all respondents held concerns over complying with award regulations and having to deal with State and Commonwealth Awards[ii].

Adoption of a unified national system of labour relations, even if incomplete in its coverage, will not only encourage productivity gains through reducing compliance costs, it will also level the playing field among Australian businesses by allowing each to operate under the same work place relations regulations.

Real Wages

Labour market and other micro-economic reforms explain much of the acceleration in real earnings growth in Australia over the past 15 years. In encouraging a closer alignment between wages and productivity, the wider use of enterprise bargaining has seen steady gains in labour productivity and wages in Australia.

The most widely used measure of labour productivity in Australia (the trend measure of real output per worker in the market sector) increased by an average of 2.8 per cent over the 10 years to 2004, compared to an average of 1.5 per cent over the previous decade and a long term average of 1.95 per cent.

The greater incentive and scope to raise productivity arising from individual and workplace bargaining has contributed to average growth in real wages of 1.8 per cent a year over the 10 years to 2004. This compares to an average rise of just 0.1 per cent a year over the previous decade, and a longer term average of around one per cent.

The effect of labour market reforms on wages and productivity in Australia is further highlighted by international comparisons. OECD data on real compensation per employee show that Australian workers have enjoyed a higher rate of growth in their real earnings than wages in most of the G7 economies over the past 10 years. Labour productivity here also outpaced both the OECD and G7 average annual increase over the past decade.

The gains in Australian labour productivity and earnings since the early 1990s highlight the importance of further labour market reform to the economy. The current reform proposals aim to reduce employment transaction costs and achieve a closer link between wages and productivity, which has the potential to deliver further growth in productivity and real wages to Australia workers.

Marginal Employment and Unemployment

The workplace relations reforms proposed by the Commonwealth Government in Workchoices also have the potential to deliver benefits for those who are most vulnerable in the labour force, namely the unemployed an marginally employed who are most likely to lose out on employment opportunities if excessive complexity and cost of labour market regulations act as a disincentive to employment.

Although Australia is enjoying 30-year lows in its unemployment rate and a record high in the proportion of adults in employment, there are still many people who can't find jobs but want to work (almost 529,000 people in June 2005), plus a large number

of under-employed. Many of these are low-skilled workers on the margins of the labour market.

The Commonwealth minimum wage has increased by 12.3 per cent (or $53 per week) over the past three years to $484.40 a week, equivalent to 52 per cent of Australian average weekly ordinary time earnings in February 2005. This represents one of the highest minimum wages in the world, both in absolute terms and as a percentage of median wages[iii].

The proposed simplification of minimum pay setting will reduce disincentives for employers to hire marginal workers. The elimination of the adversarial nature of the current minimum wage setting process by shifting the responsibility of review from the Australian Industrial Relations Commissions to the Australian Fair Pay Commission allows for consideration of a broader range of equity and economic issues.

Although minimum wages will remain at their present level following this change, this new body will aim to ensure that minimum wages operate as a genuine safety net for agreement making, and that a better balance between fair pay and employment is established. This should increase incentives to employ at the minimum wage.

The proposal to exempt all businesses employing not more than 100 employees from unfair dismissal laws will also remove disincentives to employment while also improving labour market flexibility by allowing firms to hire and shed labour more quickly in response to changing economic conditions.

Equity

There is also a strong case in equity for the reforms proposed.

Generally the frameworks in Australia for the social security and unemployment benefits that we are currently operating under evolved through the 60s and 70s with foundations from an even earlier time. These were periods in which the unemployment rate was low by today's standards: commonly around 2% and much of that unemployment would be characterised as transitional ie, people who where temporarily unemployed and between jobs, or as voluntary employment, that is the small minority of unemployed who are better off on benefits than working or who are simply not inclined to work.

When much of a countries' unemployment is either temporary or voluntary, the interests of the unemployed can quite legitimately be treated as those of a small and changing minority of society and the labour force, albeit one from time to time who still deserve special short-term consideration and assistance.

However unemployment has changed. Today, for those unemployed even with our relatively low unemployment figures, it is no longer a temporary or voluntary phenomenon.

In these circumstances there is a strong case for re-evaluating the weight given to the unemployed in the determination of wider labour market and social policies.

In particular the extent to which the industrial relations, wage determination and social security systems are designed around the interests of the employed rather than the unemployed does need to change. Once it may have been legitimate for the employed to protect themselves from competition from the unemployed when those unemployed constituted a tiny minority who could reasonably expect to join the employed in the near future – but in 2005 that is no longer the case.

There are still many people who can't find jobs but want to work (almost 529,000 people in June 2005), plus a large number of under-employed.

Clearly if a better balance between so called fair pay and employment is established this should increase incentives to employ at the minimum wage.

These are issues of equity for those in particularly vulnerable situations, some who are yet to enter the labour market such as children in jobless households. Growing up in families where parents prepare for work every day is more likely to prepare children for the world of work themselves. Otherwise, joblessness may persist across generations.

Employers accept that we have a responsibility to ensure that basic living standards do not fall below a minimum acceptable level. The debate always is whether the most effective way to achieve this is through the industrial relations system or through the social security system.

CCI submits that labour market regulation continues to be a very blunt instrument with which to administer social policy. Industrial relations policy is simply the wrong instrument to attempt to deliver social justice objectives. As one example of this, research in Australia has repeatedly confirmed that minimum wage workers are most likely to be in middle-income households[iv]. Consequently increasing minimum wages is a badly targeted mechanism to assist low income families and is more likely to benefit those middle income households.

The unemployed are the most vulnerable and the most disadvantaged in our community. Our industrial relations system currently works against them, it shouldn't - and this now needs to change.

These reforms aren't just about employers and the economy there is a sound equity case for reform as well.

A practical need for reform

At a practical level it is easy to make out the case for reform by looking at the myriad of examples of what is wrong with our current system.

No practitioner familiar with the workings of the present multiple workplace relations systems could pretend for a moment that our system is anything but complex. Whilst this may create employment opportunities for practitioners and unions, that is clearly not in the National interest.

One of the primary elements of any sensible workplace regulation system would be that the people who are regulated, the employer and the employees, can readily understand both their rights and their obligations.

A very large number of Awards, both State and Federal, are so voluminous, complex and opaque as to demonstrate that they fail this common sense test.

Is it reasonable that a shop assistant has to digest the *Shop and Warehouse Award* in Western Australia which runs to ninety seven pages to understand their rights and obligations?

Why do Awards commonly still use Latin words like mutatis mutandis?

Largely this is because today's awards are the sum total of decades of accumulated arbitration, negotiation and amendment, the end product of which is steeped in history but out of step with 2005 business needs. Awards develop over time like sedimentary rock, with layer upon layer laid down over generations. Attempts to remove elements that suited past eras that are no longer relevant are practically impossible.

Awards are not an objective assessment of what is appropriate for the employers and employees to whom they apply today.

Awards are the end product of a system whose days are past. An Industrial Barrister or Union official from five or even eight decades ago would have little difficulty recognising the current industrial relations system.

There are still awards, compulsory arbitration, Industrial Commissions, registered organisations, strikes, disputes, settlements, agreements and so forth.

The novel features compared to his previous experience would be limited to perhaps unfair dismissals and individual Agreements.

However the familiarity that they would have with the system we still operate under today, would be quite different from how they would be surprised by all of the changes in the labour market. Australia's labour market has changed significantly over that time.

Major trends include the increasing proportion of women in the labour force, the increasing use of casual and part-time employment, the significant increase in independent contractors, the large number families where both parents work, the significant increase in the number of industries operating outside 9 – 5 Monday to Friday, the increased proportion of skilled jobs, the increased jobs in the service

sector, the decline of jobs in the manufacturing sector, the decline in the proportion of union members and so it goes on.

This Barrister or Union official from fifty or more years ago would also need to understand that many of our children will be working in jobs that have yet to be invented will have multiple careers and will need to be involved in life long learning.

So there have been large scale shifts in the composition and context of the labour market but nowhere near the same change in our workplace relations systems.

What can be recognised from this is that compulsory arbitration as Australia has known it for a very, very long time is ill-suited to dealing with the diversity of employment arrangements which have grown up over the years.

The problem to be solved by our workplace relations institutions is much less now one of securing industrial peace between waring employers and waring unions but rather a totally different problem which is to secure efficient and fair labour markets and that fairness extending to employees, the unemployed and employers. This is the practical need the workplace relations system must meet.

Clearly there is a strong case both in economics and equity and on a practical level for change. In our submission the appropriate response to this need for reform is set out in the alternative system of workplace relations regulation spelt out in CCI's policy. The reasons for this view are explained below. The "Workchoices" system broadly aligns with this policy and as previously mentioned CCI therefore supports the package.

Reform – the W.A. Experience

At the end of 1993, the Workplace Agreement reforms were passed by the Western Australian parliament. They provided for a dual system – employers and employees could opt out of the existing system and remove themselves from the influence of the WA Industrial Relations Commission through the use of individual or collective WA Workplace Agreements, which were underpinned not by an award but by legislated minimums. Employers over a period came to see WA Workplace Agreements as providing much greater flexibility and certainty and therefore the opportunity to increase productivity and to be more competitive.

WA employers would argue that these changes produced considerable benefits for Western Australia and in the vast majority of cases a win/win outcome for employees and employers. The economic benefits, both in terms of productivity and competitiveness, but also in terms of the State's reputation, were considerable. Industrial relations as an issue disappeared - both in existing employer discussions and as the first question asked by businesses considering investing in the State. Although the overall level of workplace agreements was relatively low (less than 10% but widely used in some major WA industries) the existence of the alternative system also had a modifying effect on the behaviour of both the unions and the Commission

in the traditional system – they were both conscious that employers and their employees had alternatives.

Community Attitudes to Industrial Relations Reforms In Western Australia

In November 2000, the Chamber of Commerce and Industry in WA (CCI) and the Chamber of Minerals and Energy, WA commissioned Market Equity to undertake a community attitudes survey of industrial relations in Western Australia. In January 2002, CCI again commissioned Market Equity to repeat the survey. The methodology was unchanged. Both surveys were random stratified telephone surveys of individuals aged 18 and over who were permanent residents covering both metropolitan and country WA – all major WA regions were included in the survey. The results of the survey were then weighted to reflect the WA population. The first survey consisted of 651 interviews and the second, 408.

The purpose of the first survey was to establish the degree of support for the then Opposition (Labor) party's proposals to abolish workplace agreements. The survey was conducted in November prior to the State election in February 2001. The second survey was conducted to further test community attitudes just prior to the new Government's legislation being introduced into Parliament in February 2002.

The results were positive and the two surveys were consistent with each other. They showed a surprising degree of support for the then legislation and certainly show there was no widespread support for its repeal. The summary of the questions and responses is attached.
The results for 2002 appear in the body of the figures with the previous results for November 2001 included in bold.

Looking firstly at the question – *Support for withdrawal of Workplace Agreements Legislation*. Here 57 per cent did not support the withdrawal compared to only 26 per cent who did. The change since 2000 was a decline in support for withdrawal (down from 35 per cent), and an increase in Don't know (up from 10 per cent). That the opposition to any repeal could be twice the support for repeal in a climate where the legislation was almost demonised (the then Secretary of the TLC likened the Minister, Graham Kierath to Pol Pot and WA to the killing fields of Cambodia), suggested that the benefits of reform were more widely understood and felt than was then thought to be the case. This was confirmed in other responses.

Respondents were asked whether different arrangements gave workers the chance to earn more. Here 50 per cent thought an individual agreement provided them with an opportunity to earn more compared with only 13 per cent who thought the award did so.

Respondents were asked whether different arrangements give workers greater flexibility in working life. Again the results are positive for reform. 52 per cent thought individual workplace agreements could give you greater flexibility compared to only

13 percent who thought that of awards and only 17 per cent who thought that of union negotiated agreements.

The results were more mixed when respondents were asked whether different arrangements could be considered fair for all concerned.

What was interesting is that in all cases there are a greater numbers who think the employment arrangement concerned is not fair than it is fair. It seems all employment arrangements are viewed negatively. However it has to be said that in this case awards are viewed as fair by a greater percentage (33 per cent) than individual workplace agreements (25 per cent). On reflection this is perhaps not surprising. There has been a strong perception built up about the fairness of awards and there were strong public cases being argued about the unfairness of individual agreements at the time the survey occurred – rather like today in 2005. It is however interesting to compare this with the next set of responses.

Respondents were asked what type of arrangement they personally would prefer to be employed on. While there may be a perception that individual agreements are unfair, they are overwhelmingly the most preferred arrangement – 50 percent favoured an individual agreement compared to only 14 per cent who favoured the award. It appears that individuals favour an individual agreement for themselves but, for whatever reason, fear that others may be exploited and therefore individual agreements don't rate highly on the fair scale. In particular, older people were concerned about young people and yet young people were those strongly favouring individual agreements.

A positive view of choice is emphasised in responses to whether or not there were any arrangements that should not be offered. A large majority (70 per cent) indicated that all options should be available. No arrangement had more than 10 per cent of respondents saying it shouldn't be available.

So the message CCI believes is clear, people like choice.

Finally, a more generic question was asked about people's attitude to the regulation of pay and conditions. A large majority (75 per cent) said that arrangements should be less regulated – 47 per cent wanted details set at the workplace by employer/employees and 28 per cent wanted details set at the workplace by union/staff groups. Only 21 per cent argue that pay and conditions should be strongly regulated by industrial courts. It is interesting to note in several of these responses the desire to avoid the interference by third parties be they industrial commissions or unions.

What these results suggest is that the W.A. community was not opposed to the changes they had experienced since 1993 and welcomed the choices that had been offered. It is particularly interesting to note that those who have experienced a less regulated environment are not keen to go back to the old highly regulated and centralised system.

This has been born out following the repeal in 2002 of the Workplace Agreements Act 1993 by the Gallop Government. The response has been a flight to AWA's by many employers and their employees that continues today.
The statistics available on the Employment Advocate's web site, set out below, that examine the State by State share of AWA registrations shows that W.A. with only 10% of the countries working population accounts for over three times that level of AWA' registrations. No other State is as active in using AWA's as W.A.

Population shares by State and Territory: AWAs and the Australian working population

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT
Australian working population*	33%	25%	19%	7%	10%	2%	1%	2%
AWA approvals last three years	19%	18%	13%	8%	32%	4%	1%	4%

Source:

1. **Australian working population** is sourced from ABS Labour Force Data Cubes (employees only) and is based on the average of the last year to 30 September 2005.
2. The **AWA data** is sourced from the OEA in-house workflow system WorkDesk and includes AWAs approved in the past three years to 30 September 2005. This methodology is based on the most common nominal expiry date for AWAs.

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Clearly the experience of individual agreements in W.A. continues to be positive.

The central features of WorkChoices

Overall, CCI's view is a positive one of the reforms proposed – however there are some deficiencies.

The breadth of reform, meaning how widely the changes will impact on our system as a whole, is significant. Very few features of our current industrial relations system will remain untouched. However there is a second measure and of course that is the depth of reform in any particular area and in some areas our view is, that the reform simply does not go as far as it should.

Largely it seem this is because of a perceived need for compromise in some areas for political rather than sound policy reasons and this has lead to some sub optimal decisions being made about the detail of the system.

We now turn to the key elements of the WorkChoices package.

The Unitary System

The intentions here are sound.

There is a significant gain for employers operating across multiple jurisdictions. For other employers, being those constitutional corporations currently operating under inflexible and negative State industrial systems such as in W.A. the Workchoices system provides them with an immediate opportunity of accessing a more flexible industrial relations system when no such option is being considered by their State Governments.

The complexity that is a consequence of seeking to achieve as far as is possible a single system for Australia will be criticised but is largely a consequence of the lack of co-operation at this time from the States and the consequential need for a series of transitional requirements.

The complexity issue in general should of course be judged from the perspective of an individual employer not by looking at the multitude of arrangements the legislation must provide for in the aggregate.

Agreements

What is notable is that the Workchoices scheme of individual agreements includes a significant number of additional employee safeguards above those required in the W.A. Workplace Agreement system. In WorkChoices these include, most importantly, using the Award classification rate of pay as the minimum wage for agreements, rather than the universal statutory minimum used in the W.A. model that was below Award rates. Also requiring an information statement be provided to employees before signing agreements (Section 98) and requiring employees under 18 years of age to have their AWA countersigned by a parent or guardian (section 98C(1) (c)). In addition there is set of seven particular Award conditions that can only be varied by an agreement where the agreement expressly identifies this is to occur (Section 101B) – absent such an express statement in the agreement these award provisions continue to apply.

Whilst these requirements should be welcomed by those concerned about employees accepting individual agreements these additional steps of process do add further complexity to the agreement stream which we view as unnecessary.

It must be recognised that the agreement model included in Workchoices is a more regulated model of agreement making than the W.A. Workplace Agreement system that operated so successfully from 1993 to 2002, with over 250,000 individual agreements registered. In particular the minimums setting the floor under agreements in WorkChoices are higher both in wages and conditions.

It is regrettable that this reform package has lost some of the flexibility of the W.A system, however in today's context of it involving a significant improvement on the existing Federal Agreement regimes and providing many W.A. employers in the State system with a vastly superior set of agreement options compared to the unworkable W.A. regime, CCI welcomes these improvements.

Compulsory Arbitration

Compulsory arbitration by the Australian Industrial Relations Commission is to be significantly limited. This is appropriate - quite simply put there is no necessity for the Industrial Commission to be creating more employment standards than we already have and imposing these on non consenting employers.

The Commission however will revert to what it does best and that is dealing with actual industrial relations disputes between real parties as distinct from moving employers from the State system to the Federal system or hearing largely self-promoting claims for test cases.

The Commissions continuing role in exercising conciliation powers and considering orders for cessation of unlawful industrial action and overseeing bargaining is appropriate.

Awards

This is the biggest question mark over the WorkChoices package and a critical issue of concern for employers. The policy intent here is supported, rationalising and simplifying Awards, however we believe the mechanism to achieve this is problematic.

Federal Awards initially remain largely intact, subject to a future round of simplification, but any reduction in their number will only follow next year and this is dependent on the process recommended by the Award Review Taskforce and also on the mechanisms set up to implement these recommendations through the Commission.

There is plenty of scope for this to amount to little change and prove to be an incomplete exercise. There are many vested interests that will fight to preserve the Award status quo and seek to frustrate the policy intention here, particularly Unions and in some instance the tribunal as well.

This unresolved issue of the future of Federal Awards, their application, form and content will create some uncertainty for employers and is the biggest weakness in the package.

The approach taken to State Awards is more direct and more positive. For constitutional corporations they effectively evaporate or rather morph into transitional agreements with a 3 year term.

This is a simple definite approach. The question of course is why doesn't WorkChoices apply the same policy approach to Federal Awards and immediately convert these all to transitional agreements? This option should be considered by the reviewing Taskforce.

Statutory Minimums

Generally the approach here is sound. For W.A. employers this approach is not novel. W.A. has had the Minimum Conditions of Employment Act in place since 1993 with only minor amendments made by the Gallop Government in 2002.

In fact the "Workchoices" Fair Pay and Conditions Standard actually involves some increases over the W.A. statutory minimums, such as the provision of a 5th week of annual leave for shift workers and minimum unpaid carers leave entitlements. Whilst this is of concern to some employers we accept that in the totality of the WorkChoices package these improvements in minimums are not unreasonable.

Industrial Action

The attempts here to create a more effective compliance regime where industrial action is legitimately used in bargaining only and only where employees support it, is a positive approach.

Similarly the new powers for the Commission to both suspend and terminate bargaining periods will be useful in the few instances that this is appropriate.

These issues are always particularly heavily litigated because of union opposition and the policy intent can be undermined quickly if the drafting is found to be deficient or falls under the weight of novel legal argument. It should be recognised that as case law develops quickly in these areas it may in future be necessary for remedial amendments to be made to restore the policy intention where it has been eroded.

Conclusion

CCI urges the Senate to pass the Workchoices Bill into law.

Overall CCI views this as a very positive package and we are vocal supporters of it however it is still far from aligning with the preferred model CCI advocates.

But let us not be confused. The strength of opposition against this package of reforms is out of all balance with the degree of reform it involves. Much of the vocal opposition is more about Federal politics and less about the merits of the reform package.

At the end of the day if this Bill is passed into law, as CCI submits it should, employers and employees will have new opportunities provide by the significant improvements in flexibility. Australia will also for the first time have a set of near universal statutory minimum employment standards, we will also continue to have multiple industry based Awards, minimum wages will still be adjusted by an independent body, we will continue to have an Industrial Commission that can adjudicate on industrial disputes, unions will continue to enjoy legislative protection and rights and we will continue to have job protection laws. Whilst these reforms are

most welcome these changes are far from radical deregulation - Australia will continue to have a highly regulated labour market.

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[i] The Organisation for Economic Cooperation and Development, *Economic Survey of Australia 2004: Economic performance and key challenges*. http://www.oecd.org/document/29/0,2340,en_2649_201185_34037213_1_1_1_1,00.html Accessed on 7 July, 2005.

[ii] Australian Chamber of Commerce & Industry, 2004 Pre-Election Survey Small Business Priorities: Taxation, Economic Management & Workplace Relations.

[iii] *"Trimming Awards"*, The Economist Magazine. 9 June, 2005.

[iv] Andrew Leigh: Does Raising the Minimum Wage Help the Poor? - Social Policy Evaluation, Analysis and Research Centre, Research School of Social Sciences 2005. Australian National University.