ACCI Submission

Senate Employment, Workplace Relations and Education Committee

Inquiry into the

Workplace Relations Amendment (Work Choices) Bill 2005

November 2005

LEADING AUSTRALIAN BUSINESS

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ACCI
LEADING AUSTRALIAN BUSINESS

The Australian Chamber of Commerce and Industry (ACCI) is the peak council of Australian business associations and can trace its history back 104 years to the time of Australian Federation.

ACCI is also the ongoing amalgamation of three federal business organisations, each of which has a continuous history stretching back to the time of Australian Federation. They were the Associated Chambers of Commerce in Australia (created in 1901), the Federal Council of the Chambers of Manufacturers of the Commonwealth of Australia (created in 1903) and the Central Council of Employers of Australia (created in 1904).

Membership of ACCI is made up of the State and Territory Chambers of Commerce and Industry together with the major national industry associations.

Through our membership, ACCI represents over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies.

Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

Our Activities

ACCI takes a leading role in representing the views of Australian business to government.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- representation and advocacy to governments, parliaments, tribunals and policy makers both domestically and internationally;
- business representation on a range of statutory and business boards, committees and other fora;
- representing business in national and international fora including the Australian Industrial Relations Commission, National Occupational Health and Safety Commission, International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, the Business and Industry Advisory Committee to the Organisation for Economic Co-operation and

Development, the Confederation of Asia-Pacific Chambers of Commerce and Industry and the Confederation of Asia-Pacific Employers;

- research and policy development on issues concerning Australian business;
- the publication of leading business surveys and other information products; and
- providing forums for collective discussion amongst businesses on matters of law and policy affecting commerce and industry.

Publications

A range of publications are available from ACCI, with details of our activities and policies including:

- the *ACCI Review* a monthly analysis of major policy issues affecting the Australian economy and business;
- issue papers commenting on business' views of contemporary policy issues;
- *Policies of the Australian Chamber of Commerce and Industry* – the annual bound compendium of ACCI's policy platforms;
- the *Westpac-ACCI Survey of Industrial Trends* - the longest, continuous running private sector survey in Australia. A leading barometer of economic activity and the most important survey of manufacturing industry in Australia;
- the *ACIL Tasman-ACCI Survey of Investor Confidence* – which gives an analysis of the direction of investment by business in Australia;
- the *St.George-ACCI Business Expectations Survey* - which aggregates individual surveys by ACCI member organisations and covers firms of all sizes in all States and Territories;
- the *St.George-ACCI Small Business Survey* – which is a survey of small business derived from the Business Expectations Survey data;
- workplace relations reports and discussion papers, including the *ACCI Modern Workplace: Modern Future 2002-2010* Policy Blueprint;
- occupational health and safety guides and updates, including the National OHS Strategy and the Modern Workplace: Safer Workplace Policy Blueprint;
- trade reports and discussion papers including the *Riding the Chinese Dragon: Opportunities and Challenges for Australia* and the *World Position Paper*;
- education and training reports and discussion papers;

- the *ACCI Annual Report* providing a summary of major activities and achievements for the previous year; and
- the *ACCI Taxation Reform Blueprint: A Strategy for the Australian Taxation System 2004–2014*.

Most of this information, as well as ACCI media releases, parliamentary submissions and reports, is available on our website – www.acci.asn.au.

INTRODUCTION:
WHY ACCI SUPPORTS *WORKCHOICES*

INTRODUCTION

1. The Government introduced the *Workplace Relations Amendment (WorkChoices) Bill 2005* into the House of Representatives on 2 November 2005.

2. Under a motion passed by the Senate on 12 October, the *WorkChoices* Bill was referred to this Committee at the same time as it was introduced into the House.

3. The motion referring the *WorkChoices* Bill to this Committee identifies various areas of policy which have been covered by previous bills which have come before the committee, consideration of which will be excluded from the *WorkChoices* Bill inquiry.

4. This inquiry is not to consider those elements of the *WorkChoices* Bill which reflect government bills previously referred to, examined and reported on by the committee. This includes those elements of the *WorkChoices* Bill relating to:

    a. Secret ballots.

    b. Suspension/termination of a bargaining period.

    c. Pattern bargaining.

    d. Cooling off periods.

    e. Remedies for unprotected industrial action.

    f. Removal of section 166A of the Workplace Relations Act 1996 (the Workplace Relations Act 1996).

    g. Strike pay.

    h. Reform of unfair dismissal arrangements.

    i. Right of entry.

    j. Award simplification.

    k. Freedom of association.

    l. Amendments to section 299 of the Workplace Relations Act 1996.

m. Civil penalties for officers of organisations regarding breaches.

5. This submission reflects the parameters of the referral of the *WorkChoices* Bill to the Committee.

6. ACCI's position on the reform of these elements of the workplace relations system is well known and is a matter of record. ACCI has provided previous detailed written and oral submissions to this Committee on particular iterations of amending legislation (the majority of which were not passed, or were passed with significant amendment) across the past 6-8 years. These ACCI perspectives on issues such as unfair dismissal and right of entry reform are available from:

www.aph.gov.au/Senate/committee/eet_ctte/completed_inquiries/index.htm

THE CASE FOR WORKPLACE RELATIONS REFORM

7. ACCI has for many years advocated fundamental reform of the Australian Workplace Relations system. ACCI's workplace relations policy[1] calls for a workplace relations system:

a. Characterised by decentralism and voluntarism, under which primacy is given to the interests of the direct employer and employee parties to the employment relationship.

b. Which promotes freedom of choice for employers and employees in their workplace arrangements.

c. Which promotes the active promotion and encouragement of the use of enterprise agreements, individual agreements and other options including internal regulation agreements.

d. Reduces the influence of awards and tribunals.

e. Promotes enterprise development, productivity and efficiency and encourages participative management approaches.

8. ACCI policy supports a legislative framework which implements the objectives of:

a. labour market flexibility;

b. productivity-orientated wage determination;

c. decentralisation;

[1] Circulated to members of the Committee with the ACCI policy blueprint, or available from www.acci.asn.au.

d. freedom of choice;

e. an enterprise emphasis;

f. individualised approaches; and

g. a reduction in complexity.

9. ACCI policy is to achieve legislative reform which will permit greater flexibility and efficiency in the operation of the enterprise. The full ACCI Workplace Relations policy is attached to this submission (Attachment A).

10. The *WorkChoices* package would substantially progress these policy goals. It represents a substantial step down the path towards the form of workplace relations system employers advocate.

11. ACCI does not intend to go in detail to the case for fundamental reform of our workplaces, save to address two primary arguments / sources on the "why" case in favour of workplace reform:

    a. Firstly – ACCI has for some years put forward the why case for workplace reform, for public debate and consideration. We reiterate and return to this analysis in support of the package of the *WorkChoices* amendments.

    b. Secondly – ACCI responds to the erroneous questioning of the economic evidence in favour of reform.

ACCI WORKPLACE POLICY REFORM BLUEPRINT

12. In October 2002, ACCI released a detailed analysis of Australia's system of employment regulation, and a clear vision and program for fundamental workplace relations reform across the eight years to 2010.

13. ACCI's Modern Workplace: Modern Future Workplace Reform Blueprint analysed the operation of the Australian workplace relations system against a set of key outcomes for Australia's employers, employees and society as a whole.

14. The ACCI Blueprint presents a snapshot for what Australia's workplace relations system should be like by 2010. It identifies the following qualities for a reformed workplace relations system for Australia

A SNAPSHOT OF AUSTRALIA'S WORKPLACE RELATIONS SYSTEM 2010

- Australian businesses and employees would continue to aspire to, and achieve, higher standards of living.
- Unemployment would be lower, and remain structurally lower even during periods of economic downturn.
- Jobs would be more readily available for new entrants or employees returning into the labour market. There would be significantly fewer impediments to hiring new staff.
- Policies which reduce the cost of employment would be given the highest priority by governments.
- There would be less employment regulation. Remaining regulation would be simple, flexible, non prescriptive, regularly reviewed and apply only as a genuine safety net.
- The shared interests of employers and employees would be the overriding factor regulating workplace relations cultures, structures and outcomes.
- In the majority of Australian workplaces, actual wages, employment conditions and day to day working arrangements would be determined by agreement.
- Workplace agreements would exist both with groups of employees (collectively negotiated) and with individual employees. There would be increasing use of both collective and individual agreements in the one workplace.
- The quality and effectiveness of workplace agreements would improve, and there would be an increasing divergence in the content of agreements between workplaces and within workplaces.
- Workplaces would increasingly develop their own structures for direct management and employee consultation, workplace bargaining and for handling grievances and disputes. Employers and employees would be more aware of their rights and responsibilities.
- Representatives of employees and employers, including unions and business associations, would actively and constructively participate in providing services to members seeking assistance in making collective or individual agreements.
- Formal requirements for the making and approval of workplace agreements would be minimised.
- There would be 'opting out' arrangements from the formal system for best practice workplaces.

- There would be an increasing focus in workplace agreements on mutual interests, on the sharing of business performance, and on balancing work, family and lifestyle.

- The labour market would have a productive and entrepreneurial character, including through the use of contract labour services, particularly by higher skilled workers.

- Wages and wage increases negotiated in collective and individual agreements in workplaces would overwhelmingly be linked to productivity, performance, career development, and business conditions.

- A single minimum adult wage and single minimum youth wages would guard the interests of the low paid.

- There would be a more rational interface between the industrial system, and the tax, welfare and superannuation systems.

- Industrial tribunals would increasingly provide voluntary conciliation and mediation services, and private or voluntary arbitration.

- Industrial awards would only operate as a safety net of essential minimum standards. Work practices, actual conditions of work, and implementation of standards would mainly be determined in individual workplaces.

- Over time, minimum legislated standards on core employment conditions would replace the need for most awards, and awards would become simpler.

- Compulsory arbitration would be restricted to disputes seriously affecting the economy and public interest.

- There would be widespread recognition of freedom of association and voluntary unionism, both in theory and in practice.

- Unions and business organisations that establish a service oriented culture for members would prosper.

- There would be fewer disputes and grievances as workplace relations becomes more co-operative and less ideological. Levels of industrial action in Australia would for the first time in the modern era reach a level that equates with our major international competitors.

- There would be increasing use of alternative dispute resolution mechanisms for the speedy, low cost settlement of actual workplace grievances or disputes. Different dispute settlement approaches would emerge between demands for higher wages or more benefits, as opposed to grievances over existing work arrangements.

- The system would no longer require disputes to be created in order to have claims for minimum standards determined.
- There would be a rationalisation and harmonisation of federal and state industrial relations arrangements on acceptable terms that eliminates or at least minimises regulatory content and duplication.
- Rights against capricious termination of employment would be maintained but in a system with lower cost and speedier resolution of disputed terminations. Employers would have more confidence to engage and dismiss on performance and suitability grounds. Both employers and employees would be more familiar with their rights and responsibilities.
- Commercially responsible steps taken by individual employers and governments to protect entitlements in the event of insolvency would further minimise the incidence of unpaid entitlements, whilst employees and the community would have a greater appreciation of the inherent risks to investment, jobs and entitlements of businesses insolvency.

15. Assessed against these key criteria, the existing system is found substantially wanting. An analysis of over 40 key parameters of any workplace relations system identified substantial opportunities for fundamental, structural reform of Australian employment regulation.

16. Based on this topic by topic analysis, in ACCI's October 2002 Workplace Relations Reform Blueprint advanced a set of both detailed and directional proposals / objectives for reforming our workplace relations system(s).

17. There are over 140 individual recommendations / objectives for reform identified in the ACCI Blueprint, addressing issues relating to: relations between employers, employees and registered organisations, regulation of workplace relations, award and agreement making, minimum standards, minimum wages and termination of employment.

18. ACCI's Policy Analysis Supports *WorkChoices*: The *WorkChoices* Bill substantially progresses the goals for workplace relations laws identified in the ACCI Blueprint. ACCI's detailed examination of Australian workplace relations law and practice directly supports both the key directions of reform and many of the detailed propositions in the *WorkChoices* amendments.

19. The ACCI Blueprint also emphasises the importance and benefits of Australia moving towards a more national system of workplace relations – another of the key reforms in *WorkChoices*.

20. Accessing The Blueprint: Copies of ACCI's Modern Workplace: Modern Future Workplace Reform Blueprint have been provided to members of the Committee. It is also available from www.acci.asn.au .

THERE IS AN ECONOMIC CASE IN FAVOUR OF WORKPLACE REFORM

21. Despite some recent obfuscation and inaccuracy in public debate, there is an unambiguous economic case in favour of further labour market reform in Australia.

Department of Treasury

22. A number of papers from the Commonwealth Treasury support the need for further workplace relations reform in Australia.

23. A comparison of Australia and New Zealand[2] found that for Australia "*A concerted policy reform effort has seen Australia's measured productivity level move back towards the United States benchmark*." (p14).

24. A comparison of productivity in Australia and the United States[3] found that the gap between productivity in Australia and the United States could be reduced by one sixth by further reforms of product and labour market regulations. This would increase GDP per capita by around $1,300 per year.

Reserve Bank of Australia (RBA)

25. In testimony before a Parliamentary Committee earlier this year, the Governor of the RBA, Ian Macfarlane said:

> "The biggest thing in this area [increasing productivity] is industrial relations reform. There must be a lot of things that still can be done. From my own experience in the Reserve Bank, as we have changed things and reduced our size and, I think, increased our productivity enormously, one of the things that stood out was that there were a lot of benefits and rules which were of some benefit to employees—but a very small benefit—but were extremely costly to the employer, which means that there is a classic opportunity for a win-win situation as these things are resolved".[4]

Productivity Commission

26. In a recent report on National Competition Policy, the Productivity Commission said:

2. Davis, Graeme and Robert Ewing (2005) "Why has Australia Done Better than New Zealand? Good Luck or Good Management?" Treasury Working Paper 2005-01.
3. Rahman, Jyoti (2005) "Comparing Australian and United States productivity" *Treasury Economic Roundup* Autumn 2005.
4. Hansard of House of Representatives Standing Committee on Economics, Finance and Public Administration, 18 February 2005 at page 26.

> "Labour market arrangements are characterised by significant restrictions on competition which can reduce productivity and constrain the scope for reforms in other markets. For these reasons alone, notwithstanding considerable reform over the past two decades, further policy changes to increase the flexibility and responsiveness of the Australian labour markets remain a high priority" (p xxxviii).

27. And:

> "Suffice to say that building on the labour market reforms of the past two decades is vital to support further improvements in productivity and sustainability, including through easing ageing-related constraints on future labour supply and complementing reforms in other areas. It is also critical that the much needed flexibility and capacity to adapt to changed circumstances provided by previous reforms are not compromised by any backsliding" (page xxxix)

Organisation for Economic Co-operation and Development (OECD)

28. In the 2005 publication Economic Policy Reforms, the OECD observed in relation to Australia:

> "Reduce minimum cost of labour
>
> 'Award wages' (the de-facto minimum wages) are more than half of median earnings – thus relatively higher than in most OECD countries – and may therefore impede employment of the low-skilled.
>
> Actions taken: Continued reform of the previously rigid industrial relations system have increased workplace flexibility which has raised labour productivity and thus had a dampening effect on unit labour coat.
>
> Recommendations: Yearly adjustments to award wages should take better account of the employability of award-wage earners."[5]

29. The 2005 OECD Economic Survey on Australia found:

> "…The low-skilled face additional barriers to enter employment, or remain in it, because of relatively high minimum wage scales, and remnants of the formerly pervasive and excessively legalistic industrial wage award system still discourage flexibility. Further reforms are needed in these areas."[6]

30. The OECD advocated the following reforms in relation to labour market policy:

> "Ensure that the labour market functions more effectively by: promoting the negotiation of wages and employment conditions at the enterprise and individual levels; remove disincentives to hiring, especially of low-skilled workers; enhancing human capital by improved training and education; and creating stronger incentives to participate in the labour market, especially for older workers."[7]

5. OECD (2005) *Economic Policy Reforms*, page 58 (Country Note for Australia)
6. OECD (2004) *Economic survey of Australia,* page 8
7. OECD (2004) *Economic survey of Australia*, page 10

31. In considering what reforms are needed to increase the size and quality of the labour force, the OECD stated:

> "To further encourage participation and favour employment, the industrial relations system also needs to be reformed so as to increase the flexibility of the labour market, reduce employment transactions costs and achieve a closer link between wages and productivity. Regulatory requirements for collective and for individual agreements should be eased so that they can replace awards. A major step in this direction would be another reduction of the number of allowable award matters, and the tightening of their definitions and specifications. "Safety Net" award wage increases should be guided by the productivity and thus employability of low-skilled workers. Further unfinished business includes harmonisation of federal and state industrial relations and the streamlining of regulations which minimise the incidence of unlawful industrial action. Finally, the cost of dismissal procedures, including for employees who have been with firms for only a short period, is often cited by small businesses as a disincentive to hiring. The Government is now in a position to address these issues and should proceed as soon as practicable."[8]

32. The OECD released *Innovations in Labour Market Policies – the Australian Way* in 2001. It noted that during the 1980s (before enterprise bargaining was introduced), real wages fell, "*particularly for low-wage workers*", while during the 1990s (after workplace relations reform was started), real wages have increased across the earnings distribution (page 258). Reform has also not affected the gender pay ratio.

33. This report also cited evidence showing:

> "…the presence of enterprise agreements is indeed associated with productivity improvement, but above all in companies which report that their labour productivity levels are inferior to those of their competitors." (p 262)

34. The OECD has consistently argued for labour market reform in Australia, both before and after 1996[9].

<u>International Monetary Fund</u>

35. In its 2005 Country Survey of Australia, the International Monetary Fund (IMF) observed that:

> "Further reforms of industrial relations are needed to expand labor demand and facilitate productivity gains. Labor market reforms to date have substantially reduced rigidities, but centralised awards still set minimum working conditions in 20 areas through the requirement that conditions in collective and individual contracts not fall below those in awards – the no disadvantage test – and large employers face up to six different industrial relations systems at the Federal and State levels." (p18)

8. OECD (2004) *Economic survey of Australia*, page 16
9. See for example OECD (1994) *Economic survey of Australia*.

36. The IMF *"urged the implementation of [the Government's] package of reforms to widen employment opportunities and raise productivity by enhancing flexibility in work arrangements."* (p18)

37. In its 2004 survey, the IMF stated:

> "…product and labor market liberalization has spurred competition, increased efficiency, and encouraged the adoption of productivity-enhancing information and communication technologies." (p11)

38. It also stated:

> "…the wage bargaining system needs further simplification, including a reduction in the overlap of the federal and state award systems and a diminished role for the award system, which has contributed to a relatively high unemployment rate for low-skilled employees." (p13)

39. And:

> "Further broad-based measures to increase labor market flexibility are also needed, including a reduction in the overlap of the federal and state award systems and a diminished role for the award system in setting the minimum wage, which has contributed to a relatively high unemployment rate for low-skilled workers." (p18)

40. An IMF review[10] of the Australian award system argued that *"the wage awards system may have impeded the adjustment of real wages to productivity differentials and contributed to higher unemployment rates in some states"* (p13).

Other Australian Evidence

41. RBA: In a Reserve Bank conference entitled *The Australian Economy in the 1990s*, a paper by prominent economist Charles Bean from the London School of Economics examined the interaction between Australian labour market institutions and economic shocks. He found that:

> "A low degree of nominal rigidity [in employment contracts] reduces both average unemployment and the response to shocks. Finally, high levels of employment protection have a very strong statistical effect in reducing the speed of adjustment and thus in raising unemployment persistence."[11]

42. Peter Dawkins: In another paper to that conference, Peter Dawkins argued that the introduction of enterprise bargaining was associated with higher productivity, and "most of the benefits of rising productivity growth have gone in the form of higher wages" (p 341).

10. Ramakrishnan & Cerisola (2004) "Regional Economic disparities in Australia" IMF Working Paper 144.
11. Bean (2000) "The Australian Economic 'Miracle': A View from the North" in Gruen & Shrestha (eds) (2000) *The Australian Economy in the 1990s*.

43. Access Economics: wrote a report Workplace Relations – The Way Forward, released in February 2005. The report found that:

> "…the sectors with the most flexible workforce arrangements have seen the fastest productivity gains. More flexibility equals faster productivity growth, both directly and by strengthening the positive interaction with other reforms" (page 20).

44. The report also found that:

> "A 10 percentage point reduction in award reliance in an industry between 1990 and 2002 was associated with an increase in the average annual productivity growth of 0.5 percentage points." (p21)

45. IMF: An IMF paper on the Australian system[12] has results that: "suggest that the wage awards system may have impeded the adjustment of real wages to productivity differentials and contributed to higher unemployment rates in some states" (p13).

New Zealand

46. As a result of economic reforms, particularly the introduction of substantial labour market reforms, New Zealand had a substantial improvement in its economic performance.

47. Firstly, productivity growth increased substantially in New Zealand after it undertook reforms to workplace relations. Before reforms were implemented, (from 1988 to 1993), multifactor productivity (MFP) growth was 0.09%, whereas after the reforms (1993 to 2002) MFP growth was 1.32%[13]. MFP is the best measure of productivity. Some commentators[14] incorrectly use labour productivity as the best measure – labour productivity only gives a partial view of the productivity of the whole economy.

48. A major review of the NZ reform experience[15] showed that, after the labour market reform in 1991 (introduction of the Employment Contracts Act), GDP growth increased dramatically, inflation reached historical lows, the Budget returned to surplus and unemployment and public debt started falling strongly. Employment grew by 14 percent in the four years to December 1995, compared to a fall of 5.6 percent in the six years before 1991. Businesses also reported significant improvements in flexibility, productivity, increased ordinary hours pay and increased performance pay.

12. Ramakrishnan & Cerisola (2004) "Regional Economic disparities in Australia" IMF Working Paper 144.
13. Source: Black, Guy & McLellan (2005) "Productivity in New Zealand 1988-2002" New Zealand Treasury Working Paper 03-06.
14. For example, Dalziel (2002) "New Zealand's Economic Reforms: an assessment" *Review of Political Economy*, 14(1) pp 31-46.
15. Evans, Grimes, Wilkinson & Teece (1996) "Economic reform in NZ 1984-95 - the pursuit of efficiency" *Journal of Economic Literature* Vol 34

49. In addition, Kerr (2005)16 notes:

    a. After reform, annual work days lost to strikes fell to the lowest level in 64 years and employment growth was the highest in the OECD.

    b. Since 1993, NZ growth has been similar to that of Australia at 3.7 percent.

    c. The participation rate in 2003 was 76 percent, compared to the OECD average of 70 percent.

    d. Currently, NZ has the lowest unemployment rate in the OECD.

United Kingdom

50. In 1981, the United Kingdom was ranked a disappointing 18th in GDP per head – well below Germany and France. Since then, significant economic reforms were undertaken, particularly to labour markets. As a result, the UK's GDP ranking has climbed again, reaching 11th in 2005.

51. A assessment by the UK Treasury in 200317 (notably under a Labour Government) argued that:

> "A flexible and efficient labour market implies higher employment, and so an economy that is fairer (in terms of, for example, reducing social exclusion), as well as more competitive and more productive. It also implies an economy that is better able to adapt to the changing economic environment."

52. This report argues that the flexibility of the UK's labour market has increased since the 1997 assessment and the performance of the labour market had shown "concrete signs of improvement".

53. The UK Chancellor of the Exchequer has argued for labour market reform as being essential for Europe:

> "…we need a strategy that delivers a full-employment Global Europe. The answer is not to restrict or retreat from global competition, but to meet and master global change through policies that promote openness and opportunity for all. This calls for greater flexibility in product markets, labour markets and capital markets to ensure that Europe's businesses and individuals are equipped to take advantage of new opportunities"[18]

16. Kerr (2005) "Lessons from Labour Market Reform in New Zealand"
17. HM Treasury (2003) *EMU and labour market flexibility*
18. Brown (2005) *Global Europe: full-employment Europe*, HM Treasury. Emphasis added.

United States – Federal Reserve

54. Alan Greenspan, the Chairman of the US Federal Reserve (arguably the most powerful and important economist in the world), has said:

> "In my more than eighteen years at the Federal Reserve, much has surprised me, but nothing more than the remarkable ability of our economy to absorb and recover from the shocks of stock market crashes, credit crunches, terrorism, and hurricanes--blows that would have almost certainly precipitated deep recessions in decades past. This resilience, not evident except in retrospect, owes to a remarkable increase in economic flexibility, partly the consequence of deliberate economic policy and partly the consequence of innovations in information technology.
>
> ...
>
> Flexibility is most readily achieved by fostering an environment of maximum competition. A key element in creating this environment is flexible labor markets. Many working people, regrettably, equate labor market flexibility with job insecurity.
>
> Despite that perception, flexible labor policies appear to promote job creation, not destroy it. An increased capacity of management to discharge workers without excessive cost, for example, apparently increases companies' willingness to hire without fear of unremediable mistakes. The net effect, to the surprise of most, has been what appears to be a decline in the structural unemployment rate in the United States.
>
> Protectionism in all its guises, both domestic and international, does not contribute to the welfare of American workers. At best, it is a short-term fix at a cost of lower standards of living for the nation as a whole. We need increased education and training for those displaced by creative destruction, not a stifling of competition."[19]

Further International Evidence

55. A further substantial body of further international evidence shows that workplace relations reform generates substantial economic and labour market benefits. Some of these papers are listed with annotations below. In summary, these papers find that labour market reform is associated with:

    a. A reduction in unemployment, particularly for women, youth, older men and a reduction in long-term unemployment.

    b. A reduction in poverty and the unofficial economy.

    c. Higher growth in productivity, employment, output, consumption and investment.

    d. Higher welfare and business entry.

    e. A more flexible economy – that is, the economy adjusts to shocks faster.

19. Remarks by Chairman Alan Greenspan: "Economic flexibility" before the National Italian American Foundation, Washington, D.C. October 12, 2005 Available from: http://www.federalreserve.gov/boarddocs/speeches/2005/20051012/default.htm

f. The variability of economic performance is smaller.

g. Monetary policy is more effective (that is, a smaller interest rate increase will have a larger effect, meaning fewer interest rate movements are required).

56. Supporting results include:

a. Several papers find that comprehensive reform is more likely to provide benefits than piecemeal reform.

b. More labour regulation is associated with a longer duration of unemployment and a longer time to reduce the unemployment rate (persistence).

c. More union involvement in wage setting decreases the employment of the young and old (compared to prime age) and raises female unemployment.

57. These papers come from a wide range of institutions, are published in top economic journals (subject to thorough (anonymous) review processes).

58. A World Bank cross-country study[20] of the Middle East and North Africa found in 2004 that *"a 'piecemeal' approach to labor market reforms is unlikely to bring substantial benefits in terms of growth and employment. By contrast, a comprehensive approach will bring broad-based growth and reductions in both skilled and unskilled unemployment"*.

59. In recent years, product markets have become more integrated across the world. A paper[21] examining the effect of product market integration on labour markets found that structural labour market problems caused by minimum wages are strengthened by this change.

60. A 2004 study[22] of competitiveness in labour and product markets found that if the euro area increased competitiveness in both labour and product markets to US levels, real output would rise by 12.5 percent (halving the difference between GDP per capita in the US and Europe). Consumption increases by 8 percent, welfare by 2.4 percent and the sacrifice ratio (the fall in output caused by higher inflation) would fall by about one-third (in other words, monetary policy becomes more effective so smaller interest rate increases are needed).

20. Agénor, Jensen, Nabli & Yousef (2004) "Labor Market Reforms, Growth, and Unemployment in Labor-Exporting Countries in the Middle East and North Africa" World Bank Working Paper 3328 at page 38-39.
21. Andersen, Torben (2005) "Product market integration, wage dispersion and unemployment" *Labour Economics*, Volume 12, Issue 3 , June 2005, Pages 379-406.
22. Bayoumi, Laxton and Pesenti (2004) "Benefits and spillovers of greater competition in Europe – a macroeconomic assessment" Federal Reserve Bank of New York Staff Report 182.

61. Labour market reform will enable pay to be linked to profit, firm performance or individual performance, rather than pay being determined by an outside third party. A number of papers[23] show that performance pay increases productivity and wages.

62. An examination of the trade-off between output and inflation in 19 developed countries[24] found that the sacrifice ratios (reductions in output caused by higher inflation) appear to have risen in virtually all countries, but "*the increases tend to be smallest in those that have adopted measures to deregulate labour and product markets*".

63. A study25 finds that the benefit from international trade is increased if labour markets are more flexible.

64. A study[26] of the reasons for different unemployment performances in the OECD found that countries with less success in lowering unemployment had higher minimum wages and tighter employment regulation. It notes that "*all successful countries, without exception, have a more flexible employment regulation than the other countries.*" (p12) and that most of the successful countries undertook major reforms all at once (p13).

65. A study of labour regulation in India[27] found that increases in labour regulation in particular Indian states are associated with lowered investment, employment, productivity and output in formal manufacturing. Regulating in a pro-worker direction is also associated with increases in urban poverty.

66. Several studies have examined the interaction between labour market policies and economic shocks in cross-country data.

67. A seminal study in this area28 found that stricter employment protection rules were associated with larger and longer increases in unemployment, with the relationship much stronger when the interaction between policies and shocks was accounted for.

23. Cable & Wilson (1990) "Profit-sharing and Productivity: Some Further Evidence." *Economic Journal* 100(401) pages 550-555; Kruse (1993) *Does Profit Sharing Affect Productivity?* NBER Working Paper No. 4542; OECD Economic Outlook (1995) Chapter 4: Profit-sharing in OECD countries; and Estrin, Pérotin, Robinson & Wilson (1997) *Profit-Sharing in OECD Countries a Review and Some Evidence* Business Strategy Review Volume 8 No 4, December, pp. 27-32(6).
24. Andersen & Wascher (1999) "Sacrifice ratios and the conduct of monetary policy in conditions of low inflation" BIS Working Paper No 82.
25. Arnold (2000) "On the growth effects of North–South trade: the role of labor market flexibility" *Journal of International Economics* Vol 58 No 2.
26. Belot, Michèle & Jan van Ours (2000) "Does the recent success of some OECD countries in lowering their unemployment rates lie in the clever design of their labour market reforms?" Center for Economic Research Discussion Paper 2000-40. Published in 2004 in *Oxford Economic Papers*, Oxford University Press, vol. 56(4), pages 621-642.
27. Besley & Burgess (2002) "Can Labour Regulation Hinder Economic Performance? Evidence from India" *Quarterly Journal of Economics* Vol 119 No 1 pages 91-134.
28. Blanchard & Wolfers (2000) "The Role of Shocks and Institutions in the Rise of European Unemployment: the Aggregate Evidence" *Economic Journal* Vol 110 Issue 462, also Blanchard (2004) "Explaining European Unemployment" *NBER Reporter*.

68. Another paper[29] found that collective bargaining coverage and stricter employment protection legislation were connected with more unemployment. More restrictive institutions are associated with lower relative employment of youth and older men.

69. A model[30] estimates that the existence of stricter job security measures, more generous unemployment benefits and greater bargaining strength among incumbent workers will tend to exacerbate the negative employment effects of an increase in the minimum wage.

70. A study of employment protection[31] argues that strict protection legislation "*is likely to lead to lower productivity, lower output and lower welfare*."

71. A comparison of US and Portuguese labour markets32 found that the higher employment protection in Portugal increases unemployment duration, reduces welfare and reduces output in that country.

72. A survey[33] of OECD countries found that labour market reform is associated with lower economic volatility.

73. An examination[34] of the employment effects of union involvement in wage setting found that union involvement decreases the employment of the young and old (compared to prime age) and raises female unemployment compared to male unemployment.

74. A paper[35] argues that "*Heavier regulation of labor is associated with a larger unofficial economy, lower labor force participation, and higher unemployment, especially of the young*."

75. A study[36] finds that countries with tight labour and product market regulation tend to have lower employment rates in the non-agricultural business sector.

76. In 2000, Spain had one of the highest rates of unemployment in Europe (22.2%) while Portugal had one of the lowest (7.3%). A paper examining the

29. Giuseppe Bertola, Francine D. Blau, Lawrence M. Kahn (2001) "Comparative Analysis of Labor Market Outcomes: Lessons for the US from International Long-Run Evidence" NBER Working Paper No. 8526
30. David Coe and Dennis Snower (1997) "Policy complementarities: The case for fundamental labor market reform" *IMF Staff Papers* 44-1 (March), pages 1-35.
31. Blanchard & Landier (2002) "The perverse effects of partial labour market reform: fixed-term contracts in France" *The Economic Journal* Volume 112, p 214-244.
32. Blanchard & Portugal (2001) "What hides behind an unemployment rate - comparing Portuguese & US labor markets" *American Economic Review* Volume 91 No 1.
33. Kent, Smith & Holloway (2005) "Declining output volatility - what role for structural change", in Kent & Norman (eds) *The Changing Nature of the Business Cycle*, Reserve Bank of Australia.
34. Bertola, G., F. D. Blau and L. M. Kahn (2003), "Labor Market Institutions and Demographic Employment Patterns", NBER Working Paper 9043
35. Botero, Djankov, la Porta, Lopez-de-Silanes and Schleifer (2004) "The regulation of labour" *Quarterly Journal of Economics* 199-4
36. Boeri, Nicoletti & Scarpetta (2000) "Regulation and labour market performance" CEPR Discussion Paper No 2420.

reasons for this difference[37] found that the key explanation for difference was the wage adjustment process, for example the existence of lower wage floors (minimum wages) in Portugal. Another explanation was the higher firing costs in Spain. A different paper[38] argues that Spain's poor performance is due to it having "exceptionally unemployment-prone labour institutions", particularly employment protection.

77. A paper examining employment protection legislation in 60 countries[39] finds that excessive labour market regulation can lead to microeconomic inflexibility. Increasing employment protection legislation from the least restrictive to most restrictive will cut the speed of adjustment to shocks by at least one third while cutting productivity growth by about one percent.

78. A study[40] of the new countries entering the European Union found that those countries with higher minimum wages experienced a longer persistence of unemployment.

79. A paper[41] examining complementarities between labour market institutions (including job security legislation) found that "*labour market reform becomes particularly effective only once a broad range of institutional rigidities are dismantled simultaneously*".

80. A paper[42] examining hiring and firing restrictions for 21 OECD countries found that increasing the flexibility of the labour market increases both the employment rate and the rate of participation in the labour force and reduces unemployment and long-term unemployment. The effects are greater for females.

81. Chile has experienced substantial reductions in unemployment. A paper examining the reasons for this change[43] attributed it to reductions in payroll taxes and increased labour market flexibility.

82. A paper[44] finds that hiring and firing restrictions discourage employment creation in Latin American economies.

37. Bover, Garia-Perea & Portugal (2000) "Labour market outliers: Lessons from Portugal and Spain" *Economic Policy* Volume 15 Issue 31.
38. Bentolila & Jimeno (2003) "Spanish unemployment - the end of the wild ride?" FEDEA Working Paper 2003-10.
39. Caballero, Cowan, Engel and Micco (2004) "Effective Labor Regulation and Microeconomic Flexibility" NBER Working Paper 10744.
40. Camarero, Carrion-i-Silvestre & Tamarit (2005) "Unemployment dynamics and NAIRU estimates for accession countries" *Journal of Comparative Economics* Vol 33
41. Coe, David and Dennis J. Snower (1997) "Policy Complementarities: The Case for Fundamental Labour Market Reform" CEPR Discussion Paper 1585.
42. Di Tella, R. and R. MacCulloch (2005) "The Consequences of Labour Market Flexibility: Panel Evidence Based on Survey Data" *European Economic Review* volume 49, issue 5, pages 1225-1259.
43. Edwards, Sebastian & Edwards, Alejandra (2000) "Economic reforms and labour markets: policy issues and lessons from Chile" *Economic Policy* Volume 15 Issue 30, p 181-230.
44. Heckman & Pagés (2000) "The Cost of Job Security Regulation: Evidence from Latin American Labor Markets," NBER Working Paper 7773.

83. Two studies[45] examine the effect of changing work practices on the efficiency of bargaining. They find that the move towards multi-tasking and "diversified quality production" in developed countries has meant centralised wage setting (such as Australia's award system) has become inefficient and an impediment to growth, compared to decentralised wage setting.

84. A study[46] of the effect of labour market policies on structural unemployment for 1983-95 found that lower structural unemployment was associated with a more decentralised bargaining system and stricter employment protection rules. The study argues that the six success stories of the 1990s (Denmark, Australia, New Zealand, UK, Netherlands and Ireland) were different from the other countries in that they implemented comprehensive policy reforms.

85. A number of papers have explored the effect of policies that compress wages – particularly award wages. In particular, a paper[47] at an RBA conference argues that policies that compress wages "*could reduce the employment of relatively less-able workers in all education groups*" (p20). This paper also argues that: "*the interaction of firing restrictions with other labour market distortions (e.g. high minimum wages and/or strong union roles in influencing wages in new positions) and with product market restrictions (e.g. regulatory barriers to the formation of new enterprises) might have a large effect on the unemployment rate of some groups (young workers, new labour market entrants) and thereby affect the overall unemployment rate*" (p21)

86. A paper[48] shows that over half of the change in unemployment in the UK from 1980 to 1995 was due to adjustment processes. Hence, policies to increase the rate of adjustment, or increasing flexibility, will cut unemployment substantially. An example is reducing dismissal costs.

87. A major book on unemployment[49] concludes that "*employment protection laws increase the duration of unemployment and may increase its level*" (p 509).

88. An early study[50] of the effect of mandated redundancy costs showed that a mandated increase in severance costs from zero to three months pay would, in the US in 1990, cause the removal of over a million jobs, increase

45. Eichengreen & Iverson (1999) "Institutions and Economic Performance: Evidence from the Labour Market" *Oxford Review of Economic Policy* Vol 15 No 4, p 121-138; and Lindbeck and Snower (2001) "Centralized bargaining and reorganized work: Are they compatible?" *European Economic Review* Vol 45 No 10.
46. Elmeskov Martin & Scarpetta (1998) "Key lessons for labour market reforms: evidence from OECD countries experiences" *Swedish Economic Policy Review*, Vol 5, p 205-252.
47. Katz (1998) "Reflections on US Labour Market Performance" in Debell & Borland (eds) *Unemployment and the Australian Labour Market*.
48. Karanassou & Snower (1998) "How Labour market flexibility affects unemployment – long-term implications of the chain reaction theory" CEPR Discussion Paper 1826
49. Richard Layard, Stephen Nickell & Richards Jackman (1991) *Unemployment: macroeconomic performance and the labour market* Oxford University press, recently updated with a 2005 edition.
50. Lazear (1990) "Job security provisions and employment" *Quarterly Journal of Economics*, Vol. 105, No. 3. August, pp. 699-726

unemployment by 5.5 percent and change 9 million jobs from full time to part time.

89. Two studies[51] on the European unemployment experience show that employment protection significantly increases unemployment (particularly for the long-term and older unemployed) when the economy is subject to more turbulence (or shocks).

90. A study[52] examines the effect of regulation on growth, controlling for whether there are reverse effects (from growth to regulation). The study finds that labour market regulation causes reductions in economic growth and causes macroeconomic volatility (ie higher labour regulation causes more macro fluctuations).

91. A study[53] of service employment for 27 OECD countries found that more coordinated wage setting was associated with lower employment in the services sector. Expansion of service employment is "unambiguously" associated with growth of living standards.

92. A cross-country study[54] of minimum wages showed that a ten percent increase in the minimum wage is associated with a one to three percent decline in youth employment. More restrictive labour standards tend to exacerbate the negative consequences of raising the minimum wage.

93. A study[55] found that over half of the shifts in unemployment in OECD countries since the 1960s can be explained by shifts in labour market institutions. Employment protection legislation increased unemployment, mainly by increasing the persistence of unemployment.

94. An study of OECD countries[56] found that stricter employment protection rules reduce innovation.

95. The *OECD Employment Outlook for 1998*[57] argues that "*at high levels, there is general agreement that a statutory minimum wage will reduce employment.*" (p57) It is generally accepted that Australia has one of the highest minimum wages in the developed world.

51. Ljungqvist, Lars & Thomas J. Sargent (1998) "The European Employment Dilemma*" Journal of Political Economy* Vol 106 Issue 3 pages 514-550, extended in Lars Ljungqvist & Thomas J. Sargent (2002) "The European Employment Experience" Centre for Economic Policy Research Discussion Paper 3543.
52. Loayza, Oviedo & Serven (2004) "Regulation and macroeconomic performance" World Bank Working Paper 3469.
53. Messina (2005) "Institutions and Service Employment: A Panel Study for OECD Countries" *Labour* Vol 19 No 2.
54. Neumark, D. and W. Wascher (2004), "Minimum Wages, Labor Market Institutions, and Youth Employment: A Cross-National Analysis" *Industrial and Labor Relations Review* Vol 57, No 2, pages 223–48.
55. Nickell, Nunziata & Ochel (2005) "Unemployment in the OECD since the 1960s. What do we know?" *Economic Journal* Vol 115 No 500.
56. Nicoletti, Bassanini, Ernst, Jean, Santiago & Swaim (2001) "Product and labour market interactions in OECD countries" OECD Working Paper 312
57. In Chapter 2 "Making the most of the minimum: statutory minimum wages, employment and poverty".

96. A paper[58] has examined why many European governments have had difficulty in reducing unemployment. It argues that the reason for this is because the governments have failed to implement broad reforms, including to the labour market – "incremental, small-scale adjustments of existing policy packages are doomed to failure". They also argue that properly designed reforms can reduce unemployment and inequality simultaneously.

97. An article[59] concludes that: "*Since 1990, some European countries have managed to address their unemployment problem, while others remain stuck with it. The evidence suggests that successful countries typically have implemented a number of labor market reforms*." (p 66).

98. An OECD study[60] of labour market performance from 1983-1993 in 17 countries (including Australia) found that stringent employment protection legislation contributes to high unemployment, particularly youth and long-term unemployment. More decentralised wage setting systems help contain unemployment and increase the speed of adjustment of unemployment.

99. A paper[61] finds that comparatively higher labour regulation is associated with lower productivity, especially when these costs are not offset by lower wages and/or more internal training. High costs of adjusting the workforce seem to negatively affect the entry of new small firms.

100. An investigation[62] of labour market institutions for the OCED from the 1960s to late 1990s found that "Employment protection plays a significant role in increasing unemployment persistence".

101. A paper[63] examines 17 OECD countries (including Australia) to determine why inflation persists for a long time in some of these countries (in other words, why inflation is not sufficiently responsive to policy, particularly higher interest rates). The study finds that greater employment protection and centralisation of wage setting is associated with inflation being slower to respond to policy: "*labour market rigidities are a predominant source of inflation persistence in the face of slack [ie unemployment] in the euro area*" (p17).

58. Orszag, Mike, and Dennis Snower, "Anatomy of Policy Complementarities," *Swedish Economic Policy Review* 5 (Autumn 1998), p 303-51.
59. Saint-Paul (2004) "Why are European countries diverging in their unemployment experience" *Journal of Economic Perspectives* Vol 18 No 4.
60. Scarpetta, Stefano (1996) "Assessing the Role of Labour Market Policies and Institutional Settings on Unemployment: a Cross-Country Study" *OECD Economic Studies* No 26. 1996-1
61. Scarpetta, Hemmings, Tressel & Woo (2002) "The role of policy and institutions for productivity and firm dynamics" OECD Working Paper 329.
62. Nunziata, Luca (2003) "Unemployment, Labour Market Institutions and Macroeconomic Shocks", presentation to Nuffield College, Oxford University, Wednesday 26 November, available from: www.dti.gov.uk/er/emar/nunziata.ppt (accessed 24 August 2005).
63. Cournede, Janovskaia & van den Noord (2005) "Sources of inflation persistence in the Euro area" OECD Working Paper 435

102. A paper[64] examines growth in 12 OECD countries, including Australia, for 1970 to 2003 and finds that: *"…a group of countries seems to have nearly 'extinguished' the business cycle while enjoying above-average trend growth. This successful group, which includes Australia, Canada, Sweden, the United Kingdom and some others, is characterised by monetary policy frameworks of the inflation targeting type, as well as flexible regulatory frameworks in labour, product and financial markets."*

103. An OECD publication[65] finds that: *"A combination of strict employment protection legislation, wage compression across skills and lack of co-ordination amongst employers, as seen in several continental European countries, lowers incentives for innovation and the adoption of leading technologies."* (p23)

104. A study of dismissal restrictions[66] finds that firing costs equal to one year's wages reduces output by 7.8 percent and employment by 6.6 percent.

Conclusion

105. Ultimately, it is fundamentally inaccurate to conclude that there is no economic evidence in favour of workplace reform, nor in favour of the direction of change progressed by the *WorkChoices* amendments.

106. There is a substantial economic and labour market case, both domestic and international, in favour of the direction of reform in the *WorkChoices* Bill.

107. This includes a very significant body of rigorous economic research and expert analysis. In some areas, expert research and analysis more directly supports particular *WorkChoices* amendments (e.g. the OECD's analysis).

WHY DO THIS NOW?

108. Some have questioned why Australia should implement substantial workplace relations reform during a period of comparative economic wellbeing – when unemployment is comparatively low, inflation remains lower than in some other periods, and economic growth remains sound.

109. ACCI strenuously and fundamentally objects to the premise of such arguments – this is precisely how Australia should not be thinking at the moment – it is precisely the wrong way to approach this major national policy issue in 2005.

64. Cotis & Coppel (2005) "Business cycle dynamics in OECD countries - evidence, causes and policy implications", in Kent & Norman (eds) *The Changing Nature of the Business Cycle*, Reserve Bank of Australia.
65. OECD (2003) *The sources of Economic growth in OECD countries*.
66. Veracierto (2001) "Employment Flows, Capital Mobility, and Policy Analysis" *International Economic Review* Vol 42 No 3

110. Look behind the numbers: The Australian economy and labour market have performed well, and in comparative terms are enjoying periods of relative impressive performance. This is in no small part a function of the previous commitment of our policy makers to a level of workplace reform.

111. However, 500,000 people remain unemployed, a further 500,000 are underemployed, and perhaps 200,000 more are marginally attached to the labour market. This human dimension goes a fair way to explaining why any country would reform its employment relations laws in times of relative economic health. It is also important to properly understand the level of ongoing challenge despite Australia's comparatively sound economic performance.

112. You make changes in good times to avoid bad: The point of making any workplace reform is to improve future economic and labour market outcomes. In the current economic context, we should make changes now to maximise our opportunity to ensure that good times continue and to make it less likely that damaging economic and labour market adversity will re-emerge.

113. Worse to change in bad times: If Australia does not reform now, the alternative is rushed, reactionary reform in periods of comparative economic crisis. In a sense this is what happened in the early 1990s, when the implementation of reform did not have the full chance to contribute to job retention and prosperity in the prevailing economic times. Trying to make changes in times of economic recession make it very difficult to take advantage of improved employment laws – regardless of their quality or intrinsic merit.

114. Reform is long overdue: It is not accurate to describe *WorkChoices* in any way as rushed, or to claim that these propositions have not been before the Australian community for some time.

115. Very important amending legislation has failed to pass the Senate between 1997 and 2005, which would have implemented various of the key reform concepts implemented in the *WorkChoices* Bill (and which was supported by ACCI).

116. There is a direct lineage in government legislative propositions across more than a decade that directly informs *WorkChoices*. The creation of a national system of workplace relations was extensively canvassed in the Breaking the Gridlock exercise over 5 years ago.

117. ACCI has had a policy which substantially accords with the *WorkChoices* package in many key areas for more than a decade. The ACCI policy blueprint, Modern Workplace: Modern Future was released in October 2002

118. The world is not standing still: Of course competitor nations aren't going to stand still while we take a policy holiday on the basis the economy is going well. Regardless of the relative macro numbers in Australia, competitor nations will be pursuing measures to increase their competitiveness and efficiency. Our workplace relations system must support Australian workplaces becoming ever more efficient and productive.

119. This is in no way proposing direct wages competition with some nations in our region. This is not a sensible paradigm for understanding future wages and employment in Australia – it is not a consequence of *WorkChoices*.

120. Ignore this: Ultimately, we urge the Senate to have no regard to those urging delay or eschewing policy reform on the basis of the current sound performance of the Australian economy. Such arguments are a recipe for a complete lack of policy vision in Australia, for our policy makers to unacceptably rest on their laurels, and for taking absolutely no action for the future.

THE OUTCOMES OF WORKCHOCIES

121. Benefits: As set out in this submission, the *WorkChoices* reforms will substantially advance the reform of the Australian workplace relations system. These reforms will lead to:

    a. An Australian economy which is less likely to experience economic downturn, and which is characterised by sustained high employment, low inflation, economic growth and international competitiveness.

    b. An Australian economy which is more capable of resisting economic shocks, international downturns, and not entering into periods of recession.

    c. Greater productivity, efficiency and innovation. The *WorkChoices* amendments offer scope to substantially progress the very rationales for bargaining and workplace reform which have guided Australian workplace relations policy since the early 1990s.

    d. Increased job security, as employers and employees not only work in more productive and competitive organisations, but also have greater scope to respond to business challenges mutually in the interests of ongoing viability and job retention.

    e. Higher incomes and higher living standards. This has already been yielded by shifts into enterprise bargaining to date. *WorkChoices* offers the scope for more employees to bargain (and secure higher wages), and for bargaining to be rejuvenated for those already in the agreement part of the system.

f. More Australians in work, less unemployment and less underemployment. This will include less of our young people being unemployed and a real opportunity to make inroads into extended and intergenerational unemployment.

122. Employee Protection: These benefits will be delivered with no diminution of fairness to Australian employees. *WorkChoices* will retain significant employee protections, often in a clearer more effective form. As we have had for more than a decade, there will be a safety net to protect employee interests - indeed in many areas the Australian system will continue to exceed appropriate safety net levels.

123. Complexity: However, it must be acknowledged that these reforms will retain:

a. Considerable complexity and prescription in the regulation of Australian workplace relations.

b. A level of employment regulation well short of ACCI policy and the most appropriate form of workplace relations system for Australia's future.

Opportunities to Improve

124. ACCI is unambiguous in its strong support of the *WorkChoices* amendments and the extent to which they progress ACCI policy and prescriptions for the workplace relations system. In each and every area, the *WorkChoices* amendments are supported and should be passed in the broad terms introduced.

125. That said, ACCI's media statement at the time the *WorkChoices* package was detailed in October made clear that:

> (ACCI)…has warmly welcomed today's release by the Australian Government of details of its workplace relations reform package, but warned that employers and employer bodies remain wary of excessive government regulation of employer and employee relationships.
>
> … An excessive level of regulation of employer and employee relationships will remain, as governments progressively replace a regulated arbitration system with a regulated bargaining system and a legislated safety net.
>
> Some of the regulation in this package is due to transitional provisions necessary to move from dual Commonwealth / State laws to a national system.
>
> However much is also due to the decision of government (as in 1993 and 1996) to keep industrial awards and tribunals and provide a broader safety net with considerable in-built retentions of existing wages and employment conditions.
>
> … De-linking awards from agreements by creating the Australian Fair Pay and Conditions Standard is a structural reform. However employers will be wary of the

new legislated standard. The Government has made the standard inflexible (for example, sick leave cannot be cashed out despite being currently allowed) and these inflexible laws will unnecessarily apply to all employment relationships – including senior executives, professionals and managers.

Employers will also be concerned at the proposal to include in agreements a requirement that any changes to award provisions concerning monetary entitlements be expressly identified. This is an unnecessary level of government hand-holding and red-tape and is inconsistent with the de-linking of awards from agreements. It will be vital that employers secure expert assistance, e.g. from employer bodies, when negotiating and drafting agreements, otherwise award provisions may still apply.

For the reform package to be effective:

- The announced reforms need to be reflected in legislation without claw-back or compromise to their objectives;

- The Australian Government needs to withstand further calls for 'protection' of existing rights beyond what has been announced;

- The community needs to see through the erroneous scare campaign against reform by unions;

- The five States that have not referred power should genuinely consider doing so in the national interest and not create uncertainty by launching a constitutional challenge;

- Implementation of the reforms should be accompanied by an effective information campaign directed at industry through employer bodies; and

- Employers and employees need to be informed of the changes and, once they become law, use them to improve workplace relations and create more jobs.

126. Essentially, within ACCI's framework of strong support for the *WorkChoices* package and the *WorkChoices* Bill, employers retain concerns that:

a. Excessive government regulation of employer and employee relationships inherently reduces scope for essential enterprise level determination by employers and employees of the terms and conditions under which they work.

b. Extensive retention of industrial awards and tribunals as one of the elements of Australian workplace relations regulation inherently carries with it:

i. Ongoing levels of over-regulation of employment.

ii. Considerable impetus for the retention of existing wage and employment condition regulation.

c. The new Australian Fair Pay and Conditions Standard is effectively the creation of additional employment regulation and the creation of new legal obligations upon employers, particularly for cohorts of

employees never before covered by such employment laws (the traditional 'non-award' workforce.

d. The creation of the Australian Fair Pay and Conditions Standard may reduce some flexibilities which employers and employees can and are currently achieving through bargaining (e.g. agreements for the cashing out of some forms of leave).

e. The proposal to include in agreements a specific requirement that any changes to award provisions concerning monetary entitlements be expressly identified appears unnecessary.

f. A substantial amount of the regulation in the *WorkChoices* package is a function of transitional provisions to support the shift from dual Commonwealth / State laws towards a national system.

g. Australia's state governments (outside Victoria) could in very short order substantially further simplify the *WorkChoices* schema through a referral of powers to the Commonwealth.

h. Any State joining Victoria in availing itself of this opportunity would in addition to securing substantial budget savings, deliver employers and employees in their states, fairer, higher paying, more productive and more secure work.

127. As ACCI has indicated publicly in relation to the *WorkChoices* announcements, they represent a substantial further step towards substantially reforming Australia's workplace laws, and they should be supported on this basis.

Making Work for Employers and Employees

128. This is an inquiry into legislation and in particular into some of the provisions of the *WorkChoices* Bill as introduced on 2 November 2005.

129. Given the breadth of the *WorkChoices* amendments and level of fundamental change to the regulatory schema of workplace relations law and the effective re-writing of the existing Workplace Relations Act 1996, amendments to legislation will however only be the starting point in properly implementing the *WorkChoices* reforms.

130. Whilst this is perhaps beyond the scope of a legislative inquiry, ACCI reiterates that for the *WorkChoices* reform package to be effective:

a. Implementation of the reforms should be accompanied by an effective information campaign directed at industry through employer bodies.

b. Employers and employees need to be informed of the changes and, once they become law, use them to improve workplace relations and create more jobs.

HOW THE SENATE SHOULD PROCEED

131. ACCI supports the urgent passage of the *WorkChoices* Bill by the Senate, including any appropriate, constructive and necessary amendments arising during the legislative process which are consistent with the key intentions of the legislation and the parameters of the *WorkChoices* policy announcements.

132. However:

a. The announced reforms need to be reflected in the final legislative amendments without claw-back or compromise to their objectives.

b. The Parliament / Australian Government should withstand calls for further 'protection' of existing rights beyond what has been announced. This includes calls which may emerge from some quarters during this Inquiry.

AUST FAIR PAY COMMISSION (AFPC)

INTRODUCTION

133. A new Part IA of the *Workplace Relations Act 1996* will constitute and regulate the Australian Fair Pay Commission (AFPC)[67].

134. The majority of provisions in new Part IA are of a machinery nature, constituting the new body, providing for the appointment of members, etc.

THE NEED FOR REFORM

135. It is a matter of record that ACCI regards the existing National Wage Case (NWC) process of the AIRC as increasingly unacceptable and unsuited to the contemporary role minimum wages play in Australian workplace relations.

136. <u>It is vital that this ACCI submission is properly understood</u>.

137. ACCI is in no way suggesting that minimum wages should decrease (and would specifically not allow this), nor that there not be future minimum wage increases in appropriate economic circumstances, nor that the real value of minimum wages may not be maintained in the future (to the extent appropriate and merited).

    a. ACCI has supported wage increases in the majority of national wage cases since 1997.

    b. Unlike various opponents of reform, ACCI is not purporting to pre-judge the outcomes and operation of the AFPC prior to:

        i. The economic circumstances of mid 2006 becoming clear.

        ii. The AFPC receiving submissions and representations.

        iii. The AFPC releasing its analysis and making its decisions.

    c. ACCI will continue to support increases in minimum wages under the AFPC process where appropriate and merited.

[67] Workplace Relations and Other Legislation ( ) Bill 2005, pp.27-41

Australia has the world's highest minimum wages.

Comparison of National Minimum Wages[68]

	National Currency Minimum Wage	$AUD Minimum Wage	PPP $AUD Minimum Wage
Australia	$ 12.30	$ 12.30	$ 12.30
France	€ 7.61	$ 13.11	$ 11.62
Netherlands	€ 7.30	$ 12.57	$ 10.88
Belgium	€ 6.98	$ 12.02	$ 10.83
UK	£ 4.85	$ 12.44	$ 10.75
Ireland	€ 7.00	$ 12.06	$ 9.50
New Zealand	$ 9.00	$ 8.37	$ 8.28
Canada	$ 7.08	$ 7.59	$ 7.64
USA	$ 5.15	$ 7.35	$ 7.06
Japan	¥ 665	$ 8.65	$ 6.90
Greece	€ 3.13	$ 5.39	$ 6.15
Spain	€ 2.83	$ 4.87	$ 5.05
Portugal	€ 2.10	$ 3.62	$ 4.36

Highest Against Market Rates:

138. Australia's minimum wage is also the highest in the world relative to the overall labour market.

Minimum Wages Relative to Full Time Median Earnings[69, 70]

Country	Percentage
Australia[71]	58.8%[72] (55.1%)[73]
France	56.6%
New Zealand	53.6%
Ireland	51.7%
Belgium	48.5%
Greece[74]	47.9% (55.9%)
Netherlands[75]	46.4% (50.1%)

[68] This is adapted from material prepared by the UK Low Pay Commission, *UK Low Pay Commission Report 2005*, Table A4.1, p.236 http://www.lowpay.gov.uk/ The UK data has been corrected for the current Australian minimum wage of $12.30, rather than the $11.69 mistakenly applied in the UK publication.
Data to end of 2004.
[69] Source: UK Low Pay Commission, *UK Low Pay Commission Report 2005*, Table A4.2, p.237 http://www.lowpay.gov.uk/
[70] In all cases, the minimum wage refers to the basic rate for adults. In some cases, the median earnings data for full-time workers for mid-2004 are estimates based on extrapolating data for earlier years in line with other indicators of average earnings growth. All earnings data are gross of employee social security contributions.
[71] Two estimates of median earnings are available based on the Labour Force Survey (LFS) and an enterprise survey (ES). In each case, the data refer to weekly earnings. The minimum wage refers to the Federal Minimum Wage.
72 LFS
73 ES
[74] The ratio including annual supplementary pay of two additional months of salary is given in parentheses.

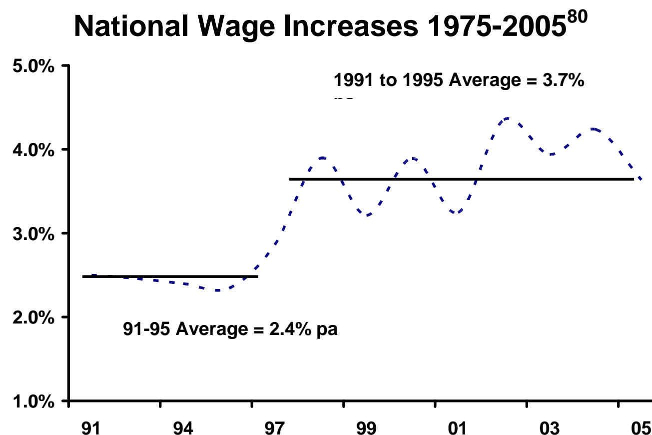
Minimum Wages Relative to Full Time Median Earnings[69, 70]

Country	Percentage
UK[76]	43.2%
Canada	39.5%
Portugal[77]	38.0% (44.4%)
Japan	33.7%
USA	32.2%
Spain[78]	30.0% (35.0%)

Australia imposes some of the world's highest minimum wage increases

139. Increases in Australia's minimum wages are also running at historically high levels, particularly during the past 4/9 years[79].

National Wage Increases 1975-2005[80]



140. Recent minimum wage increases have also delivered substantial real wage rises:

[75] The ratio including 8 per cent supplement for holiday pay is given in parentheses.
[76] LPC calculation using Annual Survey of Hours and Earnings (including supplementary information), applying the adult rate of £4.50 (applicable in mid-2004). On the basis of the minimum wage of £4.85, the figure would be 46.6 per cent.
[77] The ratio including annual supplementary pay of two additional months of salary is given in parentheses.
[78] The ratio including annual supplementary pay of two additional months of salary is given in parentheses.
[79] The safety-net era increases under the *Workplace Relations Act 1996*, and in the wake of the former Accord between the ACTU and the commonwealth.
[80] Source: http://www.workplaceinfo.com.au/nocookie/conditions/nat_increase.htm

Real Wage Increases 1997-2005

	Increase	Nominal Increase	CPI	Real Increase
1997	$10.00	2.9 %	0.3 %	2.6 %
1998	$14.00	3.9 %	0.7 %	3.2 %
1999	$12.00	3.2 %	1.1 %	2.1 %
2000	$15.00	3.9 %	3.2 %	0.7 %
2001	$13.00	3.2 %	3.0 %	0.2 %
2002	$18.00	4.4 %	2.8 %	1.6 %
2003	$17.00	3.9 %	2.7 %	1.2 %
2004	$19.00	4.2 %	2.5 %	1.7 %
2005	$17.00	3.6 %	2.4 %	1.2 %
97-05	**146.40**			**15.5**
02-05	**73.00**			**5.9**

When Is a Minimum Wage Not a Minimum Wage?

141. Australia currently has a nominal/headline minimum wage of $484.40 per 38 hour week / $12.75 per hour[81] - effectively the highest minimum wage in the world.

142. Yet, in the key industries in which award based employment is concentrated, this is not the real minimum wage. The real or actual minimum wage is higher.

143. In reality, the minimum wage which can be paid in key award reliant[82] industries such as retail, hospitality and health is not $484.40 per week, but is a higher rate set in a specific industrial award.

Effective Minimum Wage Rates[83]

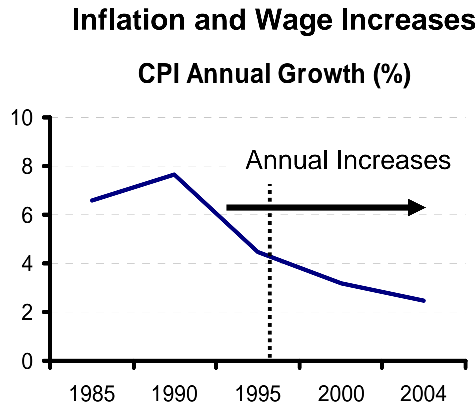
Industry[84]	Actual Min. Wage
Retail[85]	$542.80 per/wk
Health[86]	$538.20 per/wk
Hospitality[87]	$501.10 per/wk

144. In other words, in addition to having the world's highest nominal minimum wage, when in practice an employer attempts to employ the least skilled person in a shop, a bar or a nursing home (for example) – they don't need to find $484.40 per week, but amounts well over $500.00 per week.

[81] Including the 2005 National Wage Decision.
[82] i.e. the industries in which the highest proportions of employees work at award rates of pay only.
[83] Updated for the 2005 National Wage Case increase in award rates.
[84] Industries with highest concentration of award employment, based on ABS *Employee Earnings And Hours - Australia*, Cat No. 6306.0 May 2004, Table 15, p.29
[85] Retail & Wholesale, Shop Employees (ACT) Award 2000 - AW794740, Lowest Shop Assistant rate.
[86] Health and Allied Services - Private Sector - Victoria Consolidated Award 1998 , Lowest classification for most award streams.
[87] Hospitality Industry - Accommodation, Hotels, Resorts & Gaming Award 1998 - AW783479 – Level 1 rate.

A constantly moving target

145. The Australian minimum wage is also in a constant state of motion. Australian minimum wages have increased annually since 1997 (8 unbroken annual increases), and have increased eleven (11) times since 1993.



146. The frequency of minimum wage rises in Australia has increased during a period in which inflation reached an inter-generational low.

Failing to take sufficient account of social security and total incomes

147. A key failing of the contemporary approach to setting minimum wages in Australia, has been the failure to take proper account of the contemporary context in which minimum wages operate, and the proper role of minimum wages in providing incomes and living standards to our lowest paid.

148. Despite material being put before the AIRC to the contrary, there has been insufficient recognition of the non-wage sources of income and support that our lowest paid receive. The interaction between minimum wage employment and support from the tax and social welfare systems has been insufficiently taken into account. Again – this failing has been twofold:

    a. There has been insufficient regard paid to the total incomes and support provided to those on lower award rates of pay, and the variety of different income sources. There have been inappropriate conclusions in favour of awards as the only source of income (leading to above-the-odds increases in award rates of pay).

    b. The current adversarial wage case process has not allowed the AIRC and parties to grapple with the question of disincentives to abandon welfare and enter work. The complex questions of the interaction between wages, taxes and social security have been insufficiently enlivened by the national wage case process.

Federal Award Processes

149. At the heart of setting minimum wages in Australia are 'national wage cases', in recent years called 'safety net reviews'.

150. These are major national test cases examining appropriate levels of minimum wage increase. However they are not an at large inquiry into the level of the minimum wage and its impact (as for example is undertaken in the UK). Rather, these are highly adversarial cases, akin to litigation in our courts, which are shaped by the highly ritualised and traditional behaviours of unions, employers, governments and tribunals.

151. Initiation: Changes in the level of minimum wages in Australia are initiated by the ACTU. The starting point for varying minimum wages in Australia remains wages claims formulated behind closed doors by Australia's trade union leaders. Reviews of our minimum wages are not based on demonstrated economic criteria being met, or of some specific period elapsing since the previous increase. The process of commencing variations to this major influence on our economy (i.e. on aggregate wage outcomes) also occurs with no support for or consideration from the government. These cases also commence when it best suits unions, including when it best meets their political interests.

152. Ambit claims: Of course it suits unions to seek as much as possible in this process, and to seek increases as frequently as possible. The starting point for fixing minimum wages in Australia also remains the one number absolutely guaranteed to not emerge at the end of the process – the ACTU's inflated ambit wage claim. These cases are framed from the outset by positions based on tactical and strategic considerations for highly contested litigation, rather than realistic figures related to what may be awarded.

153. Adversarial: The existing national wage cases process is inherently adversarial – with unions and employers fighting to secure their desired wage outcomes using all available means. This means that clear economic and labour market points which should be able to be accepted and addressed sensibly, are aggressively contested (such as the accepted negative relationship between increasing minimum wages and employment). It also means that almost every consideration relevant to the determination of minimum wages is under debate. This is in contrast to other international systems in which these considerations can be accepted, allowing debate to move on to more complex considerations.

154.

Legalism: Allied to problems caused by legalism in the national wage case process before the AIRC, is the litigious / quasi-Court case nature of the proceedings. In short Australia presently sets minimum wages through a court case – with all the constrictions and limitations this brings. Advocates bring evidence and argument and members of a tribunal issue a decision like judges in a Court. This is inherently irrelevant to setting good economic and social policy – no other comparable country would set minimum wages this way and there are clearly superior approaches available (which have informed the design of the AFPC system).

155. Legal Contrivance: Australia's historical minimum wages system is also erected on a legal contrivance. The National Wage Case is based on federal awards which reflect a constitutional contortion of the concept of interstate industrial disputation to contrive an ongoing federal award jurisdiction. For employers this involves arcane and unknowable requirements such as logs of claims, and dispute findings.

156. One-off/Stand Alone Cases: There is also an unfortunate *ad hoc*-ery inherent in the existing AIRC process – with wages being revisited each year. The AFPC process may offer scope (to the extent appropriate) for more planning and foresee-ability in the setting of Australian minimum wages. In the UK for example, and in some Canadian provinces employers are made aware of the program of likely wage increases across 18 and 24 month periods.

157. Costly: This is a highly costly process. Business, unions, governments and taxpayers accord substantial annual resources to these cases – often for outcomes which move in a very narrow band. There is no inherent difficulty with unions and employers being required to devote resources to as significant a consideration as the level of minimum wages – however the current processes see resources unnecessarily devoted to fighting adversarial wages proceedings rather then providing the best possible research and analysis to assist the sound setting of minimum wages.

158. Economic Expertise: Minimum wages are a key setting affecting the Australian economy / wages growth. As such, considerable attention must unavoidably focus on the resources those setting minimum wages bring to their task.

159. The key to understanding minimum wage setting in Australia is that it is just one annual task in the ongoing work of persons appointed to an employment tribunal based primarily upon:

a. Their legal and industry rather than economic experience.

b. The expertise they bring to dismissal, agreement making and dispute settlement, rather than any particular expertise relating to minimum wages or national economic settings.

160. Conclusion: Australia's national wage case process is a product of a very different world than that which faces contemporary Australia. The notion of organised unions and organised employers fighting it out in a court case at the peak level no longer represents the best way to set minimum wages in any country. This is far removed from the approach other OECD countries are adopting to reviewing and setting minimum wages, and particularly removed from recent best practice reforms like those of the UK or Ireland.

161. There are, in short, far better ways for Australia to set minimum wages which will yield superior outcomes for the low paid, their employers, those out of work, and our wider society and economy. ACCI is confident the AFPC process will provide superior scope to explore such alternatives.

WAGE SETTING PARAMETERS

162. Section 7J will set out the AFPC's wage setting parameters:

> **7J AFPC's wage-setting parameters**
>
> The objective of the AFPC in performing its wage-setting function is to promote the economic prosperity of the people of Australia having regard to the following:
>
> (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.

163. ACCI strongly supports these parameters as a clear improvement on the existing objects informing the AIRC's existing NWC setting functions.

164. Employment: 7J(a) will yield a manifest improvement on the AIRC's existing NWC approach to considering employment.

165. National wage cases under the existing *Workplace Relations Act 1996* have become highly confused in regard to the importance of wage fixing taking into account the needs of the unemployed for work. They have also yielded an unsatisfactory, unduly legalistic, and economically unsound treatment of economic materials concerning the elasticity of labour demand to changes in minimum wages.

166. Rather than engaging the contentious issue of whether the concept of 'the low paid' can or should include the unemployed, the *Bill* takes the superior

approach of unambiguously directing the AFPC to have regard to the unemployed and their capacity to enter and retain work in setting minimum wages.

167. This is a key amendment in the interests of equity and fairness in the Australian community. It cannot be equitable or fair to have the interests of the unemployed suborned to the interests of those in work to the extent that the AIRC believes it was compelled to under the pre-reform *Workplace Relations Act 1996*.

168. It cannot be equitable or fair to have rigorous economic materials which go to the impact of wage increases upon employment treated with the obfuscation, dissembling, and level of doubt created by the existing *Workplace Relations Act 1996* and the legalism inherent in the NWC process.

169. Competitiveness: It is welcome that the amended considerations will enable the AFPC to consider the impact of minimum wage increases on competitiveness. Whilst this concept remains to be operationalised in submissions (as is appropriate), employers hope to be able to secure superior consideration of the impact of minimum wage increases – and a more holistic consideration of the factors involved. This appears especially important for smaller businesses.

170. Safety Net for the Low Paid: Section 7J(c) is a necessary consideration in setting the minimum wage. Whilst the needs of the lower paid in work cannot be paramount or disproportionate considerations (an unfortunate development across the post 1997 NWCs) – they obviously remain one of the key rationales for imposing minimum wages.

171. ACCI supports the formulation of proposed s.7J(c).

    a. It makes clear that minimum wages are a safety net, and that the safety net is constituted by minimum wages.

    b. It makes clear that the wages safety net is something which exists for the low paid. It is not for employees earning average weekly earnings or beyond, nor for skilled workers able to compete and bargain as the Act's schema already intends.

172. ACCI can see nothing in the provisions which will stop any party advancing materials on the 'needs' of lower paid employees to support its arguments in favour of a particular wages outcome. We can see nothing in the new provisions which will curtail the ACTU or any other organisation putting to the AFPC the types of material they currently put to the AIRC.

173. An exception to this may be the type of rank comparativist material the ACTU persists in putting to the AIRC for political and spin reasons, rather

than determinative merit. Whilst the AFPC may accept ACTU materials based on (for example) executive, parliamentary and judicial salaries, it is very difficult see that it could be any more relevant to the AFPC that it was to the AIRC.

174. Section 7J(d): This simply reflects the range of wages which it is necessary to have the AFPC set.

175. Strengths: Particular strengths of the formulation proposed for the AFPC's wage setting parameters are:

a. The considerations in s.7J are brief, concise and clear. The AFPC will have an advantage over the existing NWC approach in which the AIRC must try to reconcile a lengthy, scattered and contradictory set of parameters (which has led to the excessive approach in NWC since 1997).

b. There is reduced scope for contradiction between the parameters the wage setting body must consider.

c. This brevity leaves the new expert body to exercise its expertise – to pursue the overarching goal of economic prosperity based on their expertise

EXPECTED OUTCOMES

176. In future, we expect to no longer see situations in which wages are fixed not on absolute merit or based on the best possible wages setting for the community, but through some legalistic compulsion based on the construction of the statute.

177. We anticipate minimum wages which fulfil this clearer, more realistic set of parameters. Employers expect to see minimum wages set at levels which further the economic and employment prosperity of the people of Australia to a greater extent than those set by the AIRC (particular in more recent cases). This means minimum wages that support even greater job creation.

178. ACCI will argue for less focus on comparativism and reduced scope for unions to attempt to have safety net wages pursue redistributive functions.

AFPC AUTONOMY

179. Section 7K will provide the AFPC with wide discretion in how it does its work, including timing, scope and manner of reviewing wages.

180. ACCI supports this expert body having such discretion in how it does its business. This is essential to overturning the litigious paradigm which

informs the existing NWC process, and ensuring there is a genuine transformation in the practice in Australian minimum wage fixing.

181. This said, the discretions in s.7K are already essentially provided to the AIRC in its NWC function.

182. Some could argue that the ACTU currently controls the timing of NWC processes as it can lodge applications and commence a wage case at the time of its choosing. This is not quite accurate; the ACTU can lodge claims, but the AIRC is already controlling the timing of wage cases through the principles and concept of wage cases not more frequently than each 12 months.

Non-Adversarialism / Non-Legalism

183. Of particular importance is s.7K(2). The existing quasi court case process condemns the AIRC to only consider the material which parties bring before it. We expect the AFPC to be very different – it will be a more expert body satisfying itself as widely as it sees fit.

CORRECTING MISAPPREHENSIONS, MISCHIEF AND MISREPRESENTATIONS

184. A great deal of time and energy is being directed to discrediting and attacking the AFPC process prior to it commencing. ACCI will be pleased to address questions on this during oral evidence to the Committee. However, there are some key issues which can be addressed at this time.

Independence

185. There have been claims from various quarters in recent months that the AFPC will not operate independently.

186. ACCI can see absolutely nothing in the terms of proposed Part IA of the amended *Workplace Relations Act 1996* which could cast any doubt on the independence of the new body.

187. The Chair and Commissioners are statutory appointments, exercising prescribed powers under a statute of the Commonwealth of Australia. Presumably these roles are subject to a commission from the Governor General and to a declaration / oath of independence.

188. There is no legitimate reason to conclude that the AFPC will necessarily accept the submissions of any particular organisation or group coming before it. This goes as much for the government, as it does for unions, as it does for employers.

189. Incoming head of the AFPC, Professor Ian Harper has signalled[88] his intention to operate independently. He has observed that:

> Setting and adjusting minimum wages to optimise employment prospects for the unemployed, juniors, trainees and disabled workers, while at the same time providing a safety net for the low-paid, requires a careful balancing of interests.
>
> There are no easy or quick solutions. But the range of experience among the commissioners, together with the evidence brought to the commission and gathered by it, ought to convince all but the most sceptical of the commission's ability to form a balanced judgment of the issues before it.[89]

190. There is every reason to believe it will act on the merits of matters brought before it, based on the expertise and experience of its members, and according to the parameters set out in the legislation.

191. It is not valid to conclude that the AFPC will deliver any particular approach to minimum wages prior to it commencing and exercising its considerations. Suggestions the AFPC will deliver on the particular positions of one or other party in the pre 2005 wage cases are ridiculous.

192. Australian employers anticipate, and in fact expect of the AFPC, that it will operate independently and based on the merits of the submissions it receives, and will deliver minimum wage outcomes which properly reflect the economic circumstances of the times.

Wage Cuts

193. There is no scope under the amendments to cut minimum wages below the levels following the 2005 national wage increase.

194. There is also no basis to conclude that there will necessarily be any particular outcome in regard to real wage levels. Again, employers will look to the AFPC for economically appropriate decisions in the circumstances of each review. In regard to real wages, it should be recalled by precisely how much in excess of inflation wages have been increasing in recent years.

Family Wages

195. ACCI can see no reason to conclude that interested organisations cannot raise family obligations in favour of particular wages outcomes from the AFPC. Whilst the era of the Harvester decision has been over for decades, anyone wanting to argue in favour of minimum wages to cover a wage earner's family appears to have scope to try to convince the AFPC of this.

[88] Harper, I. (2005) "*Expect balanced decisions*", The Australian, 20 October 2005.
[89] Harper, I. (2005) "*Expect balanced decisions*", The Australian, 20 October 2005.

196. In fact, we can see little change in the types of employment for which wages are to be set from the existing *Workplace Relations Act 1996* to the reforms. The basis of the minimum wage appears no more or less individual after as before.

197. Whilst not in any way conceding particular arguments, or our scope to put alternative propositions, ACCI cannot see why an interested organisation cannot argue for wages to cover spouses and dependents under proposed s.7J(c). - Employers would of course raise issues of income transfers, the interaction of the wages, taxes and social security system etc.

Real Wages

198. Implicit in arguments from some quarters is the suggestion that the AFPC cannot guarantee the value of real wages and that somehow there is such a guarantee in the NWC process of the AIRC.

199. This is utterly wrong. There is already no real wage guarantee in Australia.

200. No system of Australian wage fixation, bar the unique and arguably deficient periods of wages indexation – have ever offered such a guarantee. The AIRC does not guarantee real wage maintenance; nor will the AFPC.

201. This in no way constitutes a valid argument against the shift to the AFPC not the passage of the amendments regarding minimum wages.

AUSTRALIAN FAIR PAY & CONDITIONS STANDARD (AFP&CS)

INTRODUCTION

202. Part VA of the *Bill* implements the Government's policy intention to create a new set of statutory minimum standards.

203. The Australian Fair Pay and Conditions Standard (AFP&CS) would create a single set of core statutory minimum standards in Australia for the first time.

204. The AFP&CS comprises:

 a. Minimum Wages (Part VA, Division 2).

 b. Maximum Ordinary Hours of Work (Part VA, Division 3).

 c. Annual Leave (Part VA, Division 4).

 d. Personal Leave (Part VA, Division 5).

 e. Parental Leave (Part VA, Division 6).

World's Best Practice

205. As a mechanism to regulate employment standards (to the extent necessary in any national system), statutory minimum standards appear to be far closer to world's best practice than the competing mishmash of federal and state award systems Australia evolved over the 20th century.

206. As a technical mechanism for employment regulation, regulating employment standards through statute can offer superior scope for:

 a. Concise, clear, comprehensible employment laws.

 b. Ease of comprehension and compliance.

 c. Simpler advice, which can be provided more generically across the community.

207. Australia has not yet moved to these circumstances. The package will create a situation in which there is a combination of award and statutory standards. However, the amendments provide a progression towards simpler standards for bargaining and in the longer term.

Areas of Concern to employers

208. There are some areas of potential concern for employers in the creation of the AFP&CS as proposed in the Bill (identified below).

209. Such concerns should be considered in their proper context. Employers strongly support the package and the creation of statutory minimum standards. They also support . Notwithstanding that employers may have taken slightly different approaches in implementation

Pass the Amendments

210. Ultimately and on balance, the creation of the AFP&CS is clearly a valid and substantial progression of the Australian workplace relations system, and a further move *towards* world's bets practice in regulating employment.

211. The amendments seek to provide protections for employees in a more modern form, which can better support the ongoing reform and modernisation of the system into the future.

212. ACCI strongly endorses the passage of the package, including the proposed creation of the AFP&CS. With the commencement of these reforms Australian employers and employees will move significantly in the direction of an ultimately improved set of minimum standards.

DIVISION 2 – WAGES

213. Division 2 of Part VA addresses the proposed AFP&CS on wages.

214. ACCI supports these amendments:

    a. The wage setting (as appropriate) is to be by the AFPC under the qualitatively superior determinative process already supported above.

    b. This process is to complement and progress the award simplification and modernisation program of the Award Review Taskforce.

    c. The amendments address the various scenarios under which guarantees have been provided for the preservation of wages arrangements in the transition to coverage by new instruments.

    d. In particular Subdivision D of Division 2 provides the guarantee of rates across the transition from pre-reform wage rates. Subdivision H looks at preserved APCSs[90].

[90] Workplace Relations and Other Legislation ( ) Bill 2005, p.90

215. Ultimately, the amendments appear to give effect to the package of reforms outlined in October 2005.

Piece Rates

216. Piece rate employment has long been part of Australian employment. It is welcome that the AFP&CS is seeking to provide scope to guarantee minimum piece rate arrangements.

Casual Loadings

217. Included within Division 2 of Part VA is Subdivision C, providing particular guarantees in regard to casual loadings.

218. Where various other instruments and standards do not deliver loadings, there is a guarantee of a loaded rate under the new provisions.

219. A standard casual loading of 20% appears an appropriate standard, reflecting not only rates in instruments, but also the matters / standards accounted for in contemporary causal loadings.

220. ACCI notes scope to adjust the 20% default arrangement in the future, but however trusts that this will not be subject to ongoing litigation or escalation. ACCI would support casual loadings not being the subject of litigation and escalation, and only being revisited very rarely.

Juniors, Apprentices, Trainees and Employees With Disabilities

221. ACCI particularly welcomes scope for the creation of minimum wage arrangements for these employees, and the proposed guarantees of .

222. The creation of Federal Minimum wages for such employees will fill gaps in the existing system.

223. The existing system which relies on the initiative and energy of unions in each award has yielded unacceptable gaps in the provision of minimum wage arrangements for juniors, apprentices, trainees and employees with disabilities.

224. Too many young people, people in training and people with disabilities are not supported and protected by minimum wage rates under the existing system. This can be a direct barrier to their employment, even where a work opportunity otherwise exists.

225. Employers hope this is redressed by . The AFP&CS reforms appear a substantial step forward.

DIVISION 3 – MAXIMUM ORDINARY HOURS OF WORK STANDARD

226. Division 3 of Part VA of the Bill introduces a standard for the maximum ordinary hours of work of 38 hours.

227. This is supported by a sensible approach to hours averaging, which reflects standard approaches day to day on this issue in our workplaces.

Reasonable Additional Hours– Picking up the AIRC's 2001 Test Case Decision

228. Section 91C(5) provides for the working of reasonable additional hours. This reflects the terms of the AIRC's July 2002 Working Hours Test Case decision (AIRC Print PR072002).

229. It is essential that any standard in regard to working time properly recognise the contractual obligation and commercial imperatives for the working of hours beyond any standard or minimum. The proposed s.95C(5) appears a sound approach to this, and the test case decision appears to have been operationalised with minimal difficulty in workplaces.

Potential Additional Costs to Employers

230. It should be noted that in some industries this will directly increase labour costs to employers, particularly where there may have been 40 hour week arrangements.

DIVISION 4 - ANNUAL LEAVE

231. Division 4 of Part VA will set out the AFP&CS on Annual Leave. ACCI understands the intention of these provisions is to codify accepted minimum standards.

232. ACCI supports annual leave being one of the key codified standards for Australian workplace relations. There is a four week annual leave standard which applies across the Australian community – and it is appropriate that this is recognised in minimum standards, as proposed in .

233. Indeed the universality of this standard will in time obviate the need for this to be included in awards.

234. It appears to ACCI that the amendments to create an AFP&CS on annual leave cover all the necessary scenarios for the accrual, taking and paying out of annual leave.

Cashing-Out Annual Leave

235. Section 92E addresses the cashing out of annual leave. There has been significant public debate on this issue during the months preceding the release of the package.

236. Ultimately ACCI considers some capacity to cash out annual leave is a necessary part of any annual leave system. For various reasons, there are scenarios in which employees may prioritise additional remuneration over annual leave balances which they do not wish to take as leave. Fly in – fly out arrangements in mining are just one example.

237. It is welcome that this has been appreciated in the drafting of the Bill.

238. The WA system through that state's *Minimum Conditions of Employment Act 1993,* has provided scope for cashing out for 12 years.

    a. Despite having scope for cashing out of annual leave, there has been no widespread movement towards it. Across economic cycles, a stable and atypical proportion of WA employees have accessed this flexibility where it has been important to them. The majority of WA employees have and use 4 weeks annual leave like the rest of Australia – without detriment as a function of allowing flexibility in some circumstances.

    b. Scope for cashing out annual leave has been retained in WA, despite multiple reviews of that state's WR system under the Gallop ALP government. Notwithstanding the substantial re-regulation of the WA system and the reversal of many key reforms, cashing out has been retained in that state.

239. ACCI anticipates no change in the propensity of Australian employees to seek to cash out annual leave, as a function of the amendments. This will remain an atypical arrangement for the small proportion of employees and employers who chose to agree to it.

DIVISION 5 – PERSONAL LEAVE

240. Division 5 of Part VA will set out the AFP&CS on Parental Leave.

241. ACCI supports the creation of this new standard:

    a. Sick and personal leave are important / fundamental employment standards which appropriately form the type of core standards which should underpin bargaining.

    b. The articulation of the standard is consistent with the examination of this issue by employers, unions and the AIRC during recent years and with approaches agreed by parties.

c. The proposed standard balances the provision of leave with necessary proof and evidence requirements for employers. Whilst cultural change, flexibility and workplace level relations between employers and employees have diminished the incidence of absenteeism (the "sickie") during the past decade, it does remain an issue in some workplaces and is a fraud against employers which they must be able to monitor and act upon.

242. However, it should be noted that the creation of this standard will increase employer obligations in some areas, including:

a. Where existing sick / personal leave standards in awards are below the proposed AFP&CS standard on parental leave (i.e. sick leave will go up).

b. Where there is an increase in the number of days of personal leave which may be used for caring purposed (i.e. not for one's personal illness).

c. Employers may see some loss of flexibility in bargaining, with the new standard prohibiting some forms of cashing out.

243. Some atypical award arrangements may also ultimately change in their operation due to the creation the new standard – including awards which do not allow for the accrual of unused personal leave.

Compassionate leave

244. The government also proposed in the amendments to create an additional standard for Compassionate Leave (ss.93Q-93S).

245. ACCI and its members strongly support capacity for employees to have appropriate time off in appropriate cases of family bereavement. Bereavement leave is included in a number of awards and instruments, overwhelmingly without disagreement. There are established approaches to when leave is accessible and in regard to the time off.

246. More importantly, in cases of deaths within an employee's family, ACCI understands that generally time off is agreed between employer and employee without significant recourse to written rules, or the letter of the law. This is very much an issue determined interpersonally at the workplace level between the bereaved employee and their employer.

247. <u>Widening the Entitlement</u>: The amendments introduce the wider concept of compassionate leave, widening leave beyond death to include serious personal injuries / illness. This is a wider entitlement than currently appears in many awards – and the creation of the AFP&CS will serve to extend leave obligations for many employers.

248. The extent to which this may negatively impact on particular employers will be a function of the tightness of the operation of the provision and it operating as intended. ACCI members believe that if the concept of compassionate leave is to be include as a new standard, it will be important that it be restricted to situations of serious illness or injury threatening life of family and household members. Other illnesses or injuries are provided for by other leave standards.

249. Evidence: The widening of the leave widens the requirements for proof, and makes it more relevant that more employers will need to be satisfied on the need for the leave in more situations (albeit likely to remain relevant only in a small minority of cases). ACCI therefore supports the proof requirements of s.93Q.

DIVISION 6 – PARENTAL LEAVE

250. Division 6 of Part VA will set out the AFP&CS on Parental Leave.

251. ACCI is examining these provisions in more detail, however it appears that the proposed standard:

    a. Is a codification of the well established Australian standard for parental leave.

    b. Reflects all three elements of the established Australian parental leave standard (maternity leave, paternity leave and adoption leave).

    c. Reflects the 12 month unpaid leave standard which has served Australia well since the initial maternity leave cases of the late 1970s.

    d. Retains all necessary documentation and proof requirements which have been proven to work well, to support the accessibility and practicality of parental leave, and to protect the interests of both employees and employers in the operation of parental leave.

ACCI Support for the Reform

252. As this is a codification of the accepted Australian standard for unpaid leave, ACCI supports the creation of the new standard.

WORKPLACE AGREEMENTS

INTRODUCTION

253. ACCI supports the broad policy objectives that underpin the legislative amendments to the agreement-making framework contained in the bill.

254. These changes are evolutionary, rather than revolutionary, in nature. They continue the policy direction that commenced in the early 1990's. They further reinforce the central role of bargaining in our contemporary workplace relations system.

255. They are also informed by the experience of employers and employees using the system over the past 12 years. Over time, employers and employees have become more confident in making use of bargaining. Bargaining procedures, and the determination of terms and conditions of employment through bargaining, are now well understood. There is a strong case for further administrative simplicity in agreement-making (as long as core protections against abuse of bargaining processes are retained – as they are in this bill).

256. This bill also represents an opportunity to identify and ameliorate abuses of the bargaining system which have emerged over time, such as pattern bargaining.

257. ACCI supports increased scope to remove such abuses and focus the workplace relations system on genuine bargaining at the workplace level (i.e. reflecting the needs and priorities of employers and employees in workplaces).

AGREEMENT-MAKING BY LODGEMENT

258. The bill removes the requirement for collective agreements to be approved via a hearing before the Australian Industrial Relations Commission. Instead, all agreements – whether collective or individual – will be lodged with and approved by the Office of the Employment Advocate.

259. The removal of the requirement for a hearing for approval of collective agreements is long overdue.

    a. As users of the system have become familiarised with agreement-making, the requirement for all collective agreements to require a hearing before they are approved has become an onerous and unnecessary rubber stamp.

    b. Agreement approval by the AIRC is not yielding any qualitative or equity benefit above the more administrative approaches of the OEA.

260. A streamlined, administrative approach to agreement approval will significantly benefit all users of the system.

CORE LODGEMENT PROTECTIONS

261. While introducing a simpler system of lodgement, retains core protections to assist in ensuring genuine employee consent in the making of agreements. This includes:

    a. Requirements for employees to have 'ready access' to the agreement at least 7 days before the agreement is approved.

    b. The requirement to provide an information statement to employees which sets out various rights and obligations.

262. The bill specifies that an employer contravenes the subsection by failing to fulfil either of these contraventions and that there are penalties for such contraventions. The Bill contains key protections against any employer actions misrepresenting employee agreement, coercing employees etc. ACCI can see nothing in the Bill which fosters anything other than genuine agreement making.

263. It will be important, in the introduction of this legislation, that government agencies retain sufficient emphasis on education and familiarisation with the new agreement-making provisions, rather than an excessively punitive approach.

NEW APPROVAL TESTS

264. changes the no-disadvantage test for agreement approval from the present test of awards to a test based on the new Australian Fair Pay and Conditions standard.

265. ACCI supports this change. It is consistent with the broader thrust of the amendments contained in the package (i.e. creating a new, universal safety net of statutory minima) and will create an approval test that is:

    a. Appropriate.

    b. Effective.

    c. Consistent.

    d. Understandable.

266. There were myriad problems with making federal awards the 'no-disadvantage test' for agreements:

a. Arguably, federal awards were never designed or capable of easily fulfilling such a role, due to their comprehensive nature. Despite some level of simplification, awards remain creatures of decades past and are a product of award regulation rather than standards to protect key interest in bargaining (i.e. they are not actually a safety net at all).

b. There is confusion among employers and employees regarding the particular federal award that applies to their business and the employment of the employee.

c. Conditions and standards between awards vary – there is no comprehensive or universally applicable safety net. In particular, some awards are more complex than others and deal with particular matters with a greater degree of prescription than other awards.

d. Comparing a proposed agreement in its totality against a federal award in its totality is a difficult, complex and time-consuming exercise. Federal awards can contain hundreds of pages of clauses and detail. In particular, the current no-disadvantage test requires the computation of a nominal monetary value to various non-monetary entitlements in awards, in order to undertake the no-disadvantage test.

e. The complexity of the test placed it beyond the effective capacity of non-experts in some instances, particularly where an employer and employee sought to substantially deviate from the old award framework. In that sense, the complexity of the no-disadvantage test provided a positive incentive for agreements to mirror or follow award employment structures closely and retarded innovation and productivity growth.

f. A cohort of businesses have, for various reasons, been excluded from agreement-making by the present no-disadvantage test. These include many employers in the retail and hospitality industry sectors, where the level of award dependent businesses remains excessively high. These changes hold open the possibility of more businesses entering into formal agreement-making and securing the benefits that flow from agreement-making.

267. There is an important distinction in the operation of the new approval test that must be made clear to users of the system. That is that the proposed section 89A which states that the Australian Fair Pay and Conditions Standard prevails over a workplace agreement to the extent to which the AFP&CS provides a more favourable outcome to the employee. This is a key difference which the operation of the current agreement-making system, under which agreements generally operate to exclude awards during the lifetime of their operation. It means:

a. Employers and employees entering agreements should be made aware of the effect of the AFP&CS on their agreement.

b. Any changes or alterations to the AFP&CS standard must be well-publicised and made with a sufficient degree of prospectivity for employers and employees to be aware of the altered standard and be capable of assessing what impact the revised standard will have on their workplace agreement.

SPECIFIC NEW PROTECTION FOR SOME AWARD CONDITIONS

268. ACCI notes that certain award conditions are protected and can only be overridden or removed from an agreement when a specific reference is made to their removal.[91]

269. The provisions identify a range of protected allowable award matters.

270. Arguably, these provisions are unnecessary and introduce a level of prescription into agreement-making that is unfortunate. However, these provisions may provide some assistance to employers and employees entering into agreements in understanding the changed system of agreement-making and the altered approval requirements under .

271. In general terms, however the requirements for agreements to be accompanied by an information statement and protections against coercion provide sufficient protection for employees when seeking to enter into an agreement.

GREENFIELD AGREEMENTS

272. ACCI notes that the bill now provides two streams for greenfield agreement-making – union agreements and employer agreements – and substantially simplifies the framework surround lodgement and approval of such agreements. These agreements appear to run for 12 months.

273. It is employers view that there should be scope for greenfield agreements to operate for the same duration as other agreements.

274. Greenfield agreements are often sought by businesses commencing major new projects, e.g. in gas exploration, mining or construction. Major projects, such as these, require certainty regarding labour costs and the conditions under which work is to be performed.

[91] Proposed s.101B – "Protected award conditions", p.177

a. The relatively short lifespan of greenfield agreements may also lead to increased disputation during projects. For this reason, increased scope for certainty in greenfield projects is required.

WORKPLACE DETERMINATIONS

275. Division 8 of Part VIA of the amendments[92] addresses Workplace Determinations which ACCI understands replace existing orders under s.170MX of the *Workplace Relations Act 1996*.

276. ACCI supports there being some scope to address the small minority of unique situations in which bargaining based disputation is threatening health, welfare and the economy as proposed to be defined under the Act.

277. ACCI appreciates that there can be unique situations demanding some atypical or exceptional treatment by the system. This has consistently been part of the system since the creation of protection for industrial action, and should remain so.

278. At all times however, any such exceptional provisions must ensure that there is no reward or incentive for intractable disputation or for any party deliberately seeking to endanger health, welfare or the economy. At all times this must remain highly a atypical and discouraged part of the system.

279. The proposed provisions appear to achieve this. The introduction of the concept of a further negotiating period appears appropriate – 21 days (or 42) before the very exceptional scope for arbitration can be accessed.

280. ACCI would also have supported capacity for an extended negotiating period (see. 113B(2)[93]) without the necessary agreement of all negotiating parties. Analogous to cooling off or suspension, there could have been scope for a further 21 day pause ever where one of the parties was committed to action / its agenda.

281. It is welcome that even where a workplace determination is made, productivity and capacity to pay will be taken into account – along with incentives to return to negotiated outcomes (s.113D[94]).

[92] Workplace Relations and Other Legislation ( ) Bill 2005, p.275
[93] Workplace Relations and Other Legislation ( ) Bill 2005, p.276
[94] Workplace Relations and Other Legislation ( ) Bill 2005, p.277

AWARDS

INTRODUCTION - AWARD SIMPLIFICATION

282. The motion referring the Bill to this inquiry indicates various areas of policy which have previously been examined and reported on by the Committee, and which are not to be considered.

283. This includes "*award simplification*".

284. On this basis ACCI is not advancing detailed submissions on many of the specifics of new Part VI of the *Workplace Relations Act 1996* as amended by the Bill. In particular, the policy basis for the deletion of specific matters is not addressed, as these are matters which appear excluded by the terms of the reference of the *Bill* to this Committee.

285. This said:

    a. ACCI strongly supports the amendments to the award making provisions of the *Workplace Relations Act 1996* and the transformation of federal awards as proposed by .

    b. Whilst ACCI would have supported significant further simplification of federal awards, and significantly more extensive simplification of award content, we do support those measures which are being implemented at this time.

PERFORMANCE OF AWARD FUNCTIONS

286. ACCI welcomes the more direct duties upon the AIRC to take productivity, inflation and jobs into account in exercising its revised award functions under (s.115A(1)) and (s.115A(2)(a)). This should lead to greater certainty in how the Commission will exercise its jurisdiction, and provide superior decisions on future award matters.

287. The reference to awards taking greater account of the need to provide incentives to bargain (s.115A(2)(c)) is very important – this is after all one of the pre-eminent contemporary functions of awards and it must better inform future award making if the non-bargaining rump of award only employment is to be reduced.

288. It is also appropriate that the AIRC and parties be in no doubt on the interaction of the AIRC's award functions and the decisions of the AFPC (s.115A(2)(b)). The AFPC is being established as the more modern, superior approach to setting some minimum standards. It is entirely appropriate that where there is any convergence of roles, and its pre-eminence is clear.

ALLOWABLE MATTERS

289. The allowable award matters in s.116[95] are successors to existing s.89A(2) of the *Workplace Relations Act 1996*.

290. Some existing matters have been deleted and others have been more clearly expressed. ACCI supports both courses – the existing allowable matters approach did not yield sufficient simplification of awards, and some matters were retained well beyond:

    a. ACCI's understanding of the intention of parliament.

    b. The ordinary meaning of the terms included in the *Workplace Relations Act 1996* as allowable award matters.

291. The revisions to the expression of the allowable matters will move awards further towards a genuine safety net. This is also supported by proposed s.116(3).

292. ACCI would have also supported further deletions, and will continue to call for the further simplification of awards.

293. Redundancy Pay: ACCI's support for this amendment to overcome the AIRC's Redundancy Test Case decision (s.116(4)) is a matter of record in previous inquiries of this Committee.

DISPUTE SETTLEMENT PROCEDURES (DSP)

294. As awards move further towards a genuine safety net, their regulation of some matters will necessarily become more generic and common across industries. A starting point for this is proposed s.116A, and the creation of a model DSP for awards.

295. It should be recalled that agreement making offers parties the scope to apply DSP arrangements of their choosing, and reflecting their circumstances.

296. This is also important in ensuring that award DSP's cannot be misapplied to render non-allowable matters open to award regulation.

NON-ALLOWABLE MATTERS

297. ACCI welcomes the creation of s.116B, and the identification of matters which cannot validly be included in awards. These are essentially restrictions which awards have perpetuated contrary to the intentions of the parliament

[95] Workplace Relations and Other Legislation ( ) Bill 2005, p.285.

in passing the Workplace Relations amendments in 1996 – its is well beyond time that they were removed.

298. Scope to prescribe additional non-allowable matters in regulations (s.116B(1)(m)) is appropriate and necessary. Not only may particular interpretations emerge contrary to the policy intentions of amendments – but unions may waste the time of the Commission and award parties pursuing matters contrary to policy. A prescription of any objectionable matter in a regulation would provide greater certainty and guidance to both award parties and the Commission.

299. There is scope for the disallowance of regulations which were contrary to the intentions of the Parliament.

FACILITATIVE PROVISIONS

300. Proposed Section 116H[96] introduces a shift from majority to individual facilitation, which is long overdue. Majority provisions in awards are not only very complex (which discourages the use of flexibilities) – but they effectively offer majorities scope to veto the choices and priorities of individuals.

301. ACCI has for some time expressed concerns that majority based facilitative provisions can act as a veto over the priorities of women and parents prioritising work and family considerations (e.g. seeking to alter a lunch hour).

PART TIME WORK

302. ACCI strongly supports the incorporation of s.116M[97] into the *Workplace Relations Act 1996*. Awards which lack part time work should not be allowed to preclude part time working – regardless of the industry concerned. This is particularly important to parents seeking to manage work and family – and entrenched union opposition to part time work should no longer be allowed to place barriers in the way of work for parents.

PRESERVED AWARD ENTITLEMENTS

303. ACCI's primary position is that the majority of these provisions could have been deleted from awards in the immediate term as non-allowable and rendered a nullity. They should have ceased effect from the commencement of the reforms.

[96] Workplace Relations and Other Legislation ( ) Bill 2005, p.290.
[97] Workplace Relations and Other Legislation ( ) Bill 2005, p.293.

304. However, the policy decision for an ongoing application of these award provisions has been given appropriate effect in Division 3 of new Part VI.

AWARD RATIONALISATION

305. Division 4 of Part VI addresses Award Rationalisation. This is a significant and long overdue process. ACCI will be looking for this to yield a significant reduction in the number of awards of the AIRC.

306. ACCI will generally support rapid translations of awards. Section 118(3)(c) should not have the effect of award rationalisation taking 3 years.

307. Section 118A appears to have the effect of creating more national awards – this appears a valid change for the future on the basis that awards will continue to move further towards a genuine safety net.

AWARD VARIATION

308. It is worth noting Division 5 of Part VIA. There will still be scope for the variation of awards where necessary to maintain minimum safety net entitlements.

AWARD REVOCATION

309. ACCI strongly supports scope for the revocation of awards where appropriate (e.g. s.119C)[98]. This is an essential measure to reduce the breadth of the award system and bring it closer to a genuine safety net.

[98] Workplace Relations and Other Legislation ( ) Bill 2005, p.309.

TRANSMISSION OF BUSINESS

INTRODUCTION

310. Part VIAA, from s.122[99], addresses Transmission of Business. This is, and always has been, a complicated issue.

311. It has arguably been complicated further during the past 10-15 years as issues of transmitting agreements have been added to the transmission of awards (which were traditionally likely to have applied more generically across industries, and therefore less likely to generate litigation).

312. It is welcome that the transmission of the various forms of instrument provided for under the Act will be consolidated in one part of the amended legislation. The various divisions of Part VIAA are logical and clear.

313. Whilst this is an inherently and inescapably complex issue – the new provisions do go some way to rendering this as comprehensible as possible. The rendering of transmission into plainer English is also welcome.

314. There has been an unwelcome increase in litigation regarding transmission in more recent times. It appears that the new provisions will reduce scope for litigation and complication in the transmission of obligations. This is an appropriate goal.

TRANSMISSION PERIOD

315. The new transmission provisions would introduce a transmission period of 12 months during which the transmitting obligations apply. After that time, there would be scope for renegotiation and for the otherwise prevailing arrangements at the end of such agreements to come into effect.

316. This has application "against" an employer, with Section 124A restricting scope to terminate AWAs during the initial 12 months following transmission[100].

317. It is welcome that the provisions envisage new employers and their new employees moving beyond the transmission paradigm rapidly. Provision to enter into AWAs and CAs with the new employer, for example, appear very positive – and allow scope for the parties to move into new arrangements (s.125B(2)).

318. This is particularly important when coming into a new business:

[99] Workplace Relations and Other Legislation ( ) Bill 2005, from p.317
[100] Workplace Relations and Other Legislation ( ) Bill 2005, from p.321

a. In all cases it is important that the incoming employer move as rapidly as they can to set in place the workplace relations strategy they wish to pursue in the longer term. This provides both parties with certainty and a capacity to evaluate longer term employment priorities and approaches.

b. In cases where the business was previously not performing well, it is particularly important that the incoming operator have the earliest possible chance to move to a workplace strategy which will increase job security and the possibility of trading out of difficulty.

NOTIFICATION AND LODGEMENT WITH THE EMPLOYMENT ADVOCATE

319. ACCI can see the policy rationale for employee notification and lodgement with the OEA (Division 8, Part VIAA[101]). However, it is important to note that this is an additional regulatory and paperwork obligation on employers.

320. There are also substantial penalties that attach to making errors or omissions under the new transmission provisions. These are penalties against employers which should be taken into account in evaluating the regulatory imposts of the amendments against particular parties.

321. ACCI looks forward to working with the OWS and other enforcement and advisory bodies to ensure that the implementation of these reforms 'against' employers is supported (at least initially) by a system of implementation which emphasises advice and problem solving rather than prosecution.

[101] Workplace Relations and Other Legislation ( ) Bill 2005, from p.336

DISPUTE RESOLUTION PROCESSES (DRP)

322. Part VIIA[102] of the amendments addresses the ongoing dispute resolution role of the AIRC.

323. ACCI strongly supports these amendments:

    a. Alternative Dispute Resolution is a growing area of expertise and innovation throughout the world. Within an overall framework in which employers and employees are provided with maximum scope to settle matters naturally within their workplaces, there are significant opportunities to learn from and apply world's best practice in dispute resolution in Australia.

    b. ADR in workplace relations has been under discussion in Australia for many years, with little actual change in day to day approaches in settling disputes. These amendments offer scope for real improvements in dispute settlement in Australia. (Although it should be acknowledged that improved relations through bargaining has also improved capacity to settle disputes during the past decade).

    c. The AIRC has expertise in the settlement of disputation, and will remain the chosen dispute resolution body for a proportion of Australian workplaces.

    d. These amendments provide an ongoing role for the AIRC properly focussed on one of the key areas it can best assist employers and employees in their workplace relations.

    e. Dispute resolution, rather than the setting of employment standards, was the *raison d'etre* of the creation of the federal jurisdiction – and for tribunals in Australia. To some extent, this reform will better reflect the historical/proper role of such tribunals in Australia than the quasi-legislative role of making and varying awards.

    f. These reforms will do away with any AIRC monopoly on dispute settlement. Capacity for competition between dispute resolution providers will foster excellence and innovation within the AIRC and in the wider dispute resolution industry.

[102] Workplace Relations and Other Legislation ( ) Bill 2005, from p.371

MODEL DISPUTE RESOLUTION PROCESS

324. Division 2 of Part VIIA[103] provides a model DRP to resolve a variety of disputes.

325. This is a further implementation of the *Workplace Relations Act 1996* schema. A generic model that applies as widely as possible, as a default, is entirely consistent with the concept of the safety net.

326. Agreement making offers parties scope for parties to agree on their own alternative forms of DRP, "above" or outside the default mechanism.

327. Importantly however, it places imperatives on parties to try to solve matters on their own without recourse to the Commission. This is entirely consistent with the *Workplace Relations Act 1996* schema and with the ongoing paradigm of avoiding and discouraging disputation.

328. ACCI welcomes the imperatives in the legislation to continue work during disputation (s.176). Not only does this reflect standard approaches under existing DRP arrangements, but also the importance of not disrupting employment and incomes, trade and commerce while disputation is resolved.

329. It should be noted that the AIRC remains the default arrangement where parties cannot agree on an alternative dispute resolution provider (s.175).

ADR BY THE COMMISSION

330. Division 3 of Part VIIA[104] addresses how the AIRC will conduct its new ADR role.

331. It is welcome that the Commission will be provided with a clearer articulation of the powers and tools it can bring to bear in addressing disputes brought before it.

332. It is also welcome that there is some control in this part (and elsewhere in the amendments) on which disputes may be brought to the AIRC. This is welcome to ensure that the AIRC remains focussed on core employment matters and that DRP not extend its regulatory power beyond what can legitimately be addressed in awards.

[103] Workplace Relations and Other Legislation ( ) Bill 2005, s.173 -, from p.372
[104] Workplace Relations and Other Legislation ( ) Bill 2005, s.176A -, from p.374

Assisting Bargaining

333. ACCI supports there being ongoing scope for the AIRC to assist parties in bargaining where disputation emerges[105]. The proposed new articulation of these powers is clear, and requires greater speed and clarity than the existing approaches.

334. Again, the delineation of what the AIRC will and will not be able to do will provide users of the DRP with greater certainty on what they can and cannot look to the Commission for.

ADR BY PROVIDERS OTHER THAN THE AIRC

335. Division 6 of Part VIIA[106] addresses ADR by providers other than the AIRC.

336. ACCI strongly supports capacity for providers other than the AIRC to assist parties in the settlement of disputes.

337. Greater competition and choice in the resolution of disputes will necessarily improve the quality of dispute resolution in Australia. This is not a criticism of any particular approach by the AIRC to date, but a recognition that the settlement of disputes is an international industry and discipline which is continually evolving and innovating.

338. ACCI anticipates these reforms will increase the technical and professional quality of dispute settlement – and ensure that labour disputes gain the quality, professionalism and technical rigour of dispute settlement which commercial parties have had for many years.

[105] Workplace Relations and Other Legislation ( ) Bill 2005, s.176G -, from p.378
[106] Workplace Relations and Other Legislation ( ) Bill 2005, s.176P -, from p.383

OTHER MATTERS

AIRC

339. Various items in the *Workplace Relations and Other Legislation ( ) Bill 2005* will reform the operation of the AIRC, particularly to reflect its revised role under . This includes consolidated and revised matters the AIRC must take into account in exercising its revised functions.

340. ACCI supports these reforms on the basis that:

    a. An altered role for the AIRC demands a new set of guiding parameters.

    b. Various elements of the new legislation accord various roles to various bodies. It becomes more important that each is clear in its responsibilities, and in the delineation of its role.

Matters AIRC Is To Take Into Account

341. Section 44A-G will consolidate various provisions governing the work of the AIRC scattered throughout the existing *Workplace Relations Act 1996*.

342. After the amendments, the parameters under which the AIRC will do its work will be clearer to users of the system.

343. Section 44A is appropriate in directing the AIRC to the revised objects, to Parliament's intentions, and in defining the public interest.

344. The AIRC is not a judicial body, and it is appropriate that the Parliament provide it with necessary guidance in the exercise of its functions – particularly where these are changing. (This also applies to the various areas of the amendments where the AIRC is directed in the exercise of its functions).

OFFICE OF THE EMPLOYMENT ADVOCATE (OEA)

345. The Bill will amend the functions of the Office of the Employment Advocate (see ss.83BB – 83BT).

346. These amendments reflect and support the OEA assuming its expanded role in relation to all workplace agreements, and the shift from a hearing based system to one based on lodgement.

347. ACCI welcomes the revised role for the OEA, including:

    a. The importance of promoting agreement making (s.83BB(1)(a)).

b. The OEA's educative and information role (s.83BB(1)(d)).

c. The promotion of better work and management practices through workplace agreements. Support for the making of higher quality agreements of all types is a valid and important role for the OEA.

d. The new lodgement focus in relation to agreements.

e. Advice to employees and employers about awards and the Australian Fair Pay and Conditions Standard. This appears important to support agreement making. However, it should be recognised in exercising this function that:

   i. The government will also be offering Wageline and OWS advisory services. It will be important that services not be doubled up.

348. Employers and employees will still have organisations from which to seek advice. Any new OEA services should complement, not attempt to substitute for, services offered by organisations.

349. It may also be appropriate that the functions of the OEA (s.83BB) include providing advice and assistance to organisations to support their role in advising and representing employers and employees.

MATTERS REFERRED BY VICTORIA

350. Part XV of the Bill will provide for employment in the State of Victoria. This construction reflects unique issues raised by the referral of powers to the Commonwealth by the State of Victoria.

351. Victorian based organisations may wish to address the Committee in more detail on these amendments.

352. However, it appears to ACCI from an examination of these provisions that they deliver to Victorian employers and employees the rights and capacities of the schema (i.e. of the Bill as a whole taking into account the differing constitutional foundations). i.e. Part XV appears to do what is intended, ensuring the Act generally applies to Victoria.

353. Referral of legislative powers to the Commonwealth by more states under Section 51(xxxvii) of the Constitution would offer scope for substantial further simplification of the *Workplace Relations Act 1996*, and for a qualitatively superior national system.

SCHOOL BASED APPRENTICES & TRAINEES

354. Schedule 3 of the Bill[107] addresses 'School Based Apprentices and Trainees', and seeks to insert a new Part XVII into the *Workplace Relations Act 1996*.

355. These are specific measures aimed at overcoming a deficiency in federal awards.

356. For several years, various attempts have been made to overcome a lack of appropriately tailored wages and conditions to assist employees wishing to undertake a part-time or school-based new apprenticeship.

357. Some progress was made with the creation of a joint 'model clause' between the ACTU and ACCI in 2000. This model clause provided an award provision for school-based apprenticeships. The clause addressed how wages and conditions for school-based apprenticeships would be set in awards.

358. Following the creation of this clause, several awards have been varied to include school-based apprenticeship clause. Progress, however, has been slow. Only a fraction of the estimated 2000 federal awards have been varied.

359. There are various reasons for this:

    a. One is simply an issue of resources and the time and resource intensive nature of federal award variation.

    b. The second reason, however, has been the policy position of several ACTU affiliate unions, notwithstanding the position of their peak body, to oppose the introduction of school-based apprenticeships into awards in their industries.

360. The consequence of this opposition has been twofold:

    a. Often, it has been successful and has frustrated employer attempts to insert such provisions into awards.

    b. Protracted, contested arbitration has taken place regarding the merits of inserting such clauses in awards, as occurred in the building and construction industry.

361. The net outcome has been that very few federal awards currently contain school-based apprenticeship provisions. This makes it very difficult for employers and employees seeking to enter into such arrangements, as appropriate wages and conditions arrangement are lacking.

[107] Workplace Relations and Other Legislation ( ) Bill 2005, Schedule 4.

362. ACCI notes that these interim provisions do not extend to part time apprenticeships as such, despite scope for PT apprenticeships within the training system. Awards at present do not provide appropriate wages and conditions to support such apprenticeships. Further reform of award structures is necessary in future to further integrate awards into the contemporary training system.

RENUMBERING THE *WORKPLACE RELATIONS ACT 1996*

363. Schedule 5 of the Bill addresses the re-numbering of the *Workplace Relations Act 1996*.

364. If appears to ACCI that this will renumber the *Workplace Relations Act 1996* after the amendments have been implemented.

365. If this has the effect that users of the system ultimately gain an act with consecutively numbered provisions – this is supported by employers.

TRANSITIONAL ARRANGEMENTS

366. The amendments are supported by transitional arrangements which appear at various places throughout the Bill, primarily being:

Schedule 13 to the Workplace Relations Act 1996[108]

a. A new Schedule 13 of the *Workplace Relations Act 1996* will set out transitional arrangements for parties bound by federal awards, the transitioning of federal awards and when they may and may not be varied.

Schedule 14 to the Workplace Relations Act 1996[109]

b. A new Schedule 14 of the *Workplace Relations Act 1996* will set out transitional arrangements for existing federal agreements (certified agreements and AWAs).

Schedule 15 to the Workplace Relations Act 1996[110]

c. A new Schedule 15 of the *Workplace Relations Act 1996* will set out transitional arrangements for state agreements and state awards.

Schedule 16 to the Workplace Relations Act 1996[111]

[108] Workplace Relations and Other Legislation ( ) Bill 2005, from p.518
[109] Workplace Relations and Other Legislation ( ) Bill 2005, from p.583
[110] Workplace Relations and Other Legislation ( ) Bill 2005, from p.599
[111] Workplace Relations and Other Legislation ( ) Bill 2005, from p.631

d. A new Schedule 16 of the *Workplace Relations Act 1996* will set out arrangements for transmission of business in relation to the transition to the new approaches.

Schedule 4 of the Bill

e. Schedule 4 of the Bill[112] providing for the making of regulations of a transitional., savings and application nature.

f. Schedule 4 addressing the transitional operation (and maintenance) of award obligations.

g. Schedule 4 addressing the transition of termination of employment matters, including when claims may and may not brought and which terminations are subject to the existing and new laws.

h. Schedule 4 addressing the transition of investigation and compliance matters across the transitional period.

i. Schedule 4 addressing the transition of organisations, and various rights matters which may be on foot or to commence across the transitional period.

367. Such provisions are important to render the transition to the new approaches comprehensible, clear and to protect rights and capacities as appropriate.

368. Whilst perhaps complex on an initial reading, when inserted into the Act and comparable to the ongoing provisions on each matter, this is expected to be comprehensible and usable by users of the system.

369. Associations of employers and employees, with appropriate government support and advice, will be well placed to advise on these transitional arrangements.

Transitional Arrangements for State Organisations

370. Schedule 2 of the Bill[113] addresses '*Transitional Arrangements For State Organisations*', and seeks to insert a new Schedule 17 into the *Workplace Relations Act 1996*.

371. It is welcome that the partial transfer of state award coverage into a national system has been properly supported by scope for state registered organisations to also enter the federal system to continue to represent their members.

[112] Workplace Relations and Other Legislation ( ) Bill 2005, from p.674
[113] Workplace Relations and Other Legislation ( ) Bill 2005, Schedule 4.

372. This will ensure that employers transitioning into the federal system on the basis of their status as a corporation will retain scope to be represented by an organisation which may have represented their interest under the state system.

373. Schedule 2 provides scope for interested state registered associations to seek a transitional registration into the federal system.

374. There is also scope for transitionally registered state associations to seek registration as organisations during the initial three (3) years of the new system.

MATTERS NOT BEFORE THE COMMITTEE

FREEDOM OF ASSOCIATION

375. The motion referring the Bill to this inquiry indicates various areas of policy which have previously been examined and reported on by the Committee, and which are not to be considered.

376. This includes "*freedom of association*".

377. On this basis ACCI is not advancing submissions on the specifics of Part XA as amended by the Bill[114].

INDUSTRIAL ACTION / BARGAINING

378. The motion referring the Bill to this inquiry indicates various areas of policy which have previously been examined and reported on by the Committee, and which are not to be considered.

379. This includes various matters relating to bargaining and protected action:

    a. Secret Ballots.

    b. Suspension/termination of a bargaining period.

    c. Pattern bargaining

    d. Cooling off periods

    e. Remedies for unprotected industrial action

    f. Removal of section 166A of the Workplace Relations Act 1996

    g. Strike pay.

380. On this basis ACCI is not advancing submissions on the specifics of Part VC of the *Bill*.

Previous ACCI Submissions

381. ACCI has advanced detailed submissions to the Committee's various inquiries in recent years on Bills concerning reform relating to industrial action, bargaining and protected action, including in relation to the following completed inquiries:

[114] Workplace Relations and Other Legislation ( ) Bill 2005, Items.

a. (June 2004) *Workplace Relations Amendment (Better Bargaining) Bill 2003, Workplace Relations Amendment (Choice in Award Coverage) Bill 2004 and Workplace Relations Amendment (Simplifying Agreement-making) Bill 2004.*

b. (October 2003) *Workplace Relations Amendment (Improved Remedies for Unprotected Action) Bill 2002.*

c. (May 2002) Workplace Relations Amendment (Genuine Bargaining) Bill 2002, Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002, *Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002.*

d. (September 2000) *Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000.*

e. (June 2000) *Workplace Relations Amendment Bill 2000.*

f. (November 1999) *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999.*

RIGHT OF ENTRY

382. The motion referring the Bill to this inquiry indicates various areas of policy which have previously been examined and reported on by the Committee, and which are not to be considered.

383. This includes "*right of entry*".

384. On this basis ACCI is not advancing submissions on the specifics of Part IX of the Bill.

Previous ACCI Submissions

385. ACCI made a submission to the Committee's consideration of the *Workplace Relations Amendment (Right of Entry) Bill 2004*, which reported in March 2005. ACCI has also contributed to other inquiries relating to freedom of association.

TERMINATION OF EMPLOYMENT

386. The motion referring the Bill to this inquiry indicates various areas of policy which have previously been examined and reported on by the Committee, and which are not to be considered.

387. This includes "*reform of unfair dismissal arrangements*".

388. On this basis ACCI is not advancing submissions on the specifics of the amendments regarding termination of employment contained in the Bill.

Previous ACCI Submissions

389. ACCI has advanced detailed submissions to the Committee's various inquiries in recent years on Bills concerning dismissal reform, including in relation to the following completed inquiries:

    a. (June 2005) *Unfair Dismissal Policy in the Small Business Sector*. This inquiry examined:

        i. Relationship between unfair dismissal laws and employment growth in the small business sector (Australian and international experience).

        ii. Impact of federal and state unfair dismissal laws on small businesses and on employment.

    b. (Feb 2003) *Small Business Employment*.

    c. (Mar 2003) *Workplace Relations Amendment (Termination of Employment) Bill 2002*:

        i. Require the AIRC to have regard to conduct by an employee which contributed to their dismissal

        ii. Extend qualifying period from 3 to 6 months.

        iii. Limit dismissal claims where dismissal is for operational reasons (redundancies).

    d. (May 2002) *Workplace Relations Amendment (Fair Dismissal) Bill 2002*

    e. (May 2002) *Workplace Relations Amendment (Fair Termination) Bill 2002*

    f. (Sep 2000) *Workplace Relations Amendment (Termination of Employment) Bill 2000*

    g. (Nov 1999) *Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999*

    h. (Feb 1999) *Workplace Relations Amendment (Unfair Dismissals) Bill 1998*

    i. (Oct 1997) *Workplace Relations Amendment Bill 1997*

390. Materials and submissions relating to these inquiries are available online:

    www.aph.gov.au/Senate/committee/eet_ctte/completed_inquiries/index.htm

ATTACHMENT A – ACCI WR POLICY

PRINCIPLES OF WORKPLACE RELATIONS POLICY

ACCI supports a workplace relations system that is characterised by decentralism and voluntarism, under which primacy is given to the interests of the direct employer and employee parties to the employment relationship. ACCI believes that only employers and employees can select the approach that best suits their particular circumstances and maximises their prospects of reaching appropriate agreements of highest mutual benefit.

POLICY OBJECTIVES

ACCI's overarching policy objectives are:

- to achieve legislative reform which will permit greater flexibility and efficiency in the operation of the enterprise
- to convince all political parties, and the community in general, of the necessity for further labour market reform
- to remove misconceptions and concerns about the effects of labour market reform
- to secure coordination of legislative measures taken at federal and State levels. Specific, immediate policy objectives include:
- the promotion of freedom of choice for employers and employees in their workplace arrangements
- the active promotion and encouragement of the use of enterprise agreements, individual agreements and other options including internal regulation agreements
- a reduction in the influence of awards and tribunals
- the promotion of enterprise development, productivity and efficiency
- the encouragement of participative management approaches
- the encouragement of performance based remuneration
- the development of detailed proposals for legislative change.

THE POLICY FRAMEWORK

Important steps were taken down the path towards genuine reform of Australia's workplace relations system, with the passage of the Federal Government's Workplace Relations reform package in 1996. For the first time:

- employers and their employees are able to form agreements which genuinely suit them free of the interference of third parties (if that is their wish)
- employees are able to form agreements on an individual rather than collective level under the federal workplace relations system

- the right of Australians to freely associate or not associate with unions and employer organisations is genuinely protected

- Australian businesses are better protected from vexatious and damaging industrial action.

However, despite the welcome and long overdue changes to the main industrial statute, considerable challenges remain:

- the system continues to be unduly complicated and prescriptive

- the award system continues to have too great a role vis-à-vis agreements

- provisions for agreement making continue to be unduly complex, and place too great an emphasis on compliance issues.

In addition to legislative challenges such as these, ACCI recognises that the formal workplace relations system (embodied in federal and Stat e legislation) constitutes only one part of the key to genuine reform for the future. There is also a need for genuine reform in the thinking of both Australian employees and their employers at the workplace level.

ACCI strongly believes that any workplace reform must be organic and driven 'from below' by the needs and desires of Australian employees and employers.

ACCI's workplace relations policies and strategies reflect the importance of workplace change as a driver of legislative reform. ACCI will seek to place an enhanced emphasis on changing workplace attitudes and practices in pursuing its policies and strategies.

The Legislative Framework

The legislative framework should be changed in order to implement the objectives of:

- labour market flexibility

- productivity orientated wage determination

- decentralisation

- freedom of choice

- an enterprise emphasis

- individualised approaches, and

- a reduction in complexity.

All of these factors have to be addressed in a more rigorous manner than is currently the case in Australia, in order to build more competitive and efficient workplaces capable of sustaining and increasing our standard of living.

Rationalisation of Federal/State Systems of Workplace Relations

The Federal Government and each State Government (other than Victoria) have established separate workplace relations systems. While co-operation between the different systems has increased in recent years, unnecessary and artificial conflict still frequently occurs.

The current Federal/State systems should be rationalised through the enactment of complementary Federal/State legislation or, in the absence of such legislation, through other means which would lead to the implementation of ACCI policy. The rationalised system should reflect the regional nature of Australia, through the establishment of State divisions of a single tribunal. Those divisions should comprise the existing State tribunals and local matters should be dealt with by members of those tribunals.

The best approach would be for the Federal and State Governments to agree on the terms of legislation to be enacted jointly. In this way the involvement of the States in the legislation and any future legislation would be maximised, in that their agreement to change would be required.

Conciliation and Arbitration

Subject to a few exceptions, conciliation and arbitration within the formal system should be an essentially voluntary process. The element of compulsion should be largely removed from the system and employers and employees should be encouraged to find their own solutions to differences and to enter into voluntary agreements.

The circumstances in which arbitration is compulsory should be confined to:

- the maintenance of essential services
- intractable disputes which on the application of an employer are found by a Full Bench to require arbitration, having regard to:
  - i the duration of the dispute
  - ii the effects on the employer's business and the employees concerned
  - iii consequential effects of the dispute and its continuation
- a claimed unfair dismissal (subject to a balance between employer and employee rights and the exemption of small business).

While there is access to compulsory arbitration in relation to a dispute or issue there would be no immunity from common law or other remedies against industrial action available through the courts or elsewhere.

Awards and Agreements

Awards and agreements should in future be made binding only on identified employers and their employees. There should be no common rule awards.

Awards and agreements should have a fixed period of operation and:

- termination should not take effect until either party gives notice

- the parties may agree to their continuation in whole or in part
- a Full Bench may order their continuation in the limited circumstances in which conciliation and arbitration is ordered.

Enterprise- level agreements, whether individual or collective, should be encouraged by allowing their implementation with a minimum of scrutiny. An agreement should simply be filed with a statutory officer and should only be subject to the requirements that it contains no less than the defined minimum standards, and as well a grievance procedure. Such agreements should override any existing awards or agreements, whether in the federal or State jurisdictions.

Minimum Standards

The legislation should specify certain minimum standards which should be of general application; no award or agreement should provide, at the time it is made or entered into, for less than those minimum standards or their equivalent.

The minimum standards should comprise:

- a minimum hourly wage for adults
- a minimum hourly wage for juniors
- four weeks' paid annual leave, or the equivalent
- one week's paid sick leave, or the equivalent
- twelve months' unpaid parental leave after twelve months' continuous service
- equal pay for men and women workers for work of equal value.

The minimum hourly wage for adults and the minimum hourly wage for juniors should be fixed following consideration of recommendations made by the tribunal or other independent body at the request of the responsible Minister. In this process account should be taken of the need to allow for appropriate flexibility in actual wage rates.

Representation of Employees

The tribunal, when dealing with disputes about representatives of employees, or determining representational issues, should be required to take into account:

- the wishes of employees and employers
- the effective operation and viability of the enterprise or enterprises affected, and
- the desirability of reducing the number of unions or agents involved. Sanctions and

Industrial Action

Industrial action should be prohibited during the life of an award or agreement. It would be desirable to fix a negotiation period of 30 or 60 days during which the parties would be required to

undertake negotiations and would be bound to any existing commitments. If during that period they agree to arbitration, there should be a peace obligation and any previous award or agreement should be extended until it is replaced by the arbitrated outcome.

Legislation should place substantial restrictions and limitations on industrial action. Secondary action should be prohibited through the Trade Practices Act 1974, and common law remedies should be available. There must be sufficient remedies against and protection of businesses from unlawful industrial action, and absolute protection of employers from industrial action relating to union membership or coverage.

There should be an absolute prohibition on industrial action in essential services or industrial action which is designed to effect an alteration in established rights, that is, the terms of an existing award or agreement.

Where the Commission undertakes voluntary arbitration on an agreed basis or in the other limited circumstances in which arbitration might take place there should be statutory remedies to enforce the decisions and processes of the Commission.

Procedures should be prescribed or adopted for the settlement of industrial disputes. These procedures should emphasise the desirability of resolution being achieved at workplace level, rather than through tribunals or courts, and without recourse to industrial action.

The ACCI Workplace Relations policy forms the basis of a ten-year Blueprint for the Australian workplace relations system, entitled ‘Modern Workplace: Modern Future 2002-2010'. This Blueprint was released by ACCI in November 2002, and is a detailed plan for the implementation of the ACCI workplace relations policy over this decade. Bound copies and summary pamphlets of Modern Workplace: Modern Future 2002-2010 are available from the ACCI secretariat. The Blueprint can also be accessed through the ACCI web site www.acci.asn.au. The ACCI workplace relations policy should be read in conjunction with the Modern Workplace: Modern Future 2002-2010 Blueprint.

Blueprint Objectives

- co-operation, not conflict
- employers and employees empowered to work together
- workplace decisions based on shared interests
- prosperous businesses
- more jobs
- better incomes
- higher living standards
- greater employment security
- lower unemployment.

How the Blueprint Gets us There

- higher productivity
- more workplace agreements
- costs of employment better linked to workplace circumstances

- flexible employment conditions
- business confidence to employ new staff
- choices for employers and employees – both as groups and as individuals
- less employment regulation
- quick settlement of disagreements.

What the Blueprint Proposes

- allowing most decisions about work to be made in the workplace
- an Employment Regulation Standard to prevent the build-up of new laws and improve the quality of employment law
- considering harmonising commonwealth and state workplace relations systems
- considering bringing state industrial tribunals within the framework of a harmonised system
- less regulation by governments and parliaments
- incorporating pro-employment objectives into industrial regulation
- supporting small businesses and non-unionised employees to fully participate in the system
- less red-tape when making workplace agreements
- over time, a single approving authority for workplace agreements
- a federal Workplace Agreements Act
- a federal Minimum Conditions Act
- simplifying award regulation by industrial tribunals
- ending the system of unions making extreme claims on employers to access industrial tribunals
- recognising the representative and service role of unions and employer bodies on behalf of member employees and employers
- closing loopholes to better protect voluntary unionism and genuine freedom in agreement making
- limiting the 'right to strike'
- banning compulsory union bargaining fees
- promoting choices and outcomes in agreement making
- allowing 'opt out' rights for best practice workplaces
- a single federal minimum wage targeted at the low paid
- maintaining youth wages
- supportive wage structures for workers with disabilities
- higher wages and conditions through higher productivity
- work and family balance through flexibility and choice
- easing the burden of unfair dismissal laws on employers, including small business
- minimising employer costs of termination and redundancy
- supporting private entrepreneurship and contracting
- encouraging performance pay and employee share ownership

- restricting the growth of discrimination and related laws
- retaining the existing safety net scheme for unpaid employee entitlements on insolvency
- preventing compulsory increases in employer superannuation levies
- reducing employment on-costs
- option for term appointments for new Australian Industrial Relations Commission (AIRC) commissioners
- making industrial tribunals less adversarial and more inquiry oriented
- recognising both the AIRC and other forms of dispute resolution
- providing for more voluntary, rather tha n compulsory, mediation, conciliation and arbitration
- speedier enforcement to prevent unlawful conduct
- giving the policy intention of the law more weight in court interpretation
- examining less costly mechanisms to recover monies owed to employees
- maintaining consultation with employer and employee representatives on government workplace policy or laws

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