UNITED FIREFIGHTERS UNION OF AUSTRALIA

SUBMISSION TO THE SENATE EMPLOYMENT, WORKPLACE RELATIONS AND EDUCATION COMMITTEE

INTO THE WORKPLACE RELATIONS AMENDMENT (WORKCHOICES) BILL 2005

10 NOVEMBER, 2005

1. INTRODUCTION

1.1 This submission is made by the United Firefighters' Union of Australia. The UFUA is the industry union representing approximately 13,340 paid fire-fighters and ancillary workers (including technical, administrative and communications personnel), comprising 10,500 full-time employed members and 2,840 part-time (retained or auxiliary) fire-fighters. The union represents fire-fighters in every state and territory (aviation fire-fighters only in the Northern Territory). In the main state and territory fire services and aviation fire services (Air Services Australia who employ around 520 fire-fighters at airports) the union has over 98% union membership among career fire-fighters. The bulk of employment is in the main fire services in each jurisdiction and Air Services Australia which is a Commonwealth owned corporation. We also cover members (approximately 400) employed by a growing number of private sector contractors who provide fire-fighting services in defence facilities around the country.

1.2 The wages and conditions of members of the UFUA are regulated by a mixture of federal and state awards and federal and state agreements. All main state and territory fire services, other than NSW and Queensland, are covered by federal awards and registered enterprise bargaining agreements (EBA's). In NSW and Queensland the instruments are state awards and state agreements (award only in NSW). In some federally regulated states there are mirror state awards. In relation to the private sector, regulation is more ad hoc, primarily through collective agreements with individual companies. However, in Victoria there is a common rule industry

award which underpins standards for all workers employed outside the main state and aviation fire services and which largely mirrors the MFB and CFA awards.

1.3 Unfortunately this brief submission is made without adequate time to fully examine and understand the legislation. In discussing the proposals over the last week even experienced industrial lawyers have struggled to explain some proposals. The Explanatory Memorandum (page 1 Outline) describes the need to "simplify" the current system, yet the new Bill is 687 pages and very complex. Many proposals were never put to the electorate and a number differ significantly from the WorkChoices summary announced in October. This legislation will have a major impact on the wages, conditions and job security of millions of working Australians. There should have been a comprehensive Senate Inquiry which travelled to every state and territory.

2. GENERAL

2.1 In common with the rest of the union movement the UFUA expresses its opposition to both the philosophy underlying this legislation as well as the detailed changes that are proposed. We call on the Senate to reject it. We support and adopt the submission of the Australian Council of Trade Unions. Failure to address specific changes in this submission does not imply acceptance of those proposals.

2.2 The UFUA believes that the proposed changes will adversely affect the wages, conditions and rights of fire-fighters and other fire industry workers. This will occur directly through changes to award standards or restrictions on the matters that can be included in collective agreements. Less directly but just a significantly our members will be affected by shifts in the balance of power between the employer and workers that will be provided for in the legislation. For example, the bargaining process will be further skewed against all workers, including fire-fighters by the introduction of changes such as pre-bargaining secret ballots, the ability for the bargaining period to be more easily terminated (including by the Minister in the 'essential services' area), the ability of the employer to terminate an EBA with 90 days notice and the ability for an employer to offer individual contracts at any time during the life of a collective agreement).

2.3 Proposals that will directly or indirectly affect our members include (but are not limited to):

- Limiting and lowering the standards applying to all workers through the award system, effectively lowering the safety net
- Over-riding more comprehensive state awards that apply to trading corporations. Even if this does not apply to some fire-fighters because they are state employees, the change makes it more likely that current or future state governments will refer remnant systems to the Commonwealth
- Reducing the role of the Australian Industrial Relations Commission and handing the setting of both minimum and classification rates to the Australian Fair pay Commission (AFPC)
- Prohibiting certain matters from being included in agreements
- Making it harder for employees to initiate and undertake industrial action that affects the employer or services to the community and easier for the Commission, courts or Minister to terminate protected action and in the case of essential services the Minister is granted very broad and non-appellable powers
- Putting pressure on employees in the bargaining process by enabling employers to terminate agreements with 90 days notice (rather than have them continue until a new agreement is reached) and forcing them to revert to the AFPCS.
- Enabling individual contracts to be offered in workplaces where a collective agreement is in operation and with a threshold of only a rate of pay and four conditions rather than the current no-disadvantage test assessed against the relevant federal award
- Enabling large employers to dismiss employees for operational reasons without redress

Because the UFUA has high union density, mainly large, state based employers and existing EBA's, our members may not feel the sting of these changes as immediately as more vulnerable workers. However, we submit that, over time, fire industry employers, will begin to use the infrastructure

provided by the legislation. This will almost certainly occur when some of the eight state and territory government revert to Coalition government.

2.4 On September 14 in Canberra the UFUA, together with other health and emergency services unions (the ANF, LHMU and TWU) launched a Joint Statement on Industrial Relations. In that statement we called on the Howard Government to "rethink its proposals". The tabling of the legislation has only heightened UFUA concerns about the impact of the legislation. The Joint Statement is attached as Appendix 1 and forms part of our submission.

2.5 Part of that Statement indicated that as workers who care for and protect the community, health and emergency services workers have an obligation to speak out about legislation that will "significantly affect the remuneration, rights and security of their children, relatives, friends and neighbours." There is no doubt that while we will all be affected by the legislation, the most vulnerable (the low skilled and low paid and those without union representation) will be first and most affected.

2.6 We reject the need for this legislation. In particular we argue that:

- Fairness, not just power, should still have a significant place in the regulation of relations between employers and employees. This legislation largely removes fairness from the legislation (expressed through universal and reasonably comprehensive standards applying to all workers, determined by an independent umpire)
- It shifts substantially the balance of power between employees and employers in favour of the latter, particularly in relation to bargaining and the ability to take industrial action.
- The proposals will further breach Australia's international treaty obligations, particularly ILO Conventions. The Workplace Relations Act has already been criticised for breaching ILO obligations in relation to rights to organise and collectively bargain and this

legislation deliberately aims to undermine both (particularly by making pattern bargaining unlawful)

- Despite slight easing of growth recently the economy is sound and there has been for a record period of growth
- Industrial relations changes will be neutral or at best marginal in relation to productivity.
- Industrial disputation is at record lows and bargaining has worked reasonably well under current rules (which already favour employers and provide only a very small window for employees to take protected industrial action). There is no economic modelling that identifies that these changes will provide any benefit, let alone a modest boost, to the economy
- The threats to the economy are the failure of the Howard Government to seriously address industry policy and assistance (eg R&D incentives, export facilitation and industry plans), skill formation, economic infrastructure and technology transfer. Compared to these matters industrial relations is a very minor matter indeed, as demonstrated by the presentation of the Governor of the Reserve Bank to Parliament earlier this year
- There is no evidence that the savage cutting of rights will boost jobs in any significant way compared to more constructive investment. The academic debate over the employment benefits of abolishing unfair dismissal is symptomatic of the ideological rather than evidence-based approach for these changes

3. NATIONAL SYSTEM

3.1 The UFUA opposes the over-riding of state systems by the Commonwealth using the corporations power of the Constitution. In our submission the system is not as unwieldy or confusing as it is painted, with many state awards mirroring federal awards. The use of the corporations power is itself a messy and piecemeal approach which does not result in a unitary system. Rather than a properly negotiated agreement between the

Commonwealth and the states for referral of industrial relations powers (including guarantees about the preservation of award conditions and bargaining/representation rights) we will now have a confusing dual system, in which the issue of whether a particular constitutional corporation is a 'trading corporation' will be visited regularly.

4. AWARDS

4.1 The UFUA notes the proposed changes in relation to awards, including the extension of non-allowable matters from those indicated in the Prime Ministers Statement in May, the removal of AFPCS matters from awards (unless the award standard is superior), the restriction of award clauses to minimum standards, the removal of the AIRC's award making powers. We oppose these proposals and support the submission of the ACTU. We will mention a few proposals of particular concern.

4.2 We particularly note that award clauses must reflect minimum standards in future. There should be flexibility to allow for specific industry circumstances. We have concerns that the rostering arrangements contained in awards currently which provide for a 10/14 system (2 x 10 hour day shifts and 2 x 14 hour night shifts worked consecutively with 4 days off duty between) will not be protected, particularly when collective agreements are terminated unilaterally and the fall-back position is the AFPCS. Again, while additional annual leave (approximately 9 weeks in total across the year) which compensates for additional working hours may be a preserved award matter, it is meaningless if all of our members are currently on union agreements and they do not have the benefit of the award if the agreement is terminated. Awards are being hollowed out. At the same time the approximately 40% of the workforce covered by collective union agreements have been deemed to have forfeited their rights to return to the sanctuary of what remains of the award.

4.3 Further, we note the requirement (s118H) that rationalised awards must include a term about regular part-time employment. This is a major issue for

operational fire-fighters. The UFUA view is that operational fire-fighting requires team work and confidence in the abilities/skills of other members of the work unit. Part-time (even regular) and casual workers would have a negative impact on that confidence and in our view should not undertake operational duties. The AIRC should have discretion in relation to this matter.

4.4 The claim of simplicity in relation to awards seems hollow, given that from now on there will be two instruments rather than one award - one covering allowable conditions and another in relation to pay rates and classifications determined by the AFPC.

4.5 Our members rely for a significant proportion of their income on over-time (through recall for additional shifts). If this was not included in awards or agreements, or an agreement including it was terminated and the employer refused to pay over-time rates, this could cause significant disruption to the ability of the employer to attract sufficient recall staff and the ability to provide services.

5. AGREEMENT MAKING

5.1 We note that the employer can give 90 days notice from the nominal expiry of a union collective agreement and that the agreement is then no longer operative after that notice expires, unlike the current situation. After the agreement expires the employees will be only legally entitled to the AFPCS (unless the agreement is 'pre-reform') and not the award (see above). This is a mechanism designed to place extreme pressure on employees in a bargaining situation and we oppose it. Often union collective agreements in the public sector take from 4 to 12 months to negotiate and conclude. This shifts the balance significantly in favour of the employer.

5.2 The UFUA notes that the legislation proposes that certain matters cannot be included in agreements, unlike the current situation in which the subject matter is unlimited (provided the matter pertains to the relationship between employer and employees). We view this clause with concern. A

number of issues, such as restrictions on contracting out in fire-fighting services, are matters that pertain to quality and safety in the performance of work and the provision of services. Further, proposed s101D specifies that in relation to agreements "The regulations may specify matters that are **prohibited content** for the purposes of the Act." While some examples of prohibited matters are listed in the WorkChoices information material it is unacceptable that the prohibited content is not set out in legislation. It leads one to the conclusion that the regulation will be used in an ad hoc manner to stamp out innovative clauses in agreements that employer associations subsequently object to. The change makes a mockery of government rhetoric that negotiating parties in the workplace should be left to their own devices, free from outside interference. We suggest that such rhetoric is only applied where the employer has power to impose minimum conditions and workplace change, not when a group of workers is able to get agreement to protect conditions, jobs, unfair dismissal rights or collective bargaining.

5.3 Further, the government has taken the Fair Pay Commission concept from the UK. It would seem appropriate to also take the concept of collective bargaining rights from the UK, Europe and North America. In many countries, where there is a certain level of union membership or where more than 50% of the employees vote for a collective agreement (the trigger differs between countries) then the employer must respect the choice of the employees to have a collective agreement, must enter into negotiations in good faith and is prevented from offering individual contracts. While we would not ordinarily support such a proposition, in the context of this unbalanced legislation, the inclusion of bargaining rights would at least provide respectful workplace preference for collective bargaining.

5.4 We support the comments of the ACTU in relation to individual agreements in the Bill, including that AWA's can be offered at any time (including during the life of a collective agreement), that they must now only meet the minimum wage rate and 4 other conditions (and not be assessed as currently against the relevant award) and that the maximum duration has been extended. These changes are clearly designed to make awards irrelevant as

more workers are signed onto inferior but over-riding AWA's. Even in the fire services industry this mechanism can be used to undermine the collective agreement, by offering AWA's to discrete business units, technical or supervisory employees or new recruit classes. In a worse case scenario it appears the legislation allows a worker to sign a shorter AWA at superior rates to an existing EBA, for the AWA to then be terminated unilaterally and the worker would then revert to the AFPCS. We oppose these changes.

6. INDUSTRIAL ACTION AND BARGAINING

6.1 The UFUA notes the provisions in relation to bargaining and the taking of protected industrial action. The new provisions represent a raft of obstacles and limitations on the ability of workers to take protected action, to maintain protected action and they make it easier for employers (through the Commission) or the Minister to terminate protected industrial action.

6.2 We note that currently the AIRC has discretion in relation to whether to terminate a bargaining period or make orders in relation to non-protected industrial action. The new provisions (s107G(1) and s (111) make it mandatory for the Commission to make orders where it 'appears' that the grounds of the relevant section are made out. We note that in many cases of non-protected action the dispute will arise from employer behaviour in breaching a certified agreement or introducing significant change without consultation. We agree with other submissions that to remove the discretion from the Commission to make a decision on the merits of the case will result in injustice to employees in many cases where they are simply enforcing agreements or protecting their rights.

6.3 We note that under the provisions third parties suffering harm may now seek the suspension of the bargaining period. In such cases the Commission *must* suspend a bargaining period if it "considers that the action is *threatening* to cause significant harm to any person (other than negotiating party)." (s107J, emphasis added). Most industrial action is designed to hurt the employer and, inevitably, industrial action by health and emergency

services workers will have some impact on the public (even where workers are very careful to avoid termination of the bargaining period on the basis of the higher order 'endangerment' of life, personal safety or health, or welfare of the population or of part of it). This provision would mean that workers/unions involved in the delivery of services could rarely, if ever, have protection, except for the most token industrial action.

6.4 The UFUA notes that Division 4 of Part VC provides for secret ballots on proposed protected action. These provisions are similar to the provisions introduced by the Thatcher Government in the UK in the 1980's. Given the low level of industrial action even during extensive industry EBA campaigns in recent years, there seems to be little rationale (other than ideological obsession and a desire to delay the taking of industrial action) for this proposal. The AIRC already has the power to order a ballot during a dispute. These changes occupy 26 pages of the Bill and indicate the desire to frustrate the right to take collective industrial action. Of particular concern is the provision that for industrial action to be authorised at least 50% of those on the roll must have voted and then more than 50% of those who voted must have approved of the action. Even in well organised workplaces this will impose onerous requirements to mobilise the vote. In workplaces or companies where there is a mixture of full-time and part-time/casual employees the task of reaching the vote threshold will be extremely difficult. For example, in NSW the UFU NSW Branch has around 3,300 full-time members and 2,500 retained members (part-time members in regional areas, employed 4-6 hours per week). If these workers are under the same agreement it would be extremely difficult to achieve 50% vote, because for most of the retained members the employment is not their primary job and while they are union members they may not share the same interest in voting as full-time members.

6.5 The UFUA is particularly concerned about the proposed provisions in Division 7 which enable the minister to make a written declaration terminating a specified bargaining period if the minister is satisfied that grounds (identical to s107G(3) are made out. This is a very broad, discretionary power, not subject to appeal and without the open and transparent process that occurs in

the AIRC. The provisions go further in that they also allow the Minister to remove or reduce the threat by directing negotiating parties to "take specified actions" or refrain from taking specified actions. Such a provision of arbitrary and secret power subverts the usual legal notion that justice must not only be done but also be seen to be done. Why would employers bother with an application to the Commission and the attendant costs (and perhaps examination of their own behaviour) when a communication to the Minister's office might more quickly and effectively solve the 'problem'. While the WorkChoices information indicated that this provision was designed to address 'essential services' situations there is no attempt to restrict the Ministerial directions to this area. We believe these provisions to be an undermining of the tribunal and are unwarranted.

7. UNFAIR DISMISSAL

7.1 The UFUA opposes in general the provisions related to the abolition of the right to unfair dismissal for workers in workplaces with 100 employees or fewer. We condemn the government's public attempts to confuse unfair dismissal rights with unlawful termination and convince the community that rights are being maintained. Not only will thousands of vulnerable workers have no legal redress against unfair dismissal, but the removal of rights will silence many who have the courage to complain about hours of work, wage rates, work clothing and equipment and a range of other matters. We support the ACTU submissions on this matter. This change will affect some of our members in the private sector. At the very least the threshold should be reduced. The bill should also reflect that employers with multiple, related businesses and employers who have restructured into entities of less than the threshold since 1 October 2004, are bound by the laws.

7.2 In addition, we note that new proposed sub-sections 170CE (5C) and (5D) provide that an application must not be made in relation to any termination where the employment was terminated for "genuine operational reasons or for reasons that include genuine operational

reasons". We believe that many large organisations will use this provision to terminate workers who cause 'problems'. The definition of operational reasons is exceedingly broad and while the Commission can examine whether the operational reasons are genuine, many workers will not be able to afford or organise representation. It is not clear whether genuine means fair, but it is unlikely. It appears that this device is being used to overcome the 100 employee threshold. We oppose these provisions.

8. CONCLUSION

The UFUA opposes the legislation and urges the Senate to reject it in its entirety. It is unnecessary and will have a major negative impact on millions of Australians whether wages, conditions, job security, ability to spend time with family or to refuse unreasonable and unsafe hours. Our economy is strong and there are far more important factors which inhibit economic development and growth. We urge the Government to focus on these crucial policy areas rather than continue with its ideological obsession with industrial relations. These changes will further breach our international obligations and they represent an end to fairness as the driving force in the industrial relations system.

The proposed changes will make it more likely that workers performing the same job in the same workplace will now be on different rates of pay. The impact may be increased mistrust and lower morale in many workplaces. The changes have the potential to exacerbate skill shortages and labour market anomalies.

More urgently than ever the Senate needs to ask: "What sort of Australia do we want this generation of young people to grow up in?" We would argue that it is an Australia that continues to value a fair go, balance and respect, values that have been expressed historically through our industrial relations system and institutions. These values have served us well, protecting millions of Australian working families through tumultuous times since 1904. They should not be jettisoned as we adapt our economy and society to the new international environment. Indeed, we jettison these values at our peril.

Attachment 1 - Joint Unions Statement on Industrial relations (14/09/05)