



GOVERNMENT OF TASMANIA

SUBMISSION TO

**THE SENATE EMPLOYMENT, WORKPLACE
RELATIONS AND EDUCATION LEGISLATION**

COMMITTEE'S

INQUIRY INTO THE WORKPLACE RELATIONS

AMENDMENT (WORKCHOICES) BILL 2005

14 November 2005

- 1 Tasmania's State industrial relations system has been developed over many years, to best serve the needs of the State and its community. The principal objective has been, and is, to do the right thing by employers and employees, and to ensure mechanisms are in place that will deliver fair and practical outcomes that are in the public interest.
- 2 The framework of the State industrial relations jurisdiction is grounded in the Tasmanian *Industrial Relations Act 1984*. At the centre of this system is the Tasmanian Industrial Commission. In addition to award-making, approving agreements, dealing with award breach, and dispute settling, the Commission may hear and determine any other matter concerning the relations between employers and employees.
- 3 The Commission provides a highly effective forum that operates with fairness and simplicity for employers and employees alike. The State system, the State Commission, and their effectiveness, are undeniably major contributing factors to Tasmania's stable, productive and enviable industrial relations environment.
- 4 The fact that Tasmania's industrial relations system has been developed over many years, through the constructive, consultative and co-operative efforts of Government, employer organisations, employee organisations, and the broader Tasmanian community is a major contributor to its success.
- 5 The Tasmanian Government recognises and encourages the development of workplace agreements that are tailored to benefit the interests of employers and employees. The State industrial relations system fosters and facilitates this approach, recognising that the most desirable result has to be agreements been made through genuine bargaining, reflecting the best interests of employers and employees.
- 6 The Tasmanian Government does not adopt a parochial or narrow approach to industrial relations. We are aware that industrial relations is a dynamic environment that informs the need for adaptation and continuing development.
- 7 Our legislation is reviewed regularly to ensure that it continues to meet the needs and demands of contemporary work practices and workplace relations.

- 8 The advantages and benefits of this functional, effective, productive and stable industrial relations system will be removed by the Australian Government's *Workplace Relations Amendment (WorkChoices) Bill 2005*.
- 9 There has been no attempt on the part of the Australian Government to consult, or test the effectiveness of the Tasmanian industrial relations system, or the impact of the planned federal legislation.
- 10 The Australian Government says its reforms will produce a "simpler, fairer, single national industrial relations system."
- 11 The notion of creating a "simpler" system is highly contestable. The Tasmanian *Industrial Relations Act 1984* barely 100 clauses and runs to just 70 pages. But the Act covers every facet of industrial and workplace relations, including provision for the Commission to deal with disputes relating to underpayment and award breach, and long service leave disputes. The Act, and the Tasmanian Industrial Commission's jurisdiction, could not be cast in simpler, more practicable and user-friendlier terms.
- 12 By way of contrast, the current *Workplace Relations Act 1996* goes to some 700 pages when Regulations and Rules are taken into account. The planned legislation, *The Workplace Relations Amendment (WorkChoices) Bill 2005* itself runs to almost 700 pages. The complexity of the Bill is illustrated by the fact that the Explanatory Memorandum alone involves another 500 pages.
- 13 This is not simple legislation. It is not capable of producing a simpler system. This is legislation so complex and demanding that it took a team of bureaucrats and legal practitioners more than five months to develop, prepare and draft.
- 14 This legislation that is intended to fundamentally alter Tasmania's industrial relations landscape and which will dramatically affect the rights, entitlements and protections of employees.
- 15 How could anyone be expected to digest this level of complexity and understand its implications? The fact is, the complexity is an attempt to hide its intended destructiveness. The Australian Government apparently does not want employees to know how the

changes are going to significantly affect almost every working man and woman in the country, most particularly in Tasmania.

- 16 Australian working men and women do not see a simpler system in prospect. All that they see is an incomprehensible raft of profound change about which they have not been consulted, and over which they have had no say.
- 17 The question of whether the new system will be simpler is very much tied to the Australian Government's argument that the proposed reforms will bring about a single national industrial relations system.
- 18 This is plainly not going to be the case. The number of industrial systems and jurisdictions in Australia will stay the same, but with the additional jurisdiction of the Fair Pay Commission. This is in fact an expansion of the system. When the federal changes do take effect, Australia will have a more complex, more confusing and expanded version of the current multi-jurisdictional industrial relations system.
- 19 But will it be fairer, as the Australian Government argues? If the changes are implemented, the employment conditions of a significant majority of Tasmanian workers currently covered by State awards and agreements will be covered by the new federal system jurisdiction.
- 20 It is true that in many circumstances the bargaining power of employers and employees is imbalanced. Employees are often not equal partners in the workplace negotiating process.
- 21 It is one of the harder facts of industrial relations life that unorganised, unrepresented and uninformed workers often have very little or no bargaining power. This is especially true for part-time, casual and young employees, and working women with children. This vulnerable group makes up an increasingly large proportion of our workforce.
- 22 The agreement-making processes under the Tasmanian legislation statutorily require the Industrial Commission to satisfy itself that agreements have been genuinely entered in to, that the outcomes are fair all round, that the agreement was not made under any form of duress, and that the bargaining process was both appropriate

and fair. By contrast, for a great many employees workplace bargaining under the existing federal system is a complete misnomer, because there is no element of genuine bargaining. Employees are essentially given a “take it or leave it” deal. In these situations employees have no say, no real opportunity to bargain, no choice. The new federal system does not address this imbalance or the inherent unfairness. On the contrary, the new federal system perpetuates and exacerbates this imbalance and unfairness. It is difficult to escape the conclusion that this is intentional.

- 23 Accordingly, the Tasmanian Government believes this is one of the main reasons that the Federal Government is attempting to erode or eliminate Tasmania’s State industrial relations system. The Federal Government does not want any fair alternative for workers and employers, it wants to force them into its new federal system, a system it has cynically named WorkChoices. Yet here is the first of many examples which demonstrate that WorkChoices is really not about giving choice but rather it is about taking away choice. Workers have no choice in the matter whatsoever. Whether or not they like it their existing right to be covered by the State industrial relations system will be taken from them.
- 24 Having been dragged into the new system, with no say and no choice, what will Tasmanian employees find? According to the Federal Government, Tasmanian workers will find a fairer system, a system in which they have more choice. It is axiomatic that in this context, the Federal Government intends ‘fairer’ to mean that the new federal system is fairer than the Tasmanian system under which these employees are presently covered. It must be intended to mean that the new federal system offers Tasmanian workers more choice than is currently available to them in the State system.
- 25 For example, under the new federal system, a worker in a business with fifteen or fewer employees, made redundant for “operational reasons,” the sacked worker will not even be entitled to redundancy pay.
- 26 Under the Tasmanian jurisdiction, all employees are entitled to bring a case of unfair dismissal, or a claim for redundancy pay, to the Industrial Commission. Any employee or former employee can make an application, and can be represented by anyone of their

choosing, or in person of that is their wish. There is no cost involved in making the application.

- 27 These basic rights will be swept away in the name of fairness and simplicity.
- 28 This new 'fairer' system, WorkChoices, will inevitably bring about workplaces in which fear, anxiety and insecurity will be ever-present.
- 29 The Federal Government repeatedly reminds us that it will be an offence to compel or coerce someone into signing a workplace agreement. That is the case now, but there is a vitally important aspect absent from the present situation that will be present in the new system - employers in the new system are to be handed a licence to virtually sack at will.
- 30 The simple reality is that employers will not need to exercise overt or direct coercion in order to get employees to sign workplace agreements. The very fact that employees know they can be sacked without reason and without any recourse, will be a constant form of intrusive and exceptionally persuasive coercion. If an employee does not sign up to an agreement the employer wants, in a few days, or a few weeks, the worker can be sacked for no reason, or fired for "operational reasons."
- 31 The new legislation does not require a reason to be given for termination of employment. If no reasons are necessary, then it will be quite legal to *unfairly* dismiss a worker in this new, "fairer" industrial relations system.
- 32 Existing rights to seek redress for unfair dismissal in an industrial tribunal are to be taken away from millions of workers. In Tasmania, where a very high proportion of the workforce is employed by businesses with fewer than 100 employees, the effect will be exponentially greater than will be the case for most if not all other States and Territories.
- 33 Not only is a high proportion of the total Tasmanian workforce employed by small businesses, about a quarter of that workforce comprises women with children and babies up to four years old. The vulnerability of these workers cannot be ignored.

- 34 At present, employees covered by the Tasmanian industrial relations system can apply to the Industrial Commission for a hearing in relation to underpayment of wages and award breach disputes. This is a simple, fair, non-legalistic and expeditious process that costs employees nothing.
- 35 This will be removed under the new federal system. In future, these workers will have to seek redress for award breach in the courts, with all the expense and delay that entails. There is no example of where the working men and women of Australia will be better off. This legislation will fundamentally change the rights of working people in a system where fairness has been the cornerstone of working relations.
- 36 The Tasmanian Government acknowledges and applauds the State's workers for their contribution to the stable, harmonious and productive workplace environment in Tasmania.
- 37 It is not too late for the Federal Government to pause, to listen, and to take notice of the widespread concern and anxiety being expressed throughout the country.
- 38 These changes are not needed, especially at a time when industrial disputation is at an historical low, where wage increases are reasonable and economically sustainable, and where real productivity and efficiency gains have been made and continue to be made.
- 39 The Government of Tasmania urges the Committee to take whatever steps are available to it, to bring to bear whatever influence it can exert in order to persuade the Federal Government to press the pause button on the process of enacting these reforms and to reconsider its approach.
- 40 The Government of Tasmania also adopts, endorses and commends to the Committee the submission lodged by the State and Territory Governments on 9 November 2005.