

# Glossary

ACCI	Australian Chamber of Commerce and Industry
ACOSS	Australian Council of Social Services
ADCQ	Anti-Discrimination Commission Queensland
ADT	Anti-Discrimination Tribunal
AFPC	Australian Fair Pay Commission
AFPCS	Australian Fair Pay and Conditions Standard
AiG	Australian Industry Group, Industrial Organisation of Employers (Queensland)
AIRC	Australian Industrial Relations Commission
AMWU	Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland
APCS	Australian Pay and Classification Scale
ATSI	Aboriginal and Torres Strait Islander
AWAs	Australian Workplace Agreements
AWU	The Australian Workers' Union of Employees, Queensland
CFMEU	The Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland
COAG	Council of Australian Governments
DEWR	Department of Employment and Workplace Relations
EEO	Employment and Equal Opportunity
ESC	Employment Separation Certificate
ETU	The Electrical Trades Union of Employees Queensland
FGQAS	Fair Go Queensland Advisory Service
FMW	Federal Minimum Wage
HREOC	Human Rights and Equal Opportunity Commission
IRA	<b><i>Industrial Relations Act 1999</i></b> (Qld)
LGA	Local Government Association of Queensland
LHMU	Liquor, Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
LSL	Long Service Leave
MSL	Minimum Salary Level
NAPSAs	Notional Agreements Preserving State Awards
OEA	Office of the Employment Advocate
OECD	Organisation for Economic Co-operation and Development
OWS	Office of Workplace Services
PSAs	Preserved State Agreements
PSEA	<b><i>Public Sector Employment (Award Entitlements) Act 2006</i></b> (Vic)
PST	Participation Solution Team
QCU	Queensland Council of Unions
QIEU	Queensland Independent Education Union of Employees
QIRC	Queensland Industrial Relations Commission
QNU	Queensland Nurses' Union of Employees
QUT	Queensland University of Technology
QWAs	Queensland Workplace Agreements
QWWS	Queensland Working Women's Service
RCB	Regional Certifying Body
RCEAQ	The Restaurant and Caterers' Employers Association of Queensland, Industrial Organisation of Employers
SDA	Shop, Distributive and Allied Employees Association, Queensland Branch, Union of Employees
TCFUA	Textile Clothing and Footwear Union of Australia



TCR	Termination, Change and Redundancy clause
TWU	Transport Workers' Union of Australia, Union of Employees (Queensland Branch)
WRA	<b>Workplace Relations Act 1996</b> (Cth)
WRAA	<b>Workplace Rights Advocate Act 2005</b> (Vic)
WRAV	Workplace Rights Advocate (Victoria)
WRC	Welfare Rights Centre
WRIL	Workplace Rights Information Line
YWAS	Young Workers Advisory Service



## Executive Summary

On 13 June 2006, the Honourable Tom Barton, then Minister for Employment, Training and Industrial Relations and Minister for Sport directed the Queensland Industrial Relations Commission (QIRC) to hold an Inquiry to examine the impact of the federal Government's Work Choices amendments to the *Workplace Relations Act 1996* (Cth) (WRA) on Queensland workplaces, employees and employers.<sup>1</sup> The Minister's Directive was given under s. 265(3)(b) of the *Industrial Relations Act 1999* (Qld) (IRA) which required the Commission to hold an Inquiry into or about an industrial matter, and to report and make recommendations, if directed to do so by the Minister.<sup>2</sup>

Four Directions were established by the Minister. These were, *inter alia*, to:

- consider mechanisms for employees to report incidents of unfair treatment as a result of the introduction of Work Choices;
- inquire into incidents of unlawful, unfair or otherwise inappropriate industrial relations practices;
- consider the investigations and outcomes of similar Inquiries in other states and territories; and
- recommend processes for facilitating the reporting of incidents of unfair treatment and for monitoring and reporting to the Minister on industrial relations practices under Work Choices [Directive 13 June 2006].

An Amendment to the Directive was provided by the Honourable John Mickel, Minister for State Development, Employment and Industrial Relations on 13 November 2006.

This amended Directive contained two further Directions to the Inquiry which required that:

- the terms of reference for the Inquiry be extended to require the QIRC to take into account the outcomes of the High Court decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees, and employers; and
- the due date for the Final Report of the Inquiry be extended so that the Final Report is delivered within a reasonable time after the High Court hands down its decision, but no longer than two months after the decision.<sup>3</sup>

This Report will be released on 29 January 2007.

The Inquiry was also required to establish processes for conducting the Inquiry including receiving and examining incident reports from individuals and organisations; inspecting workplaces if necessary; identifying remedies or options for further action; promoting the Inquiry and submitting reports on major trends and developments under Work Choices. An Interim Report<sup>4</sup> and recommendations was required to be provided within three months and a Final Report within the timeframe provided in the amended Directive.

The Inquiry commenced by placing advertisements in metropolitan and regional newspapers to provide notification of the Inquiry and to call for expressions of interest from all interested organisations and persons. In addition, a web-site was established to provide information and advice with respect to the Inquiry. This advice was also available from the Industrial Registrar. A Preliminary Hearing of the Inquiry was held on 23 June 2006.

<sup>1</sup> Appendix 1 - Ministerial Directive issued 13 June 2006

<sup>2</sup> Appendix 2 - s. 265 IRA

<sup>3</sup> Appendix 3 - Ministerial Directive issued 13 November 2006

<sup>4</sup> Interim Report "Inquiry into the impact of Work Choices on Queensland workplaces, employees and employers", Volume 1, released 20 September 2006



At the Preliminary Hearing, the Inquiry Panel clearly established that the Inquiry was a fact finding exercise and a program was established for participants, including those in regional areas, to be heard. Sittings of the Inquiry were held from 21 August 2006 to 1 September 2006 in Brisbane. Regional sittings were held from 21 September 2006 to 10 October 2006. Further sittings were held in Brisbane on 18 and 24 October 2006 and final submissions were heard in sittings held from 20 November 2006 to 6 December 2006.

The Inquiry received a total of 42 submissions. A number of organisations that had made submissions elected to make oral submissions to highlight the major points of their submission and to make comment on other submissions. In the making of these oral submissions, no further evidence was called. The submissions received provide the basis of this Report and its recommendations. Part 1 of this Report provides further details of the terms of reference and conduct of the Inquiry.

Part 2 of this Report provides an overview of the changes as a consequence of the introduction of the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). It also addresses the Directive issued on 13 November 2006 requiring that the Inquiry take into account the outcomes of the High Court Decision on the constitutional challenge to Work Choices, and its implications for Queensland workplaces, employees and employers. As such, Part 2 of this Report begins with a discussion of the outcome from the High Court decision and then considers the implications for Queensland workplaces, employees and employers. This discussion provides the context in which the submissions before the Inquiry were considered. Also considered in Part 2 of this Report are aspects of submissions before the Inquiry which discussed the more general implications of Work Choices even though this was not one of the Directions. In particular, consideration was given to: the economic and social impact of Work Choices, likely changes due to the introduction and establishment of the Australian Fair Pay Commission, the intersection between Work Choices and Welfare to Work changes, occupational health and safety issues, gender pay equity issues and regional issues.

Although submissions varied considerably in their content, a number of common concerns with respect to Work Choices were evident. Significantly, the High Court decision must be viewed within context. This decision concerned itself only with the constitutional validity of Work Choices. The decision did not consider the fairness or otherwise of that legislation. The decision provided certainty in some areas but left unclarified what actually constituted a “constitutional corporation”.

The full impact of the Work Choices legislation may not be realised for some time yet. However, as a consequence of the findings made and trends observed in this Report, the Inquiry strongly recommends the establishment of a separate statutory body to monitor the impact of Work Choices and also to assist employees and employers in understanding their fundamental industrial relations rights and obligations.

The Inquiry has serious concerns about the social and economic impact of Work Choices. Emerging trends show that employees have become extremely apprehensive about job security in this new uncertain work environment. This in turn has led many employees to refrain from raising normal industrial relations issues, such as occupational health and safety and questionable terms and conditions of employment, with their employers for fear of jeopardising their jobs. The Inquiry is strongly of the view that the most severe impact of Work Choices will be felt by those less skilled and vulnerable workers identified in this Report.

The evidence before the Inquiry has highlighted a trend towards lower wages and conditions of employment through the use of Australian Workplace Agreements (AWAs) as the relevant industrial instrument governing employment. In the AWAs reviewed and from the evidence before the Inquiry, the only outcomes evident are lower wages and conditions for employees. There has been no evidence whatsoever of reciprocal productivity and flexibility gains for employees and employers to justify such one-sided outcomes.

Part 3 of this Report addresses the first of the specific Directions issued by the Minister i.e. consideration of the reporting mechanisms available to employees to report incidents of unfair treatment as a result of the introduction

of Work Choices. This aspect of the Directive was approached differently in each of the submissions before the Inquiry. While some submissions focused on the mechanisms which had become available to employees in response to the introduction of Work Choices, others focused on a comparison between the mechanisms available pre and post Work Choices. As such, Part 3 of this Report considers both of these approaches and provides a broad ranging discussion of the mechanisms available to employees pre and post Work Choices including Unions, the Industrial Inspectorate, Anti-Discrimination Commission Queensland (ADCQ), the QIRC, Wageline, the Fair Go Queensland Advisory Service (FGQAS), Queensland Working Women's Service (QWWS), the Young Workers Advisory Service (YWAS), the Office of the Employment Advocate (OEA) and the Office of Workplace Services (OWS).

In relation to this Direction, the Inquiry accepts the evidence that the mechanisms for employees to report incidents of unfair treatment have been severely curtailed. There was also evidence of employees reporting what was *prima facie* unlawful treatment, being advised by bodies set up under Work Choices, that there was no remedy available for them. As summed up in one participant's submission:

*“Historically, employees have had a variety of options by which to pursue claims of unfair, unlawful or unreasonable treatment by employers. With the implementation of Work Choices, options for employees to report unfair treatment have been all but eliminated.”<sup>5</sup>*

The Inquiry also notes the confusion which exists among many Queensland workplaces, employees and employers with regard to workplace rights and jurisdiction. This, coupled with the lack of mechanisms for employees to report, and have heard, their concerns about unfair and unlawful treatment in the workplace, highlights the need for adequate reporting mechanisms for employees.

Part 4 of this Report deals with the second of the Directions which required the investigation of incidents of unlawful, unfair or otherwise inappropriate industrial relations practices including:

- the reduction of wages and conditions through AWAs or other collective agreements;
- discrimination, harassment or the denial of workplace rights; and
- unfair dismissal or other forms of unfair or unlawful treatment of employees.

This aspect of the Direction attracted significant attention from the participants making submissions to the Inquiry. For the most part, submissions did not explicitly attempt to distinguish between the different types of unfair or inappropriate practices identified in the Direction but rather tried to provide a range of examples of practices considered to fall under the broad heading. Indeed, it was frequently the case that in the examples provided, there was overlap between the areas identified, for example, a person may have been seen to be unfairly dismissed for not signing an AWA. In line with the Direction, however, this Report provides an examination of the evidence according to the different types identified above and provides findings in relation to each of those areas.

The evidence, in relation to this Direction, was wide ranging and the Inquiry draws a number of broad conclusions. In relation to incidences *“involving the reduction of wages and conditions through AWAs or other collective agreements”*, the Inquiry finds that the removal of the no-disadvantage test is very significant in providing the opportunity for such reduction. The Inquiry accepts the evidence before it, in the form of AWAs registered with the OEA, which remove entitlements which were previously standard for Queensland workers. In relation to both *“discrimination, harassment and denial of workplace rights”* and *“unfair dismissal or other forms of unfair or unlawful treatment of employees”*, the Inquiry accepts that there is considerable confusion within Queensland workplaces and amongst employees and employers in relation to these issues. In particular, the Inquiry notes the confusion in relation to the distinction between unfair and unlawful termination and the confusion in relation

5 CFMEU Submission p 9



to jurisdiction. The Inquiry also accepts the evidence here and in Part 3 of this Report of the lack of appropriate means for employees to report and have considered their concerns in relation to workplace issues. In addition, the Inquiry notes the concerns which arose from the evidence in relation to the Employment Separation Certificate, 457 visas, vulnerable groups of workers, occupational health and safety and the gender pay gap.

Within the category of “vulnerable group of workers” the Inquiry specifically records its concern for young workers either in or entering into the workforce. The Work Choices legislation can place these young workers in the position of having to independently bargain with their employer for their rates of pay and conditions of employment. The bargaining position between the parties will generally be unequal and the absence of adequate knowledge on the part of young workers as to what constitutes fair and reasonable workplace conditions of employment may see this group being amongst the most disadvantaged workers as a consequence of the Work Choices legislation.

Part 5 of the Report addresses the third Direction which required the consideration of the investigations and outcomes of similar Inquiries in other states and territories in terms of their relevance to Queensland. The Inquiries of particular relevance to this Inquiry were considered to be the New South Wales Parliamentary Inquiry; the Labor Parliamentary Taskforce on Industrial Relations; and the Select Committee on Working Families in the ACT. Also of relevance but only recently established was the Tasmanian House of Assembly Select Committee on Work Choices Legislation.

In relation to this Direction, the Inquiry notes that the terms of reference for each of these similar Inquiries differed quite significantly to the Directions guiding this Inquiry. The Directions for this Inquiry are specific, whereas the terms of reference for the other similar Inquiries can be considered to be more broadly focussed on the impact of Work Choices. The Inquiry accepts, nonetheless, the submissions of the Queensland Government, the AWU, and the CFMEU that the investigations and, where available, outcomes of these similar Inquiries have direct relevance to this Inquiry. As such, where available the Inquiry has considered the evidence before it in light of evidence before those similar Inquiries. The Inquiry notes the considerable support that the evidence from those similar Inquiries lends to the evidence in this Inquiry and, in particular, notes little contradiction in all of the evidence before all of the Inquiries including this Inquiry. The Inquiry also accepts that it is only with the passage of time that the full impact of Work Choices will be felt and accepts that ideally there should be some mechanism by which a longer term Inquiry into the impact of Work Choices in Queensland can be achieved.

The final part of this Report, Part 6, provides a summary of the major findings of the Inquiry with respect to each of the Inquiry Directives. Also considered in Part 6 of this Report are the final submissions received by the Inquiry which addressed the participants’ recommendations to the Inquiry. Given the common ground between the participants in relation to recommendations, Part 6 of this Report also provides an overview of the *Workplace Rights Advocate Act 2005* [Act Number 100/2005]. From this discussion, the recommendations of the Inquiry are provided.

Recommendations are also made with respect to the monitoring and reporting to the Minister, on a regular basis, on industrial relations practices under Work Choices including their impact on employees and employers.

# RECOMMENDATIONS

The Inquiry recommends that:

## **Recommendation 1**

The establishment by the Government of a separate statutory body similar to that of the Victorian Workplace Rights Advocate.

## **Recommendation 2**

The statutory body provides advice and information to the public regarding the promotion of fair industrial relations practices.

## **Recommendation 3**

The statutory body is required to raise and contribute to public awareness of fair, reasonable and appropriate workplace practices.

## **Recommendation 4**

The statutory body provides a “one stop shop” for the gathering, recording, referral and dissemination of information concerning unfair, unreasonable and inappropriate work practices.

## **Recommendation 5**

The statutory body provides a “networking” facility for the sharing and referral of matters to appropriate bodies.

## **Recommendation 6**

The statutory body provides a mechanism for referring the complaints of individuals to a range of appropriate organisations, for example, Unions, the ADCQ and QWWS.

## **Recommendation 7**

The statutory body makes representations on general issues relating to workplace matters to other relevant bodies, for example, the QIRC and/or the Australian Industrial Relations Commission (AIRC).

## **Recommendation 8**

The statutory body is not empowered to, and will not, directly represent individual employees in proceedings/negotiations about their employment terms and conditions and should not be empowered to advise employees to sign or not to sign workplace agreements.

## **Recommendation 9**

The statutory body refers matters to appropriate enforcement agencies.

## **Recommendation 10**

The statutory body engages in research relating to industrial relations matters, and disseminates that research to relevant bodies.

## **Recommendation 11**

The statutory body monitors and collects information about workers under subclass 457 visas and those who are adversely affected by programs such as Welfare to Work, and refers such issues to appropriate bodies.

