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PARLIAMENT OF TASMANIA

HOUSE OF ASSEMBLY SELECT COMMITTEE ON WORK CHOICES LEGISLATION

REPORT

ON

THE OPERATION OF WORK CHOICES LEGISLATION IN TASMANIA

Membership of the Committee

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Table of Contents

Executive Summary 3

Recommendations 10

Chapter 1 Introduction: 11
1.1 Appointment and Terms of Reference 11
1.2 Proceedings 11

Chapter 2 Work Choices Legislation 12
2.1 Overview and objectives 12
2.2 Summary of changes: 16
Federal and state industrial powers under the Australian Constitution 16
The expanded coverage of the federal industrial system 17
Federal system employer or excluded employer 17
What constitutes a Federal system employer 18
Transitional arrangements 19
2.3 The Australian industrial relations system prior to and post Work Choices 20
Industrial relations tribunals 20
Awards 23
Working hours 27
2.4 Relationship with 'Welfare to Work' provisions 32
2.5 Green-field Agreements 34
2.6 No "Choice" in Work Choices 34
2.7 Introduction of the 'fairness test' 35
2.8 Tasmanian Response to Federal Work Choices Bill 36

Chapter 3 High Court Challenge to the validity of Work Choices 38

APPENDIX 1 - SUBMISSIONS RECEIVED 39
APPENDIX 2 - DOCUMENTS RECEIVED AND TAKEN INTO EVIDENCE 41
APPENDIX 3 – WITNESS LIST 44
APPENDIX 4 - MINUTES OF PROCEEDINGS 45

Executive Summary

The introduction of the *Workplace Relations Amendment (Work Choices) Act 2005* represents a fundamental departure in the way in which industrial relations have been conducted in Australia in the past 100 years.

Through the use of its Constitutional powers to regulate corporations, the Federal Government has, without consultation, usurped the power of the States to regulate industrial relations.

It is estimated that up to 85% of workers will now be subject to Federal industrial law, leaving only State government employees and those of un-incorporated enterprises under State jurisdiction.[1]

The changes introduced by Work Choices have marginalised the Australian Industrial Relations Commission (AIRC). This effectively removes the independent umpire and appeals body from the system. Consequently Australian workers can no longer be confident that their working conditions will be determined by a fair and independent process.

Under Work Choices the AIRC has lost its general powers to arbitrate and conciliate in respect to industrial disputes and has lost its ability to set minimum wages and review existing award conditions to improve the award safety net over time.

A slow down in minimum wage rises for lower paid workers can be expected as a consequence of this change. The new Fair Pay Commission that has been established to adjust minimum pay rates will be guided by considerations such as employment and competitiveness across the economy instead of trying to match wage increases with increases in the cost of living.

The negative repercussions of these changes will be exacerbated by the restrictions that Work Choices places on unions in accessing their members and the new limitations on lawful industrial action.

The most egregious change that Work Choices has imposed on working people is the amendment to the unfair dismissal laws to allow employers with fewer than 100 employees to unfairly dismiss their workers. Whilst some anti-discrimination provisions are in place, these are quite meaningless as Work Choices empowers employers to literally sack an employee for no reason at all.

An employee who has been unfairly dismissed under these circumstances has no avenue for review or redress. Prior to Work Choices such cases could be brought before the

[1] Senate – Employment, Workplace Relations and Education Legislation Committee Report on the Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005 – Document 47, p.21

independent umpire, namely the AIRC, and the matter would be resolved justly, efficiently and at little cost. Under Work Choices natural justice is deliberately denied.

The AIRC has been stripped of its jurisdiction in such cases and the law specifically quarantines the new Workplace Ombudsman from such matters even though this Office was created to redress the obvious lack of fairness in the system.

Larger enterprises with more than 100 employees may also dismiss employees unfairly if 'genuine operational reasons' are cited as the reason or even part of the reason for the dismissal. The legislation leaves this open to interpretation, as no definition of 'genuine operational reasons' is provided.

The Federal Government however asserts that Work Choices will produce a national industrial relations system that reduces complexity and will contribute to productivity and economic growth through increased flexibility in the workplace.

The Committee has not seen any evidence to support such a claim and rejects the notion that productivity can be increased through measures that are designed to reduce the wages and conditions of workers. The lowering of wages and conditions will undoubtedly increase employer profits but this does not equate with an increase in productivity.

Work Choices aims to deliver increased flexibility to the workplace by reducing third party involvement in agreement making, (notably that of unions and the Australian Industrial Relations Commission) in favour of individual agreements negotiated between employers and employees.

Government Members of the Senate Committee inquiring into the provisions of the Work Choices Bill stated that:

> One of the primary obstacles to further employment is a lack of flexibility in the workplace relations system. The award system, through the complex, confusing and subjective 'no disadvantage' test, acts as a barrier to employees and employers deciding what is best at their workplace.[2]

There are several types of industrial agreements possible under Work Choices including individual agreements, that is, Australian Workplace Agreements (AWAs), and collective agreements such as Employee Collective Agreements and Employer Greenfield Agreements, the legislation also allows for Union Collective Agreements and Union Greenfield Agreements.

[2] Document No. 47, p. 5-6

However as indicated in Schedule 1 of the Act one of the principal objective of Work Choices is:

> Ensuring that, as far as possible, the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level.

The Federal Government contends that employers and employees negotiating together will arrive at solutions that are mutually beneficial. However, in evidence presented to the Committee it was clearly demonstrated that employers are offering AWAs on a take-it-or leave-it basis.

Furthermore, the Committee was informed that it is common practice for employers to use template documents that simply listed the minimum allowable employee entitlements. These agreements show no variation in content as would be expected if the negotiations between individual employees and employers were authentic.

Women, young people and low-skilled workers in casual or part-time employment are most vulnerable to exploitation under Work Choices. Such workers depend upon casual loadings and penalty rates to supplement their minimum wages and these are precisely the kind of workplace costs that Work Choices is designed to eliminate.

Workplace agreements are attractive to employers as they offer an opportunity to contract out of award conditions, even the so called 'protected award conditions' can be negotiated away in an AWA.

AWAs must comply with the five minimum standards set out under the Fair Pay and Conditions Standard which stipulate minimum wages and award classification levels and minimum entitlements such as: maximum ordinary hours of work, annual leave, personal/carers leave and parental leave.

Protected award conditions include: public holidays, rest breaks, incentive based payments and bonuses, annual leave loading, allowances, penalty rates and shift or overtime loadings and are deemed to be part of any agreement unless specifically mentioned in the agreement as part of a bargaining trade-off.

The number of prohibited items that must be excluded from agreements demonstrates the true lack of choice and flexibility afforded to workers under Work Choices and the extent to which the Federal Government wants to micro-manage the outcome of workplace agreements.

Prohibited content includes:

- Restricting the offering, negotiating or entering of an AWA;
- Restrictions on the use of independent contractors or labour hire employees;
- Allowing for industrial action during the term of an agreement;

- Paid leave to attend trade union trainings or union meetings;
- Providing unions with information about employees bound by the agreement;
- Renegotiating a workplace agreement;
- Providing that any future agreement must be a union collective agreement;
- Mandating union involvement in dispute resolution;
- Union right of entry;
- Deductions from an employee's pay for trade union membership subscriptions;
- Encouraging or discouraging union membership;
- Providing a remedy for unfair dismissal;
- Prohibiting or restricting disclosure of details about a workplace agreement;
- Objectionable provisions as defined in the *Workplace Relations Act*;
- Discriminating against employees for reasons including race, colour, sex, sexual preference, age, disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- Matters that do not pertain to the employment relationship.

The Workplace Authority can remove prohibited content from agreements and employers who lodge agreements containing any prohibited content may face fines of up to $33,000.

An aspect of the prohibited content provisions that gives the Committee particular cause for concern is the power given to the Minister of Workplace Relations to prescribe by regulation any additional matters that he or she may deem to be inappropriate. This gives the Minister the power to negate any agreement which is not to his or her liking and further demonstrates the inherent unfairness of Work Choices.

Work Choices prohibits the coercion of employees into signing AWAs, however employers are entitled to make AWAs a condition of employment for new employees. In addition, as submissions to the Committee demonstrate those desperate for work will have to accept whatever conditions are imposed on them.

Similarly greenfield agreements, either collective or individual agreements, are offered as a condition of employment. Employees have no say on the content of the agreement, as the conditions of employment are unilaterally imposed by the employer.

Although the term greenfield generally relates to new undertakings, under Work Choices employers are able to use greenfield agreements when taking over existing established businesses and this allows them to vary the conditions of the workers without giving them a say in the matter.

Evidence presented to the Committee indicates that employees on AWAs cannot expect to receive any pay increases during the term of the agreement which may extend for some years and industrial action is not available to AWA employees.

In a recently published study, University of Sydney researchers involved in a longitudinal study of 8000 Australian workers found that employees on AWAs generally earn less than those on common law contracts (usually high skilled employees) and less than those

on collective agreements. The study found that 46% of employees on AWAs feel that they did not have an opportunity to negotiate their pay with their employer.[3]

Employees not covered by workplace agreements will retain their award as the basic safety net to protect their workplace conditions however the future of the award system is not certain.

The Work Choices legislation requires the rationalisation and simplification of Federal awards.

Allowable matters in Federal awards have been reduced from 20 (the limit imposed by the Federal Government in 1996), to only 5 allowable matters under Work Choices.

The Fair Pay and Conditions Standard will apply to awards except in cases where the relevant award is more generous.

Prohibited content, as listed above in relation to AWAs, will also apply to awards and the AIRC will be required to remove any prohibited content from awards.

Professor Stewart, School of Law, Flinders University, informed the Committee that:

> [Once an employer offers]…a workplace agreement under the new system and that is accepted – whether that is an individual agreement or a collective one – those workers are no longer covered by their previous awards … those jobs become award free. [Likewise] … if a business is taken over or if there is a restructuring within a corporate group and employees are moved from one employer in the group to another, any existing award conditions can only last for a maximum of 12 months then the award disappears. That is if the new employer does nothing at all. If, on the other hand, the new employer puts a new agreement in place, then the old award conditions will disappear sooner.[4]

Employees formerly under State awards that have been brought into the Federal system through Work Choices will maintain their entitlements in 'notional agreements' for three years. It is unclear what alternatives will be available for these workers at the end of this period if workplace agreements are not in place at the time. A reversion to the minimum conditions and pay as provided for under the Australian Fair Pay and Conditions Standard seems likely.

Employees seeking help from unions to resolve their industrial relations concerns will find that Work Choices actively seeks to limit union involvement in the workplace.

[3] Document No. 46 p. 50
[4] Transcript, 9/11/2006, p. 12-13.

Work Choices makes it harder for unions to represent the interests of their members by restricting the right of entry to workplaces and by restricting employees' capacity to take lawful industrial action.

There is no longer an automatic right of entry to a workplace. A union official can now only gain entry to a workplace if there is at least one employee who is a union member and an appointment has been made through the employer. The employer has the right to stipulate the time, place and duration of such a meeting.

Under Work Choices employees cannot compel an employer to bargain with a union even if this is the wish of the majority.

Lawful industrial action can now only occur during a bargaining period in support of claims made in respect to a collective agreement. Industrial action cannot legally proceed if it is not approved by a majority vote conducted by secret ballot.

Work Choices can limit lawful action in certain circumstance by suspending the bargaining period, which in turn will curtail the taking of protected action. This includes situations where a union is engaging in pattern bargaining or where a cooling off period is declared by the AIRC because of concern for the public interest or where the duration of the industrial action is effecting a third party.

Furthermore the Minister is entitled to terminate a bargaining period on public health and safety grounds or if it is determined that the industrial action poses a threat to the Australian economy. The latter ground is, like much of the Work Choices legislation, very broad, the legislation offers no guidance as to the scope of this provision.

The Committee believes that Work Choices is largely targeted at reducing the influence of unions in the workplace and is in keeping with the broader anti-union agenda of the Federal Government as demonstrated by its harsh treatment of unions involved in the building and construction industry.

The Federal Government has promoted Work Choices as a simpler, fairer system that will bring choice and flexibility to the workplace for the mutual benefit of employers and workers.

The evidence before the Committee, however, has revealed the inherent unfairness of the system and the deliberate effort to create an industrial relations system that empowers employers and leaves workers vulnerable.

How can the undermining of the award system, the removal of the independent umpire and appeals body, and the limiting of opportunities for workers to act collectively be portrayed as the basis of an equitable system? And how can employees stripped of all these safeguards negotiate a fair agreement with an employer who comes to the negotiating table with an unfettered power to dismiss in his/her back pocket?

The Committee acknowledges that recent changes to Work Choices including the introduction of the Fairness Test and the Workplace Ombudsman will ensure that some sort of 'floor' is placed under the industrial relations system in terms of minimum standards and conditions. However the inherent inequity of Work Choices remains. Workers have no real say on how low this 'floor' is placed or how it might be changed in the future.

Recommendations

1. The Committee recommends the repeal of the *Workplace Relations Amendment (Work Choices) Act 2005* (Commonwealth).

2. The Committee recommends legislative change to ensure that no new Australian Workplace Agreements can be entered into.

3. The Committee recommends legislative change to ensure that no individual agreements that can undermine collective agreements or awards can be entered into.

4. The Committee recommends legislative change to restore to the Australian Industrial Relations Commission the powers that it possessed prior to Work Choices.

5. The Committee recommends that both the State and Federal Government provide more assistance to organisations that support and advise Tasmania's most vulnerable workers to help protect them from workplace exploitation.

6. The Committee recommends the immediate provision of universal access to unfair dismissal laws, under the same conditions as were available prior to the introduction of Work Choices.

7. The Committee recommends the immediate abolition of the Australian Building and Construction Commission by repealing the *Building and Construction Industry Improvement Act 2005* (Commonwealth).

Chapter 1. Introduction:

1.1 Appointment and Terms of Reference

On 28 September 2006 the House of Assembly resolved that a select committee of inquiry be appointed to 'inquire into and report upon the effect of recently enacted Commonwealth industrial relations legislation with particular emphasis on:

(1) The operation of the Commonwealth *Workplace Relations Amendment (Work Choices) Act 2005* in Tasmania;

(2) Labour market changes in Tasmania, with particular reference to the identification of incidents where the 'Work Choices' legislation has resulted in employment relationships that are inconsistent with Tasmanian industrial relations legislation and minimum standards;

(3) Any other matters incidental thereto.

1.2 Proceedings

The Committee called for public submissions in advertisements placed in the three regional daily newspapers. In addition, invitations were sent to key stakeholders including: the Minister for Workplace Relations, the Federal Minister for Employment and Workplace Relations, the Office of the Employment Advocate, Workplace Standards Tasmania, The Tasmanian Chamber of Commerce and Industry, The Tasmanian Industrial Relations Commission, the Tasmanian Council of Social Service, the Tasmanian Small Business Council, Unions Tasmania and Women Tasmania.

The Committee received 17 written submissions and 47 documents were taken into evidence. Further evidence was heard at public hearings where 20 witnesses came before the Committee. Lists of submissions received, documents received and witnesses appearing before the Committee are appended to this report.

The Committee made every effort to hear from all parties with an interest in this debate. Aside from the formal invitations to peak bodies, all individuals or organisations mentioned in evidence were given the right of reply, however all approaches from this Committee to employer groups were declined.

The Committee met on seven occasions and the minutes of proceedings are set out in appendix 4.

Chapter 2. Work Choices Legislation

2.1 Overview and objectives

Work Choices incorporates two fundamental changes to industrial relations in this country.

First, Work Choices has dramatically extended the coverage of the federal industrial relations system, primarily by using the corporations power of the Commonwealth under section 51(xx) of the Australian Constitution. The Federal Government has estimated that the new federal industrial relations system will cover up to 85%[5] of employees in Australia although coverage in some states will be lower, including Tasmania where it is estimated that there will be approximately 60%[6] coverage.

The second change involves the dramatic reworking of the federal industrial relations system which has evolved over the past century.

These changes have altered the bargaining position of employers and employees, tipping the balance firmly in favour of employers, by:

- Removing the award safety net and replacing it with minimum conditions of employment in the Australian Fair Pay and Conditions Standard which are not commensurate with those that existed under the award system;
- Abolishing the 'no disadvantage test' when negotiating workplace agreements, thereby permitting a reduction in the overall conditions of employment (although, as discussed below, a 'fairness test' has now been introduced by the Government in an attempt to curb this criticism. Due to the very nature of Work Choices, this test, however, still falls far short of the protection offered by the 'no disadvantage' test);
- Removing compulsion on employers to bargain collectively with employees if they do not wish to do so, while permitting employers to offer employees individual contracts on a take-it or leave-it basis; and
- Exempting businesses with up to 100 employees from unfair dismissal laws.

It is recognised that employees who possess skills and qualifications will have a degree of bargaining power in the liberalised workplace environment established under Work Choices.

However, evidence submitted to the Committee demonstrates that for employees with limited skills and qualifications the new system has meant either a cut in pay or conditions, or, at worst, loss of employment with no means of redress. Evidence identifies those most at risk as: women, young people, people living in rural and regional

[5] Document No. 47 p. 21
[6] Transcript, Professor Stewart, 9/11/2006, p. 6

areas, people from culturally and linguistically diverse backgrounds, people with a disability, and income support recipients.

Women Tasmania expressed concern in respect to:

> …the perceived lack of choice in Work Choices, and the presentation of AWAs on a take it or leave it basis, rather than as a negotiable document. In areas where jobs are in short supply few workers are prepared to negotiate conditions in the process of securing employment – most are grateful just to have a job.
>
> While the Australian Government argues that AWAs are mutually beneficial for employers and employees, and that flexibility is paramount the reality so far has shown that potential employees in non-managerial work have little capacity to negotiate agreements.[7]

The objectives of the Work Choices legislation as outlined in schedule 1 of the *Workplace Relations (Work Choices) Act 2005* include:

- improving productivity;
- increasing wages;
- reducing unemployment;
- improving living standards; and
- enhancing the balance between work and family life.

In scrutinising these objectives the New South Wales Legislative Council Select Committee Inquiry into Work Choices concluded that the negative effects of the Work Choices legislation would in fact work against the realisation of these objectives and suggests that:

- Work Choices aims to achieve productivity and employment growth by exploiting the labour of the vulnerable, leading to a profusion of low-pay, poor quality work in an economy characterised by low productivity;
- Work Choices is likely to exacerbate the skills shortage in Australia by removing the incentives for certain employers to invest in employee training and development. Businesses will be forced to compete on the basis of cheap labour and will not have the resources to invest in employee training; and
- Work Choices is likely to lead to a reduction in workplace safety. In a competitive market where margins are tight and where workers are often casuals or contractors, lacking the education or bargaining power to raise issues of safety, a reduction in safety with consequential results in injury and death will follow. [8]

[7] Document No. 44, p.4
[8] NSW Standing Committee on Social Issues – Impact of the WorkChoices legislation, p. xiii

The Tasmanian Council of Social Service Inc. (TasCOSS) in its submission to the Committee expressed scepticism at the motives of the Work Choice reforms and concern for the plight of vulnerable workers:

> We are particularly concerned about the move towards workplace negotiations between employers and individual employees and fear that this move is more about freezing the unions and collective bargaining out of the system than it is about increasing individual workers' freedom to negotiate their own employment conditions.
>
> Certainly under this kind of 'every-man-for-himself' system, it will be the disadvantaged, low-skilled and vulnerable workers who will be at greatest risk of exploitation, particularly in relation to pay and employment conditions ...
>
> Prior to the introduction of Work Choices, nearly 50% of Tasmanian workers had their pay and conditions negotiated through collective bargaining processes. This was the second highest rate behind the ACT and significantly higher than New South Wales where only 35% of workers have their pay se through collective bargaining. … It is likely that [Work Choices] will significantly diminish the power of low-income and low-skilled workers to achieve decent real wage increases and improved employment conditions within the labour market.[9]

In presenting his analysis of Work Choices to the Committee Professor Stewart, Flinders University, School of Law also questioned the motives of Work Choices and suggested that the true objectives are:

- To expand the Federal system at the expense of the States;
- To make it possible for employers to offer agreements that cut award conditions;
- To slow down minimum wage rises (this is further discussed below at part 2.3).
- To rationalise and simplify Federal awards. Federal awards are now limited to a smaller range of matters than previously, and certain provisions are now outlawed in Federal awards. There is also a process underway to reduce the number of Federal awards.
- To make it harder for unions to represent the interests of their members by restricting their right to enter workplaces and by restricting their capacity to take lawful industrial action.

[9] Submission No. 8 p. 3-4

- To reduce the capacity of workers to challenge their dismissal.
    - Employers with less than 100 employees are now not open to unfair dismissal claims.
    - Employees cannot bring a claim in their first 6 months of employment (the previous threshold was 3 months).
    - Employees cannot bring a claim if the reason, or one of the reasons, for the dismissal was related to 'operational reasons'.
    - This is particularly significant for Tasmania because the Tasmanian unfair dismissal system was the only State system in the country that did not previously have a significant number of exclusions. Because the State system will now apply to the minority of employees, the changes will have greater effect in Tasmania than elsewhere.
- To marginalise the Australian Industrial Relations Commission (AIRC) which has now lost its function of reviewing workplace agreements before their registration, and has lost its capacity to set minimum wage rates and no longer has a general power to conciliate or arbitrate industrial disputes. Workplace disputes may be brought before the AIRC if both parties consent and it is included in the workplace agreement which must also stipulate the extent of the AIRC powers to adjudicate. The Work Choices Act also provides for the use of private dispute resolution providers, or potentially the use of State commissions.
- To abolish the awards system. With restrictions on matters that can now be covered by awards, they become less relevant, and whilst employers can contract out of the award provisions the longer Work Choices remains in place, the more irrelevant the award system will become.

Research undertaken by the Workplace Research Centre at the University of Sydney since the introduction of the Work Choices legislation has backed up claims made by Professor Stewart. A survey of every collective agreement lodged between 2 March and 8 December 2006 in the retail and hospitality industries of New South Wales, Victoria and Queensland was undertaken. They were compared with awards and agreements lodged prior to Work Choices that covered these workplaces. Key findings include:

- Approximately 90 percent of agreements simply re-iterated statutory entitlements which employees have regardless of what is said in agreements;
- Training for employees was only mentioned in 37 percent of agreements;
- Childcare and family friendly policies mentioned in 14 percent of agreements;
- Annual leave loadings removed in 80 percent of agreements;
- protected award conditions that have been removed through the agreements include: Saturday penalty rates (76 percent), Sunday penalty rates (71 percent), overtime rates (68 percent), paid breaks (55 percent); and
- Non-protected conditions removed include: severance pay (65 percent), rostered days off (63 percent), limits on part time hours (62 percent), rights to average hours over 1-4 weeks (62 percent).[10]

[10] Document No. 46, pp. iv-vi

Another key finding of the report is that the vast majority of agreements appeared to be template agreements which reflected the minimum standards. There was little evidence of workplace level bargaining[11] - one of the virtues of the system that the Federal Government has been actively promoting - rather it was a case of employees being presented with an agreement under which they must work. This is consistent with evidence presented to the Committee that suggests many Tasmanian employers have also followed this path.

In his submission to the Committee Mr Simon Cocker, Secretary, Unions Tasmania, highlighted the deficiencies of the industrial relations system under Work Choices:

> It is our view that a fair and decent system will always have the following features. There will be an independently established set of minimum conditions that exist as a safety net. There will be the capacity to bargain above the safety net and that bargain should include the enforceable right to collective bargaining where the workers so choose. There needs to be unfair dismissal protection so the workers have security of employment knowing that when they have agreed to an employment contract it will not be unfairly terminated and there needs to be an independent umpire to deal with disputes and to set and resolve minimum conditions.
>
> Until March this year, these mechanisms all existed and those ambitions have been met but with the advent of the Howard industrial legislation these mechanisms have all been savagely attacked. Cooperation has been replaced by fear and the fair go all round has been replaced by greed. The fear and greed policies of the Federal Government have changed the Australian workplace and it is starting to have its effect here in Tasmania. [12]

2.2 Summary of changes:

Federal and state industrial powers under the Australian Constitution

Section 51 of the Australian Constitution contains a list of 39 areas (heads of power) where the Commonwealth Parliament has the power to make laws. Powers not included in section 51 are consider to reside with the States (residual powers).

The Commonwealth's legislative power with respect to industrial relations derives from s.51(xxxv) of the Australian Constitution:

[11] Document No. 46, p. v
[12] Transcript 7/12/ 2006, p.2

> The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to – conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.

This power has been used by the Federal Parliament to establish the federal industrial relations system.

However, s51(xxxv) only gives the power to make laws with respect to the conciliation and arbitration for the prevention and settlement of disputes. The residual power (to make laws with respect to all other industrial relations matters) rests with the States. Historically these systems have operated concurrently with larger employers with cross border businesses operating under the federal system, while smaller employers have remained within the state system.

Details of a High Court challenge to the validity of these changes are discussed below, at Chapter 3.

The expanded coverage of the federal industrial system

Work Choices has departed from this traditional interpretation of powers under the Australian Constitution. The Federal Government has sought to rely on s.51(xx) of the Constitution:

> The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to – foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth.

Constitutional corporations for the purpose of s.51(xx) are defined as

- Trading or financial corporations formed within Australia
- Foreign corporations.

Employees must now determine whether they are a federal system employee (to which Work Choices legislation applies) or whether they work for an excluded employer.

Federal system employer or excluded employer

Every Tasmanian workplace must determine whether it is within the federal system or is an excluded employer.

- Federal system employer – they are now subject to the Federal Workplace Relations Act. Any Sate awards or agreements they were bound by prior to March 2006 are now deemed to have effect as Federal instruments. Some of the provisions (dealing with excluded matters) will no longer be binding, and provisions will have a limited life of up to three years. A Federal system employer

remains bound by State law on a range of matters including occupational health and safety, workers compensation, child labour and discrimination.

- Excluded employer – if they were covered by a Federal award or agreement as of the reform commencement in March 2006, they can still be covered by the Federal Act but only for a period of up to five years and only for limited purposes. If they were not previously subject to Federal awards or agreements, there is no change.

What constitutes a Federal system employer

Trading corporations are Federal system employers. This requires incorporation (includes incorporated not for profit associations) and for the employer to have a significant or substantial amount of trading activity that brings in income. If bodies have enough trading activities that earn them income in a year, even if they are not trading for profit, on the current judicial approach they can be regarded as a trading corporation. Case law suggests this includes bodies such as public universities, private schools and most local councils. There is no objective measure of what 'significant trading activities' are, it is determined by the courts on a case by case basis, but it is suggested that income levels of as low as 5% can be considered significant enough.[13]

The Tasmanian Council of Social Service Inc. submission observed that:

> The uncertainty about whether they [non-government organisations] now comply and have moved under the Federal legislation or not…[rests on] whether they are trading corporations. This is an issue that has caused an enormous amount of uncertainty, particularly amongst smaller organisations. A commonly-used example is a community house that has a small budget. The major core funding is obviously not engaged in trading, however in the process of fund raising, it is selling raffle tickets, running a fete, doing small fees-for-services - they engage in a lot of trading. There is a degree of uncertainty about whether organisations comply with the Work Choices legislation or remain under the State awards. With the High Court ruling on Work Choices last month, they didn't make compliance on which organisations fall under [the category of] trading corporations or not. Without any clear indication from the Work Choices legislation, it is basically being left up to organisations to determine what they fall under. That has caused an enormous amount of uncertainty amongst organisations… there is no indication about when that question is going to be resolved, whether there will be a further amendment to the legislation or whether a potential service organisation that is being talked about is actually

[13] Transcript, 9/11/2006, p. 5.

> taken to the High Court and the decision they have made is challenged, which finally provides that kind of decision on what sector organisations fit under. Until that process happens, which could be a number of years down the track, organisations basically have to make a decision based on their own advice. That has caused an enormous amount of uncertainty.[14]

In their submission to the Committee, Women Tasmania Inc. noted that:

> The Work Choices website advises those who are uncertain to take legal advice. But lawyers are sometimes not able to provide clear cut legal advice because of the absence of a definitive body of law on the issue.[15]

State Government Agencies

If a State government agency is incorporated, and has enough trading or financial activities, they may be classed as a trading corporation. There are some constitutional limitations on the extent to which the Commonwealth can regulate these bodies. A number of states, including Tasmania, are switching their public sector workers to non-corporate employers, the most obvious of which is the State itself. However, employees that are working for an incorporated government business enterprise with enough trading activity may be caught.

Transitional arrangements

The Work Choices Act contains transitional arrangements which cover an employee's shift from a state industrial law system to coverage under Work Choices. These provisions operate:

- If an employee is covered by a state award and is not covered by a state workplace agreement, the award and legislative minimum conditions will continue to operate for three years unless a workplace agreement is made under the new federal system before then. After three years, if no workplace agreement has been made, the employee will move to the relevant federal award.
- If any of the employee's conditions are covered by a state workplace agreement, conditions in the workplace and any conditions under a state award or state legislation that operate together with the agreement, will continue to operate until a workplace agreement is made under the new federal system.

Some employees and employers currently covered by the federal system will not be covered by Work Choices as the employer is not a constitutional corporation. These

[14] Transcript 7/12/2006 p.42
[15] Document No. 44, p.2

people will have a five year period to move to the relevant state system. The employer may choose to incorporate in order to remain with the federal system.

2.3 The Australian industrial relations system prior to and post Work Choices

Industrial relations tribunals

Prior to Work Choices - Both the Tasmanian and federal industrial relations systems have traditionally relied upon compulsory conciliation and arbitration for the resolution of industrial disputes.

Post Work Choices – The federal system of compulsory conciliation and arbitration has been abolished. The Australian Industrial Relations Commission (AIRC) has been established and is a voluntary dispute resolution process. Both parties must agree to invoke its jurisdiction, or alternately if both parties agree private dispute resolution options may be engaged. Parties wishing to have their dispute heard by the AIRC have to set out the powers the Commission may exercise in relation to the dispute. They can no longer assume that the Commission can exercise its general statutory powers.

In his submission to the Committee, Mr Simon Cocker, of Unions Tasmania, discussed a situation involving workers being denied access to a copy of the AWA under which they were employed. It was noted that, since Work Choices, the only avenue for resolving this situation was to go to the Office of Workplace Standards. Previously, "We could have notified a dispute in the Tasmanian Industrial Commission and had it resolved within a few days".[16]

For those employees who are not covered by Work Choices, access to the Tasmanian Industrial Relations Commission is still available. Mr James Evans, Director of Industrial Relations, Division of Industrial Relations and State Service Management, told the Committee that:

> The Tasmanian Industrial Commission is a lay jurisdiction, it is a no-cost jurisdiction and an easily accessible jurisdiction, and it is a jurisdiction that provides a fair and reasonable outcome for all the parties. That jurisdiction, while it still exists, is being denied to the vast majority of employees in Tasmania.[17]

Mr Marshall Reeves, Union Organiser, provided the Committee with a further example of the repercussions of the abolition of the Industrial Relations Tribunal. He outlined a situation where an employee worked under agreement which made provision for the referral of a dispute to arbitration if it was unable to be resolved. In relation to redundancies, the award provided four options: transferring your redundancy to another

[16] Transcript, 7/12/2006 p.20
[17] Transcript 7/12/2006 p.35

employee, displacing a labour hire employee performing a different role, taking a voluntary redundancy or the employer could look at changing the scope of work. Under Work Choices, the employer chose to ignore these options and simply make the employee redundant. Mr Reeves asserted that if the agreement had not been rolled into the Federal system as a notional Federal agreement the employee would have been able to lodge a dispute application to the State Commission. Under the Federal model an application to the Federal Commission could have been made, but the employer would not be obligated to attend.[18]

A further example provided in evidence before the Committee concerns an employee involved in a dispute regarding sick leave. An employee was accused of taking excessive sick leave, despite having obtained all necessary medical certificates. The employee was suspended on full pay (this the Committee was told was in order to avoid the potential for an unfair dismissal claim) while the employer sought an avenue via which to terminate the employee. Prior to changes under Work Choices this employee would have had access to the Industrial Relations Commission to assist in this dispute. As it was, the employee:

> …had no recourse. I couldn't go to the Commission; I never had any hope. I went to work and I provided all the evidence to say that I was in the right. They acted as judge, jury and executioner. In the end it got down to the stage where they wanted to talk to my doctor and I do not even have privacy with my doctor anymore. I just did not have anywhere to go.[19]

The Committee was made aware of the substantial costs individuals face as other avenues for dispute resolution are curtailed under Work Choices and employees are left to pursue their rights through the courts.

Mr Bill White, Assistant Secretary, Construction, Forestry, Mining and Energy Union (CFMEU) pointed out to the Committee that for many employees it was now a balancing act between weighing up any potential court costs against likely monetary restitution to be gained:

> If somebody is under the Federal system, they have been underpaying an employee and we cannot reach agreement with them to fix up the underpayment, the only place we have to go is through the court system. My belief is that if somebody has been underpaid by $10 they are entitled to that $10. Who is going to go to court for $10? What if it was $1 000? There is a lot of cost in going to court. What if it was $10 000? If you go to court and you lose, you never know what will happen.[20]

[18] Transcript 26/4/2007, pp.6-7
[19] Transcript 26/4/2007, pp.29-30
[20] Transcript 26/4/2007, p.21

The Committee recognises that recent developments such as the introduction of the Workplace Ombudsman may help to address some cases of unlawful dismissal or the withholding of employee entitlements by unscrupulous employers. However the Committee also recognises that the Work Choice entitlements that the Workplace Ombudsman has been established to protect are minimum standards that still leave workers vulnerable. If, for example, an employee is unfairly dismissed from an enterprise
with fewer than 100 employees the Workplace Ombudsman is obliged by law to ignore such a case.

Trade unions and employer organisations

Prior to Work Choices – Australia has historically had a high rate of union membership and trade unions and employer organisations have traditionally been significant players in Australia's industrial relations system. The last twenty years have seen a significant decline in union membership.

Post Work Choices – unions are no longer automatically allowed to become involved in wage negotiations, dispute resolutions etc. Their access to workplaces has also been fettered.

Mr Peter Fraser of the Tasmanian Plumbers Union provided the following observations:

> Before July 2005, my access to construction sites was unrestricted. The principal builders were happy to talk about all matters that would assist in rectifying OH&S breaches on an advisory level, generally mentioned as something that needed to be fixed or at least be aware of. The workers, members and non members in the main would ask about new work coming up, who was hiring and firing, general gossip about their mates on other jobs and some would relate problems which affected them and ask whether I could help. After March 2006 all this changed and we now have to give 24 hours' notice... the requirements now to get onto a building site are: we must hold a valid Federal permit; provide at least 24 hours' written notice of entry, unless it is under State OH&S laws which we do not have at the Plumbers Union; when entering to investigate breaches and provide details of the breach on notice. Normally most of my visits would be to discuss matters with members and only during meal breaks - 10 minutes at morning tea and half an hour for lunch. In some cases… I might put in…a nominated time…so I have turned up at 12.30 p.m. for half an hour … On arrival they informed me that they had been given strict instructions to

> talk only for 30 minutes or they would be docked four hours' pay.[21]

Rev. Antony McMullen, Social Justice Officer, Justice and International Mission, Uniting Church of Victoria and Tasmania, also expressed concern at the diminishing of union powers:

> Our perception is that the unions actually are really a positive influence on highlighting and stamping out exploitation. So our understanding is that post-Work Choices, in terms of transparency… there is less scope for investigation.[22]

Awards

Prior to Work Choices – the pay and conditions of workers both in the federal and state systems have traditionally been regulated by a system of awards set out by both federal and state industrial relations commissions. Awards have traditionally set minimum standards of employment such as wages, penalty rates etc.

In 1996 the Federal Government made significant changes to the *Industrial Relations Act 1988.* The range of employment conditions that may be dealt with in awards was restricted to twenty allowable matters. Conditions continued to include such provisions as maximum ordinary hours of work; overtime and shift work loadings; penalty rates; sick and carers leave; long service leave and redundancy pay.

Post Work Choices – the matters that can be covered by an award have now been limited to four minimum employment conditions. These cover ordinary hours of work, annual leave, personal/carers leave and parental leave. These four conditions, along with minimum wages set by the Australian Fair Pay Commission constitute the Australian Fair Pay and Condition Standard. These standards apply to all employees covered by the federal industrial relations system. Employees who are presently operating under an award will continue to be entitled to their award conditions over the transition period if they are more generous. With restrictions on matters that can now be covered by awards, they become less relevant, and it is now easier for employers to contract out of the award system. The longer Work Choices remains in place, the more irrelevant the award system will become to most workplaces.

Rev. McMullen explained the virtues of award conditions:

> … Award conditions are great for everyone - those conditions above the Australian Fair Pay conditions standard - but they are particularly good for people such as

[21] Transcript 7/12/2006 p.46, 50
[22] Transcript 26/4/2007 p.9

> sole parents and people with disabilities. In fact, a lot of those things are almost essential for the work experience to be a positive one for those vulnerable groups so it is particularly concerning that the Welfare to Work changes have particularly targeted those two groups and that the kind of work they have been pushed into in many cases is inappropriate, just the bare minimum standard. It is unsustainable... [23]

Describing the move to get workers off awards and onto individual Australian Workplace Agreements, Mr Simon Cocker noted:

> We are probably almost going to end up with two classes of labour. We are going to end up with classes of labour that are organised and who are able to maintain a negotiated agreement and we are going to have those who can't, for various reasons. Whether they are not unionised or whether they are a small employer or whatever, those people who have no bargaining power will be in a take-it-or-leave-it situation. That is what we are seeing happening. That has been heavily impacted by the changes to the welfare system where workers can lose their welfare if they refuse to accept the job that is deemed suitable for them and by the failure to provide any protection in terms of unfair dismissal. The conditions that are put in front of you, you can take it or leave it and, while the Act does talk about coercion in relation to AWAs, if you've got the power to enforce the Act then you might be able to do it, but a lot of people don't. In that sense we build up this atmosphere of fear around the workplace, the fear of losing your job and not having your income. The reality of this Act is that the mechanisms that have been built into it are a one-way street to get workers off agreements and awards. Under the Act, once a worker has been taken off their workplace agreement or their award, they can't return to it. The most common mechanism for getting them away from the award or agreement is onto an AWA. Once that AWA expires, the only conditions that apply are the minimum standard or any protected award conditions to the extent that they aren't excluded.[24]

He went on to outline some case studies:

> **Case study 1**
>
> The hours of work clause contained in one AWA stipulates that:

[23] Transcript 26/4/2007 p.11
[24] Transcript, 7 /12/2006, p.7

> Your hours of work will depend upon our operational requirements and although your hours of work may vary from week to week, they should be predictable. There are no minimum hours guaranteed in this agreement. You will not be required or requested to work more than an average of 38 hours a week over a 12-month period and reasonable additional hours. You may, however, voluntarily apply to be available for extra hours or shifts, be they public holidays, weekends or outside ordinary time hours and be paid at the agreed all-up rate. Unless you advise, in terms of clause 1(f), then you agree that you will volunteer to be available for extra shifts or extra hours, be they on public holidays, weekends, at the all-up rate.[25]

Case Study 2

> Annual leave loading, public holidays, overtime and penalty rates were all excluded from the AWA and the workers were put onto a flat rate which applies 24/7. By that mechanism, the company has been able to significantly reduce the take-home pay of workers. One case outlined was a reduction of $190 a week - nearly 20 per cent of the take-home pay disappeared overnight from one day to the next. Another employee was going to receive about $390 per fortnight less because he only worked night shifts. This employee previously earnt between $18.90 an hour and $22 an hour. His wage was cut to $14.33 flat rate.[26]

Mr Bill White provided further evidence of how Work Choices has eroded conditions in the workplace which were previously protected by awards, citing a lack of basic amenities on building sites as an example:

> The Federal Award is silent on amenities therefore everybody in the State had to provide amenities as per the State Building Construction Industry Award … Work Choices has overridden the provision now … therefore we have a system in the State now where those people who are not under a Federal award and are not constitutionally incorporated … they still have to provide amenities as per the award. All the others just do as they please.[27]

Minimum wages

Prior to Work Choices – Under the award system, minimum wages in the federal system were adjusted by the Australian Industrial Relations Commission on an annual basis. Submissions were made to the Commission from unions, employer groups, industry

[25] Transcript, 7/12/2006, p.15
[26] Transcript, 7/12/2006, p.28
[27] Transcript 26/4/2007, p.2-3

groups and federal and state governments. These changes generally flowed on to Tasmania through decisions of our industrial tribunal.

Post Work Choices – The Australian Fair Pay Commission is now responsible for adjusting minimum wages. The operation of the Commission will differ from that of the AIRC. It will undertake its own research and consultation with stakeholders and must balance its deliberations on the extent of the safety net for the low-paid against factors such as the need to encourage employment.

The first decision of the Fair Pay Commission (2006) delivered an increase in the minimum rates that is broadly comparable to what we had seen previously from Australian Industrial Relations Commission (AIRC) decisions (slightly less than a $28 per week wage increase). The Committee notes that the Federal Government has asserted that the AIRC did not give due weight to the argument that minimum wage rises come at a cost in terms of total number of jobs available. The statutory criteria on which the Fair Pay Commission operates put more emphasis on the effects on the economy and unemployment rates and the need to consider the interests of the unemployed. Those appointed to the Fair Pay Commission have previously expressed views that support the holding back of minimum wages rates in order to promote employment. The 2007 Fair Pay Commission decision delivered a $10.26 per week increase in the minimum wage, bringing the hourly rate to $13.74 per hour. Interestingly, the Commission granted farming businesses in receipt of Exceptional Circumstances Interest Rate Subsidy a deferral of the 2007 wage increase. This provides some insight into what we may see included in future decisions of the Commission.

Mr Simon Cocker, Unions Tasmania, expressed concern that many AWAs do not contain provisions for salary increases for their duration, which is often between three and five years:

> … [Employers] normally stipulate a rate and that rate applies for the life of the agreement. In the Norvac agreement, for example, it sets out $14.33 an hour for the console operators and that is in the life of the agreement, it stays fixed; there is no provision for automatic adjustment or an increase.[28]

In this example the $14.33 is an all-in-rate that is meant to make up loss of penalty rates and overtime loadings, and although the actual hourly rate may be below the minimum $13.74 per hour, until the Fair Pay Commission sets a minimum rate above $14.33 this employee is will not receive a pay increase during the term of the AWA. This is a clear example of how Work Choices is eroding worker's entitlements.

[28] Transcript, 7/12/ 2006, p.8

Industrial actions

Prior to Work Choices – The *Industrial Relations Reform Act 1993* made it lawful to take industrial action in support of a new federal workplace agreement so long as these actions met certain criteria. For example, industrial action could only take place during a bargaining period, and parties must have genuinely tried to reach an agreement before any action could be taken.

Post Work Choice – Lawful industrial action is more narrowly defined and more easily curtailed. Lawful industrial action is limited to bargaining periods in support of claims for a new collective agreement. There is no scope for lawful industrial action under Australian Workplace Agreements.

Protected action by employees during a bargaining period for collective agreements must now be authorised by a majority of employees voting in a secret ballot.

The AIRC has been given more grounds for suspending a bargaining period, making any further industrial action during negotiations unlawful, (such as action in support of pattern bargaining) and the Minister for Workplace Relations has been given unprecedented power to stop or prevent industrial action if the Minister is satisfied that such action is threatening the safety, health or welfare of the population or damaging the Australian economy. The breadth of this power is unclear at present.

Working hours

The Australian Fair Pay and Conditions Scale prescribes that a person cannot be required to work more than 38 ordinary hours per week, plus 'reasonable' additional hours. An employer and employee may agree that the employee's hours of work are to be averaged over no more than a 12 month period.

The term 'reasonable additional hours' is not defined in the Work Choices legislation. It will be necessary for there to be some court action on the matter in order to determine a definition. In the meantime this provision is open to abuse.

In his submission to the Committee, Mr Simon Cocker, Unions Tasmania, observed:

> To be honest, I think the 38-hour week is a joke. The Act says that there will be 38 ordinary hours every week. It provides for additional reasonable hours but it provides absolutely no definition of what 'additional reasonable hours' are. It provides no penalty rates or any additional payment, other than the standard hourly rate. If, for example, someone decides that an hour a day is a reasonable additional hour then someone suddenly is on a 45-hour week. On the other hand, the act provides no

> minimum provision so somebody can be working 38 hours one week, 45 the next, three the next at the whim of the employer…those provisions are being written into AWAs and agreements, and becoming the norm… It makes a mockery of the minimum standard because it's not as it appears. There is no such thing anymore as a standard working week under these provisions.[29]

The Committee also noted that many employees lack the skills to fully understand the AWA they are being asked to sign, which may create unforseen consequences.
Rev. Terry, Uniting Church of Tasmania, told the Committee:

> … we have recently been talking with a young man from the Bridgewater/ Gagebrook [area], who believed he had been employed in a full-time capacity. He is now finding that his boss only calls him into work when he is needed, sometimes as little as one day in four. This young man is on a workplace agreement, the details of which he did not understand. It makes budgeting impossible and is destructive of home life.[30]

The Committee believes that the recent casualisation of the Australian workforce will be further compounded under Work Choices, as employees will have to take what is on offer. A witness before the Committee, Ms Pycroft expressed her concerns on this matter:

> [You] couldn't just have one job to earn the same amount of money. You have to have two or three jobs because now they are part-time. It is not like when your father or my father went out to work. They left at 7 o'clock in the morning and came home at 5 o'clock at night. They then spent time with their families. They can't do that now. Men have to go to work at 7 a.m., come home at 5 p.m. then run out to work again at 8 p.m., and come home again at midnight, to earn the same amount of money…[its] destroyed Australia's way of life.[31]

Unfair dismissal

[29] Transcript 7/12/ 2006, p.5
[29] Transcript 26/04/2007, p.1

[31] Transcript 26/04/2007, p.8

Prior to Work Choices - Employees were able to apply to the Australian Industrial Relations Commission for conciliation and arbitration if they believed they had been unfairly dismissed. The Commission could offer a remedy in the form of reinstatement or compensation. In making a decision, the Commission was required to have regard to a number of factors, including whether there was a valid reason for the dismissal and whether the employer had followed fair procedures.

Post Work Choices – Employers with less than one hundred employees are exempt from the operation of unfair dismissal laws (they are, however, still subject to provision such as anti-discrimination). Those with over one hundred employees are able to dismiss a worker without repercussions if the reasons include 'genuine operational reasons'. The exact scope of this exception will necessarily be defined by court actions.

In this regard, Mr James Evans observes:

> The employee could make application to the Commission to have the employer justify that the reason was genuinely operational. But the regulations in the Act are so broad in terms of defining that, that it would be very difficult, unless an employer was very arrogant or really did not have any regard to the circumstances and gave a blatant reason, it would be very difficult to prove that the claimed operational circumstances were not exactly that.[32]
>
> There are several other examples that have come our way of employees who have simply been told, 'It's not you or your fault, it's just for operational purposes'. Employers have been clearly become aware or advised that using the excuse of operational reasons is one that gets them off the hook, so to speak. Quite often the employer, when he says that, doesn't need to have recourse to that reason because they have fewer than 100 employees, but it has become a little bit of folklore, if you like, that if you throw that at the employee it doesn't matter - it's a catch-all, there is no recourse, no comeback at all.[33]

Mr Simon Cocker laments this change:

> The Act removes the Australian Industrial Relations Commission's general powers to prevent and settle interstate industrial disputes by conciliation and arbitration. This has been a fundamental of industrial relations for 100

[32] Transcript 7/12/ 2006, p.32
[33] Transcript 7/12/ 2006, p.33

> years, where we have had an independent umpire where we could go and have disputes heard and settled, normally by conciliation but where necessary by arbitration. That facility has quite simply been taken away. We have had the very effective, efficient Tasmanian commission doing the same job but they are now locked out. Wherever the employee involved is employed by a trading or financial corporation, they can't take their dispute to the Tasmanian commission.[34]
>
> If the employer has fewer than 100 employees, they have nowhere to go. The whole jurisdiction has simply been wiped. If it was more than 100, they would have an avenue but the employer simply needs to say, 'This dismissal is for operational reasons'. It is then beholden on the employee to prove otherwise. The definition of what constitutes 'operational reasons' has been very broad - it is big enough to drive a truck through in reality. So for under 100 employees it has gone completely and above 100 it is severely limited… There is an area of common law that deals with this stuff but I am not familiar with it and not competent to give you advice on it. It may be that they would have that avenue but again that is very expensive.[35]

The majority of submissions received from private individuals, and a number of the case studies presented by Organisations referred to workers being dismissed and having no recourse as their employers had fewer than one hundred employees.

A number of case studies can be presented in this regard.

> **Case Study 1**
> An employer had a disagreement with an employee of 10 years standing, without any consultation, demoted the employee two levels in the award classification scale. The employee was left in the situation of either accepting the situation or resigning.
>
> Previously these actions could have been challenged in the Australian Industrial Relations Commission. The employee and the employer were covered by a Federal award so Work Choices prevented application once it came into being. Section 242(3) of the Act prescribed that a demotion is not a termination if the employee remained in employment so the employee could not access the commission to argue the fairness of that action. If an employee resigns, section 243 also precludes application

[34] Transcript 7/12/ 2006, p.11
[35] Transcript 7/12/ 2006, p.13

against an employer with fewer than 100 employees which was the case in this example.[36]

Case Study 2
An employee's ex-partner entered her workplace and verbally abused her. The employer terminated the employee on the basis of, 'I don't want that sort of thing happening here'. Because the employer had fewer than 100 employees she had no recourse. [37]

Case Study 3
An employee of several years standing was dismissed to allow the employer to reorganise the workplace. The employee alleges this was done to benefit another employee who had just commenced a relationship with the employer. As there were fewer than 100 employees involved, there was no redress for the employee.[38]

Case Study 4
An employee presented for work after taking annual leave, and she found a note on an e-mail that said, 'Subject: termination of employee, bringing in a hired gun'. She was told she was going to be cut back from five days a week to two days a week.

Her employer later reprimanded her over an alleged argument with a colleague and terminated her employment.

Before Work Choices, this employee could have brought an action for unfair dismissal.[39]

Case Study 5
Ms Debbie Hyland and Ms Louise Bruce, two highly regarded hotel employees with many years of experience, informed the Committee that when the ownership of their workplace changed the new employer introduced individual workplace agreements for casual employees and threatened to cut the work hours of workers who did not sign an AWA. Upon refusing to sign an AWA allegations of misconduct were made against Ms Hyland and Ms Bruce, and both were subsequently dismissed. Federal Court action was initiated and 12 months later, the employer was found to have been in breach of the Work Choices legislation. This is a small consolation for these workers who lost their jobs and had their lives turned upside-down. If not for Work Choices this situation would not have arisen in the first place.

[36] Transcript 7/12/ 2006 (James Evans), p.32
[37] Transcript 7/12/ 2006 (James Evans), p.32
[38] Transcript 7/12/ 2006 (James Evans), p.32
[39] Transcript 7/12/ 2006 (White), p.52

There is concern that unscrupulous employers are using Work Choices to avoid their obligations to workers. Mr James Evans, Director Industrial Relations provided the following information:

> I can advise the Committee that we have had examples of employers, just prior to the onset of Work Choices delaying terminations until after Work Choices commenced, to avoid redundancy payments. There have been at least two instances in the week or two weeks prior to the legislation coming on line on 27 March this year, where employers have rung up seeking advice and essentially indicating that, 'Work Choices allows me to terminate an employee without giving them any reason and without having to worry about getting hauled off to the Commission in a couple of weeks time.[40]

2.4 Relationship with 'Welfare to Work' provisions

A number of Organisations that provided submissions were concerned about the nexus between the Work Choices legislation and the Federal Government's new Welfare to Work provisions. Centrelink statistics from October 2006 show that there are approximately 24,000 Tasmanians in receipt of the disability support pension. Recent changes to disability pensions have meant that more people with a disability are now required to look for work. There are a number of requirements job seekers must meet and when offered work are obliged to take it, regardless of the pay and conditions.

Failure to comply with requirements may result in hefty penalties such as withdrawal of pension for up to eight weeks. Concern was raised that already vulnerable people may face exploitation under Work Choices.

Rev. Dixon explained:

> One point I wanted to put more emphasis on is the assumption about power and the assumption that there is an equal playing field. I work with and care for people who are incredibly powerless and the basic assumption seems to be in the Work Choices Act that people come to the table with their employer with the same level of power and the same ability to negotiate. When you have a chronic mental illness, it is hard to negotiate the bus trip, let alone negotiate a fair work agreement. So I would like to tackle

[40] Transcript 7/12/ 2006, p.32

> this terrible assumption that in this world there is an equal playing field when there is clearly not.[41]
>
> We feel that the Work Choices act is being looked at in isolation to the Welfare to Work policy. In fact, we believe the two go hand-in-hand and that cannot be talked about in isolation.[42]
>
> Recipients must comply with conditions set by Centrelink, such as attending interviews and assessments. If you miss three such appointments, you may lose your payments for eight weeks - this is commonly known as the three strikes - or if you receive an unfavourable employer separation certificate you may also lose your payment but, in this case, for one strike and this is the part where we see the deep connection between the Work Choices and Welfare to Work. The *Australian* newspaper reports that 60 per cent of the social security recipients have lost their payments for this reason - that is the first strike, the unfavourable employer separation certificate. The *Australian* has also recently reported that due to this policy, of the 7 500 people who have lost payments in the past nine months, only 500 people have been deemed vulnerable and therefore receive financial case management assistance to help them with living expenses, so that is 500 of the 7 500. The criteria for receiving such assistance are very tight.[43]

Rev. Dixon also expressed concern that the 'safety net' was being removed and many more vulnerable people may now 'fall through the cracks.' He explained:

> I would have less concern about Work Choices if the Welfare to Work policy had not been changed. There was the sense of a safety net. My grave concern was that at the same time, in parallel, there was a change to the welfare system. Our big concern is that the safety net has gone if this forces people out.[44]

Rev. Dixon described a 'revolving door' between Welfare to Work and Work Choices, where people are being forced to take jobs they are either not skilled for or that are incompatible with family life (e.g shift work for a primary carer). When these people leave their unsuitable employment they are penalised by Centrelink as when you leave a

[41] Transcript 26/04/2007, p.13
[42] Transcript 26/04/2007, p.3
[43] Transcript 26/04/2007, p.4
[44] Transcript 26/04/2007, p.11

job you are not entitled to receive any financial support for eight weeks. He describes the present system:

> We have a punitive system that is based on an assumption that we are punishing people because it is their fault that they are unemployed, not a system that understands that we are going to have unemployment and therefore we need to support people and train them back into a workplace environment. It has really shifted gear. There are a heck of a lot of sticks and not a lot of carrots for people and the concern in that is the cost on families and on children of forcing people into work environments that are not sustainable for them and also not life-giving. It is forcing people into a context where their employment might be severed, due to no fault of their own, but due to the unsustainability of it all, and then having no welfare assistance at the other end. It is a grave concern.[45]

2.5 Greenfield Agreements

The nature of 'greenfield agreements' in Australian industrial relations regulation is that they are made for start-up operations (greenfield) before employees are employed. In the past, they were made between the employer and a single union, which claimed sole coverage of the employees to be employed at the new site. New 'greenfield' agreements will be made unilaterally by the employer and employees must accept the conditions proposed.

An employer greenfield agreement overrides employment conditions in state or territory laws, if the agreement mentions those conditions. However, it cannot override state or territory laws which cover occupational health and safety, workers' compensation or anti-discrimination provisions.

2.6 No "Choice" in Work Choices

A central theme in a large number of submissions was the actual lack of "choice" in Work Choices. Employees are being offered employment on a take it or leave it basis, which, as outlined above, many have no choice but to accept regardless of substandard conditions. The Committee noted that employees were now being forced to sign agreements which had previously been struck down under the old 'no disadvantage' test. The CFMEU provided a number of examples in their submission to the Committee:

> My supervisor… told me if I didn't sign the AWA my hours would reduce from a 12-hour shift to eight hours and no overtime would be paid. He said he would use only

[45] Transcript 26/04/2007, p.11

> blokes who sign AWAs. He gave me an example of a bloke … who hadn't signed an AWA and he wouldn't get any more work.' That is a fact; that bloke did not get any more work. 'If we didn't sign an AWA, its costs would increase from $100 000 to $140 000 per month. He said he won't pay that.[46]
>
> I was told that if I didn't sign an AWA I would not be working 12-hour shifts by … management… This can be witnessed by other persons.[47]
>
> [I was] informed… that if I did not sign an AWA my work… would reduce or disappear. I felt I had no option and that I had to sign the AWA.[48]

Other examples provided by workplace Union Organiser Mr Marshall Reeves include:

An employee who, on refusing to sign an AWA, was put on 'punishment' which involved being taken away from his normal work and put in a shed. Instead of the usual 9, 10 or 11 hours of work per day, he was restricted to eight hours a day, just sweeping up the shed. This continued for three days. Once he signed the AWA his duties returned to normal.[49]

Another employer called all employees in to a meeting and said if things go wrong he could close up shop any day and then reopen somewhere else. The employees in question believed this to be a threat so that they sign the AWA which was on offer.[50]

2.7 Introduction of the 'fairness test'

In what could be argued to be the Federal Government's response to the growing public perception that the new Work Choices legislation is unfair and will negatively impact a significant number of Australian workers, coupled with concern at the Government's removal of the 'no disadvantage test', effective from 7 May 2007, a 'fairness test' has been introduced which applies to certain collective agreements and Australian Workplace Agreements. In addition, two new statutory agencies, the Workplace Authority and the Workplace Ombudsman, have been established.

Information published by the Workplace Authority states that the Fairness Test ensures that employees receive fair compensation if their Australian workplace agreement or collective agreement removes or modifies protected conditions, such as penalty rates and

[46] Transcript 26/04/2007, p.16
[47] Transcript 26/04/2007, p.16
[48] Transcript 26/04/2007, p.17
[49] Transcript 26/04/2007, p.38
[50] Transcript 26/04/2007, p.40

overtime loadings. It is important to note that it is only 'protected conditions' which are taken into consideration, if, for example, a worker was entitled to certain redundancy payments or loadings (not 'protected conditions'), then these could be removed without recourse.

It should also be noted that many of the rights lost under Work Choices are not easily quantifiable. Examples would include notice provisions for roster changes, rights covering part time work and entitlements to time off after working extended hours. The fairness test is simply unable to compensate for these losses. Unplanned and unfettered work hours will have a damaging impact on both individuals and families.

The fairness test applies where the employee(s) covered by the agreement:

- were subject to a Preserved State Agreement or a Notional Agreement Preserving a State Award immediately before the workplace agreement started operating;
- perform the kind of work specified in a Federal award that binds the employer;
- work in industries or jobs where a Federal award usually applies; or
- work in industries or jobs where, prior to 27 March 2006, a State award would have applied.

The Fairness Test only applies to Australian Workplace Agreements for people earning less than $75,000 per year.

It should be noted that the fairness test does not apply to AWAs signed before 7 May 2007, these employees will have to endure any unfair provisions in their workplace agreement until the agreement expires, which in some cases may be up to five years.

2.8 Tasmanian Response to Federal Work Choices Bill

To counter the effects of the Federal Government's Work Choices legislation, the Tasmanian Parliament has passed the *Industrial Relations Amendment (Fair Conditions) Act 2005*. This Act establishes a safety net of fair minimum conditions of employment in relation to:

- Minimum wage;
- Maximum ordinary working hours;
- Meal breaks;
- Annual leave;
- Personal leave;
- Sick leave;
- Parental leave;
- Payment of wage whilst engaged in jury service;
- Redundancy; and
- Parental leave.

The legislation also provides that an industrial agreement or enterprise agreement cannot disadvantage an employee by reducing the overall terms and conditions of employment compared with the award or agreement that would otherwise apply. It is important to note that these provisions only apply to workers who are not employed by a federal system employer.

Chapter 3. High Court Challenge to the validity of Work Choices

In May 2006 the governments of New South Wales, Western Australia, South Australia, Queensland and Victoria, along with the Australian Workers Union and Unions New South Wales commenced a High Court challenge to the validity of the Workplace Relations Amendment (Work Choices) Act 2005. The Attorneys-General of Tasmania, the Northern Territory and the Australian Capital Territory intervened in the case but were not parties.[51]

The substance of the challenge was twofold; firstly, that s.51(xxxv) of the Australian Constitution makes it clear that industrial relations is an area in which powers are shared between the Commonwealth and the States; and, secondly, that the use of the s.51(xx) corporations power as the basis for the *Work Choices* legislation is an extension of the power beyond that which was intended.

The plaintiffs argued that Parliament's power to make laws with respect to foreign, trading and financial corporations was limited in one or more ways. They submitted that section 51(xx) was limited to laws with respect to the "external relationships" of such corporations. The external relationships of corporations, and the trading and financial activities of such corporations, were said not to include relationships between a corporation and its actual or prospective employees.

The plaintiffs also submitted that the meaning ambit of section 51(xx) of the Constitution was affected by the existence in the Constitution of the power under section 51(xxxv) so that Parliament has no power to legislate with respect to the relationship between a corporation and its employees except pursuant to section 51(xxxv), which gives Parliament the power to make laws for "conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State".

The High Court, by a majority of five to two, rejected the challenge.

Parliament House
Hobart
31 October 2007

Mr Graeme Sturges MHA
CHAIRMAN

[51] New South Wales v Commonwealth of Australia; Western Australia v Commonwealth of Australia [2006] HCA 52 (14 November 2006)

APPENDIX 1 - SUBMISSIONS RECEIVED

1. Miss Emma Venn, private submission.

2. ***CONFIDENTIAL SUBMISSION***

3. Ms Debby Hyland, private submission dated 7 November, 2006

4. Mrs. Michelle Sykes, private submission dated 16 November, 2006

5. Ms Rose Martin – private submission dated 16 November, 2006

6. Mr. Peter Fraser, Tasmanian Plumbers Union Organiser – by email: pf.cepu@bigpond.net.au
   Submission dated 10 November, 2006

7. Mr. Bill White, Assistant Secretary, CFMEU
   Submission dated 17 November, 2006

8. Mat Rowell, Chief Executive Officer, Tasmanian Council of Social Service (TasCOSS), PO Box 1126, Sandy Bay 7006
   Submission dated 21 November, 2006

9. Mrs. Maxine Evans, private submission dated 27 November, 2006

10. Mr. Simon Cocker, Secretary, Unions Tasmania, 279 Elizabeth Street, North Hobart 7000 - Submission tabled at hearings on 7 December, 2006

11. Mr. Peter Fraser, Tasmanian Plumbers Union
    Submission tabled at hearings on 7 December, 2006

12. Mr. Vance Green, private submission received by fax on 8 March, 2007

13. Mr. David Szymczak, General Manager, Norvac Pty. Ltd.,
    PO Box 287, Moonah 7009
    Submission dated 1 March, 2007

14. John Harrower, Bishop of Tasmania, Anglican Diocese of Tasmania, GPO Box 748, Hobart 7001
    Submission dated 18 April, 2007

15. Dr. Mark Zirnsak, Director, Justice and International Mission Unit, Commission for Mission, Uniting Church in Australia, Synod of Victoria and

Tasmania, 130 Little Collins Street, Melbourne 3000 - Submission dated 26 April, 2007

16. Unions Tasmania Women's Committee submission dated 4 July 2007.

17 Ms Suzanne Lipscombe, Private Submission dated 5 September 2007.

APPENDIX 2 - DOCUMENTS RECEIVED AND TAKEN INTO EVIDENCE

1. Work Choices legislation: A chronology and overview of workplace relations reforms: Alison Harper: Paper Number: 221/2006-07, 31 October, 2006, Research Co-ordinator, Dr. Bryan Stait,Tasmanian Parliamentary Library – Parliamentary Research Service Paper

2. Work Choices in Overview: Big Bang or Slow Burn? Andrew Stewart, School of Law, Flinders University, GPO Box 2100, Adelaide, SA 5001. Special Edition: Work Choices: The Economic and Labour Relations Review.

3. The Impact of Work Choices in Tasmania: Professor Andrew Stewart, School of Law, Flinders University, GPO Box 2100, Adelaide, SA 5001.

4. Letter from Unions Tasmania addressed to the Manager of Office of Workplace Services.

5. Norvac Pty. Ltd. - Employer Greenfields Agreement 2006 Tasmania.

6. AWA extract - Huon Mushrooms - noting hours of work.

7. Letter from Mr. Bill White, Assistant Secretary, CFMEU to Mr. Graeme Sturges, Chair, Work Choices Legislation Committee, dated 4 December, 2006

8. Package of examples of Australian Workplace Agreements

9. Confidential submission

10. Tasmanian Industrial Commission Industrial Relations Act 1984: Alice Louise Bruce and Mornington Inn Pty Ltd. dated 20 September 2006

11. 'Lets Fix It Work Place Agreement 2003' (with award entitlements comparison and letter dated 6/2/2004).

12. Tasmanian Industrial Relations Commission – Decision (T11802 of 2004) and (T11848 of 2004)

13. Tasmanian Industrial Relations Commission – Decision Re: The Tesa Group Pty. Ltd. and Skilled Group Limited.

14. Skilled Group – Zinifex Hobart Smelter – Australian Workplace Agreement.

15. Letter to Employment Advocate dated 29 November, 2005.

16. AWA complaint forms.

17. Memo to Skilled Production Employees as Zinifex.

18. New Skilled Group Ltd – Zinifex Hobart Smelter - AWA

19. Extract from Judicial Review Act 2000

20. Plastic Fabrications Pty. Ltd. – letter of employment.

21. Injured Worker's Report

22. (a)Vocational Rehabilitation Progress Report.

    (b)Centrelink – Employment Separation Certificate.

23. Application for Industrial Relations Commission hearing – re: Redundancy entitlement.

24. Application for Industrial Relations Commission hearing – re: Unfair termination of employment.

25. Zinifex Limited – Discipline Report – Re: Mr Van de Kamp.

26. Workers Compensation Medical Certificate.

27. Medical Certificate – dated 23 June, 2004.

28. Letter from Ogilvie Jennings dated 31 July, 2006.
29. Letters– Re: Mr Van De Kamp.
30. Application for Hearing – Re: Section 29(1) *Industrial Relations Act 1984*
31. Letters– Minter Ellison dated 10 November, 2006 and 17 November, 2006.
32. Transcript of proceedings – Industrial Relations Commission 15 November, 2006.

33. Letters – CFMEU to Mr Mathew Double
34. Zinifex Hobart Smelter – Enterprise Agreement 2004.
35. Marquis Hotel Motel – Australian Workplace Agreement 2006.

36. Industrial Relations Commission - Decision (T12546 of 2006)

37. Statement by Mr Jamie Brooks – re: signing AWA.
38. Transcript of proceedings – Industrial Relations Commission 30 November, 2005.

39. CFMEU comparison of worker entitlements pre/post AWAs Re: Crossroads Civil Contracting.

40. Crossroads Civil Contracting – AWA 2005.

41. CFMEU letter to Crossroads Civil Contracting 14 April, 2005.

42. Crossroads letter to Office of Anti-Discrimination Commissioner, 16 April, 2007.

43. Industrial Relations Commission Decision (T12546 of 2006) dated 27 September, 2006.

44. Roundtable Notes: National Foundation of Australian Women (NFAW), Women and WorkChoices Round Table held at Women Tasmania 16 March, 2007, Hobart.

45. Report 39, November 2006, New South Wales Legislative Council Standing Committee on Social Issues: Impact of Work Choices Legislation.

46 Lowering the Standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements, Workplace Research Centre, University of Sydney, Sept. 2007.

47 Report of the Senate – Employment, Workplace Relations and Education Legislation Committee – Provisions of the Workplace Relations Amendment (Work Choices) Bill 2005 – November 2005.

APPENDIX 3 – WITNESS LIST

Professor Andrew Stewart BA, BCL (Oxford), School of Law, Flinders University. (Teleconference)

Mr. Simon Cocker, Secretary, Unions Tasmania

Mr. David Polley

Mr. Leigh Jones

Mr. Jim Evans, Director of Industrial Relations, Division of Industrial Relations and State Service Management

Mr. Luke Martin, Tasmanian Council of Social Service Inc

Mr. Tom Muller, Tasmanian Council of Social Service Inc.

Mr. Peter Fraser, Tasmanian Plumbers Union

Mr. Bill White, Assistant Secretary, Construction, Forestry, Mining, and Energy Union, Construction Division

Ms. Maxine Evans - in camera.

Ms. Debbie Hyland

Ms. Louise Bruce

Ms. Julie Pycroft, representative for former employee of Zinifex

Mr. Marshall Reeves, Union Organiser at Zinifex

Mr. Jeff Wrigley, former Plastic Fabrications employee

Mr. Michael Van De Kamp, Zinifex employee

Reverend Rosalind Terry, Chair of the Presbytery of Tasmania, Uniting Church of Australia

Reverend Natalie Dixon, Youth Ministry Facilitator, Presbytery of Tasmania. Uniting Church of Australia

Mr. Anthony McMullen, Social Justice Officer, Justice and International Mission Unit, Uniting Church of Australia

APPENDIX 4 - MINUTES OF COMMITTEE

MINUTES OF MEETING
TUESDAY 10 OCTOBER 2006

At 2.05 pm o'clock the Committee met in Committee Room 2, Parliament House Hobart.

Members Present:

Mr *Sturges* (Chair)
Ms *Singh*
Mr *McKim*

Apology Ms *O'Byrne*

Conduct of the Inquiry *Resolved*; That unless otherwise determined by the Committee, the hearing of evidence will be in public.

Research Officers *Resolved*; That Research Officers, Dr Bryan Stait and Ms Alison Harper be admitted to the proceedings of the Committee whether in public or private session.

Advertisement *Resolved*; That the draft advertisement for public submissions, as amended, be approved for publication in a prominent position in the three major Tasmanian newspapers on the following dates: Saturday 14th , Wednesday 18th , Saturday 21st and Wednesday 24th October 2006.

Hearings The Committee discussed alternate dates for hearings and witnesses that should be invited to make submissions.

Resolved; That the Committee write to the following peak bodies and stakeholder:

- Minister for Workplace Relations;
- Federal Minister for Employment and Workplace Relations;
- Tasmanian Industrial Relations Commission;
- Office of Employment Advocate;
- Workplace Standards Tasmania;
- Tasmanian Chamber of Commerce and Industry;
- Tasmanian Council of Social Service;
- Women Tasmania;
- Unions Tasmania; and
- Tasmanian Small Business Council,

and invite them to appear before the Committee and provide

written submissions.

Expert witness *Resolved*; That the Committee invite an independent expert in industrial relations law to brief the Committee on issues relating to Work Choices Legislation, prior to the commencement of public hearings.

Background Paper *Resolved*; That the Chair prove a background paper for Members outlining recent changes to industrial relations legislation and the development of Work Choices.

At 3.30 pm o'clock the Committee was adjourned until Thursday 9 November 2006.

MINUTES OF MEETING
THURSDAY 9 NOVEMBER 2006

At 11.30 am o'clock the Committee met in Committee Room 2, Parliament House Hobart.

Members Present:

Mr *Sturges* (Chair)
Ms *Butler*
Mr *McKim*

Apology Ms *Singh*

Briefing from Industrial Relations Law expert The Committee met for a briefing on matters relating to 'work choices' legislation from Professor Andrew Stewart BA, BCL (Oxford), School of Law, Flinders University.

The meeting was conducted via teleconference.

The witness withdrew.

The Committee deliberated.

Minutes The minutes of the meeting held on Tuesday 10 October 2006 were circulated, read and confirmed as a true and accurate record.

Next meeting The Committee resolved to meet on Thursday 7 December 2006 for hearing of evidence from invited witnesses.

At 1.00 pm o'clock the Committee was adjourned until Thursday 7 December 2006.

MINUTES OF MEETING
THURSDAY 7 DECEMBER 2006

At 11.04 am o'clock the Committee met in Committee Room 2, Parliament House Hobart.

Members Present:

Mr *Sturges* (Chair)
Ms *Butler*
Mr *McKim*
Ms *Singh*

Public Hearings The Committee met for to hear evidence from the following witnesses:

Witnesses Mr Simon Cocker, Secretary, Unions Tasmania, Mr David Polley and Mr Leigh Jones were called. The witnesses made the Statutory Declaration and were examined by the Committee in public.

Paper Mr Cocker tabled the following papers

- Unions Tasmania Submission – 'Key Aspects'
- Letter from Unions Tasmania addressed to the Manager of Office of Workplace Services
- Norvac Pty Ltd – Employer Greenfields Agreement 2006 Tasmania.
- AWA extract – Huon Mushrooms – noting hours of work.

The witnesses withdrew.

Suspension At 12.40 pm the meeting was suspended until 1.10 pm.

Witness Mr Jim Evans, Director of Industrial Relations, Division of Industrial Relations and State Service Management, was called. The witness made the Statutory Declaration and was examined by the Committee in public.

The witness withdrew.

The Committee deliberated.

Resolved, that:

- employers referred to in evidence be invited to appear before the Committee.
- That the Committee re-advertise for public submissions in February 2007.
- That the next meeting of the Committee be scheduled for 6 February 2007.

Witnesses Mr Luke Martin and Mr Tom Muller from the Tasmanian Council of Social Service Inc., were called. The witnesses made the Statutory Declaration and were examined by the Committee in public.

The witnesses withdrew.

Witness Mr Peter Fraser, Tasmanian Plumbers Union was called. The witness made the Statutory Declaration and was examined by the Committee in public.

Paper Mr Fraser tabled the following paper:

- Copy of submission

The witness withdrew.

Witness Mr White, Assistant Secretary, Construction, Forestry, Mining, and Energy Union, Construction Division was called. The witness made the Statutory Declaration and was examined by the Committee in public.

Papers

Mr White tabled the following papers:

- Letter, dated 4 December 2006 from Mr White to Mr Sturges – in relation to Macquarie Builders Pty Ltd.
- Package of examples of Australian Workplace Agreements.

The witness withdrew.

Witness Ms Maxine Evans was called. The witness made the Statutory Declaration and was examined by the Committee in public and in camera.

Paper The witness tabled the following paper:

- Jet Personnel & Recruitment – Employment Agreement

The witness withdrew.

Suspension At 4.10 pm the meeting was suspended until 4.30 pm.

Witnesses Ms Debbie Hyland and Ms Louise Bruce were called. The witnesses made the Statutory Declaration and were examined by the Committee in public.

Paper Ms Bruce tabled the following paper:

- Tasmanian Industrial Relations Commission Order.

The witnesses withdrew.

At 5.05 pm o'clock the Committee was adjourned until Tuesday 6 February 2007.

MINUTES OF MEETING
TUESDAY 13 MARCH 2007

At 1.00 pm o'clock the Committee met in Committee Room 2, Parliament House Hobart.

Members Present:

Mr *Sturges* (Chair)
Ms *Butler*
Mr *McKim*
Ms *Singh*

Advertisements The Committee discussed the need for further advertising to alert the public to the resumption of the inquiry and to seek further submissions.

Resolved, That sufficient advertising had been conducted and that no further advertisements were required at present.

Witnesses Members discussed the request from Mr Bill White, CFMEU to present further evidence before the Committee and other possible parties that may wish to contribute to this inquiry.

Resolved, That the Committee invite Mr White to re-appear before the Committee.

Resolved, That the Committee write to the leading churches in Tasmania and seek their submissions.

Report Members discussed the time-line for reporting of the Committee's findings.

Resolved, That the preparation of a draft report be commenced.

Minutes — The minutes of the meeting held on Thursday 7 December 2006, were circulated, read and confirmed as a true and accurate record.

At 1.36 pm o'clock the Committee was adjourned until Thursday 26 April 2007.

MINUTES OF MEETING
THURSDAY 26 APRIL 2007

At 10.00 am o'clock the Committee met in Committee Room 2, Parliament House Hobart.

Members Present:

Mr *Sturges* (Chair)
Ms *Butler*
Mr *McKim*
Ms *Singh*

Witnesses — The Committee met to hear evidence from the following witnesses:

Mr Bill White from the CFMEU was recalled and re-examined by the Committee in public.

Ms Julie Pycroft, representative for former employee of Zinifex and Mr Marshall Reeves, Union Organiser at Zinifex were called. The witnesses made the Statutory Declaration and were examined by the Committee in public.

Ms Pycroft withdrew.

Suspension — Suspension of sitting 10.40 am. – 10.45 am.

The Committee resumed - hearing further evidence from Mr White.

Paper — Mr White tabled the following papers:

- 'Lets Fix It Work Place Agreement 2003' (with award entitlements comparison and letter dated 6/2/2004).
- Tasmanian Industrial Relations Commission – Decision (T11802 of 2004) and (T11848 of 2004)

- Tasmanian Industrial Relations Commission – Decision Re: The Tesa Group Pty. Ltd. and Skilled Group Limited.
- Skilled Group – Zinifex Hobart Smelter – Australian Workplace Agreement.
- Letter to Employment Advocate dated 29 November, 2005.
- AWA complaint forms.
- Memo to Skilled Production Employees as Zinifex.
- New Skilled Group Ltd – Zinifex Hobart Smelter – AWA.
- Extract from the *Judicial Review Act* 2000.

Suspension Suspension of sitting 11.30 am. until 11.46 am.

The Committee resumed its hearing.

Witness Mr Jeff Wrigley, former Plastic Fabrications employee, was called. The witness made the Statutory Declaration and was examined by the Committee in public.

Paper The following papers was tabled by Mr White:

- Plastic Fabrications Pty. Ltd. – letter of employment.
- Injured Worker's Report
- Vocational Rehabilitation Progress Report.
- Centrelink – Employment Separation Certificate.
- Application for Industrial Relations Commission hearing – re: Redundancy entitlement.
- Application for Industrial Relations Commission hearing – re: Unfair termination of employment.

Mr Wrigley withdrew.

Witness Mr Michael Van De Kamp, Zinifex employee was called. The witness made the Statutory Declaration and was examined by the Committee in public.

Paper The following papers was tabled by Mr White:

- Zinifex Limited – Discipline Report – Re: Mr Van de Kamp.
- Workers Compensation Medical Certificate.
- Medical Certificate – dated 23 June, 2004.
- Letter from Ogilvie Jennings dated 31 July, 2006.
- Letters– Re: Mr Van De Kamp.
- Application for Hearing – Re: Section 29(1) *Industrial Relations Act 1984*
- Letters– Minter Ellison dated 10 November, 2006 and

17 November, 2006.

- Transcript of proceedings – Industrial Relations Commission 15 November 2006.
- Letters – CFMEU to Mr Mathew Double
- Zinifex Hobart Smelter – Enterprise Agreement 2004.
- Marquis Hotel Motel – Australian Workplace Agreement 2006.

Mr Van De Kamp withdrew.

The Committee continued its examination of Mr White.

Papers

Mr White tabled the following papers:

- Industrial Relations Commission - Decision (T12546 of 2006)
- Statement by Mr Jamie Brooks – re: signing AWA.
- Transcript of proceedings – Industrial Relations Commission 30 November 2005.
- CFMEU comparison of worker entitlements pre/post AWAs Re: Crossroads Civil Contracting.
- Crossroads Civil Contracting – AWA 2005.
- CFMEU letter to Crossroads Civil Contracting 14 April, 2005.
- Crossroads letter to Office of Anti-Discrimination Commissioner, 16 April, 2007.
- Industrial Relations Commission Decision (T12546 of 2006) dated 27 September, 2006.

Mr White withdrew.

Suspension

Suspension of sitting 1.00 pm until 2.00 pm.

Witnesses

Reverend Rosalind Terry, Chair of the Presbytery of Tasmania, Reverend Natalie Dixon, Youth Ministry Facilitator, Presbytery of Tasmania and Mr Anthony McMullen, Social Justice Officer, Justice and International Mission Unit, Uniting Church of Australia were called. The witnesses made the Statutory Declaration and were examined by the Committee in public.

The witnesses tabled a copy of their submission.

Paper

The witnesses withdrew.

Minutes

The minutes of the meeting held on Tuesday 13 March, 2007, were circulated, read and confirmed as a true and accurate record.

Further evidence *Resolved*; That the Committee write to Unions Tasmanian and seek further information on the effect of the Work Choices Legislation on women in the workforce.

At 3.05 pm o'clock the Committee was adjourned *sine die.*

MINUTES OF MEETING
MONDAY 22 OCTOBER 2007

At 2.00 Pm o'clock the Committee met in Committee Room 3, Parliament House Hobart.

Members Present:

Mr *Sturges* (Chair)
Ms *Butler*
Mr *McKim*
Ms *Singh*

Minutes The minutes of the meeting held on Thursday 26 April 2007 were circulated, read and confirmed as a true and accurate record.

Draft Report Members considered a draft Report and noted some corrections that were required and made suggestions for more information on certain aspects.

The recommendations of the Committee were discussed and Members agreed to give further consideration to at next week's meeting.

Resolved, That an amended draft be prepared for the consideration of Members at the next meeting of the Committee.

Next meeting Members agreed to meet on Monday 29 October next.

At 3.00 pm O'clock the meeting was adjourned until Monday 29 October 2007.

MINUTES OF MEETING
MONDAY 29 OCTOBER 2007

At 2.20 Pm o'clock the Committee met in Committee Room 3, Parliament House Hobart.

Members Present:

Mr *Sturges* (Chair)
Mr *McKim*
Ms *Singh*

Apology Ms *Butler*

Minutes The minutes of the meeting held on Monday 22 October 2007 were circulated, read and confirmed as a true and accurate record.

Draft Report Members considered the amendments to the draft Report.

Members agreed on the final draft of the recommendations.

Evidence *Resolved,* That the submissions and documents as listed in appendix 1 and 2 of the draft report be taken into evidence.

Report *Resolved,* That the Committee adopt the draft Report as amended as the Report of the Committee.

Minutes *Resolved,* That the minutes of this meeting be considered as confirmed by the Committee once they are circulated and no objection is raised.

At 3.10 pm O'clock the meeting was adjourned.