

INQUIRY INTO IMPACT OF COMMONWEALTH WORKCHOICES LEGISLATION

Organisation: Catholic Commission for Employment Relations
Name: Ms Korrily McDermott
Position: Employment Relations Advisor
Telephone:
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Theme:

Summary



**Catholic Commission for Employment
Relations**

*leadership through service to strengthen work
relationships*

**Submission to the
Standing Commission on Social Issues
in the
Inquiry into the Impact of Commonwealth
WorkChoices Legislation on the People of
NSW
by the
Catholic Commission for Employment
Relations**

6 June 2006

OVERVIEW AND SUMMARY

1. This submission is made by the Catholic Commission for Employment Relations (CCER). CCER is an organisation established by the Bishops of New South Wales (NSW) and the Australian Capital Territory (ACT) to provide Catholic Church employers with employment relations advice, research and advocacy within the context of Catholic Social Teaching. CCER also acts as a spokesperson for the Catholic Church in NSW in public policy debates relating to employment relations.
2. This submission responds to the NSW Parliamentary Inquiry into WorkChoices. This Inquiry was convened by the NSW Parliament in order to consider the impact of the *Workplace Relations Amendment (WorkChoices) Act 2005 (WorkChoices)* on the People of New South Wales.

CCER

3. CCER draws its comments for this submission based on the principles of Catholic Social Teaching. It also draws on the collective experience of the Catholic Church as a provider of services for those most marginalised in our society¹, and one of the largest non-government employers in NSW².
4. Catholic Social Teaching begins with an understanding that all people have an innate and inviolable dignity, flowing from our identity as being made in the image and likeness of God. The Church understands that work is a good thing for the human person, but teaches that the worker should not be reduced to a commodity nor should their value be seen solely in relation to his or her economic contribution.
5. The Church also recognises that how we organise our society- our institutions, our laws and our public policy, directly affects the capacity for human dignity to be affirmed and expressed. As such, the Church teaches that all laws and social institutions must be ordered towards the needs of the person, and judged according to whether they threaten or enhance human dignity.

THE SUBMISSION

6. In commenting about the impact of WorkChoices on the people of NSW, this submission will consider the changes affected under WorkChoices, and whether or not these changes create the social conditions in which human dignity can be affirmed and expressed.

¹ An important part of the Church's ministry is providing practical assistance to those most vulnerable in our community. The Catholic Church in NSW, through its various agencies, is a substantial provider of social welfare services directed towards meeting the physical, emotional and social needs of disadvantaged people, including the unemployed, refugees, indigenous communities, new migrants, the disabled, the underemployed and the poor. In providing these services, the Church recognises that society must also challenge the systems and structures which perpetuate poverty and injustice.

² The Catholic Church in NSW is a major employer. Through its various agencies, the Church employs a significant proportion of employees in the areas of diocesan and parish administration, pastoral care, education (primary, secondary and tertiary), community services and health and aged care. In its employing capacity, the Catholic Church is guided by its own Social Teachings.

7. Although the concept of human dignity appears esoteric, the Church understands that within the world of work and employment, the expression of human dignity is contingent (at a minimum) upon the fulfilment of the following basic rights:
- The right to employment (i.e. people seeking work are able to find suitable employment);
 - The right to a just wage (i.e. workers are provided with a wage which will enable them to support themselves and their family in modest comfort, to obtain decent housing and to educate their children, and a wage which recognises their contributions);
 - The right to fair working conditions (i.e. workers have working conditions which protect their health, safety and well-being, and that their working hours and conditions enable them to attend to personal, family and social responsibilities, as well as enjoy leisure time);
 - The right to security of employment (i.e. workers are protected from unwarranted and arbitrary dismissals, including when they are injured); and
 - The right to join a union and to strike as a last resort (i.e. workers have the right to cooperate and participate in their own employment and to act collectively in order to advance their own interests, and, in extreme circumstances, withdraw their labour).

A good framework for employment relations is one which ensures that these basic rights are affirmed and upheld.

THE STRUCTURE OF OUR SUBMISSION

8. CCER's submission will be structured in such a way that WorkChoices will be evaluated by reference to how well it enhances or diminishes these basic rights, and in turn, whether it meets the basic tenets of an employment relations system capable of affirming human dignity. Whilst CCER is not in a position to address all of the terms of reference in this inquiry³, it is anticipated that this framework will provide a comprehensive framework in which to consider the impact of WorkChoices on the human person. *In this way, this*

³ Unfortunately, CCER is unable to comment on all the terms of reference in this inquiry. The terms of reference of this inquiry call for a consideration of the impact of the legislation on the people of NSW with particular regard to:

- a) the ability of workers to genuinely bargain, focusing on groups such as women, youth and casual employees and the impact on wages, conditions and security of employment;
- b) the impact on rural communities;
- c) the impact on gender equity, including pay gaps;
- d) the impact on balancing work and family responsibilities;
- e) the impact on injured workers; and
- f) the impact on employers and especially small business.

submission addresses the systemic issue for consideration in this inquiry, namely the impact of WorkChoices on the people of NSW.

9. A chapter will be dedicated to considering each of the key rights of the worker as set out in paragraph 7. Specifically, the submission considers whether WorkChoices improves people's rights to find employment, be paid a just wage, to have reasonable working conditions, to have security of employment and to participate in a union.
10. In summary, CCER's submission shows that many of the changes affected under WorkChoices take away some of the basic rights of the human person, which in turn will have an adverse impact on the people of NSW. The legislation reduces people's rights at work, introduces changes which increase managerial prerogative and profitability but offer very little flexibility and choice to employees, exacerbates work-family tensions and is disproportionately detrimental to those already most marginalised in our society. The Church is especially concerned that under WorkChoices:
 - the burden of job creation is placed on those already worst off in our society;
 - the new institutions and criteria for setting wages will adversely affect the living standards of the low paid and may impact on gender equity;
 - the change to the standard required for the making of collective and individual agreements will reduce minimum conditions and will have undesirable social effects, particularly on the family;
 - job security will be reduced because of changes to unfair dismissal protection and the removal of casual conversion clauses from awards; and
 - employees rights and participation at work will be affected because of the limitation of union rights.

The Church has expressed similar concerns in the Senate Inquiry into the Workplace Relations Amendment (WorkChoices) Bill 2005⁴.

⁴ Refer to <http://www.accer.asn.au/docs/pdfs/Senate%20Submission%20IR%20Reform.pdf>

PRELIMINARY OBSERVATIONS

1. In making this submission, CCER understands that WorkChoices proposes the most comprehensive reform to the Australian industrial relations system in over a century. Because work is an enduring and important activity of the human person, it follows that changes to the regulation of work of the scale and scope proposed by WorkChoices will have an effect on workers, their families and the wider community. The State has an obligation to ensure that its policies and institutions are ordered towards the needs and dignity of the human person, and therefore it is important that the impact of legislation on people be regularly considered. To this end, CCER commends the initiative of the NSW Parliament in undertaking this inquiry.
2. As a preliminary observation, CCER notes that less than three months have passed since the commencement of WorkChoices⁵ and many of the institutions established under the legislation, including the Award Review Taskforce and the Australian Fair Pay Commission are still to undertake the most significant parts of their work. Likewise, many employers are yet to engage with the new system in light of the ongoing constitutional challenge by the States and Union movement in the High Court, and the three year transitional arrangements set out in the legislation. Some employers, including many Church employers, are still unclear of whether or not they will fall within the jurisdiction of the legislation. The inadequacy of case law on the subject of not-for-profit and religious organisations as well as the submissions of the Government during the High Court proceedings⁶ only compound this lack of certainty. For both employers and employees, there is a real sense of confusion and uncertainty, and in light of these circumstances, it may be five to ten years before it is possible to fully observe the real human cost and social impact of the legislation.
3. Nonetheless, in the short time frame since the commencement of the legislation, CCER notes that some employers have elected to introduce changes to their work practices underpinned by certain aspects of the new reforms. In a number of cases, this has meant employees in businesses with 100 employees or less have been terminated without proper processes or valid reasons, and no longer have a formal avenue for redress. Similarly, there have been reports of companies terminating existing work contracts and offering new individual agreements based which cut pay and working conditions. The media reports involving Triangle Cables⁷, Spotlight stores⁸, Cowra abattoir⁹, Cold Rock Ice creamery¹⁰ (amongst others) recognise some

⁵ The bulk of the Workplace Relations Amendment (Work Choices) Bill 2005 became operative on 27 March 2006.

⁶ The proceedings in the High Court have reinforced the fact that the application of WorkChoices to Church organisations is not clear cut. During proceedings on 9 May 2006, the Commonwealth solicitor general, Mr. David Bennett QC was asked by Justice Kirby "are Churches in Australia constitutional corporations?" In reply, Mr. Bennett noted "that was not a question to which one can give a yes/no answer"... and "it would depend on the activities of the particular body – many of the churches would have a body which engages in the activities which are closer to trading activities and the activities which are purely religious; others might not. One would have to look at the structure of the particular religious organisation and see how it was done".

⁷ This matter involved 9 long standing employees who were terminated from Triangle Cables on 28 March 2006. The company claimed that the employees did not have an avenue under unfair dismissal laws as the company only employed 97 employees.

⁸ Since the introduction of WorkChoices, Spotlight Stores, with the support of the National Retailers' Association, are offering prospective job seekers an Australian Workplace Agreements which remove overtime, penalty rates, rest breaks and leave loadings in exchange for an increase of 2 cents per hour. As these agreements comply with the Australian Fair Pay and Conditions Standard, they are lawful under WorkChoices.

⁹ Cowra Abattoir issued 29 employees with termination notices, but invited all of its sacked employees to reapply for 20 new employment contracts that involved pay cuts of up to \$180 per week and loss of current performance bonuses. Whilst the company employed 180 employees and therefore fell within the unfair dismissal jurisdiction, it sought an exemption based on the fact that the restructure was due to 'genuine operational reasons'. Following adverse media interest and the direct intervention of the Federal Government, the abattoir withdrew its proposal.

cases of injustice, but there are many other untold stories. Many Catholic welfare agencies are currently working with people recently terminated under WorkChoices. Although WorkChoices is new legislation, it is important to note that it is already having an impact on the well-being and dignity of workers, families and communities.

4. At least in the short term, there will be some parts of the legislation where we will be unable to immediately *observe* its full human impact. However, with common sense and sound research, it will be possible to *predict* the likely impact. Whilst some of these discussions may appear ad hoc and anecdotal, or may be based in general principles and therefore merely speculative, CCER insists that this should not discourage debate. CCER raises these observations to the convenors of this inquiry, on the basis these realities should be recognised, but not viewed as an impediment in attempting to undertake one of the first systematic reviews of the human impact of WorkChoices.

¹⁰ This case involved 19 year old Leonie Wong, who worked at Cold Rock Ice Creamery until she was fired for refusing to sign an AWA.

CHAPTER 1: THE RIGHT TO EMPLOYMENT

“Work is a good thing for man—a good thing for his humanity--because through work man not only transforms nature, adapting it to his own needs, but he also achieves fulfillment as a human being and indeed in a sense becomes “more a human being.”” (Laborem Exercens, On Human Work, Pope John Paul II, 1981)

Work, Unemployment and Catholic Social Teaching

1. The Church's teaching on work begins with the understanding that the human person has an innate dignity, and that human work,¹¹ in so far as it is a free and self determining act of the human person, has both a rich theological and sociological significance. Work structures our time, encourages people to cooperate and use their gifts and talents for the service of society, and provides people with opportunities to affirm their freedom and creativity. Work also reminds us of our condition as bodied persons, allows us to contribute to God's ongoing creation, and enables us to unite more closely with Christ, who himself occupied much of his early life in silent work as a carpenter (Mark 6:3).
2. In modern industrial societies, the Church recognises that work has special significance because it is the principal means by which people earn a wage in order to meet the material needs of themselves and their family. Employment remains the key to economic and social participation and the formation of family life. In this sense, being unable to access employment is of serious concern. The Church considers employment as a right flowing from the nature of the person, and therefore sees unemployment as a 'scourge' which demeans the person and assaults human dignity¹².
3. As such, Catholic Social Teaching sees that it is the responsibility of the government to promote policies of full employment and to ensure that the work which is created is meaningful and consistent with human dignity.

WorkChoices and Job Creation

4. One of the objectives of the WorkChoices legislation is to reduce unemployment and create the economic conditions in which job creation is possible. The claim that

¹¹ In the Catholic tradition, work includes, but is not limited to paid employment. The Church has always valued work which takes outside the market, including the work of raising children and fostering a family, which is primarily undertaken by women, as well as volunteer work.

¹² Whilst unemployment rates in Australia have dropped over the past twenty years, there still remain many people who are unable to find work. In April 2006, over 550 000 people, or 5.2% of the Australian labour market were unemployed, of these 101 000 people formed part of the long term unemployed. Likewise, in September 2005, 5.2% of the working population were underemployed and sought additional hours of work. Unemployment deprives people of the income that they need to live, contributes to poverty, feelings of social isolation and lack of self-esteem, is detrimental to peoples overall health, increases a sense of idleness and correlates to higher incidences of drug use and criminality. It is also particularly detrimental to young people who are seeking to make the transition to adult life and when people are unemployed for long periods of time and have little hope of gaining future employment. As unemployment has corrosive effects on the person, their family and the wider community, public policy directed at overcoming unemployment promotes the common good.

WorkChoices will 'create jobs' is regularly used by the Government as the moral justification for promoting the more contentious parts of the legislation, including the reduced set of minimum conditions for agreement making and removal of unfair dismissal protections for certain groups of employees:

"Now the aspiration should be to create the conditions under which as many Australians who want a job can get a job. That's my personal aspiration" (Doorstop interview, Hon Kevin Andrews, Federation Square, Melbourne, 13 October 2005).

5. WorkChoices claims to create more jobs by developing a more 'flexible' workplace relations system which "*contain(s) fewer barriers to employment and.. costs of employment*¹³". To this end, WorkChoices introduces a package of structural reforms which change key aspects of the employment relationship. Whilst these changes will be discussed in greater depth in the next chapters, they include, but are not limited to weakening wage setting mechanisms, dismantling the 'no disadvantage test', downgrading minimum conditions of employment, curtailing union rights and the removing unfair dismissal protection for employees in small to medium sized businesses.
6. The cumulative effect of these reforms is that formal mechanisms to regulate work are weakened, and the human person becomes little more than a commodity and the exchange of human labour a market transaction. Rather than relying on awards and other industrial instruments which provide collective and standardised minimum conditions across occupational groups or industries, parties are encouraged to bargain as individuals, developing individual agreements based on the purported 'choices' of employers and employees. However, because 'choices' are a function of bargaining power, some employees will have very few choices. Employers will have the 'choice' to base their employees' working conditions solely on the five minimum conditions of the Australian Fair Pay and Conditions Standard, and some will have the 'choice' to terminate at will, without fear of unfair dismissal litigation. Employees will have the 'choice' to accept or reject the offer of their employer, and possibly face unemployment. Because of changes to union rights under WorkChoices (refer to chapter 5), all employees will have less 'choice' to involve their union in their workplace negotiations and ongoing employment.
7. The Government believes that in reducing the safety net of minimum conditions and encouraging agreement making at the workplace level, WorkChoices generates market incentives for employers to employ labour. WorkChoices aims to create jobs, by making it cheaper and easier to employ staff (and terminate them as required), and by allowing employers to develop working conditions that allow them to utilise labour in a way appropriate and efficient for their business.

CCER's Response

8. There are a number of difficulties associated with the Government's proposition that eroding the lawful safety net of minimum conditions will create jobs. In summary:

¹³ Andrews, Hon. K (2005), 'Removing the Roadblocks- Workplace Relations Reforms', Speech to National Retail Association Business Congress, Gold Coast, 19 May

- a) The burden of job creation will be placed on those in low paying jobs by reducing the safety net of minimum conditions they rely upon;
 - b) Any new jobs which will be created are likely to be based on a minimalist framework of working conditions; and
 - c) Notwithstanding the above, there is also insufficient academic evidence supporting the proposition that these changes will lead to higher job growth.
9. One of the major ethical concerns of the Church is that the job creation depends on the erosion of the lawful safety net of minimum conditions. The most vulnerable people in our community rely on the preservation of a safety net as the basis of decent living standards. For these people, this safety net is not a minimum from which to commence negotiations, instead, it forms the substance of their working conditions. As a matter of principle, the Church believes that the burden of job creation should be spread across the community in an equitable manner. It is not morally acceptable to seek to reduce unemployment by causing further hardship to those who vitally rely on the preservation of an adequate safety net. Government policy should not seek to generate employment by allowing conditions to fall below the level at which employees can sustain a decent standard of living.
10. The Church also believes that the type of work that is created should have a particular value and freedom associated to it. Human dignity and basic rights should not be traded away as a 'stepping stone' for the unemployed to enter the labour market. The unemployed should not only be assisted to find jobs, but guaranteed that those jobs will pay them an adequate wage, assure them minimum conditions, be secure and stable and allow them to participate in their workplace and be represented by a union. These rights are not only important to ensure that the unemployed will not be living in poverty and hardship when work becomes available, but also because they the unemployed with an incentive to look for work.
11. In Catholic Social Teaching, a bad job is not necessarily better than no job. It is unlikely that the types of jobs created under WorkChoices will adequately affirm human dignity, and in this sense, this 'solution' to unemployment is not acceptable. This will be considered in greater depth in the next section. The fact that the Church does make some quantitative assessment on work was eloquently affirmed by Justice Macken, a Catholic and former Judge of the Industrial Relations Commission of New South Wales when he said:
- "You can easily create a position of over-full employment by simply dividing all your full-time jobs into two part-time jobs and then say 'See? We've abolished unemployment.' The issue is not the creation of employment - we've got nearly full employment now in Australia - it's the creation of employment in a situation in which men can economically and materially and spiritually grow. It's not just the creation of work". Justice Macken, the Religion Report, 17 August 2006."*
12. In addition to the ethical concerns already identified, there is also insufficient evidence that the industrial relations reforms proposed by WorkChoices will improve productivity and employment growth. The causality between the reduction of the safety net,

including the watering down of unfair dismissal laws and improved job growth has been contested by a group of 151 Australia academics in their submission to the Senate Inquiry on WorkChoices¹⁴. An alternative view is that reducing the cost of labour and people's wages only improves *profitability*. This view was articulated by ALP's Shadow Minister for Industry, Infrastructure & Industrial Relations, Stephen Smith who said:

"I don't subscribe to the view that reducing the Minimum Wage, or reducing wages at the lower end of the market increases employment. Let me give you a simple anecdotal example: if you have a cleaner who is currently on the Minimum Wage, about \$25,000 a year, the Government's view is that if you reduce the cleaner's wage by \$2,600 a year - which have been their submissions to the Industrial Relations Commission over the last ten years - then two things will occur, firstly the cleaner would be more productive, which is of course a nonsense, but secondly, somehow magically you would have two cleaners." ¹⁵

13. In effect, there is a view by some people that the changes under WorkChoices will not lead to improved productivity or lower unemployment. Whether or not this is the case will take further research and a number of years to determine. However, on the view of some academics, all that changes under WorkChoices is that companies have lower labour costs and therefore higher profitability. Whilst the Church recognises that profits are the natural reward for entrepreneurialism, there is an equal recognition that the goods of the world are meant for all, and that the fruits of these goods are not to be appropriated at the expense of workers. The 'Principle of the Universal Purpose of Goods' sees growing profitability existing in the face of increased employee hardship as a form of theft. The Church sees that societies should be founded on principles of solidarity, where all people are able to find employment, and this employment affirms all the rights and conditions which flow from the workers dignity.
14. In conclusion, the Church sees that the creation of employment is an important public policy goal, because employment is a good thing for the person, his or her family, and society more generally. However, the Church has never taught that full employment should be relentlessly pursued, whatever the consequences. Firstly, the *means by which jobs are created* should not reduce people's wages and conditions below a just level, nor should it impose a disproportionate burden on the poor and vulnerable. Secondly, the *types of jobs which are created* should affirm the freedom of the person and their innate dignity, and provide conditions which are fair and that allow employees to sustain a decent standard of living. These ethical concerns are further intensified in light of the ongoing controversy over whether or not there is an actual causal link between lower wages and conditions and higher employment.

¹⁴ 'Research Evidence about the Effects of the 'Work Choices' Bill', A submission to the Inquiry into the Workplace Relations Amendment (Work Choices) Bill 2005, A Group of One Hundred and Fifty One Australian Industrial Relations, Labour Market and Legal Academics, November 2005

¹⁵ Quoted by Fr Frank Brennan, 'On Being Model Employers who exemplify Gospel values and the Church's mission in the WorkChoices Era' Address to the Australia/New Zealand Conference of Managers of Diocesan Development Funds , 1 May 2006

CHAPTER 2: THE RIGHT TO A JUST WAGE

"A just wage is the legitimate fruit of work. To refuse or withhold it can be a grave injustice (Cf. Lev 19:13; Deut 24:14-15; Jas 5:4). In determining fair pay both the needs and the contributions of each person must be taken into account." (Catechism of the Catholic Church, 2434).

A Just Wage and Catholic Social Teaching

1. The Church teaches that the principal right of an employee is the right to a just wage. At a minimum, a just wage should meet the employee's needs. It should "allow the worker to live a truly human life and to fulfil their family obligations in a worthy manner" (Mater et Magistra, 71, St Paul Publications). It should be "sufficient to enable the worker, even if unskilled, to have the benefits of survival, good health, security and modest comfort. The wage must also allow the worker to provide for the future and acquire the personal property needed for the support of a family"¹⁶ A just wage should also recognise an employee's contributions. An employee's skills, responsibilities work environment and the like will all affect what is considered a just wage.
2. The Church teaches that it is the responsibility of the State to ensure the payment of a just wage. In modern societies, the Church understands that in ensuring the payment of a just wage, the State may give consideration to the use of transfer payments like tax breaks and family payments, and the burden of the payment of a just wage need not always fall only on the employer. However, the mechanism or system to ensure payment of a just wage will always remain the prerogative of the State;

"A just wage is the concrete means of verifying the justice of the whole socio-economic system, and, in any case, of checking that it is functioning justly". (Pope John Paul II, *Laborem Exercens*, 1981).

A Just Wage in the Australian context

3. In Australia, the work of the Australian Industrial Relations Commission (AIRC) and its predecessors (the Conciliation and Arbitration Court and the Conciliation and Arbitration Commission) have been fundamental in promoting and affirming the principles of just pay in Australia. In recognising that a wage must meet a person's needs as well as value their contributions, the AIRC has ensured:
 - (a) there is a minimum living wage which is annually adjusted,
 - (b) there is an award system through which work can be objectively valued and classified. This includes a capacity for the value of that work to be re-evaluated over time, through mechanisms of a special case.

¹⁶ 'A Century of Catholic Social Teaching', Australian Catholic Bishops, quoted in 'Briefing Paper No 1 on the Commonwealth Government's Proposals to Reform Workplace Relations in Australia', Australian Catholic Commission for Employment Relations, 2005

The Minimum Wage and WorkChoices

4. The payment of a fair minimum wage is of particular concern for the Church in the sense that it is the primary means by which the most vulnerable workers are able to support themselves and their family in modest comfort, to obtain decent housing and to educate their children. Whilst many people will be able to negotiate above the minimum wage, the reality is that some people enter the labour market disadvantaged and with limited bargaining power and rely on the minimum wage as the basis of their income.
5. In Australia, minimum wages have traditionally been regulated through the award system, and have therefore been set, reviewed and increased by the Australian Industrial Relations Commission (AIRC) and its predecessors, the Conciliation and Arbitration Court and the Conciliation and Arbitration Commission. Section 88B(2) of the former *Workplace Relations Act 1996* required the AIRC to ensure a safety net of “fair” minimum award wages and conditions was preserved, having regard to “the context of living standards generally prevailing in the Australian community” as well as “economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment”. In setting the minimum wage, the AIRC was also required by statute to consider “the needs of the low paid”.
6. Each year, when setting the minimum wage, the AIRC would conduct a National Wage Case which was a public process involving the participation of interested stakeholders. There were opportunities for employers, employees, governments and other bodies to make submissions about what constituted an appropriate adjustment to the minimum wage, in light of the wage setting parameters set down in the legislation¹⁷. It is relevant to note that in assessing ‘the needs of the low paid’, the AIRC made it clear that the *needs of the family would be considered, not just the needs of the individual*. In handing down its decision in 2004, the AIRC confirmed that “*Whilst a significant proportion of Australian families continue to rely upon a single wage as their sole source of income, the needs of single income families will continue to be relevant in connection with consideration of the needs of the low paid*”. (Safety Net Review- Wages, May 2004, Print PR002004, paragraph 275). The Church emphasises that the needs of the low paid should not be seen in isolation from the needs of their family. Through submissions made to Safety Net Reviews, the Australian Catholic Commission for Employment Relations (ACCER) has argued that the minimum wage should be based on the needs of a family of two adults and two children, with only one adult working, and taking into account all relevant transfer payments. The stability and financial security of families is important for all people and society more generally.
7. Under WorkChoices, the wage-fixing role of the AIRC is removed and it is passed to a non-judicial body called the ‘Australian Fair Pay Commission’ (AFPC). The role of the AFPC is to set a Federal Minimum Wage (FMW), establish minimum wages for award classifications (these will be known as Australian Pay and Classification Scales or APCS), set award training wages, fix casual loadings and rates for piece workers, juniors and employees with disabilities. Unlike the AIRC, the AFPC has the freedom to determine how frequently it will undertake reviews and how it will obtain its information

¹⁷ These parameters are listed in paragraph 5 of this chapter, and include the prevailing economic conditions, the need for a fair safety net within the context of Australian living standards, and the needs of the low paid.

to do so.

8. In addition, whilst the AFPC has a wage-fixing role, its parameters to do are significantly different to those of the AIRC. A basic difference between the AFPC and the AIRC is that the AFPC has a more rigorous economic agenda and whilst it is required to have regard to "providing a safety net for the low paid", it is not made explicit that this safety net should take into account their needs or the needs of their family, or even the principle of "fairness". Indeed, under WorkChoices, the primary objective of the AFPC is geared towards the fulfilment of economic goals. Its stated purpose is to "promote the economic prosperity of the people of Australia" having regard to factors such as the capacity of the unemployed and low paid to obtain employment and the general competitiveness of the economy¹⁸.

Church Concerns- The Impact on the Minimum Wage

9. The Church has genuine concerns about the adequacy of the AFPC to provide a fair minimum wage. Whilst the Government has indicated that the AFPC will undertake wage reviews regularly, the legislation leaves it up to the AFPC to determine the frequency of its reviews. The criteria in which the AFPC uses in setting the minimum wage is not required to consider basic principles of fairness or human needs. Its primary focus is on economic needs and it the criteria for determining the Chair is a person who must have a 'high level of experience in business or economics'. Whilst the AFPC is required to develop a 'safety net for the low paid', it is unclear whether this will be set according to the needs of the single adult worker, rather than the needs of the family. In addition, the processes used by the AFPC in determining the minimum wage are entirely up to its own discretion. For instance, whilst the AFPC may consult and may undertake research, there is nothing in the legislation to compel it to do so.
10. It appears that under WorkChoices the real wage of the poorest may fall over time. Whilst the minimum wage will be preserved at 2005 rates, the Chair of the AFPC, Professor Ian Harper has indicated that the current minimum wage may be "*a potential obstacle to unemployed persons finding paid work... (and the AFPC) must set minimum wages over time so as to protect the unemployed (and juniors, trainees and disabled workers) from being priced out of the labour market*" (Ian Harper, Ensuring Fair Pay: The First Steps, Speech, 16 February 2006). Similar sentiments have been expressed by others, including the current President of the AIRC, Justice Giudice, who was reported in the Age on 18 March 2006 as saying "*People with low skills, low bargaining power are heading for the Fair Pay and Conditions Standard which will have an effect on their incomes. This will be accompanied by a slow down in the rate of growth of minimum wages*".
11. CCER is concerned that any further reduction in the minimum wage will be detrimental for the most vulnerable people in our community who have little bargaining power and rely solely on a fair minimum wage. CCER understands that the low paid workers already struggle to make ends meet. A further reduction in the real value of the minimum wage will make their circumstances more difficult. Research from the Centre for Work and Life, University of South Australia and the Centre for Applied Social Research, RMIT published in 2006 demonstrate that there is a unavoidable human

¹⁸ Refer to Part 1A, Division 2, 7I

cost and social cost associated with receiving a wage insufficient to meet the basic needs and comforts of Australian life. *“These experiences reveal that low pay costs them a great deal: in gnawing worry, persistent anxiety about bills, ill-health, concern for their children and denial of participation in the kinds of activities that many Australians take for granted: sport, visiting friends, training, job search, the prospect of secure housing and hope for retirement without poverty. For these workers, low pay narrows and constricts their social circles, restricts travel, and affects children’s access to school excursions and basic health - including dental - services. Working poverty is associated with the deferral of family formation and relationship tensions around money in some households”*. (Masterman-Smith, H., May, R., and Pocock, B., 2006 *“Living Low Paid: Some Experiences of Australian Childcare Workers and Cleaners”*, Centre for Work and Life, University of South Australia and the Centre for Applied Social Research, RMIT). As indicated in Chapter 1, it is not fair to place the full burden of economic adjustment on those already most vulnerable in our community.

12. Allowing the minimum wage to fall will also exacerbate inequality. More unequal societies tend to be more violent, have higher crime rates, worse health outcomes and lower levels of community participation. Inequality increases social unrest and alienation and in this sense impacts on everyone, not just the low paid.

Other Concerns: Awards, Pay Equity and WorkChoices

13. Having considered the first tenet of a just wage, that is, the payment of a minimum living wage to meet the workers needs, it is now timely to consider the second tenet of a just wage, that is, a wage which fairly rewards a worker for their contributions. For almost a century, Australia’s centralised system of awards provided a mechanism by which different kinds of work could be fairly assessed, classified and reviewed. The principles set down in section 88B(3) of the former *Workplace Relations Act 1996* imposed an obligation on the AIRC to address issues of work value and discrimination in making and reviewing awards¹⁹.
14. Under WorkChoices, the work of the AIRC as a centralised wage fixing body will gradually, but inevitably be eroded. The Government has indicated that over a number of years, it intends on rationalising existing federal awards into 20 key industry awards, as well as streamlining existing classification structures into a generic system containing between 10 to 15 classifications. The likely outcome of this rationalisation and simplification process is that awards will increasingly lack relevance to organisations, providing further incentive for employers to enter into workplace agreements with their employees. This is likely to have an impact on pay equity, with research consistently demonstrating that the gap between women and men’s wages increases as we move away from the centralised award provisions. This trend is

¹⁹ Section 88B(3) of the former *Workplace Relations Act 1996* required the AIRC, in making and reviewing awards and classifications, to have regard to “the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed”, “the need to apply the principle of equal pay of work of equal value without discrimination on the basis of sex” and “the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin”.

exacerbated when women enter into individual Australian Workplace Agreements. A comparison of non managerial employee's average hourly rates in 2004 finding a gap of:

- zero per cent between women and men on award wages only (\$16.40);
- 7.73 per cent between men and women on unregistered collective agreements (\$22 compared to \$20.30)
- 10.36 per cent between men and women on registered collective agreements (\$25.10 compared to \$22.50)
- 11.3 per cent between men and women on unregistered individual agreements (\$23.90 compared to \$21.20)
- 20.32 per cent between men and women on registered individual agreements (\$25.10 compared to \$20).²⁰

Women will be particularly disadvantaged when they enter individual negotiations without an adequate classification and award structure to underpin their wage. Women are less likely to belong to a union, more likely to work on a part-time or casual basis, and because of their carer's responsibilities and breaks in service, tend to have reduced opportunities for career development.

15. The removal of the arbitration function of the AIRC and its state counterparts will also have an impact on pay equity, because there will no longer be a mechanism by which the value of work can be considered in light of social conditions and circumstances. The role of the special case has been integral to affirming the principles of pay for equal work, and later and equal pay for work of equal value in Australian industrial tribunals for over twenty years. For instance, the recognition that there had been bias against the value of work and particular skills in feminised industries some types of work has led to the institutional adjustment of the wages of librarians, and more recently, childcare workers. As WorkChoices compresses wage structures, and does not provide a mechanism for which the values upon which those classifications were originally made, there may be the capacity for bias against certain skills or attributes to continue without any avenue for redress.
16. In the Australian context, the Church believes that the principles of equal pay for equal work, and equal pay for work of equal value are fundamental to measuring the contribution of a worker, and in turn the payment of a just wage. In so far as WorkChoices threatens to widen pay gaps between men and women, the Church expresses its concern.
16. In summary, all workers are entitled to a wage that meets their needs and recognise their contributions. In order to meet the worker's needs, it must be enough to allow the worker to live a fulfilling life and to meet their family obligations. In order to recognise a worker's contribution, it must have some framework for reviewing and valuing work, that is not based on principles of discrimination. The Church is concerned that

²⁰ Marian Baird and Patricia Todd *Government Policy, Women and the New Workplace Regime* Paper presented to the workshop on the Federal Government's Proposed Industrial Relations Policy, University of Sydney, June 20- 21 2005

WorkChoices does not give sufficient emphasis to the objective of fairness in the setting of wages; the provision of a fair safety net by reference to the living standards generally prevailing in Australia; the needs of employees and their families; and the proper assessment of the impact of taxes and welfare support payments. The Church also has concerns about the rationalisation of awards and the shift to workplace agreements, and the impact this will have on pay equity in Australia.

CHAPTER 3: THE RIGHT TO FAIR WORKING CONDITIONS

"Respect for human dignity requires that working conditions, including the length of shifts and the length of a week's work, be such as to protect the health and well-being of workers and to recognise their obligations to the wider community"

(Industrial Relations- The Guiding Principles, 1993, Australian Catholic Bishops Conference)

Fair Working Conditions and Catholic Social Teaching

1. Fundamental to the Church's teaching on work is the idea that "work exists for the person, not the person for work" (Industrial Relations- The Guiding Principles, 1993, p.2. Australian Catholic Bishops Conference). By this, the Church means that human labour should not be seen as just an input into the production process but a means in which people can fully express their freedom, creative potential and humanity. Workers are more than just commodities, and work must be designed in such a way as to provide employee's with adequate rest as well as time to participate in and fulfil the employee's personal, family and social responsibilities.
2. As excessive hours, lack of proper rest time, and unsocial working hours affect not only the well-being of the worker, but also the ability of families to function, the Church teaches there is a particular obligation on governments to set limitations on the working conditions in order to ensure workers are able to enjoy an appropriately balanced human life.

The Impact of WorkChoices on Minimum Conditions Of Employment

3. Prior to WorkChoices, minimum conditions were set by reference to statute and the terms of an industry or occupational-wide award. Employers were unable to contract out of the statutory entitlements owing to their employees. If an employer wanted to engage staff on terms substantially different to the award, they would be required to have a workplace agreement approved by the AIRC or State equivalent. The AIRC was responsible for ensuring that all workplace agreements passed the 'no disadvantage test'. This 'no disadvantage test' ensured that all workplace agreements complied with the terms of the relevant statute, and that overall, the terms of the agreement did not make the employee worse off than if they had remained employed under the award.
4. WorkChoices radically changes the regulation of minimum conditions of employment by creating a new legislated minimum called the Australian Fair Pay and Conditions Standard (AFPCS). The AFPCS consists of 5 minimum conditions of employment and replaces the no disadvantage test and the award system as the basis for approving new collective and individual agreements. It is, in effect, a new safety net from which employers and employees are able to commence bargaining. It is *significantly lower* than the safety net which previously existed.
5. The AFPC consists of:

- the minimum wage of \$12.75 per hour or a grandfathered award based wage, if such a wage is higher;
- 38 ordinary hours of work a week, which can be averaged over a year long period with the employee's request, plus 'reasonable additional hours';
- 4 weeks annual leave for each year of service without leave loading, with a capacity for up to 2 weeks being able to be 'cashed out' at the employees written request;
- 10 days paid personal leave (which incorporates sick leave and carer's leave. Employees will also be able to take an additional 2 days unpaid carer's leave per year, and 2 days of paid compassionate leave per occasion); and
- 52 weeks unpaid parental leave, less any amount of paid or unpaid leave taken by one's partner.

There will also be the right to refuse to work on a public holiday, although this does not form part of the Standard.

6. In addition to the changes in the safety net, WorkChoices also introduces a number of other administrative changes to make it easier for employers and employees to enter into workplace agreements. Importantly, it removes the requirements for new agreements to be certified and approved before they operate. Agreements can now commence on lodgement with the Office of the Employment Advocate (OEA), provided that there is a declaration signed by the employer and that the form of that declaration meets certain requirements set by the OEA. Also, these agreements can only be set aside by the Federal Court or Federal Magistrates Court. CCER has already expressed some concern that allegations of coercion, duress, misleading and deceptive, unconscionable behaviour cannot be considered by the Office of the Employment Advocate which receives the applications.

Concerns of CCER

7. CCER has concerns about the adequacy of the AFPCS in forming a fair minimum framework of minimum conditions. Award protections such as overtime rates, shift penalties, limitations on the spread of hours of work, weekend and public holiday penalties do not form part of the AFPCS 'safety net', and therefore, with consent, can be removed from an employee's workplace agreement. In data provided by the Office of the Employment Advocate to a Senates Committee, of the agreements lodged since 27 March 2006:
 - every workplace agreement has removed at least one award condition;
 - 40% of agreements remove payment for gazetted public holidays;
 - 64% of agreements remove leave loading; and
 - 52% remove shift allowances²¹

²¹ 'Fed: Employers drop award conditions', AAP Newswire, 30 May 2006

This data reflects the fact that the lower safety net initiates a 'race to the bottom', as employers are forced to reduce labour costs to maximise their competitive advantage. The departure from awards as the basis for the safety net exposes many low paid and industrially weak employees to inequitable bargaining that will impact on their terms and conditions of employment, and in turn, their ability to support themselves and their families. The change will impact on low paid breadwinners, on parents who work part-time to supplement the family income, on young people new to the workforce, or those in rural and regional areas with limited job opportunities and mobility and on many unskilled migrants. It will also impact on sole parents who, under the Government's new welfare to work arrangements, are required to look for at least 15 hours of work when their youngest child turns eight. The capacity of sole parents to bargain is particularly weak given their significant care responsibilities and their limited recent work experience and skills.

8. CCER is also concerned about the impact of the AFPCS on the institution of the family more broadly. Whilst the Government argues that WorkChoices "*is very family friendly legislation*" and will provide "*people the choice so they can better balance their work and family responsibilities*" (Hon Kevin Andrews, Minister for Employment and Workplace Relations, 11 October 2005, Doorstop Interview, Hilton Hotel, Sydney), CCER is not convinced that families will be better off under the legislation. The evidence reveals that the overwhelming majority of individuals have been unable to negotiate family friendly agreements with their employers. Between 1995 and 2000, 93% of employees in the private sector on Australian Workplace Agreements (AWAs) had no additional family friendly rights. Only 8% of AWAs had paid maternity leave, 5% had paid paternity leave and 4% provided for unpaid purchased leave²².
9. The AFPCS will also increase unpredictability of work hours which will impact on the formation of family life. For instance, whilst the AFPCS guarantees a maximum 38 hour work week, it does not require that there be certainty in the actual roster in which these hours are worked. As a result, full time and part time employees could be used in the same way as casuals, whose quantum of hours are fixed, but who are required to work on different days and shifts according to operational needs. This will make it virtually impossible for people to be able to make plans to interact with family and friends and to commit to social, cultural and sporting endeavours. It will also see leisure time structured around the need to be "on call" and in this sense, reduce people's capacity to relax and enjoy life. It will also make life especially difficult for those who have carer's responsibilities, and who need predictability in hours of work to arrange the provision of child care.
10. WorkChoices also makes it more attractive for employers to require their employees to work overtime, on weekends, public holidays and late nights. As the AFPCS allows employers to remove overtime, average work hours and remove penalty rates for work on public holidays and weekends, there are commercial incentives for employers to impose longer and more unsocial hours of work. Barbara Pocock's research of the impact of WorkChoices on Australian Working Families (2005) sets out the range of local and international literature which finds negative effects of unsocial hours on many aspects of family life. For instance, a 2004 study by Stazdins found that working

²² ABS Cat No 6310, August 2004, p30

evenings, nights and weekends can affect worker's social relationships because they miss out on shared family events, routines and outings. Research by Presser (2000) in the US amongst 3476 couples found that recently married fathers who worked nights faced odds of divorce six times higher than amongst fathers who worked days. Mothers married more than five years, who worked nights, faced odds of divorce that were three times higher than amongst mothers who worked days.

11. Similarly, long hours of work also have an impact on the physical well-being of workers and their families. A Canadian study by Stanzdins et al (2004) found that children of parents who work non-standard hours are more likely to have emotional or behavioural difficulties. Spurgeon (2003) found a correlation between long work hours and higher rates of mental health difficulties, cardiovascular diseases, and higher incidences of behaviours that have negative consequences for health like smoking and alcohol consumption and poor diet.
12. The Church is also concerned that the removal of penalty rates on weekends will lead to a further proliferation of weekend work, making it difficult to people to enjoy shared social time with their family, participate in community sports and attend a worship community. The Church is also concerned that the option to cash out annual leave will impact on the capacity for families to enjoy holidays together, and contribute to a sense of 'burn out' from families balancing work and carer's responsibilities.
13. Finally, the Church is disappointed that the AFPCS does not include the outcome of the family provisions decision as part of the parental leave guarantee. CCER supports the right for employees to elect to extend parental leave from 52 to 104 weeks, the right for employees to request to work part-time until their child reaches school age, and the right to request a longer period of 8 weeks simultaneous paid parental leave. The fact that these rights to request provisions do not form part of the AFPCS represents a step backwards on established work and family standards and may lead to workplace cultures which see the worker as an economic commodity in isolation from family responsibilities. Additionally, as the AIRC has been vital for general advances on work and family standards, the removal of its arbitral powers under WorkChoices makes future advances in community standards uncertain.
14. In conclusion, WorkChoices undermines the award as the basis of the safety net of minimum conditions and replaces it with a few minimum pay and leave conditions. In the immediate term, there is already evidence that employers are utilising the AFPCS in order to gain a competitive advantage in labour costs. For Spotlight general manager of marketing, Jono Gelfand, the proposal by Spotlight to offer new job seekers an AWA which removed all entitlements to penalty rates, overtime, leave loadings, rest breaks and paid public holidays in exchange for 2 cents higher was merely a matter of "*doing what were told to do by the legislators*"²³ "*Our AWA obviously meets all of the WorkChoices requirements ... which includes all those five minimum conditions of wages and leave, etcetera,*"²⁴. WorkChoices encourages the individualisation of the employment relationship, making it easier for employers to make their employees work unsocial hours, and work longer, harder and for reduced

²³ '2 cent an hour offer slammed', The Australian, 25 May 2006 <http://www.news.com.au/story/0,10117,19248316-421,00.html?from=rss>

²⁴ 'Job Seeker offered two cent rise in AWA', AAP, 24 May 2006 <http://au.news.yahoo.com/060524/2/z3et.html>

pay. This is inconsistent with human dignity, and is likely to have adverse impacts on the worker's health and well being, as that of their family, and society more generally.

CHAPTER 4: THE RIGHT TO SECURITY OF EMPLOYMENT

"Workers have rights which Catholic teaching has consistently maintained are superior to the rights of capital. These include, the right to security of employment"

The Common Good and the Catholic Church's social teaching, Catholic Bishops' Conference of England and Wales, 1996, pg 91

Security of Employment and Catholic Social Teaching

1. The Church teaches that security of employment is a matter of fundamental importance to the security of the family. Precariousness of employment is inconsistent with the dignity of the worker and adversely affects the formation of family life. Workers need stable work and a regular income and need to have the confidence that they will not lose their job through an unwarranted dismissal. Employees who are injured at work should also be protected from the threat of dismissal so that they have an opportunity to be rehabilitated and return to the workforce.
2. Security of employment does not require an employer to maintain the employment of someone for whom there is no work, or no suitable work, or that an employee should not be dismissed if his or her conduct or work performance justify it. Nor is it to say that an employee should not be subject to a reasonable probationary period before qualifying for security of employment. It does however impose an obligation on governments to make laws that provide appropriate procedures and remedies for those whose employment security is violated, and to create laws which promote in a positive sense, the right of job security.

Security of Employment in NSW before WorkChoices

3. Before WorkChoices, the job security of NSW employees was promoted in several key areas:
 - Under the former *Workplace Relations Act 1996*, full-time, part-time and 'regular casuals' were able to access an unfair dismissal scheme if were terminated in a manner that was 'harsh, unjust or unreasonable'. This system provided employees with access to a process of appeal against dismissal, where they could seek reinstatement or monetary compensation, based on the principle of a 'fair go all round'. In making its decision, the AIRC was required to have regard to various matters, including whether there was a valid reason for the dismissal related to the capacity or conduct of the employee, the size of the employer's undertaking and the operational requirements of the employer's business. Similar protections against unfair dismissals also existed at State law.
 - Under the former *Workplace Relations Act 1996*, employees could seek a remedy if they believed they were unlawfully terminated. An unlawful termination was said to occur if an employee was terminated for a prohibited reason, such as because of race, sex, sexual preference, age, physical or mental disability, family responsibilities, pregnancy etc. These claims could be conciliated in the AIRC but would be arbitrated in the Federal Court.

- Section 99 of the *Industrial Relations Act 1996* (NSW) made it unlawful for an employer to terminate an injured worker²⁵ within six months of an injury and imposed a maximum penalty for breach of this clause of \$11 000. The NSW Act also allowed an employee to seek an order for reinstatement if they are terminated and they become fit to work again within two years of their dismissal.
- Some NSW awards promoted permanency of employment by placing restrictions on the use of casual employees over part time or full time employees. Also, following the outcome of the *Secure Employment Test Case*, most awards were varied to include a clause enabling casuals who worked on a regular or systematic basis for longer than 6 months the right to elect to convert to a permanent position.

Changes to job security under WorkChoices

Unfair dismissal

4. Under WorkChoices, employees in organisations with 100 employees or less will now be excluded from making an application for unfair dismissal. This will leave employees in small to medium sized businesses open to dismissed arbitrarily; with their employer not required to provide them with a valid reason for their termination or comply with any fair process. As long as the reason for termination is not unlawful, employees in affected businesses will no longer have a remedy against dismissals that are harsh, unjust or unreasonable.
5. In addition, employees who have been dismissed for 'genuine operational reasons' will be unable to lodge an unfair dismissal application. This means that as long as an employer can establish that there has been a genuine redundancy, an employee will be unable to make an unfair dismissal claim, irrespective of whether or not their selection and the process of making them redundant was fair. This will undo the requirements of procedural fairness which have long been part of accepted fair standards in Australian workplaces.
6. The Church believes these changes deny people of natural justice and their right to job security. It also dramatically shifts the balance of power in favour of the employer, leaving employees effectively beholden to the arbitrary decisions of their employer. This vulnerability is likely to lead to a sense of alienation and powerlessness at work, and feelings of being disconnected from their own work. It makes protection from unfair dismissal contingent upon the size of the employer's business. It is also contrary to Australia's international obligations as a signatory to the *Termination of Employment Convention*.
7. Whilst all employees will still have rights to claim redress for an unlawful termination, the Church does not believe that this provides an equitable or efficient mechanism for dealing with termination of employment. Whilst the government has pledged a means tested \$4000 to assist with the legal expenses of those who have been unlawfully terminated, litigating in this area is difficult as it is necessary to identify the reason or reasons for the decision to dismiss. For example, was a worker terminated because they were too old, or because of genuine restructure? The truth of the matter is in the mind of the decision maker which may not become apparent until an expensive and time consuming hearing in the Federal Court.

²⁵ An injured worker for the purposes of this section is one receiving workers compensation payments.

Injured workers

8. As WorkChoices overrides the operation of State industrial laws, injured workers will no longer have a specific right to be protected from termination within six months from their injury, nor will they be able to seek reinstatement if they are terminated but are fit to return to work within 2 years from their date of injury. In addition, some NSW awards contain provision for "accident make-up pay". This tops up an employee's statutory workers compensation payment to their normal award payment during the period when they are on workers compensation. Under WorkChoices, this award right does not form part of the list of "allowable award matters", and therefore drops out of awards.

9. The Church sees injured workers as especially vulnerable and believes it is important for employers and the State to cooperate to provide income protection, rehabilitation as well as assistance in returning to full, meaningful work. Whilst under WorkChoices, injured employees will have limited access to the unlawful dismissal jurisdiction²⁶, the Church is concerned that the legislation does not place a responsibility on employers to provide injured workers with work once rehabilitated. The Church also sees the removal of accident make up pay from the list of allowable matters as detrimental, particularly in industries which have a higher element of inherent risk, such as mining and construction.

Casual workers

10. Finally, casual employees will no longer be able to rely on award provisions to provide them with permanency of employment after they have worked a particular qualifying period. Award conditions such as that secured in the recent Secure Employment Test Case will be prohibited from inclusion in both Federal awards and workplace agreements. CCER believes that it is inappropriate for employers to use casual employees on a regular and systematic basis and not offer them the security that comes with permanent employment. Prohibiting clauses which impose this requirement on employers will further undermine security of employment for those already in precarious employment.

²⁶ WorkChoices will make it unlawful to terminate an employee who is temporarily absent from work due to illness or injury, up to a maximum period of 6 months (exclusive of sick leave).

CHAPTER 5: THE RIGHT TO JOIN A UNION AND STRIKE AS A LAST RESORT

"The purpose of unions is not simply to defend the existing wages and prerogatives of the fraction of workers who belong to them, but also to enable workers to make positive and creative contributions to the firm, the community, and the larger society in an organized and cooperative way." (Laborem Exercens, On Human Work, Pope John Paul II, 1981).

Unions, the Right to Strike and Catholic Social Teaching

1. Catholic Social Teaching recognises the rights and obligations of employees to co-operate to participate in their own employment and to advance their own interests. Under the heading, "the importance of unions", Pope John Paul II wrote in *Laborem Exercens*:

"All these rights, together with the need for workers themselves to secure them, give rise to yet another right: the right of association that is to form associations for the purpose of defending the vital interest of those employed in the various professions. Catholic social teaching does not hold that unions are no more than a reflection of the 'class' structure of society and that they are a mouthpiece for class struggle, which inevitably governs social life. They are indeed a mouthpiece for the struggle of social justice, for the rights of working people in accordance with their individual professions" (Laborem Exercens, Pope John Paul II, 20, 1981)."

2. The Church emphasises the importance of unions because of the role they can play in advancing the interests of employees in a full human sense. The Church sees that unions have a role not only in wage negotiations, but in encouraging workers to more fully participate and express themselves at work. Unions "serve the development of an authentic culture of work and help employees to share in a full human way in the life of employment" (*Centesimus Annus*, pg 15, St Paul Publications). In their proper sense, unions are true representatives of employees; they have a right to participate in workplace negotiations and work more generally, and their participation in the employment relationship should be encouraged.
3. The Church also recognises that in extreme circumstances and as a last resort, people have the also right to withdraw labour, or the right to strike, without fear of personal sanctions. However, the Church teaches that the union should not use the ultimate weapon of strike action too quickly. "Abuse of the strike weapon can lead to the paralysis of the whole of socio-economic life, and this is contrary to the requirements of the common good of society, which also corresponds to the properly understood nature of work itself" (*Laborem Exercens*, 1981, pg 20).

Unions in Australia

4. Whilst union membership is steadily declining in Australia, the union movement have had an enduring place in the Australian industrial relations system. From the early days of Federation, unions have participated in collective bargaining in order to determine industry wide award rates and conditions. Later on, unions played an important role in securing better employment conditions and influencing community standards in areas such as annual leave, long service leave, penalty rates and parental leave. In recent

years, the Union movement has had an important role in enhancing parental leave rights and workplace flexibility based on family friendly provisions (refer to Family Provisions Decision 2005). The Union movement also initiated proceedings in the NSW IRC enabling regular and systematic casual employees the right to convert to a part time status.

Changes to Union Rights under WorkChoices

5. Whilst union rights have progressively diminished since the introduction of the *Workplace Relations Act 1996*, the introduction of WorkChoices legislation introduces further restrictions on union rights which limit the capacity for unions to enter the workplace and the right of unions to commence industrial action.
6. Firstly, award content which confers representation or recognition of unions is now deemed to be 'non-allowable' and will be removed from awards in a process of award simplification. Likewise, employers and employees will be banned from including 'union friendly' clauses in their workplace agreements. Regulation 8.5 specifies a long list of terms which are now expressly prohibited from inclusion in a new federal agreement. These terms include terms that provide for payroll deduction of union fees, trade union training leave, paid union meetings, the provision of information about unions to employees, terms which mandate the involvement of unions in dispute resolution and terms which allow unions right of entry.
7. Right of entry will be restricted to 'fit and proper persons' and the AIRC will be given powers to revoke or suspend the license of permit holders who do not comply with the rules of entry. Union officials will now be required to provide employers with at least 24 hours and no more than 14 days notice of their entry and employers will have greater control over the behaviour and movements of the union official whilst they are on the employer's property. Union officials will also only be able to enter the workplace to investigate a breach of conditions if it affects at least one employee who is a member of the union. Previously, union officials were free to enter a workplace as long as their union as eligible to cover employees on the site. Under WorkChoices, union officials will not be entitled to access employee records of non-union members, unless they obtain a specific order from the AIRC allowing them to inspect non-member records. Additionally, in workplaces where all employees are covered by AWAs, union officials will only be able to enter the workplace with the written request of the employee(s).
8. Finally, WorkChoices introduces significant changes to curtail union rights to protected industrial action. Under previous laws, employees were able take protected industrial action during designated "bargaining periods". WorkChoices grants the AIRC wider powers to suspend terminate or restrict unions' ability to enter into bargaining periods. Unions are also required to vote via secret ballot before commencing any protected industrial action. Any resultant protected action may only go ahead if more than 50% of eligible voters actually voted, and more than 50% were in favour of the action and the action takes place within 30 days of the result being known.

Church Concerns with Union Rights under WorkChoices

9. The Church is concerned that the WorkChoices legislation assumes that workers are 'third parties' or outsiders to the employment relationship. Under WorkChoices, it is much more difficult under for union representatives to gain access to the workplace to defend the rights of workers, it will be more difficult for employees to bargain collectively, and it will be more difficult for unions to engage in industrial action for the common good. As expressed by Professor Ron MaCallum, Dean of the Sydney Law School at the National Press Club in 2005:

"The rules on Collective Bargaining are tilted very much against the trade unions... there is no mechanism in the Bill to allow a majority of employees at a workplace to insist they be dealt with collectively.. The capacity for the trade union to take industrial action is so limited that it can turn collective bargaining into collective begging"

10. CCER believes that unions should not be viewed as outsiders to the employment relationship and believes that it is wrong for laws to be enacted laws that impede and frustrate unions in carrying out their representative activities. It also believes that the State has a responsibility to provide a legal structure in which employees can cooperate through unions to advance their common interests. Employees should be able to exercise their right of freedom of association, that is, to either join or not join a union.

CHAPTER 6: Conclusion

1. This submission has explored the impact of WorkChoices legislation on the people of NSW by reference to how the legislation impacts upon the key employment rights necessary to affirm human dignity. A good employment relations system is one which provides people with work, a just wage, fair working conditions, security of employment and allows them to participate in a union.
2. By examining WorkChoices impact on the right to employment, a just wage, fair working conditions, security of employment and union participation, CCER has expressed some of its primary concerns with the legislation. WorkChoices is inadequate in meeting fundamental human needs and therefore diminishes human dignity.
3. CCER affirms that it the duty of the government to constantly evaluate the impact of its laws and policy to ensure that human work affirms human dignity, that conditions of work are appropriately safeguarded, and the nature of work as a subjective, creative and self-determining activity of human persons is expressed.