From ‘Uncharted Seas’ to ‘Stormy Waters’: How Will Trade Unions Fare Under the Work Choices Legislation?

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The 2005 ‘Work Choices’ legislation builds on earlier legislative and policy measures of the Howard Coalition Government that have restricted the activities and undermined the traditional legal rights of unions. This article highlights the key aspects of the 2005 legislation affecting trade unions. The constitutional basis of the new framework for regulating registered organisations is considered, as it presents unions with the challenge to revisit the validity of their registration under Federal law or to ‘opt out’ of registration altogether. The new union ‘right of entry’ provisions provide employers with far greater scope to resist or limit unwanted union influence at the workplace. Amendments to the ‘freedom of association’ provisions will restrict unions’ capacity to engage in a range of tactics to support the collective representation of workers’ interests, and limit their ability to block de-unionisation or individualisation strategies by employers. We conclude that the 2005 Act constitutes the most serious threat to Australian unions yet, but that the high-profile debate generated by the reforms, and the erosion of conditions which will inevitably follow for some workers, provide opportunities for unions to re-establish their relevance and reverse declining membership levels.