

15 April 2013

# UNIONSWA

WA's PEAK UNION BODY

Committee Secretary  
Senate Education, Employment and  
Workplace Relations Committee  
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Canberra ACT 2600

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Dear Madam/Sir

## **RE: Inquiry into Fair Work Amendment Bill 2013**

UnionsWA is Western Australia's peak union body, representing over 30 affiliated unions and 150,000 union members. UnionsWA welcomes the changes proposed in the *Fair Work Amendment Bill 2013* as important and necessary steps forward to secure the rights of working Western Australians who are in the Federal industrial relations system. It remains the case, however, that these are steps along the way to better conditions and stronger protections for workers, and should not be the end of the story. There are many parts of the Amendment Bill that can and should be strengthened for the benefit of workers before it passes through the Parliament. UnionsWA therefore fully supports the ACTU's submission and recommendations.

The UnionsWA submission will address the Amendment Bill's changes concerning

- Family-friendly measures
- Protections for pregnant workers
- Modern awards objective
- Anti-bullying measures
- Right of entry

UnionsWA is particularly concerned that many of the best features of this Amendment Bill will not be available to workers in state industrial relations systems such as WA's. Before the recent state election the WA Liberal government put out its *Labour Relations Legislation Amendment and Repeal Bill 2012* for public comment. This 'Green Bill' purported to harmonise with the *Fair Work Act*, but in practice it only harmonised with those parts of the *Fair Work Act* that were least favourable to workers. While UnionsWA is mindful of the constitutional distinctions between state and national powers in the industrial relations area, as the state's house in the Federal Parliament we would urge the Senate Committee to consider ways in which the benefits of this Amendment Bill could be extended to employees in state industrial relations systems.

### ***Family-friendly measures***

The Bill amends the *Fair Work Act* to provide greater flexibility in parental leave, increased rostering protections and broader rights to request flexible work arrangements

It is the view of UnionsWA that the right to request flexible working arrangements should be underscored by an effective right of review where the request is refused.

While the proposed 65(5A) of the Act adds more clarity about what constitutes the 'reasonable business grounds' upon which a request may be refused, it remains the case that grounds for refusal are still very broad.

Therefore the Amendment Bill should ensure that all employees have a right to appeal an employer's unreasonable refusal of a request, clearly setting out not just what are 'reasonable' business grounds' but also the employer's positive duty to seriously consider a request for flexible work arrangements. There should also be a requirement to ensure that all options to accommodate a request for flexible working arrangements have been explored.

It is also of concern to UnionsWA that workers in the WA state industrial relations system will miss out on the right to request. The WA Liberal government's 'Green Bill' for industrial relations proposed a set of 'State Employment Standards' (SES) that set minimum conditions for WA workers lower than the National Employment Standards (NES). Conspicuously there was no right to request flexible work conditions included *at all* in the proposed SES.

The Senate Committee should consider how 'right to request' protections can be extended to workers in the remaining state industrial relations systems such as WA.

### ***Protections for pregnant workers***

UnionsWA supports the proposed amendments to extend the right to be transferred to a safe job to employees with less than 12 months service. We also support the proposal in the amended section 82A which provides that if no safe job is available, employees with less than 12 months service would be entitled to unpaid no safe job leave.

Unfortunately, once again workers in the state industrial relations system look set to miss out on protections being extended to workers in the national system. As with flexible work arrangements, UnionsWA urges the Senate committee to consider ways to extend these protections to workers in the remaining state industrial relations systems.

### ***Modern awards objective – additional remuneration for unusual working hours***

UnionsWA welcomes the new section 134(1)(da) which acknowledges

*the need to provide additional remuneration for:*

- (i) employees working overtime; or*
- (ii) employees working unsocial, irregular or unpredictable hours; or*
- (iii) employees working on weekends or public holidays; or*
- (iv) employees working shifts;*

UnionsWA is concerned to protect the take home pay not just workers in the national industrial relations system, but also in the state system. According to the WA Department of Commerce, around 10 per cent (or 120,000) of WA employees have their pay set by awards

and of those 41 per cent are in the accommodation and food services industry.<sup>1</sup> Data from the Australian Bureau of Statistics on Employee Earnings and Hours in WA shows that, in terms of ordinary time hourly cash earnings, workers in the accommodation, and food and beverage services industries earn respectively around 77 per cent and 42 per cent less than the all industry average in this state.<sup>2</sup> It is important for workers to have their penalty rates and allowances protected in these industries.

The recently re-elected WA Premier Colin Barnett suggested in February 2012 that, with the introduction of Sunday trading in Perth, that he wanted ‘*a more even pay rate between weekday work and Sunday work and Saturday work*’, implying that workers earning weekend penalty rates are somehow a privileged class compared to those who work during the week.<sup>3</sup>

The assumption appears to be that workers in the hospitality sector should have *less time* for family and community events. This will be the case because without penalty rates they will need to make up their take home pay though increased hours, or have their take home pay reduced if they wish to spend time with family on weekends and public holidays.

However, families with school-age children need weekend and weekday evenings to share time together. If unsociable hours of work are available more cheaply then employers would be likely to more often require such work of their employees. Retail and hospitality employment is growing, and these sectors employ significant numbers of young people, including students. In families where a working child and a parent or parents are employed in affected sectors weakening of penalty rates will be magnified. In those families only one or more members needing to work more unsocial hours will dramatically affect shared time.

UnionsWA has analysed data from the ABS CensusAtSchool population sampler, and found that, between 2008 and 2012, the amount of time school students spend in paid work has been increasing, and the amount of time spent with family has been decreasing. Based on a random sample of 200 school students in 2008 and 2012, we found that hours spent with family during the year had declined by 14 per cent, and time spent in paid work has increased by 17%.<sup>4</sup>

Year	Total hours weekly in WA	
	Time with Family All years School Students	Paid work All years School Students
<b>2008</b>	2,425	553
<b>2012</b>	2,075	648
<b>% Change</b>	-14%	17%

<sup>1</sup> ‘State Industrial Relations Coverage in WA’, [http://www.commerce.wa.gov.au/LabourRelations/Content/Publications/Labour\\_Market\\_Statistics/Key\\_Labour\\_Market\\_Indicators.html](http://www.commerce.wa.gov.au/LabourRelations/Content/Publications/Labour_Market_Statistics/Key_Labour_Market_Indicators.html)

<sup>2</sup> 6306.0 - Employee Earnings and Hours, Australia, May 2010, <http://www.abs.gov.au/ausstats/abs@.nsf/mf/6306.0>

<sup>3</sup> ‘WA: Debate over Sunday pay for WA retailers’, AAP, 22 February 2012

<sup>4</sup> ABS CensusAtSchool Australia, <http://www.cas.abs.gov.au/cgi-local/cassampler.pl>

UnionsWA supports protecting penalty rates in the Modern Awards Objective as a check on unsociable hours of work. Weekends and after hours on weekdays remain important as shared time for families and for community events.

### ***Anti-bullying measures***

UnionsWA supports the proposed new Part 6-4B of the Fair Work Act that enable a worker who is bullied at work to apply to the Fair Work Commission (FWC) to stop bullying. We are pleased that the Federal government is acting on the House of Representatives Standing Committee on Education and Employment Inquiry Report on Workplace Bullying.

UnionsWA appeared before the Committee Inquiry when it held its Perth Hearing in August 2012, alongside representatives from our affiliates the Australian Services Union (ASU) and the Civil Service Association (CPSU/CSA). We highlighted that workplace bullying should not be framed as simply 'psychotic' individuals bullying others in specific easy-to-record 'incidents'. The WA government's Code of Practice on 'Violence, aggression and bullying at work' identifies changes in the workplace and workloads as one of a number of reasons for bullying. Work by Dr Jacque Hutchinson from the UWA Business School has highlighted that restructuring and downsizing in organisations can lead to poorer mental health outcomes, bullying and other forms of occupational violence.<sup>5</sup> This is not an argument that change should never happen, rather that appropriate guidelines should be developed about implementing organisational reforms to ensure that workplace bullying is not the price of change.

Therefore, in addition to adopting the ACTU recommendations, the Senate Committee inquiry should consider Amendments to the Fair Work Act that recognise that workplace bullying arises not just from individuals under pressure but also from organisations under pressure.

UnionsWA is also concerned that the recently re-elected WA Liberal-National government has already committed itself to weakening Occupational Safety and Health protections in this state by refusing to sign up to national laws. WA workers may miss out on these important new protections and remedies against workplace bullying, and we would urge the Committee to consider how these protections might be extended to state system employees.

### ***Right of entry***

Right of Entry is a worker's right to representation of their legitimate industrial interests. UnionsWA welcome the Amendment Bill's recognition that too many employers are exploiting the restrictions to Right of Entry in existing legislation.

The Bill's proposed remedy, however, of expanded scope for the FWC to deal with disputes about Right of Entry, is not adequate for the task, and may amount to unduly restricting the legitimate exercise of the rights conferred by the legislation in an already heavily regulated area.

UnionsWA also notes that, while the Amendment Bill devotes attention to the issue of 'accommodation arrangement' for permit holders visiting remote locations, there is another

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<sup>5</sup> Jacque Hutchinson, 'Restructuring and workplace bullying in the Australian public sector', <http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan046794.pdf>

accommodation arrangement that is left untouched – that is, permit holder’s access to worker accommodation villages in remote locations.

Left unchanged in the current bill is section 493 ‘residential premises’ which states that

*The permit holder must not enter any part of premises that is used mainly for residential purposes.*

Right of Entry is about the right of workers to join their union and meet with their representatives in the most convenient location. For workplaces in remote locations it can be challenging to find such locations. Often unscrupulous employers will take advantage of remote locations to restrict access to worker accommodation villages on the grounds that they are ‘private residences’, even though the employer has control over who can access these accommodation sites.

The Amendment Bill should ensure employee’s representation rights by recognising the need for access to remote locations. That is, where a permit holder wishes to enter a worker accommodation village whether it is onsite or offsite, to consult with members or potential members, the permit holder should be able to do so as of right as though the worker accommodation village were a workplace proper.

***In conclusion***

UnionsWA supports the recommendations of the ACTU submission, and welcomes the changes proposed in the Amendment Bill as important and necessary steps forward to secure the rights of working people. However we believe there are many aspects of the Bill that can be improved, and we urge the Committee to consider ways in which the benefits of this Amendment Bill could be extended to employees in state industrial relations systems.

Yours sincerely

**Meredith Hammat**  
**A/ Secretary**