30 August 2000

The Secretary
Senate Employment, Workplace Relations,
Small Business and
Education Legislation Committee
S1.61 Parliament House
CANBERRA ACT 2000

Dear Secretary

Re: Senate Employment, Workplace Relations, Small Business and Education Legislation Committee into Four Workplace Relations Bills

Enclosed the AMWU's submission into the above inquiry.

Please contact Kate Cotis or Tania Clarke on 029 798 9133 if you require further information.

Yours sincerely

by electronic mail

Julius Roe
National President

The AMWU's Submission to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee into Four Workplace Relations Bills

Introduction

The AMWU is adamantly opposed to the Government's attempts to introduce the four Bills which are currently before the Committee.

In the AMWU's view the introduction of these Bills is simply another attempt by the Government to brow beat the Sentate into caving into to their demands which have been continually rejected. In this regard the AMWU would also like to express it's concern over the apparent waste of Senates resources in this attempt by the Government to reintroduce its failed Workplace Relations Legislation Amendement (More Jobs, Better Pay) Bill 1999.

The four Bills contains similar proposals which were dealt with extensively in the AMWU submission to the Senate Inquiry into the Workplace Relations Legislation Amendement (More Jobs, Better Pay) Bill 1999. Therefore this submission briefly summerises AMWU's 1999 submission the sections which are relevant to this enquiry. In addition this summary is crossed referenced with the AMWU's 1999 submission which for ease of reference is attached in it's entirety.

One behalf of it's, members the AMWU implores the Committee to find that the four Bills to be contrary to the principals of fairness and equity.

Workplace Relations Amendment (Australian Workplace Agreements Procedures) Bill 2000

The AMWU continues to strongly oppose AWAs and continues to believe that AWAs do not provide employees with adequate industrial protection. As previously submitted the AMWU's objections have proven to be soundly based ie. AWAs have been found to offend ILO, Convention No. 98 (ILO Committee of Experts, November-December 1997 Session) (see page 56 of the AMWU's 1999 submission).

The AMWU believes that the proposed amendments simply increases the promotion of AWAs whilst simultaneously removing protections such as the no-disadvantage test to the Commission (see pages 15-17 of the AMWU's 1999 submission).

The AMWU continues to believe that the Bill's application ignores the requirement at s.3(e) for the Act to support fair and effective agreement making and ensure that the parties abide by awards and agreements (see page 56 of the AMWU's 1999 submission).

In 1999 the AMWU provided evidence in it's submission to the Senate inquiry into the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 that the only choice being offered to AMWU members is that of an AWA or the job itself. Unfortunately in the union's view this situation has not changed. The fact that the legislation requires genuine consent (s.170VBA(2) does not in reality, effect consent at all (see pages 15, 16, 17, 18 & 56, of the AMWU's 1999 submission).

In the AMWU's view section 170VBD(d) continues to allow AWAs to operate from the date of signing rather than the date the Employment Advocate (EA) specifies there is no disadvantage by approving the agreement. This will leave employees exposed to recovering lost monies where the AWA is not approved (see page 57 and attachment "C" of the AMWU's 1999 submission).

The AMWU believes that this proposal restores, in part, a proposal rejected by the Democrats in 1996. The Bill that preceded the 1996 Act had AWAs take effect once filed. That proposal was abandoned and a requirement that the Employment Advocate check agreements for no disadvantage, secured through the Democrats' amendments (see pages 56-57 of the AMWU's 1999 submission).

This Bill provides for AWAs applying to employees earning $68,000 or more per annum to automatically pass the no-disadvantage test. Employees on the top minimum rate, prescribed in the Metal Award (M1913), earn just over $48,000 per annum, ordinary time. Technical and Supervisory members employed throughout the Australian Public Service also earn in excess of the proposed $68,000, as do some of our printing, vehicle and metal trades persons when all aspects of remuneration are considered (overtime, penalty, superannuation fringe benefits).

It cannot be assumed that high paid employees and/or white collar employees are better enabled to reach genuine consent, are aware of their award entitlements or are in strong bargaining positions. The $68K cap is an arbitrary and nonsensical measure of equity. Neither the Bills Explanatory Memorandum or the Ministers Second Reading Speech provide any rationale for assuming AWAs applying to employees receiving $68K contain no disadvantage (see page 58 of the AMWU's 1999 submission).

The AMWU resubmits that the repeal of the provisions preventing AWAs containing different conditions to be offered to comparable employees will cause division and disputation at the workplace. The AMWU continues to believe that there is no rationale for repealing this provision.

Section 170VPA(1)(e) was effected by the Democrats agreement with the Government for the purpose of:

- preventing discriminatory practices, and
- supporting "collective bargaining" provisions (see pages 58 of the AMWU's 1999 submission).

Industry evidence continues to show that employees are being forced to accept AWAs. and that they are being used as pattern bargains and quasi collective agreements. This evidence supports that the retention of this provision would prevent discriminatory practices.

In light of the evidence that continues to highlight the disadvantages experienced by employees the AMWU believes that the individual contract stream be repealed.

Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2000

The AMWU continues to believe that the Bill's provisions regarding secret ballots as condition precedent to protected industrial action are designed to negate workers' position in the bargaining relationship. The secret ballot provisions will be costly, create inordinate delay and are unnecessarily burdensome. There is no evidence to suggest union members are unwillingly taking industrial action.

The AMWU's Notice of Intended Industrial Action (s.170MO(5) to employers has in place a stop work meeting process where members determine, what, if any, further industrial action occurs. It is the members who determine the nature of action, if any, to be taken in furtherance of finalising an enterprise bargain (see page 59-60 of the AMWU's 1999 submission).

The AMWU continues to believe that the amendments sought at s.170MO(5) to specify the precise nature, date/s and duration of industrial action is likely to escalate the forms and duration of action taken. The unions current s.170MO(5) notice often results in stop work meetings occurring during breaks with a short intrusion into working time. The amendments proposed will interfere with this process as members are forced to specify escalated forms of action on the basis it may be needed after the lengthy period entailed in the secret ballot process (see page 59-60 of the AMWU's 1999 submission).

The Bill's encouragement of escalated industrial action is also evident at s.187AA which prohibits payments for the day on which industrial action occurs, rather than for the time action occurred. Why limit a stop work meeting to 10 minutes if payment for the whole day is prohibited?

The secret ballot proposals are unnecessary as the Act already provides (s.135) for the Commission to order a secret ballot in order to prevent or settle an industrial dispute. It has been open to negotiating parties and the Commission to access s.135 in relation to industrial action with the Commission determining voting procedure. The Bill (s.135(2)) proposes to specifically preclude these types of applications (see page 59-60 of the AMWU's 1999 submission).

If there were evidence of coercion in relation to the taking of industrial action one would have expected a significant number of applications under the existing provisions. The lack of such evidence and the lengthy, cumbersome ballot process proposed is designed to render the

protected industrial action provisions ineffectual (see page 59-60 of the AMWU's 1999 submission).

Workplace Relations Amendment (Termination of Employment) Bill 2000

The AMWU believes that the Bill proposes to make it even more difficult for employees to be treated fairly during unlawful dismissal proceedings.

The Bill seeks to:

- interfer with state legislation
- place Independent Contractors and therefore a large proportion of the work force outside the eligibility of the unlawful termination provisions
- excludes all employees who are made redundant from seeking remedy for unlawful termination
- make it more difficult for employees to lodge legitimate "out of time" applications
- complicate and delay proceedings by providing employers with the ability to mount jurisdictional arguements
- put at risk employees' right to arbitration
- places an obligation on the Commission to consider the size of a business therefore providing small business with an exemption from treating its employees fairly in relation to termination
- prevent the Commission from considering compensation for distress caused by a termination.

It is clear that this Bill is simply seeking to provide irresponsible employers with the ability and more options to unfairly dismiss employees without any recourse whatsoever.

Workplace Relations Amendment (Tallies and Picnic Days) Bill 2000

Tallies

Whilst the removal of Tallies will not directly effect the majority of AMWU members, the union is nevertheless concerned about those employees who will be effected if this Bill is passed. During the Senate Inquiry into the Workplace Relations Legislation Amendement (More Jobs, Better Pay) Bill 1999 evidence was provided by several unions (eg. Australian Workers Union, the Liquor, Hospitality and Miscellaneous Workers Union, the Australian Meat Industry Employees Union) in relation to the adverse effect that the removal of Tallies would have on certain sections of the work force in terms of loss of take home pay. When the Government introduced the Workplace Relations Act 1996 it promised that no worker would be worse off or lose any take home pay. The removal of Tallies is entirely inconsistent with this promise.

Picnic Days

The proposal to remove picnic days from awards can only be seen as an attempt by the Government to further reduce the conditions of Australian workers. Picnic days are an entrenched and widely accepted part of Australian tradition. The Government has not

provided any sound justification for the removal of picnic days. The AMWU believes that when dealing with this matter that the Committee should view the lack of apparent concern from employers in relation to this issue as evidence that any issue regarding picnic days is and can be dealt with in the normal course of industrial relations. The AMWU fully supports the ACTU's submission on this matter.

AMWU'S RESPONSE
TO SENATE INQUIRY - WORKPLACE RELATIONS LEGISLATION AMENDMENT (MORE JOBS, BETTER PAY) BILL 1999 (THE BILL)

The following submissions address the Inquiry's terms of reference at paragraph (a) through the provision of evidence and case example. The material emerging through paragraph (a) will then be cast against the provisions of the Bill in relation to proposals for :

- Right of Entry;
- Bargaining→secret ballots→collective Vs AWAs;
- Closed shops;
- Object of the Act→Role of Awards

PART A

THE IMPACT OF THE WORKPLACE RELATIONS ACT 1996 (the Act) :

a(i) WHETHER THE PRINCIPAL OBJECTS OF THE ACT (particularly paragraphs 3(j) (k) have been fulfilled in practice.

PRINCIPAL OBJECTS

1.0 S.3(a) ENCOURAGING THE PURSUIT OF HIGH EMPLOYMENT, IMPROVED LIVING STANDARDS, LOW INFLATION AND INTERNATIONAL COMPETITIVENESS THROUGH HIGHER PRODUCTIVITY AND A FLEXIBLE AND FAIR LABOUR MARKET.

SUMMARY

The workforce through flexibility is stretched to breaking point. The Bill introduces further flexibility and removes protections creating further stress. The economic indicators specified at s.3(a) are operating independently of the Act, Consideration is required as to the level of Management's performance regarding productivity outcomes.

1.1 The Act has been operational for just over 2.5 years. The degree to which it has contributed to high employment, low inflation and international competitiveness by creating higher productivity is largely unassessed. What is known is that productivity requires "more complex considerations than simply the question of labour costs". [1] Whilst the Act's impact on productivity and inflation are not observable, the AMWU's evidence strongly supports that the Act's promotion of a more flexible labour market has not resulted in fairness.

The non-observable or quantified link between the Act and the economic indicators provided at s.3(a) guard against introducing the further flexibilities and reduced award protection provided for by the Bill.

1.2 Increasing levels of productivity, as observed by the Full Bench of the AIRC in the Safety Net Review Decision, April 1999 [2] have been a feature of the Australian economy since the early part of the decade, and hence cannot be attributed to the Act. The AMWU argues that increased productivity has been supported, inter alia, by the introduction of the skill-based career paths, which the Bill seeks to delete from awards. (s.89A(2)(a)..

The Bench went on to observe that during the actual period of the Act's operation, award rates had not kept pace with the growth in earnings generally and the gap between income levels has widened. [3] Real unit labour costs declined by -1.7% in the year to September Quarter 1998 [4] and real award rates fell in 1995-96 and 1996 - 97. [5]

1.3 The AMWU has argued that labour market reform has reached saturation point and that squeezing further flexibilities and lowering wages is not the path to sustainable productivity.

The pursuit of increased productivity has mostly been focussed at the employee level. Very little consideration has been given to management performance in relation to productivity outcomes. As outlined, in the Karpin Report [6], Australian management performance ranked poorly compared to other countries. This was also reflected in our members' responses in the ACTU Employment Security and

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1 Hospitality Penalty Rates Case (AIRC, Print P9677, p.5)

2 Safety Net Review Decision, April 1999 (Print R1999) p. 32

3 Ibid, p. 65

4 Ibid, p. 69

5 Ibid, p. 61

6 Karpin Report - Enterprising Nation; Report on Management & Leadership Skills

Working Time Survey (Attachment 'B') - when asked if they wanted management at the workplace to improve, 77% agreed.

The AMWU report Rebuilding Australia [7] demonstrated that the AMWU has been heavily involved in the debate about industry development and the future of manufacturing for many years. This is hardly surprising given that workplaces with union members in manufacturing account for :

- 69% of total manufacturing employment
- 78% of all sales made by manufacturing industry to the domestic market
- 86% of manufacturing industry's export sales
- 78% of all research and development carried out by manufacturing industry

The Report clearly shows the need for a more interventionist and sophisticated policy agenda and demonstrates :

- Why $4 billion of infrastructure spending and job creation initiatives in 1996 would have provided 120,000 more jobs in 1997 with 90,000 fewer Australians unemployed.

- How industry policies can create more than 100,000 extra jobs every year during the first decade of the 21st century

These are the initiatives required to stimulate economic indicators and the welfare of the Australian people.

1.4 Ministers may seek to claim credit for the fall in unemployment or days lost in industrial action, however, these factors have been trending down irrespective of the Act's operation. The "benefits" of micro-economic reform are being reflected by a greater wage dispersion, record levels of private, corporate profit share [8] and increased job insecurity.

Productivity in the vehicle industry is due to a number of factors. Many reports have been written on macroeconomic and microeconomic outcomes and reforms in the automotive industry in Australia. Microeconomic factors such as labour are impacted upon by macroeconomics such as government industry policy, tariffs and international competition. A quote from the "State of the Australian Automotive Industry 1997" highlights the many factors that influence productivity in the car manufacturing industry. It states:

"*The number of vehicles per employee increased markedly during the first half of the 1990's as both plants and model lines were rationalised, new investment emphasised efficiency*

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[7] Rebuilding Australia - Industry development for More Jobs, AMWU, September 1997

[8] Safety Net Review 1999 - Print R1999, p. 69

improvements and production of the continuing Australian made models increased. But during the more stable period for output after 1994, this measure of productivity improved

only marginally to 1996 and then fell in 1997. The relatively small decline in 1997 is not surprising given the increase in employment noted earlier in this chapter, which is typically associated with new model development and introduction, while the lower production at two manufacturers as model changeover loomed would also have reduced productivity in 1997"[Commnwealth Department of Industry Science and Resources December 1998. p.37]

1.5 Employment in manufacturing, at just over 1 million in August 1999, is at the lowest level ever recorded by the ABS (ABS Catalogue 6291, 0.40.001). Employment in manufacturing has fallen by 75,000 in the two years to August 1999, i.e. the period of operation of the Act.

1.6 FLEXIBILITY AND FAIR LABOUR MARKET

One of the few studies to directly assess "management measures" during the operation of the current Act was undertaken by Cully et al [9] on a grant funded by Rio Tinto. The study found that overall, absenteeism between 1996 - 98 had increased by 0.1%. The study also found that the increase in the rate for women, from 2.8% in 1996 to 3.1% was statistically significant. [10]

Increased absenteeism is a response to increased work pressure and flexible hours. The concept of "flexible hours" is one often described as beneficial for employers and employees. For workers with little bargaining power, however, this often means accepting working time arrangements on the basis of job insecurity rather than "improved living standards". This ultimately leads to irreconcilable and competing pressures between work and family responsibility. Absenteeism is the observable result.

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[9] Cully M et al : Australian Labor Market - Employee Relations in Australia; Australian Bulletin of Labour, June 1999, p...

[10] Cully M et al, Ibid, p. 94

FLEXIBILITY - CASE STUDIES

The Maitland Mercury, NSW, part of the Rural Press Group

The Maitland Mercury is part of the wider organisation knows as Rural Press. Rural Press prints news papers in many regional towns across Australia.

The employer during enterprise bargaining (EBA) negotiations, initiated a one week lock out of workers.

The employer sought reduced entitlements for casual and part-time workers. In particular, the employer seeks no minimum daily hours for part-time work nor any maximum weekly hours. Prior to the Act, the Award (R45) contained both minimum and maximum weekly hours

The employer wants the power to direct part-time workers to work over their agreed weekly hours, without the payment of overtime or penalty rates. In effect, the employer wants a pool of workers employed on nominal weekly hours, with complete flexibility to direct them to work any number of additional hours each week, paid at ordinary rates of pay. This has the clear potential to allow someone engaged by agreement at 25 weekly hours to be directed to work up to 50 hours per week.

For casual workers, the employer wants to introduce a minimum 2-hours engagement. The employer has made clear its agenda is to replace the predominantly full-time permanent workforce with casuals and part-time workers.

The implications of the Rural Press agenda of introducing casuals and part-time workers is a loss of job security. In particular, the prohibition in the Act, s.89A(4)(b) on setting maximum weekly part-time work hours has a direct impact on the balance between work and family responsibilities for those workers who are recruited as part-time workers. There becomes no certainty in hours for these workers who wish to work 25 hours but not 50.

Rural Press newspapers operate in regional locations, in areas of high unemployment and limited employment opportunities. Rural Press is able to exploit the local employment market by offering employment only on the basis of casual or part-time employment, save for employing a small core of permanent full-time employment. As a large employer in depressed regional areas, Rural Press is flexing its bargaining position to the detriment of local workers with little bargaining power.

Berri Ltd (Orchards) SA, VIC, NSW, QLD

The workforce is predominantly female and are restricted from working overtime due to unsuitability regarding family commitments and child-care.

Berri Ltd want a permanent workforce but to use them in a casual manner - adopting "just in time" practices with no stock held in the warehouse. Employees are told to take or cancel holidays and RDOs on short notice (24 hours) when the company wants this leave taken. The employer also seeks to change the length of shifts on short notice. These forms of flexibility do not suit the workforce and result in increased absenteeism.

1.7 s.143(1C)(a) of the Act encourages the making of facilitative award arrangements. This provision has been used extensively to increase flexibility in award hours of work provisions. Following the first round of award simplification many awards[11] covering low paid workers allow employers and employees to agree to vary the span of normal hours at the workplace without Commission involvement.

Prior to award simplification [12] employees under the AMWU's Graphic Arts - General - Interim Award 1995 received a 20% morning shift allowance for commencing work prior to 7.00 a.m. Now, such workers can "agree" to forgo this allowance.

It ignores the reality of low paid workers (minimum award rates of $385.40) who are low paid due to not having bargaining power, to accept that flexible arrangements facilitating a 20% reduction in earnings is fair.

The difficult relationship between ensuring a flexible and fair labour market and improved living standards is further evidenced by the results of research [13] by the AMWU in October, 1998. (Attachment A)

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[11] Metal and Engineering Associated Industries Award (M1913), Graphic Arts General Interim Award (G0439), Textile Industries Award (T0007)

[12] Print, R7898

[13] Work, Union and the AMWU Employee attitudes, Research conducted for the AMWU by Research & Management Consultants Pty Ltd, 1998.

1.8 The AMWU survey results are consistent with concerns expressed by workers elsewhere in Australia and overseas. The OECD [14] report that full-time employees are "concerned about longer working hours and their effects on family and community life" [15] and that "increases in unpaid overtime are clearly an important factor". [16]

The ACTU research conducted by Yann Campbell and Hoare Wheeler reported outcomes consistent with the AMWU. The AMWU specific outcomes extracted from the ACTU research are attached and marked "Attachment B".

AMWU members, surveyed in October, 1998 (Attachment A) reported the key influences are :

- Job insecurity; and
- Fear of unemployment

Employees are concerned about :

- Restructuring, redundancies, downsizing
- The increasing casualisation of the workforce
- High employer expectations driven by productivity improvement
- Contracts
- Ageism
- Advancements in technology
- Competition for jobs

The key defining characteristics of the workforce are :

- insecurity
- mistrust
- anxiety
- competition
- divisiveness
- a lack of unity
- self-focus and self-preservation
- lacking leisure and rest time
- a lack of forward planning
- erosion of the very Australian trait of mateship.

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14 OECD, Employment Outlook, June 1998

15 Ibid, p. 153

16 Ibid, p. 161

Expanding on those findings the report found :

DOMINANCE OF WORK

- Workers feel life is dominating their living. There is an increased expectation to remain at their stations until the job is done. Many are unsure of the time they will arrive home (p.12) (Attachment A).

FINANCE PRESSURE

- Employees with families to support found it difficult to keep up with the cost of living.

- Casual employees claimed to be accepting any offers of overtime to withstand anticipated months of unemployment.

The most significant element causing financial pressure was found to be the lack of job security (p.12).

LACK OF JOB SECURITY

There is no doubt that the lack of job security is the overwhelming concern in the workforce. The 90's workplace is highly competitive, jobs are precious and unemployment looms as a very real prospect, underpinning insecurity. Workers feel uncertain, anxious, mistrustful and insecure. The anxiety over possibly becoming unemployable was almost palpable in the focus groups. The causes are several and the ramifications, both in the workplace and for the community at large, appear to be largely undermining. (p.12)

Those in permanent positions dread the possibility of becoming employed as casual staff while those respondents currently in casual employment describe themselves as having "*low morale and low self-esteem*". (p.13)

"you have no security...you can't budget....you can't get a home loan"

(Lapsed member, Melb)

Growing trend towards contract work was accompanied by a perception that individual agreements are inherently "unfair". (p.13)

Some employees expressed fears of recriminations at the end of the contract period if employers perceived them to be "*troublemakers*" and tended to behave in a rather subdued or "*docile*" manner: (p.14)

- A highly competitive job market - employees are all too sure that their jobs could easily be taken by others. They are afraid to refuse overtime or any implicit demands to expend greater time or effort to their work in the belief, usually fostered by employers, that "*if you don't do it, there are plenty of others who will*". Some respondents had taken pay cuts to retain their positions following management restructures.
- High productivity expectations of employers and set "*accountability*" measures add pressure, create a lack of self-confidence and "*nervousness*" and invariably lead to increased working hours.

IMPACTS ON THE WORKFORCE

Leisure time and rest appear to have become severely restricted. (p.16)

Employees are often reluctant, and if working as casuals unable to make commitments regarding their future. (p.16)

Workplace stress, anxiety caused by the lack of job security, extended work hours and financial pressures are claimed to be taking their toll on family relationships. (p.17)

Job satisfaction is diminishing - employees , for the most part, are glad just to have a job. (p.17)

HIGH EMPLOYER EXPECTATIONS

Employees are well aware of management's drive to increase productivity in order, as they see it, to compete globally and thereby, remain afloat. However, from their perspective, where their jobs are on the line, increased productivity means higher expectations from employers.

- The problem employees are encountering is the implicit threat behind these expectations to stay at work until the job is done. Several employees believed that the expectation is often not even voiced :

> *"its kind of just a general thing so everyone does it.....there's an expectation there.....often I find that it's not asked....it's almost demanded....a lot of pressure on you to stay and finish or basically, don't bother coming back....my company looks down on people that won't do the five days a week, the Saturday....and when it's time for someone to actually go....when they've got to cut down, it's generally those that won't work the Saturday that are the first to go"*

(Potential, Sydney)

- While overtime is being paid when this additional work might extend to a number of hours, it does not always appear to be paid when the task requires only a matter of an hour or part thereof to be completed. Indeed, it seems that it is the very notion of extended working hours that employees are having difficulty in coming to grips with and it is the sense that they are "*giving more*" for the same or lower wage, that results in their feeling "*used*" :

> *"I think they're trying to get more out of us for less pay"*

(Potential, Melb)

To say that most employees feel put upon would be a truism and an understatement. They clearly resent the very expectation of employers that they will comply with demands or risk losing their jobs. They perceive that they are expected to be flexible. And the underlying resentment stems from the lack of power of the insecure worker to do anything but comply. Employers are perceived to be playing on this job insecurity and, for the most part, they appear to be succeeding.

2.0 s.3(b) **ENSURING THE PRIMARY RESPONSIBILITY FOR DETERMINING MATTERS AFFECTING THE RELATIONSHIP BETWEEN EMPLOYERS AND EMPLOYEES RESTS WITH THE EMPLOYER AND EMPLOYEES AT THE WORKPLACE OR ENTERPRISE LEVEL**, and

s.3(c) **ENABLING EMPLOYERS AND EMPLOYEES TO CHOOSE THE MOST APPROPRIATE FORM OF AGREEMENT FOR THEIR PARTICULAR CIRCUMSTANCES, WHETHER OR NOT THAT FORM IS PROVIDED FOR BY THIS ACT**.

SUMMARY

AWAs are not operating in the spirit of s.3(b) & (c).

Employee insecurity and lack of bargaining power make AWAs an inappropriate form of industrial instrument.

Research conducted by the AMWU, ACTU, DWRSB and ACCIRT confirm that employees do not feel able to genuinely negotiate with employers.

AMWU case studies reflect that this is so.

Through the operation of the Act, there has been an increasing deregulation around hours of work to the detriment of workers' health and balance regarding family responsibilities.

2.1 Before assessing whether objects s.3(b) & (c) (as experienced at the workplace) support the principal object of the Act to provide a framework for co-operative workplace relations, it is essential to breakdown the parameters on which 3(b) & (c) reside. For example :

3(b) Do employees and employers have an equal say in determining matters at the workplace?

Are employees able to negotiate on an equal basis with their employer?

3(c) Do employees and employers have an equal say in determining what form of agreement is used.

If the AIRC does not have a role overseeing agreements or the no disadvantage test does not apply, do employees have knowledge of their existing entitlements?

The AMWU's evidence supports the contention that objects ss.3(b) and (c) are founded on the incorrect premise that equality of bargaining power underlines the employment relationship.

The effect of these sections has been to further consolidate bargaining power to employers by a focus on individual bargaining and agreement making both inside and outside of the AIRC's purview.

2.2 In respect to employees and employers determining matters at the workplace, AMWU respondents to the ACTU Survey [17] reported that over the past 12 months :

- Work pace had increased (39%);
- Control over own work had decreased (20%);
- level of monitoring had increased (29%);
- decreased job satisfaction (36%).

The ability of object 3(b) to secure positive workplace relations is thrown into doubt by 58% of respondents reporting they would like to have more say in setting working arrangements.

The ability of workers to have more say is undermined by job insecurity (62% of respondents would like employment to be more secure) and the removal of consultative arrangements and structures from awards pursuant to s.89A(2) of the Act.[18]

Award Stripping has seen the removal of consultative provisions from awards.

2.3

REMOVAL OF CONSULTATIVE PROCESSES - CASE STUDIES

The sale of Amcor Envelopes (Port Melbourne VIC. and Alexandria NSW) to Reding Paper Products in August, 1999 remained a closely guarded secret, despite continued inquiries by shop delegates and the Union, until the day prior to the completion of the sale. The terms of the sale, as was subsequently learned, included massive restructuring and relocation of former Amcor employees.

Prior consultation would have given both the new employer and the employees a clearer idea of the problems being faced in the relocation process.

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17 Attachment 'B'

18 Award Simplification Decision, Print, P7500

The Craftsman Press, Burwood, Victoria

During a down-turn in work in mid 1998, The Craftsman Press undertook a program of redundancies, without any form of consultation with either their employees or their union. The company's attempt at consultation involved a facsimile sent to the Union, a matter of hours before the intended redundancies were to take place. Subsequently, all employees successfully filed unfair dismissal claims; one employee gaining reinstatement. During negotiations regarding the issue, the point was raised that the company had been advised that even though the consultation provisions still existed in their award, the AIRC had no power to enforce them, as they had since become non-allowable matters.

Migras Packaging Pty Ltd - Qld

The employer introduced shift work without consultation with employees - day, afternoon and night shifts. Employees who had previously worked days were forced onto late or night shifts. The employer refuses to allow rotation between shifts, either on a temporary basis, a rotation basis or through a swap between workers by consent.

Employees and unions have sought consultation with the employer about the impact on the workers. The employer has refused, informing workers if they want to get off late shifts, they can resign.

Of a staff of 40, in the past year there has been a turnover of over 100 staff. This belies any argument that the employer's flexible hours of work arrangements provide efficiencies. The Australian Industrial Relations Commission is powerless to resolve this matter without the consent of the employer.

UMT Milk in Launceston, Tasmania - Metals Division

This company was sold from one proprietor to another. The original owner sold the business without advising the union or the employees of the potential sale, even though the effect of the sale was to render the workers redundant (unless they accepted employment with the new owner).

The original owner refused redundancy to the workers and instead argued that their conditions would be carried over to the new employer as part of a transmission of business. However, because the contract for the sale of the business didn't provide for the transfer of the employees' entitlements to the new owner, the employees were to lose all of their accrued entitlements.

Under s89A of the Workplace Relations Act, consultation prior to redundancies is a non-allowable matter. In UMT's case, because there was no obligation to consult, the employer was free to announce the sale, and bring about redundancies, without first consulting with the employees.

The Industrial Relations Commission has no specific power to ensure employees' entitlements are rolled over to a new owner. Instead, the Union was forced to run a test case under section 170FB of the Act, a largely untested and discretionary provision. The AMWU is awaiting a decision in this case (after 7 months) (C NO. 70230/1998). In the meantime, workers are still denied redundancy pay, and for those workers who did transmit to the new owner, they have lost accrued, as well as lower wages and conditions.

2.4 The promotion of individual bargaining (AWAs, s.170VA) in the agreement, as well as award stream s.143(IC)(a) in the evidence of overwhelming job insecurity and diminished consultative arrangements, will not promote the principal objects of co-operative workplace relations or the welfare of the Australian people. The OECD[19] report that collective bargaining arrangements are important in securing employee preference around hours of work arrangements.

The preference for collective arrangements is well understood as the following examples highlight the industrial myth of employees and employers genuinely agreeing to the form of industrial coverage.

2.5

EMPLOYEES AND EMPLOYERS CHOOSING THE MOST APPROPRIATE FORM OF AGREEMENT - AWA CASE STUDIES

Big Colour Pages, Fairfax Group

This company formerly known as "Melbourne Big" was taken over by the Fairfax Group. Employees, who formerly worked under the Graphic Arts - General - Interim Award 1995, were handed AWAs, given the statutory amount of time to consider the offer, and told that these were to be the only terms and conditions available under the new ownership. No negotiation was to be entered into.

Cherry Graphics, Greenacre, NSW

This case, (currently the subject of litigation) involves the employer changing the nature of employment contracts from award coverage to AWAs, and discrimination against union members. In this instance, the employer offered continuing employment under individual contracts in return for employees either remaining non-union members, or

19 Ibid, p. 167

resigning their membership.

The contracts offered were not subject to negotiation, rather they were offered as a condition of ongoing employment. This case also involves clear discrimination against union members, as those who were perceived by their employer to be closest to the union's activities were not offered individual contracts, and were subsequently made "redundant".

Printcraft Pty Ltd in Fortitude Valley, Qld

This company employs about 30-40 workers. Increasingly, and in secret, the employer has been putting its workers onto AWAs. There are two union members at the site. One of the members, when told to accept an AWA, told the employer he wanted to consult the union about the AWA. The employer told the worker the site was "non-union" and he had 5 days to accept the AWA or resign. The AWA cut the rate of pay for overtime from double-time to time-and-a-half, for all periods of overtime. The AWAs were being introduced as part of the introduction of 12-hour shifts and, provided that workers would be paid ordinary pay for doing shifts, i.e. no penalty rates would apply for working between 6.00 p.m. - 7.00 a.m.

PMP Communication Group

Within the Graphic Design or Pre Press area of the industry, AWAs are common place and it is not unusual for large pre-press organisations, who have agreements in place, to relocate employees to the premises of major clients, and claim that a condition of this move is a change to an AWA. Although this has been difficult to police, or to, in fact prove, as many calls are from non-union members the amount of enquiries under these circumstances indicate that the practice is widespread. Enough enquiries are taken from prospective employees of sections of the PMP Communication group to indicate that they are involved in this type of activity.

Pasta Master, (VIC)

Pasta Master (PM) introduced an "Unregistered AWA".

The employees gave in as they were frightened. Unemployment is high in the local region and fears were held the employer would find others to do the work.

The AWAs (not registered) were a reduction on the award. The "agreement" introduced 11-hour shifts, but the employer was only paying ordinary time across the who shift, undercutting the requirement under the Food Preservers Award (F15) to pay the appropriate overtime rate and meal allowance.

Australian Maritime Safety Authority

AMSA, the Federal Government department responsible for ensuring maritime safety regulations, since 1997 has only employed new staff on AWAs. These have been offered on a "take it or leave it" basis. Furthermore AMSA is reclassifying many existing jobs and offering them to the current incumbents as AWA positions.

AMSA is not a highly unionised workforce. Many staff who have been offered AWAs, despite not wanting them, are forced to accept because they want to keep their jobs. The staff feel so pressured and vulnerable that they are not prepared to agree to allow the unions to legally challenge AMSA.

AMSA offered an extra 1% pay rise to anyone who signed an AWA. This was used to entice the non-unionist majority to accept the Australian Maritime Safety Authority (Shore Based Staff) Agreement 1997 [A2578]. This agreement provided for open-ended access to AWAs and virtually eliminated the higher duties allowance (an allowance of particular importance to AMWU-member party leaders on duty at sea).

ABB Services

ABB Service Division maintain and service Sydney Water maintenance contracts. The division also looks after the various water treatment works and plants across Sydney. This means that the workforce is a geographically scattered one. The workers are often isolated from each other. There are approximately 15 AMWU members employed as mechanical fitters. The division's previous enterprise agreement expired in May 1999. On 16th April 1999, one month prior to the previous EBA expiry date, the company held a meeting with the workers (without notifying the union) and proposed a new system of AWAs.

These agreements effectively undermined the relevant metal award (M1913) by -

- no meal breaks nor allowance
- no overtime payments
- cashing out of annual leave through the "Total Leave" concept (whereby all leave is pooled together into a bucket of "hours" and then drawn upon by individuals)

These AWAs were offered on a "take it or leave" basis. The employees did not get any input as to what form these agreements should take. The employer insisted on AWAs for both new and existing employees and initially refused to negotiate anything else.

The company's actions in mailing out these individual agreements to the worker's home address seemed motivated at specifically excluding the Union's right to represent their members. The company's actions reinforced the belief that a dispersed workforce

would prove more amenable to an AWA exercise. Over a period of time, the Union applied pressure on the company to deal with their workforce on a collective basis. The company insisted on a clause that any proposed collective agreement would only cover those employees who were not on AWAs. This resulted in a six-day stoppage from 29 June to 8 July 1999. There were no Commission proceedings in respect of this stoppage.

The outcome of this was that the company's AWA agenda was overturned. The company eventually agreed to negotiate a collective agreement with the union. This agreement, which is still to be certified, is the ABB Service Sydney Water Maintenance Contracts Enterprise Bargaining Agreement 1999. The Union was also successful in negotiating a clause in this agreement preventing the company from unilaterally imposing individual contracts on the workforce.

2.6 There is also evidence from the vehicle industry that employees are not given the right to choose the most *appropriate form of agreement* because they are forced to accept a so called agreement that is offered to them. This is particularly true where employees are not represented by the union. Genuine choice is not reflected by deciding between accepting an agreement or keeping the job.

2.7

• CHOOSING THE MOST APPROPRIATE FORM OF • AGREEMENT - CASE STUDIES

- **National Car Rentals - A.C.T**. : The evidence provided by an AMWU member was that employees were offered AWAs which they did not want to sign but felt they had to for fear of recrimination. At the meeting where management was explaining the terms of the AWA, in response to a question as to whether the terms of the agreement could be negotiated, the response was "no". An analysis of that AWA, comparing it to the relevant award, is found at Attachment "C".

- **BP Express - Ashfield** : Evidence given by an AMWU member that, although she refused to sign an AWA offered to all employees, the company was using the AWA to determine her wages and conditions of employment.

- **Socobell** -

- Socobell refused to negotiate a division 3 agreement with the union. This company, on the advice of the A.I.GROUP refuse to negotiate, or enter into negotiations for the making of an Enterprise Agreement or other matters related to employees employment conditions. Following the initiation of a "Bargaining Period" and application to the A.I.R.C. under section 170NA (Commission to conciliate the making of an Agreement) the company still refuses to negotiate and the Commission simply states that there is nothing further that it can do.

- This company also hinders the servicing Organiser by not allowing access to the night shift who have only 2 x 10 minute staggered breaks instead of the Award provision of a 20 minute meal break during the course of a shift. The Union believes that this was imposed on the employees without consent, however, to date cannot convene a meeting with night shift workers to determine the matter.

Non Union Agreements

Sec. 170LK of the Act has allowed employers to bypass/ignore unions and go directly to employees, regardless of the employee wishes on the matter. Even where workers want union representation and their employer has been formally notified there is

nothing in the Act to prevent the employer from ignoring this and still producing a non-union certified agreement. This has even happened where bargaining periods have been established and protected action implemented.

Examples where this has happened include;

- British Aerospace Australia, Jindalee Project Facilities Certified Agreement 1997
- Health and Family Services Enterprise Agreement
- AMSA (Shore-based staff) Agreement 1997

Sec. 170LT and 170LU of the Act can be circumvented simply by the employer listening (but ignoring) the union/members and going straight to a staff ballot on an employer-friendly package. The union is then forced to make a sec. 170M(3) application if it wishes to be a legal party to the agreement.

Australian Public Service

In the Australian Public Service, agencies have been able to get reductions in employment conditions through s.170LK agreements.

In at lease one agency, with a high proportion of non-union members, the employer offered larger salary increases to encourage those staff to accept an agreement, which disadvantaged a highly unionised minority group (e.g. AMWU technical officers).

Such reductions include:

- increased ordinary working hours
- limiting higher duties payments
- restrict overtime payments
- introducing performance based pay

In those agencies where there are a lot of non-union members, the employer frequently offers large salary increases to those staff. These salary offers are made in return for their accepting agreements which are secretly aimed at disadvantaging a minority group (eg AMWU technical officers who are performing functions that the agency is planning to privatise).

Telstra

A union can be excluded from s.170LO agreements even when the terms are acceptable to the excluded union. In negotiations for the Telstra Corporation 1998/2000 Enterprise Agreement [T1629] the AMWU (along with other unions) was represented in negotiations by a bargaining unit. Telstra was formally notified of these arrangements. Along with other unions, the AMWU notified a bargaining period and took protected action at one stage. In the last 2 months of the 18 month negotiating period the CEPU did their their Telstra Corporation Customer Field Workforce Agreement 1998/2000 [T1630]. The AMWU and the MEAA were the excluded unions at the end. This agreement was certified in the Commission on 21 December, 1998 (C No. 76246/99), despite the AMWU contesting the matter. The AMWU has been locked out of this particular agreement which covers about 95% of our remaining drafting officer membership in Telstra.

The valid majority provisions in s.170LR(1) means that the minority - the AMWU drafting officers in Telstra - will always be outvoted. This agreement will monetarily disadvantage our members.

2.8 A range of data provides evidence employees do not feel capable of determining the "relationship between employers and employees" at the workplace.

A survey of union and non-union workers, commissioned by Peter Reith, Minister for Workplace Relations, Employment and Small Business, [20] confirms this proposition.

2.9 **DWRESB - COMMUNITY RESEARCH**

The results of research into Community attitudes to workplace relations issues was among documents released by the Minister for Employment, Workplace Relations and Small Business on 17 February, 1999. (Attachment D).

The Research was conducted by Australasian Research Strategies for the Labour Ministers Council and the Department.

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[20] Australasian Research Strategies Pty - Research Commissioned by Department of Employment, Workplace Relations and Small Business into Community Attributes to Workplace Relations Issues, June & July, 1998

The Project was designed to uncover the personal emotions and values of workers in Australia which determined their perceptions of the workplace, the role of government in the workplace, the role of unions in the workplace and workplace agreements.

Relevant to the concept at s.3(b) & (c) of employers and employees freely making and equally determining workplace relations, the researchers found:

The main perceived drawback of workplace agreements is that if a worker does not have the ability or bargaining power to adequately communicate their position in a negotiation they may be taken advantage of and their self esteem damaged. (P.8) (Attachment D)

Some workers also feel that the workplace dynamic may be compromised because a workplace agreement is oriented on the good of the individual rather than the good of the whole. This affects morale, productivity and diminished satisfaction with life and security. (P.8)

The ability to set standards was viewed extremely positively across all demographic groups. The Government's power to set decent standards for wages and safety, among others, was comforting to workers and reassures them that economic stability in Australia will continue. It is arguable that as OH&S issues are now non-allowable, perceptions of the Government on this parameter may be diminished.

Finally, regarding Workplace Agreements and "negotiation skills", skills which play an important role in ensuring fairness under s.3(b) & (c) and facilitative provisions (s.143(IC)), the report found that employees felt extremely negative about their ability to negotiate workplace agreements.

On bargaining ability, comments noted in the report include :

- "*lack of negotiating skill, I wouldn't be able to negotiate because I would not know how to...I'd feel inferior if there is a suit and tie.*"
- "*If you're not very articulate, you can't fight for what you want, you have to go along with whatever's given to you at the renegotiations each year.*"
- "*[I'm] not good at negotiating - intimated by my boss.*"
- "*I feel I got a raw deal - my employer didn't do the right thing by me.*"
- "*Management is taking advantage of people that don't know any better -- I would feel used ... like management has shafted me.*"

- "*Manipulation by management. If agreement isn't fair, or you don't understand it, management can manipulate your life, pay and conditions.*" (p.25)

The DWRSB report summarised :

"While communication skills are mentioned by a significant portion of respondents, in nearly all cases, it is mentioned in a negative light (i.e., inability to negotiate properly). This inability to communicate leads to the sense that workers are *being taken advantage of.*" *(p.26)* (emphasis added)

2.10 The concerns of employees as reflected in the AMWU, ACTU and Ministers' surveys are reinforced by ACCIRT [21] :

ACCIRT's research concluded that "*increased work pace, tighter management performance monitoring and control and workplace understaffing were also leading to serious problems with work intensification, workplace stress and decreased ability to balance work and family*".. (p.20)

During the operation of the Act, ACCIRT reported that cutting wage "premiums", historically seen as protecting against excessive and anti-social working hours, has seen:

- hours increased while paid over-time has not;
- unpaid overtime is increasingly not just a feature of managerial work, but increasingly a feature of wage occupations;
- there has been an erosion of compensation for night work and weekend work and a subsequent devaluing of the personal and family costs of this work;
- there has been an erosion of the value of wages through the weakening of the relationship between the hours worked and hours paid for and an increase in annualising salaries and wages. (p.21)

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21 ACCIRT : Work, Time, Life - An Issues Paper for The Australian Union Movement, November 1998 (Attachment 'G')

As well as those features ACCIRT summarise the more detrimental impact of unregulated and fragmented working time arrangements as including:

- occupational health and safety (excessive hours, fatigue, work intensification, stress, ill-health, isolation);

- Differential impact on different groups with males tending to experience serious problems with excessive hours, and women experiencing both underemployment and precarious employment and a disproportionate impact on balancing work and family;

- reduction in the value of wages as hours increase but wages do not;

- reduction in the premiums on unsocial and irregular hours which erodes the value of the costs associated with shiftwork and irregular work;

- increased managerial prerogative;

- particular issues for women and families (where it is assumed that women can carry the burden of domestic responsibilities to accommodate the extended or anti-social work patterns of their partners, or that they can reorganise their lives to be able to work irregular and precarious arrangements).

2.11 In practice, s.3(b) and (c) cannot operate fairly or effectively in the environment established by the above evidence.

The primacy at s.3(b) and (c) to workplace outcomes also mitigates against successful arrangements pursued by employers, employees and their unions at the Corporation level.

The AMWU has negotiated multi-employer agreements with, for example, EMAIL, NESTLE, AMCOR and VISYBOARD. These agreements extend beyond the workplace and have been negotiated through an efficient and effective process discounted at s.3(a), (c) and s.170LC

2.12

EMAIL - CASE STUDY

The giant Email Corporation approached the AMWU for a national agreement covering 30 distinct workplaces and different employers under the EMAIL umbrella.

The Corporation's Managing Director, Ralph Waters, made a presentation to AMWU officials and delegates in Sydney on February 9, 1999 outlining the current economic position of Email and emphasising the need for a new agreement.

The Company did not wish to run the gauntlet of the Act which, during the 1997 bargaining negotiations, saw EMAIL "trialling" the new provisions of the Act, particularly s.127 and s.166A.

This approach, combined with a bargaining method at individual sites, resulted in six weeks of strikes and repetitive and unnecessary bargaining at 30 different plants. Thirty different managers and union representatives performing the same functions for the same outcomes is not efficiency.

During the 1999 round of negotiations, eschewing the workplace by workplace approach, there were only 10 meetings and one stopppage - and that was against political interference in the negotiations. Site specific arrangements were included as required.

The Bill attempts to prohibit such national agreements through the workplace focus and prohibition on pattern bargaining. This focus is clearly not suited to co-operative workplace relations such as demonstrated by the parties in the making of this significant agreement.

Email now has a bargaining free period of two years nationally and 3,000 EMAIL employees received a wage increase of 4% per annum funded by past and projected productivity.

2.13 Despite the language at 3(b) and 3(c) and the legislative support for AWAs as an instrument available to respond to individual workplace and individual employee needs, Buchanan et al found "*a high level of pattern bargaining among Australian Workplace Agreements*". The researchers reported that 31.2 per cent of agreements (covering 24.3% of employers) were Pattern Agreements". [22] The Bill legislates against pattern bargaining in the certified agreement stream, however, no such prohibition is proposed for the AWA stream.

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[22] Buchanan, J et al - Wages and Wage Determination in 1998; Journal of Industrial Relations, Vol. 41, No. 1, March 1999, p. 111

Buchanan et al comment, referring to the Report on the Effect of the introduction of Queensland Workplace Agreements :

"*Prima facie it would appear that in many cases, Australian Workplace Agreements are being used as de facto non-union collective agreements and have more to do with restructuring collective bargaining then with individuals developing unique arrangements customised to suit their peculiar needs*". [23]

Buchanan's observations are on all fours with the experience of the AMWU at Haljudi Pty Ltd.

2.14

AWA - PATTERN BARGAIN - SIGN OR NO JOB - CASE STUDY

Haljudi Pty Ltd Trading trading as Haulmark Trailers, Qld

- In 1997, Haljudi Pty Ltd (trading as Haulmark Trailers) refused to renegotiate a collective certified agreement and offered its workforce individual AWAs. The AWAs contain exactly the same conditions and a copy of one is attached marked "E". The 2-year AWA reverted the employment conditions back to a 40-hour ordinary week and contained no wage increase other than "safety net adjustments" during its life.

  Some employees declined to give up their 38-hour week and remained on their previous terms and conditions of employment. These employees have not received any pay increases because of an existing overaward allowance.

  New employees are only offered employment on the basis that they sign the non negotiable AWA. The 2-year term starts from when they sign the document and commence employment.

  The Union has brought this matter to the attention of the Qld Employment Advocate who has declined to investigate the matter. (Attachment E)

  - The employer is using pattern bargain AWAs to undermine union collective bargaining;
  - The employer is discriminating against employees who refuse to sign the agreement by only applying wage increases to AWA employees.
  - The employer is using economic duress on prospective employees to sign the AWA

23 Ibid, p. 111

3.0 s.3(d) PROVIDING THE MEANS -

(i) FOR WAGES AND CONDITIONS OF EMPLOYMENT TO BE DETERMINED AS FAR AS POSSIBLE BY THE AGREEMENT OF EMPLOYERS AND EMPLOYEES AT THE WORKPLACE OR ENTERPRISE LEVEL, UPON A FOUNDATION OF MINIMUM STANDARDS, AND

(ii) TO ENSURE THE MAINTENANCE OF AN EFFECTIVE AWARD SAFETY NET OF FAIR AND ENFORCEABLE MINIMUM WAGES AND CONDITIONS OF EMPLOYMENT.

SUMMARY

Section 3(d)(i) and (ii) recognise the dual role of the award system as

(i) the instrument underpinning bargaining and
(ii) as promoting the welfare of the Australian people by providing minimum wages and conditions of employment for those workers who have no enterprise or workplace agreement.

Object s.3(d)(i) and (ii) have been undermined in practice by the Act's revised objects under S.88A, the process of award simplification s.89A(2)(a) and in-award bargaining, s.143(1C)(a).

Employees' position regarding job insecurity and bargaining capacity do not support an erosion of the bargaining system.

3.1 1. AWARD SIMPLIFICATION

The AMWU is a respondent to hundreds of Awards. Its main industry awards are close to being finalised pursuant to WROLA and s.89A(2) of the Act.

The Metal, Engineering and Associated Industries Award 1998 (M1913) (the Metals Award) is the simplified Metal Industries Award 1984.

The Graphic Arts - General - Interim Award 1995 (G0439) (the printing award) will be replaced by the Graphic Arts General Award 1998. (AIRC, Print R7898)

The Food Preservers Award 1983 (F15) (the food award) is currently awaiting a final order, however, the Commission has determined the non-allowable matters. (AIRC, Print R8264).

The Vehicle Division's main employer awards have been simplified, whilst the industry awards are still undergoing simplification.

The Technical & Services division has members covered by simplified awards including the Australian Public Service Award 1998 and the Draughting Production Planners and Technical Workers Award 1998 (T&S Awards).

3.2 All industry awards lost provisions requiring consultation and the formation of "Consultative Committees". For example, the printing and metals awards had the clause requiring the establishment of "a consultative mechanism procedures appropriate to the size, structure and needs of the plant or enterprise" deleted. [24]

The removal of award provisions establishing the requirement for and processes of consultation both depletes minimum standards (s.3(d)(i)) and reduces the effectiveness of the award s.3(d)(ii). These consultative forums were not dispute-settling procedures but forums where employees and employers could raise "items to increase the efficiency, productivity and international competitiveness of the printing industry". [25]

The consultative forums also provided an avenue for the airing of views, through representatives, of disadvantaged groups and those with little bargaining power.

It is a strange outcome that has required the deletion of provisions so clearly underpinning the principal object of the Act.

The Food Award (F15) will have provisions relating to amenities deleted from the award pursuant to simplification. Provisions requiring -

- seating for employees (predominantly women) on process lines; and
- mats to place over concrete floors whilst standing on process lines;

are not allowable. These provisions are not specified in State Occupational Health & Safety legislation and their deletion, both reduces minimum standards (s.3d(i)) and the effectiveness of the award (s.(d)(ii)).

As a result of simplification all awards lost the requirement that terminated employees should be provided with a Statement of Employment. It does not assist the welfare of the Australian people, who have been terminated to be deprived of a document assisting them to become re-employed.

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[24] Printing Award (G0439) clause 2.2.2) Metals Award (M39, Clause 6B(b)) prior to simplification

[25] Printing Award (Clause 2.2.1)

Provisions relating to award compliance and union related matters have been removed from awards. Time and Wages records and pay slip provisions have been removed as the requirement to provide pay slips and keep records is provided for in Regulations 131 and 132 of the Workplace Relations Act.

The removal of these provisions will impact on the effectiveness of the award, particularly, in light of evidence establishing that employees at the workplace do not have access to the Workplace Relations Regulations and the award provisions had been used extensively to settle disputes. [26]

Employees in the Vehicle Industry Repair, Services and Retail industry rely mainly on the award. The nature of the industry can be described generally as disparate comprising thousands of small businesses, i.e. service stations and maintenance repair shops. Wages and conditions of employment are not determined by certified agreements because it is challenging for the unions' resources to negotiate at each and every site. Employers in this sector do not favour enterprise agreements. The conditions that have been removed from the Vehicle Industry Repair, Services and Retail Industry award (V0019) include:

- notification and consultation on introduction of change
- requirement for discussions to take place prior to redundancies
- standards for accommodation
- provisions for clothing, tools, equipment, laundering and accommodation which are not in the nature of an allowance
- amenities and conveniences
- requirement for employers to provide first aid kits.

Employers have been given more rights re unilateral change, which undermine the safety net, reduces the effectiveness of the award and is inconsistent with ss.3(b) and (c).

The reduction of the minimum standards underpinning bargaining will result in a narrowing of the bargaining agenda. Employers and employees will be forced to bargain for the minimum standards lost from awards rather than focussing on a larger agenda aimed at the promotion of co-operative workplace relations and economic prosperity.

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26 Exhibit "M12", Printing Award Simplification Case (C No. 00561/98)

3.3

EFFECTIVE AWARD SYSTEM - CASE STUDIES

Award Simplification - Alcoa

Alcoa is a major smelter of aluminium in Australia.

The present award - the *Alcoa Point Henry Award* - governs the employment terms and conditions of the Union membership at its Victorian plant. Under this award the employer is required to provide water to those employees engaged in the high heat and high stress environment of the potroom in the smelter.

Under the Government's award simplification process pursuant to sec. 89A of the Act , this clause was deemed to constitute a non-allowable matter. This was despite the very clear occupational health and safety reasons for the continued operation of this clause and the consent nature of the clause's retention.

The danger to the safety and welfare of the workforce in not keeping them hydrated in an extremely physically uncomfortable working environment as posed by the removal of this clause was clear to both parties. This issue still remains unresolved in the Commission.

This issue highlights the often arbitrary and mechanistic nature of the award simplification process. It has resulted in the removal of many agreed and sensible award items and has attacked the foundations and status of many consent (site specific) awards such as in this Alcoa case. Attention should perhaps also be drawn to s.109 applications being made by the Minister which often ignore the nature of the respective workplace and industry.

Paid Rates :

The Act only provides for minimum rates award.

Existing paid rates awards are to be converted, by separating them into appropriate minimum rates and residual components. Over time it is envisaged that the residual components would be absorbed such that there would be left only "properly fixed minimum rates" and that salary increments would be phased out (except based on work value). These intentions arise from a full bench decision of the 20th October, 1999. (Print Q7661)

This decision is significant because it undermines the relevancy and appropriateness of the "no disadvantage" test as applied under the Act. Enterprise agreements are currently tested against awards to make sure that employees are not exploited. The lower the rates and conditions specified by the award, the greater the scope for employees to suffer disadvantage in enterprise bargaining negotiations.

Paid rates awards by specifying **actual** entitlements (rather than **minimum** entitlements in minimum rates awards(invariably have higher rates than minimum rates awards. The Commission's decision effectively means that current paid rates awards will eventually mirror the rates paid for equivalent classifications in minimum rates awards.

Example :

The ultimate effect of losing the paid rate (and access to increments) on a base level tradesperson in the Dept. Defence :

Current award rate	$501.20 per week
Current actual rate under EBA	$569.70 per week
Proposed properly fixed minimum award rate (equal to a fitter in the metals award)	$465.20 per week

This means that the actual pay rate for a tradesperson in Defence could fall by up to 18.4% ($104.60 pw) and that the enterprise agreement concerned could still meet the "no disadvantage" test under the Act. For a Technical Officer, Level 3, in Defence, the decrease could be up to 26.1% ($215.10 pw).

3.4 RELEVANT AWARDS

The objects of the Act at s.88A replaced the former requirement at s.88A(a) that awards provide "wages and conditions of employment that are maintained at a "relevant level" (s.88A(c), Industrial Relations Act 1988). The AIRC had previously interpreted "relevant" as maintaining the general level of wages and conditions.

The abandonment of the "relevancy" requirement has impacted on the maintenance of an effective award system. The AIRC reported on the failure of award increases to keep pace with the growth in earnings generally. [27] The gap between income levels is widening. This evidence does not support object s.3(d)(ii) in practice.

3.5 Item 51 WROLA, S. 143 (IC) (a) of the Act

Item 51 of WROLA & S.143 (IC) provide that awards :

"*Where appropriate, contain facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees) on how the award provisions are to apply*" (emphases added).

27 Statement of The Full Bench, Safety Net Review - Wages - 29 April, 1999

Facilitative provisions were formally introduced into industrial relation regulation in 1994. [28] Facilitative provisions were not to change the level of entitlement and were subject to protective measures as the agreements made would not go before the AIRC.

One of the protections attached to the use of facilitative provisions was that the majority agree to the implementation of a facilitative provision.

The legislative support for facilitative provisions, including individual arrangements, provided by the Act has seen such provisions abound in simplified awards. Increasingly, the effect of facilitative provisions is to weaken minimum standards and undermine the effectiveness of the safety net.

The pre-simplified metals award (M39) contained a requirement for a minimum 10-hour break between the time of finishing work and next commencing work. Where the employee was required to commence work prior to the completion of the ten hours, they were required to be paid double time until a 10-hour break was provided.

Employers can now seek an individual workers' agreement to reduce the 10-hour break to eight hours, without incurring the double-time payment.

Given the evidence previously referred on the capacity of individuals to bargain (section 1 and 2 above), the objects at s.3d and the protection provided by the safety net are effectively undermined by facilitative provisions which alter the level of existing entitlements as opposed to the way in which the entitlement applies, for example, time off in lieu of overtime.

The award safety net represents an important protection against exploitation of the unequal bargaining relationship between employers and employees. It particularly protects the industrially weak, including women, young people and workers from non-English speaking backgrounds. Facilitative provisions are now being used to create "in-award" bargaining over the level of entitlements, thus dismantling the protection formerly provided by the safety net.

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28 Print L5300

There is no wage increase attached to this form of in-award bargaining. With the increase of precarious forms of employment, it is not wages, but keeping the job itself, which forms the background to in-award bargaining. The "no increase bargaining" was reported by Buchanan when examining the Queensland AWAs where it was found 57.8% of agreements provided no wage increase during the life of the agreement. [29] The ADAM report confirms this is not a Queensland phenomenon, with 75% of the first 163 federal AWAs not providing a wage increase during the life of the agreement. [30]

4.0 3(f) ENSURING FREEDOM OF ASSOCIATION, INCLUDING THE RIGHTS OF EMPLOYEES AND EMPLOYERS TO JOIN AN ORGANISATION OR ASSOCIATION OF THEIR CHOICE, OR NOT TO JOIN AN ORGANISATION OR ASSOCIATION.

SUMMARY

The Act's focus on removing Unions from an involvement in the employment relationship has increased anti-union activity at the workplace.

The Right of Entry provisions are making access to members increasingly difficult.

4.1 The AMWU's evidence indicates employers "encourage" employees to resign or change unions and restrict right of entry.

4.2 Award simplification has removed provisions from Awards relating to union representation at the workplace and the Act (s.285G) reduced access of unions to members at the workplace, e.g. 24 hours' notice required prior to entry. The Bill proposes to remove the Commission's powers regarding disputes over s.285G, Right of Entry (ROE) provisions.
The union's experience of anti-union employers is consistent with the findings of the OEA report. [31] The Wallis report found :

- 16% of organisations regard union members unfavourably;

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29 Ibid, p. 110

30 ADAM Report, No. 20, March 1999

31 WALLIS Consulting Group Pty Ltd - Report Prepared for the Office of the Employment Advocate, June 1999

- 7% reported they may not hire union members;

- 10% reported unions were definitely or possibly not allowed on site;
- 7% said employees were not fully free to exercise their right to choose to join a union.

4.3

RIGHT OF ENTRY - CASE STUDIES

Scanlon Printing

The employer refused the union its right of entry despite several written requests in accordance with the Act. Finally, after being informed the union might need to have recourse to the Commission, the employer allowed the union onto the premises. The basis of the employer's refusal was that the union would not disclose the name of which employee had requested the Union attend the premises.

The employer briefed the employees before the union's arrival stating that although employees could meet with the union they couldn't do it privately. The union organiser was told to stand in a corner of the factory floor away from where employees performed work, so that any employee who approached the organiser would do so in full view of the employer.

Colourcorp Pty Ltd

The union sought entry to the employer's premises based on its rights under the Act. The employer repeatedly refused. The union met with management about the union's right of entry. The employer presented an "advice" from its solicitors which claimed the union could enter the premises only upon a request from an identified member. After the union advised the employer about the penalties for preventing a union's rightful entry, the employer agreed to allow the union onto the premises.

A meeting with workers took place on the site. The employer sent the production manager to the meeting. Despite the presence of the Production Manager some workers asked questions of the Union. The Production Manager took a list of names of those workers who asked questions and following the meeting the managing director of the company interviewed each of those workers as to why they had asked questions at the meeting with the Union.

The Union sought and was granted another meeting. At that meeting the Union requested the Production Manager leave the meeting, which he did. Immediately after the Production Manager left the "paymaster" came to the meeting. The union organiser was surprised at how quiet the meeting was and why so few questions were asked. After the meeting, the organiser discovered the "paymaster" was the wife of the Managing Director and was also a director of the company.

McLaine Stainless in Launceston, Tasmania

The employer refused the Union a right of entry despite the provisions of the Workplace Relations Act

The union explained to the employer the terms of the Workplace Relations Act. However, the employer persisted in refusing entry. There is only one union member at the site, but the identity of that member was not disclosed to the employer. Because of the refusal to allow a Right of Entry, the union is unable to assist that member and is unable to recruit further members at the site. Although the union does have recourse to the Commission in this matter, this dispute is indicative of the increasing resistance the AMWU is encountering from employers. The frequency of resistence places an impossible resource burden in terms of taking matters to the AIRC.

The frequency of refusal of entry has increased since the restrictions inserted by the Workplace Relations Act at s.285G. In any event, the Bill removes the Commission's power to hear s.285G disputes.

Merino Lithographics, Moorooka, Qld

The employer repeatedly denies the union its right of entry. On one occasion the employer denied the union entry, despite the union complying with the Act, and instead told the organiser to return at 3.20 p.m. The organiser returned at that time, to find the workers finished work at 3.10.

Aristocrat Leisure Industries, Roseberry, Sydney

Aristocrat Leisure Industries is a large manufacturing company of gaming machines. Their principal plant is at Roseberry in Sydney. They employ around 200 AMWU members.

Aristocrat have continually pursued a militant strategy of de-unionisation in the workplace and strenuously resisted any AMWU attempts to organise their plants.

In settlement of past disputes, the company and Union had reached an agreement on right of entry.

Under the Act, Unions are required to give employers a minimum 24 hours notice before they intend to enter the company's premises. On 19 November 1998 the Union sent a notice of hearing to the company that they intended to enter the premises on 26 November. This is certainly greater than the requisite 24 hours notice provided

under sec. 285D of the Act.. Upon arrival at the factory gates outside the security guard informed the organiser that the scheduled meal break was over and that the Union was too late to address the workforce. The organiser found upon investigation that the times specified on the notice had been manually changed. This enabled the company to ensure that no entry could be given as the time specified on the right of entry form was inconsistent with the meal break time. The Union was not properly notified of the

This matter was taken to the AIRC where the Commissioner told Aristocrat that they had to give the Union accurate mealtimes pursuant to sec.285C(2) of the Act. The Commission refused to do anything else on this matter despite the clear breach of the Act in refusing to grant entry to the Union (C No. 25968/1998). This is a prime case of employers circumventing the Act. The proposed amendment to s.285(G) will remove the Commission's power to deal with matters such as described above..

DISCOURAGING UNION MEMBERSHIP - CASE STUDIES

Wyn Print, Launceston

Wyn Print, has about 30 employees, and was recently bought by a proprietor who also owns a printing shop in Queensland. The proprietor, Dennis Lever, boasted to the union and the employees that his Queensland shop is non-union

Just prior to the business being sold the site's EBA had expired. The employer engaged an employee relations consultant to assist him in negotiations of new conditions at the site.

In conjunction with the negotiation process, the new owner identified the need for redundancies. The section identified for cut-backs included the shop delegate, who having been identified for voluntary redundancy, declined the offer. The employer offered the delegate an increased redundancy package which gave the worker three times the redundancy package available to other workers. The delegate recognised this self-proclaimed "non-union" employer had targeted him as being the focus for union activity. In the circumstances the delegate saw little option but to "accept" redundancy.

This has left the site without a delegate, and has left the remaining workers less inclined to contact or call in the Union.

Fowles Auction Group in Victoria

The company is rabidly anti union. There have been a number of cases of employees who are union members being harassed by management. Examples include having their substantial duties changed, counselled or warned for issues that are frivolous or lack substance or terminated on trumped up charges which lack credibility. In the current year to date, 3 such employees have been terminated (all Union members) including the Shop Steward. All are currently subject to unfair dismissal applications.

Socobell OEM

The company is a plastic components supplier in Victoria. The company is approximately 25% unionised. Union members have been informed by management that it is in their best interest to not be members of the Union. Early in 1999, a Shop Steward was elected and within 2 hours was called into the office by management and pressure placed on her to resign. Within a matter of weeks, this member resigned as Shop Steward. When this issue was raised during another hearing in the AIRC, the company admitted this had happened but pleaded ignorance and inexperience of the manager involved. The Commission warned the company that their action was unacceptable and that it was none of the company's business as to who was a union member or a Shop Steward.

BMW

This workplace has only 2 or 3 Union members amongst some 12 employees in the warehouse. Very anti union, the company harassed the Shop Steward who was also the OH&S representative to the extent that he was off work on stress-related illness. The Company was so intent on ridding themselves of this member, that they approached the servicing organiser and the member to determine "how much" he wanted to leave the company. The member, with the advice of his solicitor, finally agreed to resign for an ex-gratia payout in excess of $40,000.

At Fowles Auction Group, Socobell OEM and BMW, all Shop Stewards were persecuted by the employer to the extent that they were sacked, brought out or resigned as Shop Steward.

5.0 3(f) ENSURING THAT EMPLOYEE AND EMPLOYER ORGANISATIONS REGISTERED UNDER THIS ACT ARE REPRESENTATIVE OF AND ACCOUNTABLE TO THEIR MEMBERS, AND ARE ABLE TO OPERATE EFFECTIVELY.

SUMMARY

The impact of award simplification has placed an enormous resource drain on industrial parties and the Commission.

The first round of simplification should be finalised and a proper period expire in which the effects of simplification on industry and employees observed before further simplification occurs.

5.1 The Act's emphasis on AWAs and individual workplace arrangements has had a negative impact on the resources of the union in terms of facilitating bargaining at each site. This is particularly evidenced in the vehicle repair services, printing and metal industries, which consists of a large number of small workplaces. The result of not being able to operate broadly is the reliance of non-protected employees on minimum safety net entitlements and the non-enforcement of their rights.

5.2 The extraordinary resources required for award simplification is stretching organisations to breaking point, as is increased litigation. It is simply not sensible to embark on another round of simplification when the parties and the Commission are clearly suffering simplification fatigue. This phenomenon was commented on by AIRC Vice President Ross at the ACCIRT Conference, "Re-Thinking Collective and Individual Rights at Work : A Reflection & Outlook", Sydney, 16 July, 1999.

"*The Vehicle Industry Award have been through the item 49 review process. The process itself took 18 months and involved the conditions of over 20,000 employees. The Commission has been provided with the following estimates of the resources expended during that time.*

Over 150 Shop Stewards, 10 Senior managers, 10 senior union officials, several consultants, a firm of solicitors were involved -

- *Over three person years in staff time;*
- *External expenditure by the **employers** exceeding $100,000*

There were 25 listings in the Commission including conferences and hearing and an unquantifiable but very large number of private meetings between the parties. Three separate decisions were required, four awards were set aside and 253 clauses were deleted from the seven remaining consolidated awards. 881 pages of regulation was reduced to 463 pages.

The award simplification process is time-consuming and the work exacting, because at its heart it involves the adjustment of legal rights between unions and employers, and employers and employees. Whilst the Commission is not a Court it is of course required to act judicially. It is required to give proper notice of its hearings to those who might affected by the outcome and to hear both sides of the case where matters are in dispute". (AIRC Web Site, Speeches).

The above awards referred to only included the company awards, i.e., Holden, Ford, Toyota, Mitsubishi, Nissan, Austral Pacific, etc. It did not include the Vehicle Industry award and the Vehicle Industry Repair, Services and Retail Award, which are currently being finalised.

Attachment A to the decision in the printing award simplification case (Print, R7898) which, commencing from 7.2.1997, details 63 separate conferences, report-backs, hearings and negotiations. The final order is still being negotiated, adding another 10 days of negotiations and conferences. Each report-back, conference, or negotiation was attended, at a minimum, by two union officers, 2 representatives from the Printing Industries Association and 2 representatives from the AI Group.

Other AMWU awards are still to commence the simplification process including the significant Country Printing Award (C0056) and the Confectioners Award (C0053).

6.0 3(h) ENABLING THE COMMISSION TO PREVENT AND SETTLE INDUSTRIAL DISPUTES AS FAR AS POSSIBLE BY CONCILIATION AND WHERE APPROPRIATE AND WITHIN SPECIFIED LIMITS BY ARBITRATION.

SUMMARY

The functions of the Commission relating to industrial disputes is limited by s.89A(1) of the Act. The restrictive definition inhibits dispute resolution and encourages industrial parties to escalate dispute by resorting to s.127 ands.166A of the Act and then proceeding to the Courts.

6.1 This phenomenon was commented on by Frazer :

> "*A common theme in many of the decisions is the increasing role played by the ordinary Courts in industrial relations. In accordance with the philosophy underpinning the Workplace Relations Act 1996, the Commission was notably absent from involvement in the Patrick dispute. In view of the recent statutory restrictions on the Commission's arbitral functions, it would have had no power to impose a settlement on the parties in any case*". [32]

Litigation rarely helps settle disputes as evidenced by the EMAIL bargaining dispute which resulted in agreement after s.127 and s.166A applications escalated the process into a 6-week strike.

POWERS OF THE COMMISSION - CASE STUDIES

Peerless Holdings

This Victorian company operates a tallow plant, where fat is extracted from meat carcasses and separated into cosmetics and explosives. The local AMWU delegate at this plant was threatened verbally and on-the-job by management because of his union activities. Factory management made threats of dismissal against the delegate because of his role as the union representative. Union members at the plant took industrial action against management's intimidatory behaviour.

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[32] Frazer, A Major Tribunal decision in 1998, Journal of Industrial Relations, Vol 41, No 1, March 1999, p. 80

The Commission granted s.127 orders against the Union for this industrial action, but not in respect of the action taken over the delegate. The AIRC did not intervene to assist over management's behaviour towards the properly elected union representative. This case demonstrates the continued irrelevance of the Commission in properly resolving and settling workplace level disputes. The erosion of the AIRC's powers in dispute settlement stems directly from the focus of the Act on the symptoms of industrial disputation rather than the cause. This is reflected by the narrower arbitration and conciliation scope in conjunction with the litigation provisions.

Mountain Maid

Members at AMWU put a bar on goods entering or leaving the Batlow site. This action was taken following management's actions of selling machinery and failing to guarantee $1.5 million dollars worth of employees' accrued entitlements.

The company notified a s.99 and then sought s.127 orders. The Commission was prevented from trying to conciliate an outcome as :

"*The Commission was charged by the present applications of paying due regard to the Act itself... This meant, in effect, that the Commission had to consider, with discretion, whether there was a breach sufficient to constitute bringing actions under s.127*" (Commissioner Jones, Print, R7466.)

The dispute settling provisions of the Act were overtaken by s.127. Section 127 orders were issued which then delayed settlement of the dispute. Members did not return to work as the concerns regarding their jobs and entitlements had not been resolved. (Symptom not cause).

Eventually, Union officials and management brokered a solution through discussion, access to information and negotiation - a process formerly facilitated by the Commission.

Martin Bright Steel

EBA negotiations resulting in a 6-week stoppage and picket line. Attempts by management to intimidate workers with s.127, 166A and Proceedings in the Supreme Court failed. The dispute was resolved following lengthy negotiations between the parties facilitated by the AIRC, through compulsory conciliation.

ACI - Dandenong

EBA negotiations resulting in a 9-week picket line. Legal proceedings initiated by the employer not only failed to resolve the matter but inflamed the dispute further. Matter finally resolved through compulsory conciliation by the AIRC.

6.3 The Bill's further restrictions on the Commission's powers at arbitration and conciliation, in conjunction with the 48-hour mandatory issue of s.127 orders, will continue to escalate disputes.

7.0 s.3(I) ASSISTING EMPLOYEES BALANCE THEIR WORK AND FAMILY RESPONSIBILITIES.

SUMMARY

- Increased work intensity, longer hours and job insecurity are having a negative impact on workers ability to balance work and family responsibilities.
- Increased working hours flexibility correlates with a statistically significant increase in absenteeism amongst women during the operation of the Act (Refer section 1.5 above).

7.1 AMWU respondent to the ACTU survey reported (Attachment B) :

- hours in their main job change from week to week (41%)
- usually more than 5 days in a row (26%)
- there is too much work to be done (35%)
- difficulty in taking sick leave entitlement (18%)
- difficulty in taking annual leave entitlement (20%)
- dissatisfaction with work and family balance (31%)
- unpredictable hours make personal planning difficult (20%)
- change in work arrangements impacting on workers' health (38%)
- work arrangements contributed to accidents or near-misses (39%)

7.2 The prohibition in awards s.89A (4) on settling maximum part-time hours exacerbate the pressures on working men and women.

The Acts support for individual employment arrangement in the agreement and award stream has weakened regulated working time arrangements and reduced premiums for working unsocial hours. (Refer ACCIRT, Section 2.0 above).

7.3

WORK FAMILY BALANCE - CASE STUDY

Line Graphics, Alexandria, NSW

Line Graphics initiated the introduction of 12-hour shifts. The 12-hour shifts were introduced without consultation with the union or the employees. Although there are provisions in the Award allowing for the introduction of 12-shifts, these shifts must be introduced only following consultation with the union, the affected employees and, prior to award simplification, subject to AIRC scrutiny.

The employer has refused to negotiate with the Union about the issue of 12-hour shifts. Under the simplified award, the AIRC has no role in reviewing 12-hour shift arrangements.

The impact on workers has been significant. Having taken employment with the employer on certain conditions, they now find themselves on 12-hour shifts. This has had a direct impact on the workers' ability to balance their family responsibilities with work.

7.4 The available evidence shows that the combination of work and family is one that is of particular importance to women.

While the combination of these roles would ideally be an issue facing all workers, it is women who primarily have responsibility for family related unpaid work. Work undertaken by ABS reveals that despite a slightly increased participation by men in unpaid work between 1987 and 1992:

* women spend almost twice as much time on unpaid work (43 hours) as on labour force activity (23 hours) while the reverse was the case for men (ABS, Cat. No. 4421.0, ABS, Cat.no.4422.0);
* full time women workers spend 36 hours on household activities compared to 18 hours for men employed on a full time basis. Full time working women only spend eleven hours less time on household activities than their part time counterparts (47 hours) (ABS, Cat, no. 4421.0, ABS, Cat, no. 4422.0);
* women do about four times the amount of housework as men, about three times the amount of food production and cleaning up and about eight times the amount of laundry (ABS, Cat. no. 4113, ABS, Cat. no. 4154.0).

7.5 Over three quarters of part time jobs are held by women, and women make up 61% of all casual employees. Thirty two per cent of the workforce have children under the age of 14 years. Of this group a much higher proportion of mothers worked either part time (57%) or casual (35%) than fathers (5% and 11% respectively) (ABS, Cat. no. 4422.0).

7.6 Women require certainty in their working hours so that appropriate and affordable child and other dependant care arrangements can be made and then maintained.

The providers of dependant care services also require certainty from clients as to their required hours. Child and aged care services are often scarce and women do not have the option of constantly changing their care requirements in order to meet constantly changing work circumstances. ("Working Out Time", Newell, Alcorso, Smith, 1997). See the effects of increased flexibility on the increased absenteeism of women workers during the operation of the Act (Cully, June 1999).

7.7 For an award to remain an "effective safety net" for workers with little bargaining power, it must continue to offer concrete protections at the workplace level and there must be reasonable limits on employers' capacity to offer local arrangements with workers individually or on a sectional basis.

Women's incomes and other entitlements are critically dependent on award conditions. The Australian Workplace Industrial Relations Survey (AWIRS 95) found that the award was the dominant determinant of pay and conditions for 59% of workers in female-dominated workplaces, compared to only 21% of men (unpublished AWIRS data, DWRSB).

Working hours are one of the most common matters determined through local (registered or unregistered) workplace agreements, featuring in over three quarters of all workplace agreements in 1995.

The emphasis on individual bargaining under the Act, in combination with the flow of facilitative arrangements and loss of award entitlements through simplification, compromises the ability of, particularly, women workers to manage their work and family responsibilities.

7.8 The NSW Working Women's Centre report Working Out Time 1997, found that in the absence of award prescriptions on issues such as starting and finishing times, span of hours, ordinary hours, procedures for developing rosters, shifts and weekend/after hours work there was a tendency by employers to expect excessively long hours of work, an unreasonable "on call" capability, extreme flexibility in response to work demands and the domination of work into family and private life.

7.9 The capacity to negotiate local arrangements was widely available in the absence of detailed or prescriptive awards. This did not necessarily result in the flourishing of mutually beneficial individual arrangements amongst the workers who contributed evidence to the report. Many employees reported agreement not being genuine but based on factors such as lack of knowledge, and job insecurity.

A recent case run by the Working Women's Centre on behalf of 27 Macedonian and Spanish speaking women labourers hinged substantially on the issue of alleged "agreement" to take voluntary redundancy.

In his decision that even where the women had signed voluntary redundancy papers, their "agreement" was not genuine, Patch JR specified the following issues as being of relevance (Sapevski and Others v Katies Fashion (Australia) Proprietary Limited, NI 3769, 3774, 3780, 3783, 3785 and 3787) :

* the fact that all of the women were immigrants and had a limited understanding of English and none of them spoke English as a first language,

* that the company's reliance on staff members as interpreters during crucial stages of the redundancy process was disadvantageous to the women because these staff were not trained, because there were too few of them to interpret adequately and because they themselves had insufficient fluency in English to interpret comprehensively or accurately,

* that the women were therefore not equipped to negotiate effectively in the language-dependent process (in this case of employment termination), a process marked by meetings at which company managers explained matters to the women, and letters sent to the women (in formal English) seeking their acceptance of formal offers.

7.10 This decision clearly sets out a high standard for genuine agreement and negotiation that most employers would not be able to meet.

It also underscores the risks for employees involved in "enterprise flexibility" and where "facilitative processes" may determine arrangements at a workplace level. There are added risks for employees in the absence of mechanisms for independent scrutiny of workplace arrangements.

There is no standard for genuine agreement established at s.143(1C)(a) of the Act.

8.0 s.3(K) ASSISTING IN GIVING EFFECT TO AUSTRALIA'S INTERNATIONAL OBLIGATIONS IN RELATION TO LABOUR STANDARDS

SUMMARY

The Act has not assisted Australia give effect to its obligations under international standards. The Bill widens the breach and should be rejected. The current provisions require amendment to bring them within acceptable standards as requested by the ILO.

8.1 There are four fundamental basic human rights at work :

- The right to form or join a trade union of one's choice and to collective bargaining (Conventions 87 and 98);
- The right to be free from slavery and bonded labour (Conventions 29 and 105);
- The right to one's childhood (Convention 138);
- The right to equal pay and not to be discriminated against because of one's gender, race, colour, religion, political views or national or ethnic origin (Conventions 100 and 111).

8.2 The Act has been found by the ILO Committee of Experts to be in breach of Australia's obligations under Conventions No. 98 (Right to Organise and Promotion of Collective Bargain) and No. 87 (Freedom of Association and Protection of the Right to Organise).

The Government has not moved to remedy the Act's deficiency in relation to its international obligations for labour standards.

The Bill widens the breach of international law. For example, the Committee of Experts noted that AWAs were promoted through easier filing. The proposal to have AWAs operate prior to filing (s.170VBD), having a one-step approval process and removing the referral of AWAs to the Commission for concerns regarding no disadvantage test, escalate the flouting of international standards.

8.3 The ILO Committee of Experts also found that the Act restricts the right to strike, contrary to the requirements of Convention No.87, particularly regarding excluding multi-employer claims from protected bargaining, sympathy strikes and action about issues other than those which could be covered by a certified agreement.

The removal of the Commission's discretion at s.127(3A) widens the breach of international law.

9.0 3(a)ii THE IMPACT ON WAGES, EMPLOYMENT, PRODUCTIVITY, AND INDUSTRIAL DISPUTATION LEVELS

SUMMARY

The data below establishes that movements in Australia's employment, productivity and industrial disputation levels operate independently from and cannot be sourced to the Act.

The Act can be seen to have a negative impact on wage outcomes, particularly, for those with little bargaining power who rely on the Award or are subject to AWAs. 75,000 manufacturing jobs have been lost during the operation of the Act.

9.1 PRODUCTIVITY

Source: "*The New Economy? A New Look at Australia's Productivity Performance*" *Productivity Commission Staff Research Paper May 1999*

"Australia's productivity performance is now at an all-time high. Productivity growth is faster now than in the so-called `Golden Age' of growth around the 1960s." (p.vii)

Productivity growth measures an economy's ability to produce more goods and services from given inputs of labour and capital equipment.

Australia's productivity growth of 2.4% a year since 1993-94 is the fastest it has been since the ABS began keeping records of productivity growth since 1964.

From the beginning of the 1990s, Australia has experienced a "different and faster growth pattern, based on stronger MFP (multifactor productivity) growth...the growth that would have taken 13 years on the old path has been achieved in six years." (p. vii)

The latest ABS figures for the most recent acceleration in productivity growth trace its rise from 1993/4 through to 1997/98. Productivity growth in this period has been 2.4% a year. This compares very favourably with annual average growth since 1964/65 of 1.4% a year.

The underlying trend in productivity growth has been at/above 2% p.a. since 1993-94 (predating the *Workplace Relations Act*). (Refer also section 1.2 above).

The table below shows the growth rates of labour and capital productivity.

Table 1 **Productivity Growth Rates Over Time**

	Recent cycle (93-94 to 97-98)	*Long term (64-65 to 97-98)*
Labour productivity	3.1	2.3
Capital productivity	0.8	-1.0

Data source: ABS 5204.0

The reasons advanced for the rise in productivity are the previous 15 years of micro-economic reform such as :

- floating the dollar
- deregulating the financial system
- lowering of tariff protection
- more stringent competition policy
- reform of public utilities

9.2 Economic Growth Rates

	Average Economic Growth Rates Since 1990 (p.a.)
Australia	3.2%
USA	2.5%
New Zealand	2.1%
Britain	1.9%
Canada	1.9%
Japan	1.8%

Source: SMH 9/6/99

Changes in Real Gross Domestic Product

Year -	
94/95	4.3%
95/96	4.2%
96/97	2.8%
97/98	4%

Source:ABS 5206

9.3 **Wage Growth**

Percentage Growth in Award Rates of Pay
Year -

94/95	1.3%
95/96	2%
96/97	1.5%

Source:ABS 6312
Note: This series was discontinued in June 1997

This data shows very low growth rates in award rates of pay.

9.4

WAGES - CASE STUDY

Inequality in wages outcomes are evidenced by the AWAs referred to in PART A(a)(i) above, i.e. those in a relatively weaker bargaining position are subject to unilateral managerial decision making whereas those in a stronger position i.e. those employees at Ford and Holden where union membership is nearly 100% are covered by Enterprise bargaining agreements. For instance the wages increases at Holden agreed to are:

- *5.0% to be paid on the first pay period on or after the above date.*
- *3.0% to be paid on the first pay period on or after 15th August, 1999.*
- *2.0% to be paid on the first pay period on or after 15th February, 2000.*
- *3.0% to be paid on the first pay period on or after 15th August, 2000.*

If the Consumer Price Index (CPI) exceeds 3.0% in the period from the 1st July 1999 to 30th June 2000, the final 3.0% payment in August 2000 will be adjusted up to an amount equal to the CPI.

[source: Holden Ltd Enterprise Agreement (1998-2001) - Div 3 certification 8 Oct 1998]

The employees at Holden were represented by Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU), the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), The Australian Workers' Union (AWU), The Association of Professional Engineers, Scientists and Managers, Australia (APESMA), the Construction, Forestry, Mining and Energy Union (CFMEU), the National Union of Workers (NUW) and the Australian Municipal, Administrative, Clerical and Services Union (ASU) [Federation of Vehicle Industry Unions]. Matters included in the agreement were, Sick Leave; Payment of Accrued Sick Leave; Allowances; Outsourcing Use of Casual and Contract Labour - Salaried Areas; Journey Accident Insurance; Superannuation; Paid Maternity Leave ; Job Security; Employee Assistance Program ; Environmental Clause; Shop Steward Education Leave and the list goes on. The agreement also contains the following clause;

"6. The Union Philosophy

The Unions fully support Holden. To increase efficiency so as to enable Holden to compete with imports at lower levels of government assistance as well as to increase the export orientation of Holden. To provide better quality products for consumers at reduced real prices. To minimise disruption to production and employment during the transition to a more efficient Holden. To increase the awareness of Holden management, unions and their members, that they must assume far greater responsibility for making Holden more internationally competitive, through improvements at the plant level as well as through the wider initiatives of Holden. To improve competitiveness while accommodating a gradual reduction in tariff protection, within a stable and competitive macro economic environment reform, which is practical, achievable and relevant. To improve competitiveness by improving the economies of scale in both the Plan Producer sector and the Components sector and by achieving significant increases in the effective utilisation of advanced manufacturing technology. To improve competitiveness by enhancing Holden research and development, design and tooling capacity and forging them into strategic competitive advantages. To improve competitiveness by adopting better management systems, reforms in work organisation, promoting skill development, and improving Holden employee relations performance.

7. Federation of Vehicle Industry Unions Commitment :

The FVIU is committed to continue working with Holden with regard to increasing exports and to improve customer satisfaction. This may include liaison with other unions such as transport and waterfront unions to achieve more efficient handling of product.

9.5 The wage outcome, process and philosophy of the Holden agreement support the Act's objects. Compare this to the AWA being offered to employees at National Car Rentals (Attachment 'C') and BP Express, small workplaces with low unionisation rates. The difference in wage outcomes is striking.

9.6 The Act diminished the requirement at s.88A(a) for awards to provide wages which were maintained at a relevant level. (Refer Object s.3(d) above). This diminution and narrowing of the scope of awards to the low paid)s.88B(2)(b)) has resulted in award covered employees (1/3 of employees) falling behind the general movements in wages.

9.7 The data above demonstrates in 1996/97 award rates moved by 1.5%, compared to the AWOTE movement of 3.6%. The wage outcomes for award-covered employees are also reduced by the facilitative provisions inserted into awards, via s.143(1C), e.g. facilitative provision to forgo 20% morning shift loading in the printing award. The impact of this facilitative provision is that a level 1 award-reliant employee working morning shift would lose $77.00 pw, reverting to $385.40 pw.

9.8 INDUSTRIAL DISPUTES

The Act (s.127) "overreacts" to the recorded instances of industrial action. Industrial action is not a commonplace occurrence at Australian Workplaces. Cully et al observe that in 1995 less than one in ten workplaces had experienced industrial action of any kind over a 12-month period. [33]

9.9 In the metal products, machinery and equipment sector, the introduction of the Act escalated industrial action. In 1995, prior to the Act, 142 working days, per 1,000 employees, were lost because of industrial disputes. In 1996, the year the Act was introduced, days lost increased to 146 , with 1997 recording a significant increase to 189 days lost. In 1998, the figure fell to 71 days. [34]

The use of worker militancy in 1996-97 is attributable to the Act's introduction. Workers protested against a further erosion of their quality of life, by resisting lower pay and longer hours. Employers escalated disputes and days lost by applying the the Act (s.127, s.166A). (Refer EMAIL and Mountain Maid above).

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33 Ibid, p. 94

34 ABS, Industrial Disputes, Australia, Cat. No. 6322.0

9.10 The 1998 figure for days lost in metals manufacturing is low, however, as the Cully (Rio Tinto funded) report found :

> "*it is somewhat disingenuous to attribute this to the provisions of the Workplace Relations Act 1996, as the Minister for Employment, Workplace Relations & Small Business has recently claimed (Reith 1999 *) a downward trend has been clearly evident since at least 1992*". [35]
>
> * Reith, P "Industrial Disputes in Australia - Experience Under The Workplace Relations Act 1996 - April 1999.

9.11 The Bill's cumbersome administrative procedures are designed to make legal right of entry and protected action virtually impossible. This outcome, in conjunction with s.127, is a cocktail for increased disputation.

10.0 3(a)iii PROTECTION OF EMPLOYEE ENTITLEMENTS

The issue of protection of employee entitlements should be addressed independent of the proposed changes to the Workplace Relations Act. The issue goes beyond solutions available through the Act.

The AMWU has developed a comprehensive approach to the protection of employee entitlements. Our proposals (Attachment F) have been forwarded to Minister Reith in response to the Ministerial discussion paper on employee entitlements.

The Act does not operate to protect employee entitlements. Refer Mountain Maid, where employees' genuine concerns regarding their entitlements were subject to s.127 orders, which achieved nothing in the way of protecting entitlements or solving the dispute.

AMWU members at Austral Pacific are still owed an estimated $7.8 million worth of entitlements as a result of the company standing down 700 members nationally and subsequently terminating them on 17 January, 1999. The company then went into receivership.

The AMWU proposes two positive amendments to the Act to improve protection of employees' entitlements.

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[35] Ibid, p. 95

10.1 s.170CM

Insert a new sub-section providing that on succession, assignment or transmission of the business of the employer concerned, he/she will deposit accrued entitlement in a complying trust fund. A complying trust fund would be defined by regulation.

The Government to also support a variation to the TCR test case standard provision regarding transmission of business in these terms.

This proposal is supported by Schedule 10, ILO Convention Concerning Termination of Employment At The Initiative of the Employer, Article 12, 1(a) (a separation allowance or other separation benefits).

2. Remove the restriction at s.170FA(2) which excludes the effect of that section for employees with ≤ 15 employees. In conjunction, the Government should support an application to delete the same restriction from the TCR test case standard.

There is no reason why employees of small employers should be denied a severance allowance. Employers have used this provision, by laying workers off over a period of time, to come under the 15 employees threshold. The exclusion has then been used to deny entitlements, even where the funds are available.

This was the situation at Ashenault Pty Ltd (Print M5784). In this matter, the Commission did issue an order for payment, however, the members, some with service in excess of 20 years, had considerable delay and the union spent considerable resources in preparing and presenting the case. This delay and cost would be avoided by removal of the ≤ 15 exemption.

PART B

(b) IN LIGHT OF THE COMMITTEE'S FINDINGS IN RELATION TO THE MATTERS LISTED IN PARAGRAPH (a) THE PROVISIONS OF THE WORKPLACE RELATIONS LEGISLATION AMENDMENT (MORE JOBS, BETTER PAY) BILL 1999 AND ALL MATTERS RELATED THERETO.

The AMWU's submissions regarding the Inquiry's terms of reference at paragraph (b) will focus on :

- Right of Entry (s.285)
- AWAs (s.170VA)
- Bargaining Provisions (s.170LO)
- Closed Shops (s.298)
- Objects of the Act (s.3)
- Powers of the Commission

1. RIGHT OF ENTRY (ROE)

The Bill's proposed ROE provisions increase the difficulty of access for unions to workplaces and employees and members employed at the workplace.

1.1 s.285B

S.285B(1) restricts entry for the purposes of investigating a breach to holders of a current invitation (s.285CA). This requirement will result in award breaches remaining unactioned as employees, particularly, in small workplaces, where employees are all personally known by the employer, may be intimidated to not offer an invitation.

Small workplaces dominate in areas of AMWU award coverage. For example, in the printing industry 85.3% [36] of employer establishments employ less than 20 employees.

1.2 s.285(2)

The restriction of documents and records available for inspection to those pertaining to union members will allow the breach to go undetected for non-union members. The restriction also prevents unions gathering evidence regarding alleged discrimination in wages and conditions between union and non-union members.

1.3 s.285C

s.285C(1) reflects the current provision allowing permit holders to enter for the purpose of holding discussion with employees who are members OR eligible to become members. Proposed s.285C(2) restricts entry to permit holders with an invitation under s.285CA.

1.4 s.285CA

s.285CA requires an invitation to be :

s.285CA(1)(a)
"in writing and signed by at least one employee who works at the premises AND is a member of the organisation" (emphasis added).

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36 PIAA - Paper Products, Printing & Publishing Industry Overviews, January, 1997, p. 7

The interaction between s.285C and CA is such that premises without union members may no longer be entered by union officers. This restricts the rights of employees in non-union enterprises to have the union attend and address employees on issues identified by such employees.

This restriction will entrench award breaches in non-union workplaces and curtails existing union rights.

s.285CA(1)(C) requires that the employee, in fact a union member, extending the invitation state that there is:

"reasonable grounds to believe that there is evidence at the premises relevant to the suspected breach".

s.285CA(1)(c) ignores the fact that many workers -

(a) have limited literacy skills, and
(b) are unaware of existing entitlements.

s.285CA(1)(c) assumes employees are aware of their entitlements and are able to detect a breach and have access to evidence establishing a breach.

This assumption is unsupported by evidence.
For example, the Commission, in determining the printing award simplification case, found :

"poor language, literacy and numeracy skills are encountered on a regular basis" - Print R7898, p.7.

The Commission has also found :

"many employees are unaware of their award responsibilities and employers are not aware of existing award entitlements" - AIRC Print R7898, p.10

In light of this evidence, the union often operates as an information agent for both employer and employees.

The proposal at s.285CA(2) that invitations are only valid for 28 days "multiplies" the inequity of these proposals. The delay created by the proposals will escalate disputes as employees are required to follow lengthy administrative procedures before their issue is investigated by the Union.

In light of this evidence, the Bill's proposals at s.285(B),(C) and)CA) are unwarranted and will effectively reduce employees' access to having award breaches investigated.

The identification of award breach is also beneficial for employers who may unwittingly be exposing themselves to prosecution. Early detection is compromised by the Bills' proposals.

1.5 s.285CC

This provision recognises that employees receive negative treatment when inviting the union on site, however, s.285CC increases the administrative obstacles involved in carrying out inspections.

This recognition should lead to a rejection of the proposals at s.285CA rather than a complicated and delaying mechanism which attempts to provide employees with anonymity as required. The case study provided evidence at Part A, object s.3(f) supports this position. Anonymity is difficult in small workplaces.

1.6 s.285D

The proposed s.285D constructs a process for ROE, basically reliant on the "issuer" of the invitation being aware of and being able to supply evidence of award breach to the holder of the invitation. As discussed above, employees are often unable to record the breach or are unaware of their entitlements in the first instance.

Even where the Union was supplied with details of suspected breach, the proposals at s.285D(2C) place the ROE at the discretion of the employer as to whether sufficient details have been provided. For example, an employer can refuse access if he/she, under 285D(2C)(c)(ii), is not satisfied that the person has provided adequate particulars in relation to the request.

The Union's case study material at Part A above is evidence that replacing the current right of entry with employer discretion will escalate the incidence of ROE being denied, despite the merits of employees' concerns.

1.7 s.285DA

The proposed power of the employer to require that discussions with employees take place in a room as designated allows for anonymity to be compromised. Refer to Right of Entry Case Study - Scanlon Printing (PART A, section 4.3 above).

1.8 s.285G

The removal, as proposed under s.285G, of the Commission's powers to prevent and settle disputes about ROE provisions, effectively render ROE provisions nugatory. What do employees do and where do they and unions go when an employer exercises his/her discretion to not allow ROE.

A remedy that applications could be made to the Federal Court for enforcement are slow, costly and ignore the reality of the employees who originally sought the assistance of the Union at the workplace.

2.0 AUSTRALIAN WORKPLACE AGREEMENTS (AWAs)

2.1 The promotion of AWAs under the Act has already been found to offend ILO, Convention No. 98 (ILO Committee of Experts, November-December 1997 Session).

The Bill increases the promotion of AWAs whilst simultaneously removing protections e.g. AWAs to prevail over existing certified agreements (s.170VD(4)) with the reference of the no-disadvantage test to the Commission repealed.

The AMWU has negotiated hundreds of agreements which by consent of the employer and employees, reinforce the support for collective bargaining arrangements and prohibit AWAs during the life of the agreement. The Bill's application ignores the requirement at s.3(e) for the Act to support fair and effective agreement making and ensure that the parties abide by awards and agreements.

The Union supplied extensive case studies on how AWAs do not reflect a free choice between an employee and employer as to the preferred instrument of industrial regulation.

The AMWU evidence is that the only choice being offered to AMWU members is that of an AWA or the job itself. The fact that legislation requires genuine consent (s.170VBA(2) does not effect consent.

A further deregulation of the individual contract stream is not supported by the evidence. On the contrary, rather than the Bill's proposals, we submit a review of the evidence demands that the individual contract stream be repealed.

2.2 s.170VBD(d)

This section allows AWAs to operate from the date of signing rather than the date the Employment Advocate (EA) specifies there is no disadvantage by approving the agreement.

This will leave employees exposed to recovering lost monies where the AWA is not approved.

This proposal restores, in part, a proposal rejected by the Democrats in 1996. The Bill that preceded the 1996 Act had AWAs take effect once filed. That proposal was abandoned and a requirement that the EA check agreements for no disadvantage, secured through the Democrats' amendments.

The problems employees would face under this proposal are highlighted by the following example.

BP EXPRESS, ASHFIELD, NSW - CASE STUDY

Under the AWA, ordinary hours may be worked on any day of the week up to a maximum of 12 hours on any shift. A casual console operator is paid $15.06 an hour under the AWA. Under the AWA, at the end of their shift, employees are required to complete a cash balance. Shift handover is part of normal 24-hours operations and the time taken to complete this task is recognised in the hourly rate and does not attract payment.

Under the relevant award, the Vehicle Industry Repair & Retail Motor Industry Award 1993 (V0019), a casual console operator under the award receives $14.79 per hour for Monday - Friday work and on Saturday, Sunday and public holidays receives $19.00 per hour. Overtime worked in excess of 10 hours per day or an average of 38 hours per week shall be paid $8.14 in addition.

Other disadvantages provided by the AWA include overtime being paid for by time off in lieu of overtime on an hour for hour basis at the employer's discretion. Under the award, employees may elect to be paid overtime by time off in lieu at a rate equal to time and a half.

An AMWU member has advised that although she refused to sign the AWA, its terms are being implemented. (Refer PART 'A', section 2.7 above)

Under the Bill, the AWAs disadvantages, compared to the Award, could operator for 60 days before any scrutiny prevails. If the EA refused the AWA, the responsibility for pursuing an underpayment resides with the affected individual

This proposal provides another opportunity to undermine the award safety net. Provision for payment of any shortfall through the Courts (s.170VX) is not consistent with the requirement at s.3(d)(i)&(ii).

2.3 s.170VCA

The Bill provides for AWAs applying to employees earning $68,000 or more per annum to automatically pass the no-disadvantage test. Employees on the top minimum rate, prescribed in the Metal Award (M1913), earn just over $48,000 per annum, ordinary time. Technical and Supervisory members employed throughout the Australian Public Service also earn in excess of the proposed $68,000, as do some of our printing, vehicle and metal trades persons when all aspects of remuneration are considered (overtime, penalty, superannuation fringe benefits).

It cannot be assumed that high paid employees and/or white collar employees are better enabled to reach genuine consent, are aware of their award entitlements or are in strong bargaining positions. This fact was recognised by the AIRC during award simplification of the Municipal Officers Award:

> "*I also do not accept as a general proposition that the more highly paid and educated members of the workforce necessarily need any less assistance from the Union in terms of advice and representation nor are they necessarily more receptive to coming forward to their employer in order to have their union called in on any particular matters*" AIRC Print Q7329.

The $68K cap is an arbitrary and nonsensical measure of equity. Neither the Bills Explanatory Memorandum or the Ministers Second Reading Speech provide any rationale for assuming AWAs applying to employees receiving $68K contain no disadvantage.

2.4 s170VPA (1) (e) (repealed)

The repeal of the provisions preventing AWAs containing different conditions to be offered to comparable employees will cause division and disputation at the workplace.

There is no rationale for repealing this provision contained in the Minister's Second Reading speech or the Bill's Explanatory Memorandums.

s.170VPA(1)(e) was effected by the Democrats agreement with the Government for the purpose of:

- preventing discriminatory practices, and
- supporting "collective bargaining" provisions.

The industry evidence is of employees being forced to accept AWAs. There is also evidence of AWAs being used as pattern bargains and quasi collective agreements. (Refer PART 'A', section 2.5 and 2.14 above). This evidence supports the retention of this provision preventing discriminatory practices.

3.0 BARGAINING PROVISIONS

3.1 The Bill's provisions regarding secret ballots as condition precedent to protected industrial action (s.170MQ) are designed to negate workers' position in the bargaining relationship.

3.2 The secret ballot provisions will be costly, create inordinate delay and are unnecessarily burdensome. There is no evidence to suggest union members are unwillingly taking industrial action.

3.3 The AMWU's Notice of Intended Industrial Action (s.170MO(5) to employers has in place a stop work meeting process where members determine, what, if any, further industrial action occurs. It is the members who determine the nature of action, if any, to be taken in furtherance of finalising an enterprise bargain.

3.4 The amendments sought at s.170MO(5) to specify the precise nature, date/s and duration of industrial action is likely to escalate the forms and duration of action taken. The unions current s.170MO(5) notice often results in stop work meetings occurring during breaks with a short intrusion into working time. The amendments proposed will interfere with this process as members are forced to specify escalated forms of action on the basis it may be needed after the lengthy period entailed in the secret ballot process.

3.5 The Bill's encouragement of escalated industrial action is also evident at s.187AA which prohibits payments for the day on which industrial action occurs, rather than for the time action occurred. Why limit a stop work meeting to 10 minutes if payment for the whole day is prohibited?

3.6 The secret ballot proposals are unnecessary as the Act already provides (s.135) for the Commission to order a secret ballot in order to prevent or settle an industrial dispute. It has been open to negotiating parties and the Commission to access s.135 in relation to industrial action with the Commission determining voting procedure. The Bill (s.135(2)) proposes to specifically preclude these types of applications.

3.7 If there were evidence of coercion in relation to the taking of industrial action one would have expected a significant number of applications under the existing provisions. The lack of such evidence and the lengthy, cumbersome ballot process proposed is designed to render the protected industrial action provisions ineffectual.

3.8 The expansion of the AIRC's powers to terminate bargaining periods s.170MW(1)(c) and 170MWA(1) supports this contention.

The evidence referred above to the 1997 EMAIL dispute warns against proposals which serve only to distract the parties from settling the dispute at hand. The amendments force the parties into litigation and do not contribute to settlement of issues between the bargaining powers. See also proposed amendment to s.170N disallowing Compulsory Conciliation as well as the existing arbitration during a bargaining period.

4.0 CLOSED SHOPS

4.1 S.298SA prohibits a person or union engaging in activity establishing or maintaining a closed chop. A closed shop is deemed to be a workplace where 60 per cent of employees or independent contractors performing work of the same type are union members. This reverses the trend where the NSW Greiner Government proposed legislation legalising closed shops in workplaces where 65% of the relevant employees voted in favour. [37]

4.2 The Bill assumes that high levels of workplace unionisation are evidence of closed shops. The BCA funded research into Trade Unions stated "*the presence of an occupational group where all workers are union members does not necessarily indicate the presence or absence of a closed shop*". [38]

4.3 Closed shops recognise employees' preference and agreements between management and employees. The Bill's proposals are inconsistent with principal object s.3(b) which provides for employees and employers to determine matters affecting their relationship.

4.4 The Minister's Second Reading speech for the current Act claimed:

"*The Commission will be denied jurisdiction over preference in employment. Existing award provisions providing for preference will cease to have effect. Under the Bill, individuals (including independent contractors) will be protected against coercion to join or not to join an organisation or to cease to be a member of an organisation. Closed shops will be abolished*." (emphasis added)

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37 N. Zappala G - A New Framework for the Closed Shop In Australian Industrial Relations; ACIRRT Working Paper No. 13, July 1991, p.1

38 N. Drago R et al - The Changing Role of Trade Unions in Australian Workplace Industrial Relations, National Institute of Labour Studies, June 1998; p.15

4.5 These proposals came to pass with the Act now containing comprehensive provisions prohibiting discrimination against employees or potential employees on the basis of membership or non-membership. In 1996 the Act outlawed compulsory unionism and the closed shop in a legislative move already overreactive to the facts as Drago [3] and Hamberger [39] report compulsory union membership is on the wane.

There is no rationale for introducing further legislative provisions regarding closed shops.

4.6 It will be argued that the Wallis report commissioned by the Employment Advocate (EA) concluded that employers compel employees to be members and 17% of union members are members because of this reason. The EA also claims that the AWIRS evidence is that prior to the Act, 32% of trade union members were members because of compulsory unionism. This distorts AWIRS. The BCA funded report states:

"*AWIRS data thus provide two alternative estimates of the incidence of compulsory union membership - 20 per cent and 32 per cent.*" [40]

4.7 Instead of introducing further legislation to solve a dissipating issue the Bill should investigate ways of assisting employees of the 16% of employers identified in the EA's report who regard union members unfavourably. The union's case evidence in Part A on right of entry and discouragement of union membership supports this approach. (Refer PART 'A', sections 4.2, 4.3 & 4.4)

4.8 The preference and preparedness of employers to encourage union membership within their respective workplaces is exemplified in various provisions contained within agreements specifying the merits of a collective approach to resolving workplace disputes and/or grievances, and more importantly, in the context of bargaining over terms and conditions of employment.

4.9 Furthermore, the recognition of union representation at workplaces is also illustrative of the support of companies for union representation to be respected and fostered. For example, many provisions specified in enterprise agreements prevailing throughout the vehicle industry, in particular the major manufacturers and components suppliers, contain terms to the effect where upon engagement, the company is committed to providing them with an application form to join the union.

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39 Wallis Report - Office of The Employment Advocate, Report on Compulsory Unionism 1999.

40 Ibid.; p.13

4.10 The support by companies for such collective arrangements and encouragement of union membership amongst employees arise for the following reasons:

- Past custom and practice which has enshrined a collective approach to matters affecting the workplace. This approach has been effective as a means of improving the working relationship between the company, its employees and the union.

  The capacity for a company to undertake and provide for change through consultative arrangements as a means of establishing support for changes at the workplace.

- A collective approach also enables the company to manage the processes of change by consultation and agreement, with the knowledge that where agreement is reached the company can be assured the terms agreed to between the company and the union will be supported.

4.11 The company can have the benefit of certainty over terms and conditions to apply. A collective approach also enables the company to effectively and efficiently achieve improved conditions of employment for all employees.

Companies also consider a strong union presence at the workplace as a positive in that it enable the company to negotiate with the union(s) as a single bargaining unit in the context of industrial democracy.

5.0 <u>AWARDS</u>

<u>ss3(c) and s88A</u>.

5.1 In industrial relations as in history lessons from the past are instructive.

The Bill proposes to fundamentally change and limit the role of awards.

The Bill repeals existing s.3d(ii) which provides for

(ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment;

and replaces it with

(ii) <u>to ensure that awards act as a safety net by providing basic minimum wages and conditions of employment in respect of appropriate allowable award matters to help address the needs of the low paid; and</u>

(iii) <u>to ensure that awards do not provide for wages and conditions of employment above that safety net</u>.

5.2 The requirement at existing s.3(d)(ii) to maintain an effective award safety net of fair and enforceable wages and conditions was secured by Democrat amendment and as noted in the submission of Senator Andrew Murray et al to the 1997 National Wage Case:

"Object (d) was modified to refer not just to the existence of an an award system, but also to its *maintenance*, and now reads:

> 'to ensure the *maintenance of* an effective award safety net of fair and *enforceable* minimum wages and conditions of employment'.

Speaking to the amendment, Senator Murray said:

> 'Amendments No 2 and 3 are to ensure that the award safety net of fair minimum wages and conditions is maintained. That was a vital change. This is an important amendment in that it makes clear that it is not the object of the Act that awards merely wither on the vine. Rather, they should be kept up to date and relevant to provide the minimum standards for enterprise agreements and to ensure that workers are protected. The clauses must also be enforceable.' (Senate Hansard 31/10/96 page P4765)". [41]

5.3 Similarly the Democrats and Government came to agreement that s.88A should provide for a "broader scope" and "wider considerations" as consistent with an effective award system.

The Democrat/Government agreement re: s.88A changed the original 1996 Bill from:

s.88A (a)wages and conditions of employment are protected by a system of enforceable awards; and

(b) awards and confined in their scope to providing a safety net of fair minimum wages and conditions of employment

to

s.88A (a) wages and conditions of employment are protected by a system of enforceable awards *established and maintained by the Commission*; and
(b) awards *act as* a safety net of fair minimum wages and conditions of employment.

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41 Senator Andrew Murray - Submission to the National Wage Case On Behalf of the Australian Democrats, 1997, p.2

In relation to these amendments the Democrats stated:

"*It was our clear intention in moving these amendments that awards would not be confined to a safety net role - although that is one of the important roles awards do provide - but would also provide relevant and up to date standards, which are kept relevant and up to date (i.e. maintained) by the Commission. These objects are consistent with the objects of the Act as a whole, and reflect the importance we place on a comprehensive, up to date award system*".[42]

5.4 The Bill's proposals at ss.3(d) and s.88A again seek to reintroduce the 1996 Bill by limiting the scope of awards. Existing s.88A(b) is repealed and replaced with two new sub-sections which repeat the proposed s.3(d) (ii) and (iii) referred above.

5.5 The effect of these amendments confines the scope of awards to providing basic minimum conditions, only in respect of allowable award maters and only in respect of the low paid.

The proposal at s.88(ba) provides a contradiction. Maintaining an award as provided at s.88A(a) is inconsistent with the requirement that awards not provide "*for wages and conditions of employment above the safety net*" *(s.88A(ba)* as the safety net is defined as " existing wages and conditions in the relevant awards [43].

5.6 s.88A(ba) would restrain s.88A(a) and this was clearly not the intention of the Democrat/Government Agreement. As referred above the agreement recognised awards should not be confined to a safety net role but would also provide relevant and up to date standards in a comprehensive award system. Limiting awards to "help address the needs of the low paid" (ss.3(d)(ii) and 88A(b) does not provide a comprehensive award system.

5.7 Again, neither the Minister's second reading speech or the Bill's Explanatory Memorandum supply an explanation for these changes. There has been no change during the operation of the Act to the number of employees who rely on awards to set their wages and conditions. Buchanan [44] states a third of workers remain dependent an awards. This estimate is consistent with AWIRS and has not altered during the operation of the Act. Buchanan states that for award reliant workers "*anything paid above legislative minima is primarily determined by the employe*r". [45]

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42 Ibid, p.3

43 Safety Net Review, Print R1999, p.53

44 Journal of Industrial Relations, Ibid, p.102

45 Ibid, p.102

5.8 The requirements for a comprehensive and maintained award system to protect those workers without bargaining capacity and to provide a legitimate benchmark for agreement making are as essential now as they were at the commencement of the Act. The amendments at ss.3(d) and 88A are not supported by evidence and should be rejected.

5.9 s.89A(2)

The Bill proposes to restrict the scope of awards by a further reduction in allowable award matters.

Skilled based career paths (s.89A(2)(a) and training (s.89A(3A)(b) are specifically excluded. These exclusions undermine the Act's principal object at s.3 to promote economic prosperity, improve living standards and international competitiveness.

5.10 The AI Group continue to recognise the importance of skill based career paths underpinning increased productivity and career development. Bob Herbert, addressing a recent conference stated:

"*Together with the unions, a decade ago, we turned the whole training agenda around and steered it toward a competency approach which would enable young people to build and progress through a career path into well paid jobs*".[46]

The acquisition of skills and movement through a career path also provides workers with little bargaining power an opportunity to improve their living standards.

The importance of skill based career paths and training was recognised by the Democrat/Government agreement which reinstated express reference to skill based career paths to the Act. Speaking to the amendment in the Senate debate, Senator Murray said:

"*The combined effect of these changes is to broaden the powers of the Commission enormously and to ensure that the Commission has sufficient power to prevent workers being disadvantaged in a harsh or unjust manner. The list of allowable matters will now clearly pick up all important aspects of hours of duty, skill development and career paths and superannuation.....The clause will give the Commission the authority to actually proceed to develop a real and effective awards simplification process - and that is something which we support." (Senate Hansard 6/11/96 p. P5001-2)*". (emphases added)

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46 Herbert, B - Workplace Relations In the New Millennium, Speech Given East Melbourne, 25 June 1999.

5.11 There is no less a requirement now for skill based career paths than when the Act was introduced. International competitiveness is predicated on a highly skilled workforce able to respond, and adapt too, as well as create, new technologies and opportunities.

5.12 The Bill's proposal to restrict allowances (s.89A(2)(j)) appears to be an attempt to rewrite the award simplification principles established by the full bench [47] rather than a reasoned policy response to any issue created by allowances being expressed in Awards. The metal (M1913) and print (G0439) award simplification cases had joint union and employer group consent to a variety of allowances which the Bill would make non-allowable.

What is the Government's rationale for overiding the consent position of the parties based on industry knowledge and circumstance? Where is the evidence supporting this proposal?

5.13 s.893A

The proposal to specifically exclude matters deemed allowable such as transfers between locations (s.89(3A)(a) overides consent positions between employers and employees pursuant to award simplification. The simplified Qantas award [48] provides for employees to be transferred to any location at short notice. Removing minimum award rights and responsibilities for this process will create disputation. It will also have a negative impact on workers balancing their work and family responsibilities.

5.14 For example, a Sydney based employee is entitled to know, and not to have to bargain for, the rights (notice, frequency, payment etc) attached to being temporarily sent to Darwin to perform maintenance and repairs to aircraft.

5.15 The proposal at s.89(3A)(e) to exclude union picnic days is an example of how the Bill is driven by idealogy rather than an observation of the Acts principal objects, practicality or the consent position of the industrial parties based on industry experience and knowledge. In the simplified print award it was agreed by AI Group, PIAA and the Union that the "additional day" in the award would remain as union picnic day. This day is observed on Easter Tuesday in NSW and employers and employees in the industry have planned their production around the Easter break with this knowledge.

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47 Print P7500

48 Airline Operations (QANTAS AIRWAYS LIMITED) Award 1999 (A20) - Clauses 33.2 and 33.3.

Declaring union picnic day non-allowable will lead to disputation as workplace parties commence re-negotiating an entitlement formerly settled in industry awards. This unnecessary activity will not enhance productivity.

5.16 s.89A(b)

The proposal to limit (s.89A(6) & (6A) the incidental provisions to machinery matters such as award title seeks to reduce the scope and role of awards. The Democrats gained the Government's agreement to broaden the scope of s.89A(6) prior to the Act's commencement.

The Democrats reasoning was to expand the scope of allowable matters in s.89A by:

"*expansion of matters incidental to allowable matters that could be included in an award from the narrow "matter.....essential for the effective operation of the award" to the much broader "matters....necessary for the effective operation of the award" (89A(5)*".[49]

5.17 The amendments now sought reintroduce the "essential" requirement (s.89A(6)) to the incidental provisions. The Bill's proposal will result in further lengthy argument before the Commission. This is not supportable when the effect of incidental award provisions has not been demonstrated to prejudice the Act's principal objects nor employers or employees.

The inclusion of incidental matters in AWMU simplified awards predominantly reflects the consent position of the industrial parties. Training was agreed by the AI Group and the AMWU as incidental and necessary to s.89A(2)(a) - classification and skill based career paths. Senior Deputy President Marsh, applying the award simplification principles, concurred with this position[50].

5.18 Similarly award provisions relating to how and when employees are paid have been found to fall within s.89A(6) [51]. The Bill proposes these provisions no longer fall within the scope of s.89A(6).

5.19 The proposals at s.89A(6) and (6A) will narrow the scope of awards to the limited matters expressed in s.89A(2). This outcome is consistent with the Minister's expressed intention of having a core of basic minimum conditions underpinned by the corporations rather than conciliation and arbitration powers. The proposal should be rejected.

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49 Democrats' submission to 1997 National Wage Case

50 Print P9311, p.40

51 Print P9311, p.47

Roping-In Awards

5.20 s.111AAA is to be amended to further the restriction on the Commission in dealing with a dispute (log of claims). The restriction will include a relevant contract of employment as an additional circumstance. This is defined as a contract of employment underpinned by minimum conditions set out in the provisions of the Act, applying to Victoria, or as provided in Western Australia or South Australian legislation.

The provision allows by stealth the Minister's preferred position for coverage by a set core of basic minimum conditions. Sections 111AAA of the Act was enacted as a result of the agreement with the Democrats, with the intention of ensuring that federal award coverage could be achieved for employees who did not have access to a state system of awards and agreement-making which provided adequate protection. The stated intent of the Democrats was to ensure that access to the federal system was not restricted, in recognition that the state system (Federal in Victoria) did not provide for comprehensive awards.

5.21 The proposed outlawing of the roping-in of employers to Federal awards stands in breach of the internationally recognised right to organise (Convention 98). It also represents an attack on the award system and violates Principle 3(d) and (e) of the Act :

The proposal to delete, as a "*primary consideration*", the views of employees and employers as to whether they choose federal award regulation (s.111AAA(2), contradicts Principal Object ss.3(b) and (c).

Despite the firm protestations of the Minister that employees and employers should determine employment matters it appears that it is the Minister's view of having a core set of basic minimum conditions which is to have "*primary consideration*".

6.0 THE COMMISSION AND ITS POWERS

6.1 The Bill changes the Objects of the Act (s.3h) by reducing the scope of the Commission's arbitration and compulsory conciliation powers. Fee for service voluntary conciliation and private mediation services are also provided.

6.2 Compulsory Conciliation conferences are used extensively to assist in dispute resolution. During the 1997 EMAIL dispute the parties were at a stand off following the employers ss.127 and 166A applications.

It was through the exercise of the Commission's Compulsory Conciliation powers that the dispute was finally resolved. The Bill excludes this form of resolution (ss.170N & NA). The Commission worked through the night and on the weekend to assist the parties at EMAIL resolve their differences. The dispute would have

continued but for this process.

It is unlikely that the parties would have attended a voluntary conciliation. It is even less likely that the parties would have been prepared to pay for Voluntary Conciliation (Part VA) and Mediation (Part1VB) services.

6.3 The AMWU has grave concerns over the proposed reforms to the role and nature of the Australian Industrial Relations Commission. The proposed focus on private mediation begs the question of:

- who are they?
- who pays for them?
- how independent are they?

The Union also has strong concerns over the Commission charging conciliation fees. This "*user pays*" principle would mean that the dispute resolution function of the AIRC would effectively be undermined given that the average Australian worker would not have the financial means to pay for such a service.

Is this the logical end result of a system whereby unions are "*discouraged*" from the workplace, collective agreements are frowned upon, industrial action by unions is once more made illegal (again a breach of a fundamental human right) and then individuals are charged fees for access to AIRC conciliation?

6.4 The imposition of fixed term appointments (s.16(1A) dissolves the Commission's independence. This is particularly relevant with the Government's dissatisfaction of Commission decisions reflected in s.45 and s.109 appeals and review.

The argument that the AMWU has expressed in terms of job insecurity and precarious forms of employment. ("*control the tenure control* the *person*") is equally applicable at fixed term Commission members.

This proposal should be rejected to ensure the Commission's independence.

ATTACHMENT C

NATIONAL CAR RENTALS - FYSHWICK [CANBERRA] - Australian Workplace Agreement v. the Vehicle Industry - Repair and Retail Motor Industry (ACT) Award 1996

The following table compares an AWA offered to detailer employees at National Car Rentals in Fyshwick, Canberra. The AWA has been compared to the award after it has been through the Item 51 award review process.

The following comparison will reveal that:

the AWA fails the "no disadvantage" test prescribed by the Act;

- the total remuneration offered to a detailer in the AWA is less than the total award remunertation (the comparison in the table is based on the position of a full time detailer who is required to work a 7 day roster). Even on a very conservative comparison of the AWA rate and award rates based on a minimum annual salary, the award is still in front by $64 p/a not including other applicable rates i.e. shift penalties [see example one]. This conlcusion does not also take into account the future safety net increases that will occur under the award during the life of the agreement.

- hours of work prescribed in the AWA are more flexible with less restrictions, to the company's advantage, but at the expense of employee protections and entitlements which are not provided for in the AWA but are covered by by the award;

- hours of work prescribed in the AWA are not family friendly;

- there are no substantial additional benefits offered in the AWA which could be described as "above award" which would indicate that a trade off had been made. However it is acknowledged that redundancy entitlements are more than the award [but even here there is an exemption from payment upon transmission of business];

NATIONAL CAR RENTALS - FYSHWICK SITE - AWA [AS AT AUGUST 1999]	VEHICLE INDUSTRY - REPAIR SERVICES AND RETAIL MOTOR INDUSTRY (ACT) AWARD 1996 [V0249]
This agreement shall be binding on you in your position of **detailer in a full time capacity** at the Fyshwick/Canberra airport site or any other premises within the Canberra metropolitan area.	Applies to National Car Rentals and its employees [as defined].
TYPES OF EMPLOYMENT DEFINED: A **full time** employee means an employee appointed as such and employed to work an average min of 76 hours per fortnight A **part time** employee means an employee appointed as such who is regularly employed to **work less than 76 hours in any fortnight.** **Further on under part time employees** If you are a part time employee, you are entitled to the benefits available to full time employees on a pro rata basis. Your minimum hours each fortnight will be **n/a** hours per fortnight The part time rates of pay are calculated by dividing the ordinary base fortnightly rate of pay by 76. No loading shall apply to part time rates of pay. **[casual employees are not defined]**	[see hours of work below] An employee may be engaged by the week to work on a **part-time** basis for a min no. of hours in each week **not less than twenty ordinary hours**...the ordinary hours of work for a part time employee..shall be between 20 and not more than 38 hours...[clause 4.3.2] The max period for which a **casual** employee can continuously on a full-time basis shall be six weeks. In any case, where such full time employment extends beyond six weeks, the employee shall thereafter be deemed to be employed by the week [clause 4.3.1]
TERMINATION OF EMPLOYMENT Not > one year - at least one wks 1 yr or > but not < 3 yrs- at least 2 wks 3 yrs or > but not > than 5 yrs - at least 3 wks 5 yrs or > - at least 4 wks [NB* an additional wk will be given if you over 45 years of age Notice periods apply to employees also	Up to one calendar month - 1 day > 1 mth and < 1 yr - 1 week 1 yr up to the completion of 3 yrs - 2 weeks 3 yrs and up to the completion of 5 yrs - 3 weeks 5 years and over - 4 weeks [45 years old proviso applies] notice applies to employee also [clause 48]

CLASSIFICATION STRUCTURE: The movement between classifications is stated to be at the discretion of National Car Rentals and is based on incidental duties. The classification structure is not attached to the AWA.	A new classification structure was included in 1994 via award variation- levels R1 to R6 - generic structure based on qualifications, skills and experience a detailer is within level 1 R1 and level R3 a detailer is defined as: " means an employee not being a tradesperson whose work includes that of paintshops assistant and /or polisher and /or cutter using buff or wet and dry rubber and /or painter - brush and/or spray on mechanical and/or chassis components, in addition to the cleaning and polishing of new and/or used vehicles." [clause 5.2]
WAGES : the **base salary stated is $24,500 per annum**. Allowances, penalty rates and loadings including annual leave loading applicable prior to the agreement are absorbed into the base salary. .However payment for additional hours will not be available to you if your base salary is in excess of $38,000 per annum. Sunday work: time and a half The increases are : pay period ending on or after July 1, 2000 : 1.2% and pay period ending on or after July 1, 2001: 1.2%. example: Detailer: [assume works every 2nd weekend-Sat and Sun] base rate - **$25,000p/a** **additional hours:** - excess of 76 in any fortnight. - paid at 1.5 times hourly rate of pay. - if work on Sat and Sun no overtime, penalty rates etc. Therefore only take into account additional hours. So could work 70 hours in first week and 6 hours in second week and receive no payment for additional hours.	**Detailer $22, 869.00 p/a[level 3]** plus: • penalty rates apply for working weekends • sunday work - double time • Saturday work - time and a half for 1st 3 hrs b4 12noon and double time thereafter • shift loadings • holidays - double time and a half **Examples:** **Example 1.** Detailer: [assume works every 2nd weekend - Sat for min 4 hrs and Sun for min 4 hrs] $22,869.00 p/a [incl of SNA '99] - $438.60p/w + $2195 **$25, 064.00** [this does not include additional overtime, shift penalties, annual leave loading, holiday rates and allowances i.e. meal tnat may apply from time to time] **Example 2.** Detailer [assume works every 2nd weekend - Sat for min 8hrs and Sun min 8 hrs]

	$22,869.00p/a [incl of SNA '99] - $438.60p/w + $4889.00 **$27,758.00** [this does not include additional overtime, shift penalties, annual leave loading, holiday rates and allowances i.e. meal], that may apply from time to time **Example 3.** Detailer [assume works every 2nd weekend - Sat and Sun for 12 hrs and 14 hours during the week] $22,869.00p/a [incl of SNA '99] - $438.60p/w + $6,690.00 **$29,559.00** [this does not include additional overtime, shift penalties, annual leave loading, holiday rates and allowances i.e. meal, that may apply from time to time]
HOURS OF DUTY & DEFINITIONS : full time employees required to work an average **minimum** of 76 hours in any fortnight. Meal break is not regarded as time worked You shall have at least 10 consecutive hours off duty between the work on successive days unless otherwise agreed between the parties and subject to a consideration of any occupational health and safety issues. If you are appointed to a retail operations position or customer service position you may be required to work on a 7 day a week roster **at such hours as may be requested by NCR** and on public holidays and **weekends as required.**'	the ordinary hours of work shall be an average of 38 per week to be worked on not more than five days in any week, on the following basis; -38 hours within a work cycle not exceeding seven days -76 hours within a work cycle not exceeding 14 consecutive days; -114 hours within a work cycle not exceeding 21 consec days etc...[clause 6] The ordinary hours of work prescribed **shall not exceed ten on any one day** but may be more but **not more than 12 on any day unless a majority of employees agree to arrange otherwise** and 12 hour days will only be permitted when there are special circumstances. Where 12 hour shifts are worked min standards which are listed therein have to be observed i.e. no more than two night shifts may be worked in succession and there must be a 12 hour interval between shifts and rosters to include at least two free weekends per month and etc. The ordinary hours of work may be worked on any day of the week.

	rostered days off: the implementation of the 38 hour week may be by employees working < 8 hrs a day or by employees working <8 hrs on one or more days each wk or by fixing one weekday when employees will be off in a particular period etc...
ADDITIONAL HOURS : payment for additional hours will not be avail to you if your base salary is in excess of $38,000 p/a additional hours means hours worked in excess of 76 in any fortnight which have been approved by the relevant manager. Hours can be adjusted within the fortnight with consent of supervisor At the completion of each fortnight hours in excess of 76 hours approved by your manager will be deemed additional hours and paid at 1.5 times the hourly rate of pay. As payment for additional hours, 15 mins or less in any one day shall not be counted. [nothing to stop you from working 70 hours in one week, including weekend work and 6 hours in next week with no overtime] However is you are "regularly rostered" to work at weekends you can receive an additional 5 days annual leave or paid out. "Regularly rostered" means performed work at weekends as part of a normal roster on at least 12 occasions in the 52 weeks prior to the entitlement to take leave arising and "weekends" means a complete day's work on Saturday and Sunday. This not prevent you being rostered on every Sunday however and under the award five days annual leave is less than the amount received for penalty rates etc.	**clause 6.3 - overtime** a casual required to work outside ordinary hours shall be paid on Sunday at double time and on a holiday prescribed by the award at double time and a half and on any other day time and a half for the first three hours and double time thereafter, such double time to continue until the completion of the overtime work. [clause 7.1 - prescribes 11 + public holidays] **Saturday work** An employee who works any of his/her ordinary hours on a Sat shall be paid at time and one quarter fro the first three hours up until 12 noon and double time thereafter. **Sunday work** An employee who works any of his/her ordinary hours on a Sun shall be paid at double time.
HOLIDAYS & ANNUAL LEAVE : public holidays -determined by state legislation.	**Public Holidays - 7.1** note payment for work on public holidays is double time. there are 11 + prescribed holidays provided for and prescription for substitution arrangements

Annual leave loading abolished. Has been included in base salary.	**annual leave - clause 7.6** wages calculated for annual leave shall be as per weekly payment would have received during the period taken as annual leave annual leave loading to apply also- 17.5%
Shift penalties are absorned into the base salary. not provisions as to spread of hours re shiftwork etc except to say that a 10 hour breal between shift will apply.	**shift work- clause 6.4** employees working on afternoon or night shift except on a Sat or Sun or holiday will be paid shift loadings in addition to ordinary rates..... there are also shift protections inlcuded in terms of hours work and spread of hours ect.
LSL, PARENTAL LEAVE, BEREAVEMENT LEAVE, SICK/FAMILY LEAVE :: LSL as per state legislation Bereavement leave- 3 days on each occasion Sick/family leave - all full time employees shall be entitled to ten days paid sick leave for every 12 months of service- 3 days can be taken for carers leave [below test case standard]. After 2 days evidence of sickness is required. Can accrue family leave for up to 12 years of service.	LSL - as per state legislation Bereavement - 3 days each year **Sick leave: 7.2** -76 hours a year -accumulates to 608 hours -after two single day absences need to provide medical evidence **Parental leave**- test case standard
SUPERANNUATION CONTRIBUTIONS : As per commonwealth legislation	detailed clause about approved fund and fund membership etc. and employee contributions.[clause 5.6]
DISPUTE RESOLUTION PROCEDURE : Provides for talks between supervisor and employee - if that fails either party can refer to mediation- at mediation either party can be represented. Whilst mediation is taking place employee agrees not to: -obtain a penalty under s.170Vv of the WRA 1996 -to obtain damages for breaches of an Australian Workplace Agreement; or - to enforce a provisions of the AWA or part VID of the WRA 1996	provides for talks between employee and supervisor, if this fails then employee representative can discuss with manager/supervisor if this fails then the employee's representive can refer to a manager in higher position- if this fails will be referred to meeting of representatives. [clause 3.3]

REDUNDANCY/RETRENCHMENT : < 1 yr - nil 1 yr and < 2 yrs - 4 wks pay 2 yrs and < 3 yrs - 7 wks pay 3 yrs and < 4 yrs - 10 wks pay 4 yrs and < 5 yrs - 12 wks pay 5 yrs and < 6 yrs - 14 wks pay 6 yrs and over - 16 wks pay "weeks pay" means you annual base salary divided by 52 severance payments shall not apply where the business or part of the business of NCR is sold or transmitted.	**<** 1 yr - nil 1 yr and up to the completion of 2 yrs - 4 wks pay 2 yrs and up to the completion of 3 yrs - 6 wks pay 3 yrs and up to the completion of 4 yrs - 7 wks pay 4 yrs and over - 8 wks pay :[clause 4.7.3] "weeks pay" means the ordinary time rate of pay for the employee concerned. **where a business is transmitted to another employer the continuity of the employment for the employee employed before the transmission shall be deemed to have not been broken.**
no provisions included	**allowances - cl.5.5** meal allowance, laundry allowance clothing, equipment and tools i.e. gloves, goggles, uniforms allowances
no provisions included	**Breaks- 6.2** meal break and morning and afternoon tea
no provisions included However note: this agreement shall be binding on you in your position of detailer in a full time capacity **at the Fyshwick/Canberra airport site or any other premises within the Canberra metropolitan area.**"	**Travelling, transport and fares allowances - part 8** - compensation for travelling between sites and provision of transport etc.