Submission

to

Senate Employment, Workplace Relations and Education
References Committee

Inquiry into Workplace Agreements

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8 August 2005

John Carter
Secretary
Australian Senate
Employment, Workplace Relations and Education
References Committee
Suite SG.52, Parliament House
CANBERRA NSW 2600

Dear Mr Carter

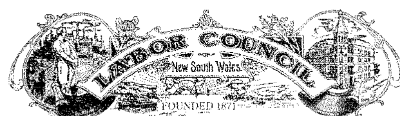
RE: SENATE INQUIRY INTO WORKPLACE AGREEMENT-MAKING

Please find attached Unions NSW submission to the above Inquiry.

Should you wish to discuss this further please contact me on (02) 9264 1691.

Yours sincerely

MATT THISTLETHWAITE
DEPUTY ASSISTANT SECRETARY



UNIONS NSW SUBMISSION TO

SENATE INQUIRY INTO WORKPLACE AGREEMENT MAKING

8 August 2005

> *"What are the common wages of labour, depends everywhere upon the contract usually made between those two parties, whose interests are by no means the same. The workmen desire to get as much, the masters to give as little as possible. The former are disposed to combine in order to raise, the latter in order to lower the wages of labour.*
>
> *It is not, however, difficult to foresee which of the two parties must, upon all ordinary occasions, have the advantage in the dispute, and force the other into a compliance with their terms. The masters, being fewer in number, can combine much more easily..."*
>
> Adam Smith
> The Wealth of Nations

INTRODUCTION

Unions NSW submits that any workplace and worker regulation must strike an appropriate balance between measures that promote a productive economy, and fair and reasonable incomes and working conditions for people working in the economy.

On 26 May 2005, in the Federal Parliament, the Prime Minister, John Howard, announced his government's proposed changes to Australia's industrial relations laws. As part of this proposal the Government intends to introduce a new system for making workplace agreements between employers, employees and unions.

These changes include replacing the current award based no disadvantage test with a new test based on five legislated minimum conditions which include the minimum wage rate, annual leave, personal leave, parental leave (including maternity leave) and a maximum number of ordinary hours. The Australian Industrial Relations Commission (AIRC) will no longer exclusively administer the no disadvantage test and certify agreements. The Government proposes to allow both collective agreement and Australian Workplace Agreements (AWAs) to be approved on lodgment with the Office of the Employment Advocate.

The changes to agreement making procedures will be made in conjunction with changes to the manner in which minimum wages are set, another round of award stripping, and a reduction in the AIRC's powers to resolve disputes and set minimum wages. The Federal Government also intends to promote AWAs as the preferred method of agreement making between employers and employees.

Unions NSW believes such legislative changes will not enhance the productive capacity of the Australian economy and will result in a reduction in income and living standards for a large proportion of the Australian workforce, particularly those workers who lack bargaining capacity when it comes to negotiating working arrangements. Unions NSW believes these proposed changes will further tilt labour law in favour of employers and transform the AIRC into an administrative institution which enforces labour law on unions whilst outsourcing its dispute settling functions to the common

law courts, private mediators, and a new "low pay" commission. We strongly oppose the Howard Government's proposed changes to industrial relations laws.

1. THE CAPACITY FOR EMPLOYERS AND EMPLOYEES TO CHOOSE THE FORM OF AGREEMENT MAKING WHICH BEST SUITS THEIR NEEDS.

As is recognized in the quote above by the great neo-classical economist, Adam Smith, it is commonly accepted that certain members of society possess a greater bargaining capacity than others when it comes to negotiating terms and conditions for employment with an employer. Those members of society who possess greater levels of education and skills development generally have a greater capacity to bargain for better wages and conditions with their employer at work. Typically such persons are tertiary educated, working in full time employment on superior salaries and conditions of employment.

Others within society who lack post-school qualifications, or basic trade and tertiary qualifications, often lack bargaining capacity when it comes to negotiating wages and conditions. Typically such persons are young workers or women, often working in precarious types of employment such as casual or part-time arrangements.

Unions NSW submits that those employees who lack bargaining capacity at work have little or no choice in the form of agreement, which is made with their employer and determines their wages and conditions. Such employees are typically not union members and are employed in casual or part-time positions. There is an increasing incidence of casual and part-time employment in Australia. Often such employees are offered an agreement or set of terms and conditions on a "take it or leave it" basis. They possess no capacity to bargain for better wages and conditions. Where there is no union involvement in a workplace, often the form of agreement is chosen by the employer and the employees must live with that decision.

The Federal Government has indicated it proposes to promote AWAs as the preferred mode of agreement making in Australian workplaces. In the tertiary education sector the Howard Government has linked education funding to the promotion of AWAs by university management at universities throughout Australia. The Government has also indicated that it intends to offer preference for bidders to government contracts, based on whether or not such bidders promote AWAs as the preferred method of workplace agreement.

Most AWAs are made with employees who are not members of unions. As such they are often forced to negotiate their terms and conditions on an individual basis.

Unions NSW research into AWAs reveals that most AWAs leave employees worse off, compared to their award in terms of over all conditions of employment. A perusal of the Office of the Employment Advocate (OEA) website reveals a number of AWAs in various industries, which the OEA promotes as examples of agreement making between employers and employees. The Construction AWA contained at Tab 2 of this submission, was downloaded from the OEA website. A comparison of this AWA with the Construction Industry Award is contained at Tab 3 of this submission. Although this AWA contains a rate of pay which is higher

than that prescribed by the award, a comparison of weekly wages based on an ordinary working week, and eight hours overtime on Saturday, including allowances, indicates that the employee is $163.49 worse off per week.

This AWA does not contain four weeks annual leave and the payment for annual leave is included in the hourly wage rate. The comparison at Tab 2 further examines the effect of cashing out annual leave on the worker's annual wages. The comparison demonstrates that annually the employee is $16,631.62 worse off compared to the award, when annual leave entitlements are considered.

Tab 3 to the Submission contains an AWA approved by the OEA on 13 September 2004, for the Horticulture Group Training Australia Limited company. That AWA contains two rates of pay, one $15.80 per hour for long-term assignments, and another $17.31 per hour for short-term assignments. Schedule 2, clause 4 to the AWA indicates that the rate of pay is an all up rate and includes components for holiday pay and loading, long service leave, sick pay, public holidays and weekend and late work penalty rates and allowances, meal money, travel allowances, redundancy, retrenchment and severance, parental, bereavement, and other such leaves and entitlements set out in any applicable awards or acts that apply.

Clearly, $15.80 per hour could not compensate for the buy-out of those particular provisions. Unions NSW is aware that employees are offered employment under this AWA on a "take it or leave it" basis in Sydney.

Unions NSW submits that those employees in Australia who lack bargaining capacity at work require protection through fair and reasonable workplace regulations to ensure that they have a decent standard of living and are able to participate within society. The Government's proposed changes will remove such protections that currently exist for low paid/unskilled employees and they will have very little, or no ability, to bargain for conditions of employment which suit their needs and work.

2. THE PARTIES' ABILITY TO GENUINELY BARGAIN, FOCUSSING ON GROUPS SUCH AS WOMEN, YOUTH, AND CASUAL EMPLOYEES

The above groups of persons have a higher incidence of precarious employment and tend to be employed on a part-time or casual basis. For example, the May 2004 Australian Bureau of Statistics (ABS) Study of Employee Earnings and Hours indicated that 34.3% of all employees in Australia were employed on a part-time basis. Of those, 33.2% were employed on a non-managerial basis. Of the 33.2%, 23.8% were females.[1]

Such groups of people tend to be non-union employees and do not possess the education or skills and qualifications of full-time male employees. Accordingly, such employees lack a genuine bargaining capacity at work and are disadvantaged when it comes to bargaining for wages and conditions.

A recent comparison of AWAs to collective agreements conducted by the ABS indicates such classes of employees are worse off when negotiating wages and conditions at work.

[1] ABS Employee Earnings and Hours 6306.0 May 2004

In May 2004, non-managerial workers on registered individual contracts received an average of 2% less than workers on registered collective agreements ($23.90 per hour).

For men the difference between earnings on AWAs compared to a collective agreement was not significant, but women on AWAs had hourly earnings 11% less than women on registered collective agreements.

Further, for casual workers AWAs paid 15% less than registered collective agreements. For permanent part-time workers AWAs paid 25% less compared to collective agreements.[2]

These statistics highlight the inability of groups of employees such as women and part-time employees to genuinely bargain for wages and conditions at work which suit their needs. Unions NSW submits that the Federal Government's proposed changes to industrial relations laws, in particular promotion of AWAs in workplaces, will leave such groups of employees much worse off at work.

3. **THE SOCIAL OBJECTIVES, INCLUDING ADDRESSING THE GENDER PAY GAP AND ENABLING EMPLOYEES TO BETTER BALANCE THEIR WORK AND FAMILY RESPONSIBILITIES**

Almost all awards in Australia contain provisions which contain penalty or overtime rates of pay for work on weekends or after conventional hours. Nearly all awards also contain provisions for annual leave and personal carers leave, maternity leave and long service leave. Awards also typically contain casual loadings for casual employees to compensate for the lack of access by such employees to many leave entitlements. These conditions are typically bettered or mirrored in most collective certified agreements in Australia.

Such provisions have ensured that, not only do low paid, unskilled workers have the ability to earn a decent standard of living and participate in society, but they also ensure that workers generally enjoy a better standard of living through a better balance between work and time spent with their family or at leisure.

The Federal Government's proposed changes to the no disadvantage test for collective agreements and AWAs will see a watering down of these important protections in awards for workers and their families. For example, contained at Tab 4 to this submission is a copy of the OEA Small Business AWA template. Clause 9 of the document relates to hours of work. The document pays no regard to the hours of work provisions contained in an underpinning award and allows the parties to the AWA to negotiate hours of work at any time and on any day of the week. Further, Clause 10, Additional Hours, provides that employees may volunteer to work additional hours, but not be paid penalty rates for such work.

Unions NSW submits that particular groups of employees who lack a bargaining capacity at work, for instance, casual, young, women, or employees from a non-English speaking background, will have no capacity to bargain for conditions which maintain where the provisions and protections contained in awards which ensure a

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[2] Professor David Peats, Lies, AWAs and Statistics, 2004

reasonable work/life balance.

With the Government's promotion of AWAs as a preferred method of work regulation, and the changes to the no disadvantage test for collective agreements, Unions NSW submits that groups of such employees will be worse off and the changes will lead to a reduction in living standards for a large group of unskilled and precariously employed.

4. THE CAPACITY OF THE AGREEMENT TO CONTRIBUTE TO PRODUCTIVITY IMPROVEMENTS, EFFICIENCY, COMPEITIVENESS, FLEXIBILITY, FAIRNESS AND GROWING LIVING STANDARDS

The Howard Government claims that the reforms proposed are necessary to promote another bout of productivity growth, improve the efficiency and competitiveness of the Australian economy, and provide flexibility and choice for employers and employees in setting wages and conditions at work.

Unions NSW submits that such assertions are nothing more than "media spin". We believe the proposed changes will not promote productivity and efficiency, but hinder it, and see the greater development of a working poor in the Australian community.

The evidence from the New Zealand experiment with complete deregulation of the labour market demonstrates that further deregulation in Australia may not produce the productivity and efficiency bounce that many claim it will. In the early 1990s the New Zealand Government basically completely deregulated their labour market in one legislative onslaught. In 1991 the National Government introduced the Employment Contract Act and brought in a system of employment regulation based firmly on individual contracts. It saw the employment relationship as no different from any other commercial contracts, and unions were relegated to a minor role in workplaces. Courts of limited jurisdiction replaced industrial tribunals and handled workplace claims as merely contractual disputes. Businesses and the conservative side of politics held out great hopes for these changes. They said they would revolutionalise New Zealand's labour productivity.

At the same time in Australia, the Keating Government introduced a less radical and fairer form of market deregulation through the Industrial Relations Reform Act. This change introduced enterprise bargaining as a new form of determination of wages and conditions at individual enterprises. This new system was underpinned by a fair and reasonable award system which formed the basis of the no disadvantage test for the making of enterprise agreements. The fundamentals of this system are still in place in the provisions of the Workplace Relations Act.

A comparison of labour productivity rates in Australia and New Zealand from 1998 to 2000 reveals that labour productivity did not receive the bounce expected by government and business. In fact, when the New Zealand Employment Contracts Act began in 1991, New Zealand's national labour productivity was around 5% better than Australia's. After just four years of full deregulation they had already fallen behind Australia. Over the next five years, they dropped further and further behind. By the time the Employment Contracts Act was repealed in 2000 in

favour of a more inclusive industrial relations model, New Zealand labour productivity was more than 8% behind Australia's – a 13% turnaround in just nine years.

Unions NSW submits that further watering down of the award system and minimum wages in Australia will all but destroy the safety net which has ensured fair and reasonable conditions of employment for employees, whilst at the same time it will not promote productivity and efficiency within our economy. The safety net as a platform for employment conditions forces employers to compete in other areas of business management, such as research and development, innovation, and cooperative workplace relations that produce smarter ways of working to ensure greater workplace output.

If the safety net is removed we submit that employers will not be able to resist the temptation to compete purely on cost. This will produce a race to the bottom on labour costs, and stifle other aspects of business development which employers should promoting as a means of increasing efficiency and labour productivity.

4. THE SCOPE AND COVERAGE OF AGREEMENTS, INCLUDING THE EXTENT TO WHICH EMPLOYEES ARE COVERED BY NON-COMPREHENSIVE AGREEMENTS

One of the key aims of the Government's proposed industrial relations reforms is to switch employees from awards and collective agreements to individual agreements, and from employment to commercial contracts. Unions NSW submits that these reforms are indeed likely to succeed in substantially reconfiguring the way in which wages and employment conditions are determined in Australia.

In 2004 the breakdown of categories of employment determinations was as follows: 20% of employees were award only employees; 38.3% of employees were employed under registered collective agreements, 2.6% under unregistered collective agreements. 2.4% of the workforce was employed under registered individual contracts or AWAs. 31.2% of the workforce on unregistered individual contracts. 5.1% were proprietors of a business.[3]

Unions NSW submits that the Government's proposed changes to workplace laws will produce the following effects:

(a) The coverage of awards will fall substantially in the medium term, primarily switching to AWAs, but also non-union section 170LK agreements;

(b) Employees covered by certified agreements will experience moderate falls but the composition will change as the reach of union certified agreements will decline and non-union section 170LK agreements will arise. Evidence from other nations with deregulated labour markets indicates that over longer periods of time coverage of certified agreements will gradually become increasingly confined to union

[3] ABS, Employee Earnings and Hours, Australia May 2004, Catalogue No. 6306.0

members;

(c) The number of employees will fall significantly as employers increase their usage of contractors, primarily at the expense of the certified agreement stream.

Unions NSW submits that these reforms, whilst they notionally retain awards, will set in motion changes which will almost certainly lead to the withering away of awards.

The largest concentration of award only workers is in the accommodation, cafes and restaurants industries where 60.1% of employees are covered by awards only. Next is the retail industry with 31.3% coverage, followed by health and community services with 26.6% and personal and other services with 23.5% The overwhelming majority of award only employees are employed in small businesses with 30.9% of employees in businesses with less than 49 employees being covered by awards only.[4]

As the industries which have the largest award only coverage tend to also cover employees based on precarious employment, these highlight the vulnerable character of the awards only workforce and its preponderance in small businesses. There are two fundamental reasons why employees remain covered by awards instead of enterprise agreements. The first is that the majority of employees covered by awards only lack the bargaining power, skills or knowledge to negotiate better wages and conditions. At the bottom end of the labour market it is employers who set arrangements for determining pay and conditions. Secondly, employers, especially small businesses, continue to use awards because the administrative costs of making an agreement outweigh the benefits.

Unions NSW submits that this will now change. The replacement of the no disadvantage test with the five statutory minimums will radically alter the cost benefit calculations of award only employers. As employers no longer have to meet the no disadvantage test the cost of making agreements is streamlined and employers will be encouraged to make agreements, which strip away a raft of common award conditions. Over time this will see a reduction in the extent and coverage of award safety net conditions for many Australian workers.

[4] ABS, Employee Earnings and Hours, May 2004, 6306.0