



**Community and Public Sector Union  
State Public Services Federation Group**

**Submission**

to

Senate Employment, Workplace Relations and Education  
Legislation Committee

**Inquiry into Workplace Agreements**

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## **CPSU (SPSF Group) Submission to Senate Committee regarding Workplace Agreements**

### **1. INTRODUCTION AND OVERVIEW**

- 1 The Community and Public Sector Union – State Public Services Federation (CPSU-SPSF) welcomes the opportunity to make this submission to the Inquiry into workplace Agreements. The CPSU-SPSF represents workers in the State Public Services, non-teaching staff at Universities and TAFE Colleges.
- 2 While many of our members are covered by specific state Public Sector awards and agreements, many of our members fall under the Federal industrial jurisdiction of the Workplace Relations Act 1996.
- 3 The CPSU-SPSF is gravely concerned about the current proposals to amend the Workplace Relations Act 1996. Although at the time that this hearing invites submissions, a draft Bill of the proposed legislation has not been made public, our submission is based upon statements made by the Prime Minister John Howard to Parliament and the Minister for Workplace Relations the Hon .Kevin Andrews.
- 4 The CPSU-SPSF argues that the Government's intentions are clear, that they desire an industrial relations system based upon individual contracts of employment through the mechanism of Australian Workplace Agreements. We argue that their proposals will undermine collective agreements and awards. We argue that this will disadvantage workers in particular sectors of the economy, that it will exacerbate the unequal bargaining position of many workers.
- 5 Individual bargaining will not result in a fair and equitable outcome for many workers. Many will have no choice and will be forced onto individual contracts without fair representation.
- 6 We also submit that individual bargaining will not lead to improvements in productivity as claimed.
- 7 We would also refer the Senate Committee to Australia's obligations under International Labour Organisation conventions. We argue that restrictions placed upon workers and their organisations to bargain at the level they desire is a contravention of International Labour Organisation Conventions Number 87 and 98.

- 8 The ability to collectively bargaining and to engage in industrial action at any level, be it national, industry or workplace is considered to be a basic human right and a core labour standard.
- 9 We note that the Committee of Experts has in the past condemned the Workplace Relations Act for breaches of the conventions and argued that attempts to further restricts workers' ability to bargain will also contravene these Conventions.

## **2. DISPARITY OF BARGAINING POWER:**

- 1 On this point we are confident, as it is widely recognised that the fairest bargain or contract is reached where there is near equality of bargaining power.
- 2 The current proposals to extend the use of individual contracts is based upon the legal notion of fair and equal contracts - that the employment relation is best governed by principles of freedom of contract where individuals are free to make whatever bargains they please with whom ever they please.
- 3 It is fair to say that this principle has been rejected by lawmakers, governments and workers.
- 4 Lawmakers have rejected this ideology by regulating employment relations and encouraging collective bargaining. Workers have rejected this notion by forming and joining trade unions in order to balance the unequal nature of the bargaining process.
- 5 Legal theorist such as Otto Kahn-Freund identify the fundamental contradiction of freedom of contract in employment relations when he argues that the employment relation is not equal, that one party is subordinate to the other. It is a relationship of subordination and domination.
- 6 The employment relation is not only an unequal social relationship, but also an unequal economic relationship. In most areas of employment, individual workers do not have equal bargaining power.
- 7 In order to survive, workers must earn a wage. Workers are totally reliant upon their work and the wages that come from this.
- 8 Furthermore, the modern day work process exacerbates the unequal nature of the bargaining process. The worker does not have the knowledge or skills of an employer, armed with human

resource departments, industrial relations consultants and the best legal resources. These attributes of employers outweigh those of the individual worker.

- 9 This disparity is lessened where employees combine their skills, knowledge and resources in democratic organisations (i.e. unions) that are able to engage in fair and independent collective awards and agreements.
- 10 In consulting the union's members for the purpose of making this submission, typical responses to the proposition that an AWA govern their employment was :-

*"How can I negotiate my own agreement, I don't have that sort of knowledge."*

*"I have always relied on the union to look after my wages and conditions."*

*"I don't want to have an AWA, I want to be covered by an enterprise agreement".*

- 11 The unfortunate reality of individual bargaining is that workers are offered contracts on a take it or leave basis, they are often given no opportunity to choose another form of agreement.
- 12 In order for workers to feel secure in the employment relationship, the settlement of agreements must be *seen* to be fair, equal and bargained in good faith. It must be a mutually satisfying process in which one party does not dominate over the other. This is particularly true for workers in the public sector.
- 13 AWAs are not subject to the same openness and transparency that can be said of collective agreements and awards. There are sound policy reasons for openness and transparency in employment contracts in public service employment.
- 14 Nepotism, favouritism and discrimination were scourges of public employment in the 19th and early 20th centuries. Legislative and policy reforms through the course of the last century led to the effective and efficient public sector institutions we have today, where appointment and promotion are based on merit, where rates of pay and conditions of employment are codified and accessible to all employees.

15 There is no place for different, inconsistent and secret employment contracts in the public sector.

### 3. Workplace Relations and the Capacity to Promote Productivity:

- 1 Proponents of AWAs argue that individual contracts and low unionization rates improve worker commitment and increase trusting relationships at the workplace. These assertions are unfounded, in fact there is much evidence to suggest otherwise - that they will have a negative effect on workplace relations and productivity.
- 2 Workers view AWAs with suspicion and fear. This is evidenced by the failure of AWAs to permeate the industrial relations system. AWAs cover a very small percentage of the workforce, only about 2 per cent.
- 3 Community reaction to the current proposals to make industrial relations changes indicate a high level of dissatisfaction to further attempts to individualise workplace relations. In a recent Age Poll sixty per cent of those polled strongly disagreed with the Government's new industrial relations policies. (The Age July 5<sup>th</sup> 2005).
- 4 Deery and Iverson found that:

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*bank branch performance was clearly higher when employees displayed loyalty to their union, were satisfied with its performance and believed that the industrial relations climate between the two parties was trustful and cooperative. A collectivist work orientation was also associated with better performance outcomes. (Peetz 2005p18).*

- 5 Kristin van Barneveld, in her doctoral thesis **Equity and Efficiency: The Case of Australian Workplace Agreements** found that management:

*hoped that the introduction of AWAs would result in closer ties between them and employees. However interviews with some employees suggested the opposite. A significant number of the non-managerial AWA employees...indicated that they felt they had been 'blackmailed' into signing an AWA, and an 'us and them' attitude was evident between both AWA and non-AWA employees and management. P19*

- 6 The above evidence indicates that AWAs can have a negative impact on workplace relations. One would assume that these feelings would impact on productivity.

#### 4. Labour Productivity and Flexibility:

- 1 In *Do individual and collective agreement make a difference? A longitudinal study of agreement making and their effect on workplaces* an ACIRRT Working Paper, Dick Crozier from Australian Business Ltd. found that managements' responses were that 35 per cent reported improved profitability and 40 per cent reported improved productivity.
- 2 However, changes to the organization, work culture, products or services, improved skills and motivated workforce was considered to be more influential.
- 3 The form of agreement does not usually cause productivity or profitability improvements – these improvements arise from a multiplicity of factors.
- 4 A majority of respondents were unable to confirm that their agreement had a positive impact on the achievement of various goals (Crozier 2002).
- 5 Professor Peetz has studied the effect on national productivity growth of the move to a more individualised system in *Is Individual Contracting more Productive?* He finds that in periods under the traditional award system, national productivity was higher than in the period since the introduction of the Workplace Relations Act.1996 (Peetz 2005:p5) Productivity growth has been below the average that applied during the traditional award period.
- 6 New Zealand evidence does not support the argument that individual contracts improve productivity in the workplace. Gilson and Wagar, who examined workplaces and organizations at a micro level, found that:

*we cannot find a single statistically significant or reliable relationship between organisations pursuing individual contracts and our exhaustive measures of firm performance.*  
(Peetz 2005:8)

7 In fact Tseng and Wooden, who looked at productivity levels in Australian firms, found that the combined effects of union membership and collective agreements produced higher productivity levels than the combined effect of individual contracting and non-unionism. (Peetz 2005 P:8)

8 Wooden found that

*Unions apparently are good for productivity, but only at workplaces where unions are active.*

9 A BCA funded study **The Impact of Enterprise and Workplace Focused Industrial Relations and Employee Attitudes and Enterprise Performance** found that:

*'There was no negative relationship between unionism and productivity, but collective bargaining coverage was associated with higher levels of self-claimed productivity' (Peetz 2005)*

10 Peetz's analysis of Access Economics' report into productivity and flexibility found that industries which had a lower penetration of AWAs had less labour productivity growth than industries with the fewest AWAs (Peetz 2005 p13)

11 Peetz argues that

*In short, there is no compelling evidence presented by or on behalf of the BCA to support the claim that individual contracting leads to higher productivity. In fact, there is barely any evidence at all and what evidence is presented is shallow and dependent on either misrepresentation or failure to use current data that had been available for some time (Peetz 2005 p15).*

12 British case studies by Brown show that firms that ceased recognizing unions for collective bargaining and pursued procedural individualization

*did not gain any advantage in terms of either functional flexibility or temporal flexibility of labour over firms that retained collective bargaining (Peetz 2005p16)*

13 Peetz concludes that there is no positive relationship between individual contracting and productivity Workplace data shows no gains in terms of productivity for individual contracting over union collective bargaining.

14 All of these studies show the instrument of regulation of the workplace appears to have little impact on workplace flexibility or work practices. Awards, agreements and AWAs all have the ability to cater for particular work arrangements and AWAs do not improve labour productivity.

15 It appears to us that moves to institute AWAs and further decentralise workplace bargaining are more directed at de-unionising the workforce and eroding the wages and conditions of workers, rather than seeking better work practices.

## **5. Australian Workplace Agreements – A Fair Wage Outcome Or Greater Inequality?**

1 We have argued that the employment relationship is not one where workers and employers bargain equally. In a system based upon individual bargaining those with lesser power will suffer. Studies indicate that since the introduction of AWAs greater inequality of wage outcomes has become evident. We turn to the effect of AWAs on wages and conditions of workers.

2 Studies of AWAs indicate that while professional and managerial workers do not seem to be disadvantaged in AWAs, other workers covered by AWAs have achieved worse wage outcomes than other forms of agreements. They have also been subject to an erosion of working conditions.

3 Wages data collected on the ACIRRT-ADAM database found that AWAs are less likely to include quantifiable wage increases during the term of the agreement than collective agreements.

4 Workers on AWAs are exposed to the risk of not receiving a wage increase during the life of the agreement. This is a significant fact when one considers that AWAs can have a lifespan of 3 years.

5 Studies of AWAs not only indicate a poorer wage outcome but also a reduction in working conditions and non-wage benefits.

6 AWAs are less likely to include penalty and overtime rates for working long and unsocial hours. They are far more likely than union agreements to contain provisions which reduce the payment for non-standard work hours arrangements. (Van Barneveld & Arsovska 2002:17)



- 7 A study conducted by the Western Australian Commissioner of Workplace Agreements found that individual agreements reduce or eliminate significant conditions of work. It found that 50% of individual agreements reduced or eliminated conditions such as overtime pay and penalty rates and that some employees lost two or more significant conditions (Bailey and Horstman 1999)
- 8 A recent analysis of AWAs by Prof Peetz *The Impact on Workers of the Australian Workplace Agreements and the Abolition of the 'No Disadvantage Test'* shows that they provide for longer working hours than other agreements and that they were usually paid at the single ordinary time rate, not overtime (2005 No.2p 2).
- 9 Rather than enhancing productivity, AWAs have boosted profitability through cost reductions.
- 10 Individual contracts are more likely than collective agreements to reduce or abolish payments for overtime, nights or weekends.
- 11 Workers see AWAs and the de-unionisation of bargaining as a method of reducing pay and conditions. Their suspicions are well founded.
- 12 Since the introduction of the Workplace Relations Act 1996, wage increases in non-union agreements have been on average .5 percentage points lower than union collective agreements. The cumulative effect over the period from 1996 to 2005 leads to disadvantage of 4.3 per cent for workers on non-union agreements. (P2p4)
- 13 AWAs are much less likely than collective agreements to provide for wage increases during the course of the agreement and where increases do occur they are usually based on individual performance at the discretion of management
- 14 Another aspect of AWAs is a fundamental difference between the way they link performance to pay increases from that of collective agreements. Collective agreements have a more team or group focus whereas AWAs are more likely to link increases to individual performance measurement.
- 15 We would submit that for an individual performance pay system to operate effectively and fairly and be accepted by the workforce it must be properly administered by those having the proper knowledge to do so, that the process must be objective and fair and that it must allow participants in the appraisal system to contest and appeal decisions.

16 We argue that Australian Workplace Agreements do not provide better wage outcomes for workers and that they create greater inequality and less fair outcomes. Individualized pay setting undermines merit based pay and will result in nepotism and patronage. This undermines the capacity of public sector workers to act without fear or favour.

17 The very basis of public service ethics are undermined.

## 6. Addressing the Gender Pay Gap:

1 We would argue that any movement away from award and collective agreements will reduce and endanger gender equality in the workplace.

2 International studies show that women fair better under centralized bargaining arrangements.

3 The recent **Report of the Taskforce on Pay and Employment Equity in the Public Service and the Public Health and Public Education Sectors in New Zealand** found that the gender wage gap was smallest in highly collectivized departments and that decentralised bargaining disadvantaged women.

4 They found that individualized pay setting processes where subjective judgements and may themselves be a product of discrimination. (NZ Department of Labour 2004)

5 Studies undertaken by Hammond and Harbridge into the impact of individual contracts of employment on the gender wage gap in New Zealand, after the introduction of the Employment Contracts Act 1991, found that de-centralism and de-collectivisation of labour had and continues to work to the detriment of women workers, particularly weaker groups such as casual and part-time workers. (Hammond and Hargbridge 1992 & 1996)

6 Awards and agreements negotiated collectively have put in place flexible part-time work arrangements, paid maternity leave, family and carer's leave and superannuation provisions.

7 Australian Bureau of Statistics data shows us that women on AWAs have hourly earnings 11 per cent less than women on collective agreements.

8 Peetz's analysis finds that the gender pay gap was worse on AWAs. Under registered collective agreements, women received 90 per

cent of the hourly pay of men on such agreements. Women on AWAs received only 80 per cent of the hourly pay of men on AWAs. (P2p11).

9 The gap also widens significantly when we consider part-time employees, where women paid under AWAs received 24 per cent less. (p2p12).

10 We believe that the suspicion and fears of our members have been further heightened by the current proposals to remove the application of the no-disadvantage test to AWAs. The removal of the no-disadvantage test as well as the underpinning of entitlements to a bare minimum of standards will create greater inequality in wages and entitlements in the workforce. It will result in an unfair and inequitable industrial relations system.

11 Individual bargaining will not redress gender inequality but will exacerbate gender division within the workforce.

## **7. CONCLUSION**

1 We thank the Senate for allowing us the opportunity to make submissions on behalf of our members.

2 We further request that should the Senate allow for public hearings in Melbourne, many of the members of our Victorian branch would be pleased to give evidence as to their experiences with individual contracts during the period of the Kennett Government, when many public sector workers were forced onto this form of employment regulation.

3 We conclude that in the employment relationship, the notion of free and equal bargaining is somewhat of a legal fiction. Where bargaining takes place at an individual level, management preferences dominate and management control the process.

4 Most workers have little say or input into a supposedly equal relationship. The result of this is that Australian Workplace Agreements produce a substantially inferior outcome for workers.

5 This is particularly true for workers in the low paid sectors of the economy. This has significant implication for women workers and gender equity.

6 We also submit that individual contracts are not suitable for public sector workers, whom the public expect to be able to act without fear or favour or retribution.

- 7 We would also request that the Senate consider the current intentions to remove many of the safeguards which currently apply in the approval process of Australian Workplace Agreements. We would submit that these changes will result in a further erosion of wages and conditions for workers on AWAs.
- 8 These changes will not encourage confidence in workers that they have participated in a fair bargaining process. We submit that this will only have a negative impact on employment relations and will do nothing to improve efficiency, productivity and flexibility.

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