Submission

to

Senate Employment, Workplace Relations and Education References Committee

Inquiry into Workplace Agreements

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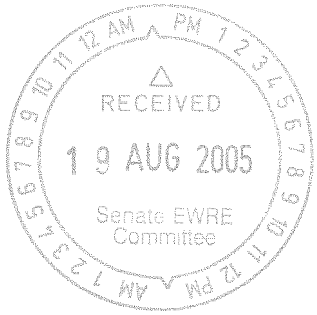

Mr J Carter
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Senate Employment, Workplace Relations and Education Committee
Department of the Senate
Parliament House
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Inquiry into Workplace Agreements

These are our written submissions in relation to the above inquiry. Thank you allowing us until the 19 August 2005 to prepare this submission.

Background

The Centre was established in the financial year 1995/1996, under the then Government's Justice Statement. The Centre was given specific funding to set up a Women's Outreach Service along with the Generalist Legal Service. We were initially required to provide assistance to people from Mudgee to the South Australian border. That is 42% of the State. The regional area we cover was thankfully reduced in 2000 when the Far West CLC based in Broken Hill commenced operations and services Broken Hill and Wilcannia. As no legal centre is funded to service Orange, Forbes & Parkes we also provide telephone advice services to them. The Centre commenced to receive funding from the Office of Employment Advocate under its Community Partnership Program in 1998. This funding enables the Centre to employ an additional part-time solicitor to provide assistance to disadvantaged workers.

The Community Legal Centre aims to meet the legal needs of our far-reaching community by providing community legal education, law reform activities and media comment on issues of importance to that community. The provision of a professional casework service in areas of law where there is a wider community need, the client is disadvantaged and legal resources from other sources are inaccessible or inadequate is also an important part of our work.

Response to Terms of Reference

We have not responded to each of the terms of reference as we have very limited resources and we do not have the capacity to prepare a voluminous submission whilst we maintain our service levels in other areas.

(C) The parties' ability to genuinely bargain, focusing on groups such as women, youth and casual employees;

The ability of parties to bargain is clearly put to test in negotiations around AWAs. As AWAs are individual contracts they diminish the role of collective bargaining. There is therefore greater scope for unscrupulous employers to take advantage of employees. As mentioned in response to the terms of reference **(F) Australia's international obligations** later, the proposed minimum conditions with individual contracts will gradually reduce the number of unionised workers in the workforce.

The result from the "Young People and Work Survey 2005" regarding their attitudes, experiences and real levels of awareness on key industrial issues, is "...that young people combine a low level of awareness of their fundamental employment rights with a high degree of exposure to exploitation."[1]

The use of AWAs will make the situation for young people worse. Young people have a restricted capacity to defend their interests. AWAs will benefit those with skills in demand and experience, but leave those with little experience or qualifications such as many young people, with lower rates of pay or worse conditions.

Casual workers are also in a particularly vulnerable position. Typically casual workers are predominantly women, and young people under the age of 34. They are low-income earners working in low level skill industries. Many are non-unionists[2]. These employees are some of the more disadvantaged workers in the country. In practice, the proposed laws will further erode their rights and create systematic disadvantage to a group that is already disadvantaged

A client who was attempting to negotiate with his employer in relation to a proposed AWA was amazed to hear that the 2 other casual bus drivers who performed exactly the same duties as him could be paid a completely different hourly rate and work under completely different conditions.

[1] OIR, Young People and Work Survey 2005 – Summary & Key Findings (3/8/05)
[2] Available at: http://www.awu.net.au/national/speeches/1042594647_2128.html

(D) The social objectives, including addressing the gender pay gap and enabling employees to better balance their work and family responsibilities;

On individual basis employees under AWAs have the ability to negotiate their working conditions. However it is uncertain that without collective bargaining if employees will have the ability and fortitude to negotiate favourable conditions for maintaining a basic lifestyle including family obligations and standard of living.

In the 5 years I have worked for this centre I have provided advice in relation to thousands of AWAs. I have NEVER seen an AWA that offered favourable conditions to employees in relation to being better able to balance their work and family responsibilities. In my experience AWAs are always drafted by the Employer and therefore always state the best position for the employer. Unfortunately employers in Australia have been very slow to realise the benefits to them from assisting employees to balance the competing pressures in their lives.

Our client had worked for his employer for more than 15 years when he was asked by his employer to sign an AWA. The agreement said in part that as a result of the seasonal nature of the farming industry he could be required to work up to 49.5 hours per week. Further in the agreement it stated that when he was taking annual leave he would be paid for 37 hours each week of leave. This meant that in effect he could work for 49.5 hours for 48 weeks each year. Then take his four weeks annual leave and not be paid for 12.5 hours per week he would have been entitled to.

Our client had already signed the AWA, without independent advice, and it had been approved by the OEA

(E) The capacity of the agreement to contribute to productivity improvements, efficiency, competitiveness, flexibility, fairness and growing living standards;

Our client was employed under an AWA that had expired. The new AWA included provisions such as "that parties agree that for the sake of longevity and the general financial health of the practice, that should a decrease in productivity have significant effect upon the viability of the practice, such decrease in productivity shall likewise have effect upon the wages offered by the employer and negotiated at the next round of wage negotiations". Our client had no control over the productivity of the business and important terms such as "significant effect" were not defined.

We believe that the Government feels that by reducing the complexity of the existing system, less focus will be required to manage the process requiring fewer resources and allowing existing resources to be freed for productive purposes. In effect it will be easier to hire and fire employees under the new system.

The government wants to remove unfair dismissal protection for those in business with 100 or less staff. 99% of all private sector firms employ fewer than 100 people.[3]

That means that the vast majority of working Australians could be dismissed at any time without warning and without any right of appeal.

Number of private sector employers ('000s)

under 100 employees	%	100 or more employees	%	Total employing firms
575.8	98.9	6.2	1.1	582

[3] data source: ABS Small Business in Australia 1321.0 2001 (the most recent data)

(F) Australia's international obligations.

The new workplace relation system will not promote and encourage collective bargaining. Rather it will undermine collective bargaining. Australia has international obligations. In 1973 the Australian government ratified the following conventions:

Convention 87 Freedom of Association and Protection of the Right to Organise (1948) regulated workers fundamental right to form and join independent union organisations. It is a responsibility of states to facilitate this:

C 98 – Right to Organise and Collective Bargaining Convention (1949) regulated rights of employees to collective bargaining and encourages governments to establish mechanisms to allow for the process and to ensure that workers are protected against anti-union employer activities.

The proposed changes from the Australian government will offend these conventions.

"Freedom of Association" and "collective bargaining"

Freedom of Association is one of the most fundamental rights of workers and employers. That is also a fundamental principle for the International Labour Organization (ILO). Freedom of Association is the basic right of employers and employees organisations to exist and to fight for rights as well as the right to bargain collectively and strike.

Collective bargaining is viewed as a fundamental human right under international law by the United Nations and the International Labour Organisation. Collective Bargaining is the process by which employer and employee organisations negotiate terms and conditions of employment to form an agreement.

The unequal bargaining power between individual employee and employer is overcome through collective bargaining ensuring that the basic rights of employees are maintained. Whilst AWA structures don't abolish this type of bargaining they discourage it.

A potential problem for employees is that employers can offer employees in the same work different packages for the same role and skills base. Tacitly this undermines the concept of Collective Bargaining where workers in the same industry receive similar remuneration. Where once workers were unified in their approach to the negotiations, the employer is now offering individual agreements with different pay and conditions.

The right for employees to join a union and to have their wages and conditions collectively negotiated, if they so choose, holds a special place in the ILO standards.

In 1996 the government introduced individual agreements in the industrial relations system. A consequence of this has been that employers have had the opportunity to evade and undermine bargaining collectively and force employees onto individual agreements and the new reforms will make it more difficult for employees.

Currently workplace agreements can't be used to reduce pay or employment conditions below the 'award safety net'. That is the current 'no disadvantage test'. The government is abolishing this test and replacing it with just four minimum conditions, employers will be able to use individual contracts to remove employment rights like redundancy pay, overtime and shift work rates, weekend and public holiday pay rates without compensation.

By reducing the number of award conditions, employers will be able to force employees into individual agreements more easily than when individual contracts were introduced in 1996. The effect of which is to prevent the employee being covered by a collective agreement. An individual contract locks out any collective bargaining for up to three years, and the government has foreshadowed that this will extend this provision to five years.

In Australia there is no obligation for the employer to collectively bargain. He has simply to refuse collective bargaining and also to provide benefits only to those who sign these agreements. The proposed changes can be seen to discriminate against Collective Bargaining and unions

In all other OECD Nations the right for employees to choose to bargain collectively and requiring employers to recognise this choice is legally protected.

A number of countries have endeavoured to do this by establishing a statutory duty in the legislation intended to oblige the parties at the bargaining table to engage in fully informed negotiations. This includes Canada and Europe (Art.28 EU-Charter) where employees have an enforceable right to collectively bargain. The ultimate purpose of this kind of duty is to ensure that the parties have every possible opportunity to reach agreement. In some instances, this duty is limited to a duty to negotiate, while in others it is expressed as a duty to bargain in good faith.

In Australia employees do not have an enforceable right to collectively bargain like other nations. And the Australian government proposal is to not change anything about this and that means it will not promote collective bargaining.

Peter Costello, Treasurer, says "This is now the once in a generation opportunity to enhance individual contract..."[4]

The employer establishes terms and condition of employment. In contrast collective bargaining provides equal power in the workplace and encourages fair treatment. Further the employers can expect improved productivity and greater loyalty from a more highly motivated and skilled workforce enjoying better working conditions. From evidence in the community, compared with collective agreements, AWAs reflect inferior wage outcomes and a reduction in working conditions and non-wage benefits for workers.

Potentially, the only choice that workers will have is to enter into an AWA or look elsewhere. Employees who wish to collectively bargain have no choice to exercise their rights as they will be locked in an agreement.

[4] Interview 13/2/05, Channel 7 - Sunday Sunrise Show

This offends the international labour rights. The ILO has sought to ensure that employees can engage in meaningful collective bargaining without fear of retribution from government or employers.

The OEA is limited in its powers and employees will have difficulty in ensuring that the conditions of the AWAs are met and adhered to.

Our client was covered by an individual contract. The employer breached the agreement. The OEA was investigated and requested the employer meet their obligations. The employer continued to refuse to pay the employee. The employee had to travel to Sydney, a round trip of over 1000km to enforce the agreement in the Chief Industrial Magistrate's Court.

Also, AWAs can be used to block union entry and that will potentially spell the end off collective bargaining. As an example the Australian Industrial Relations Commission[5] found that ALDI had the right to prevent the National Union of Workers ("NUW") from entering its warehouse, because all of the employees employed by ALDI at its warehouse were covered by "AWAs".

Yours Faithfully
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Per:

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[5] PR937747