Submission

to

Senate Employment, Workplace Relations and Education References Committee

Inquiry into Workplace Agreements

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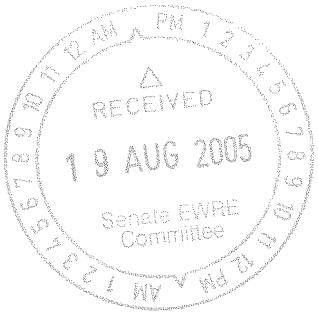

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Dear Sir/Madam

Submission to the Inquiry into Workplace Agreements.

We are a Community Legal Centre situated in Lismore in regional NSW. We have a generalist legal practice and a women's legal outreach and in both of these practices we are contacted by people seeking employment advice. We make the following submission in relation to Terms of Reference c. (the parties' ability to genuinely bargain, focusing on groups such as women, youth and casual employees ;) and f. (Australia's international obligations).

Most employment related enquiries to our Centre concern unfair dismissal matters with occasional inquiries about workplace conditions and employment contracts. This in itself may suggest that most people do not get advice about legal matters such as the terms of their employment until a serious and final action occurs such as dismissal. If this is the case, employees and employers are certainly not in equal bargaining positions when it comes to the agreement making system offered by Australian Workplace Agreements.

Two cases have recently arisen which illustrate the unfair operation of such a system:

1. An employer operating several caravan parks and resorts in a seaside town in our area led all staff to believe they were covered by an Australian Workplace Agreement and it was a condition of their continuing employment (when this employer bought the business from the previous owner) that they sign the agreement. They were all described as casual employees. Acting on the terms in the Agreement, the employer gave our client notice that from the following day her job would be made redundant and she was offered work in the shop at the park for half the number of hours per week than she currently worked. She could not survive on the income from this alternative position and so raised this with the employer who said "don't bother coming in at all then".

When this client contacted our service she had effectively been dismissed but had waited several weeks before contacting our service believing that what had been done was authorised by the agreement she had signed. Upon investigation it became apparent that the agreement had never been registered and it was merely a draft that each of the employees had signed. Unfortunately, after receiving advice our client decided not to take any action because it would jeopardise her chance of ever finding alternative employment in the town.

We believe this example illustrates how women working in the hospitality industry in our area are powerless to negotiate the terms and conditions of their employment. Without getting advice at the commencement of her employment this client had no idea that the document she signed had not been approved by the Office of Employment Advocate. The case also illustrates the powerlessness of people in regional and remote Australia to negotiated fair and reasonable conditions with or without collective bargaining. With only a limited number of employers in any given place most people will opt not to speak up for themselves and thereby get a reputation among employers in the region of someone prepared to challenge employers on unfair employment practices.

2. An indigenous woman working in the employment and training industry contacted our centre seeking advice on an AWA that had recently been presented to existing staff at her workplace. Management told staff that although they could not be forced to sign the agreement, they must have heard about the proposed changes to Industrial Relations Laws and that things would be "a lot more uncertain for employees after the changes". Our client took this to mean she would be sacked if she refused to sign the agreement. The main point of disagreement between staff and management was the existence of terms which sought to prohibit staff from working within the region in a similar type to position if they voluntarily left their current employment.

Such a restraint of trade type provision would obviously have an adverse impact on any employees but particularly those in regional NSW whose employment prospects are more limited than for those living in metropolitan areas. The term would operate to effectively bar these people from seeking career advancement within their own communities. Luckily this woman sought advice and eventually was able to delete this clause from her contract, however we are concerned that many staff signed the contract as it was presented and are not aware they had any right to question the inclusion of particular terms.

A system that relies on individuals being fully cognisant of all their legal rights and requiring them to negotiate alone is clearly one which disadvantages the most vulnerable in our communities. In our experience, young people, women and casual employees are likely to be those most disadvantaged. A party's ability to genuinely bargain is also influenced by geography (in regional Australia and particularly our region jobs are limited and pressures on employees to accept unfair conditions in the hope of retaining employment are great) experience in the workforce and level of education.

The recent South Australian Industrial Relations Court decision in which an AWA failed the no-disadvantage test clearly demonstrates the lack of bargaining equality present. In that case a 15 year old was paid 25% less than her minimum award entitlement and the agreement purported to cash-out annual leave, leave loading and sick leave. A first time employee desperate for employment may well consider agreement to such terms was inevitable even without the signing of the agreement being a condition of her employment. As the court found, she was clearly under a "manifest disadvantage".

International Obligations

We have grave concerns that the promotion of individual industrial agreement-making, including Australian Workplace Agreements (AWAs), breaches Australia's international obligations. Australia has ratified numerous International Labour Organisation (ILO) Conventions which include convention No. 87 Freedom of Association and Protection of the Right to Organise and No. 98 Right to Organise and Collective Bargaining. The government's proposal to erode an award system which is the result of years of collective bargaining and replace it with individualised workplace agreements is contrary and in breach of both of these conventions.

The development of a workforce whose rights are individually negotiated runs a risk of being subjected to anti-union discrimination. We contend that those workers, who refuse to sign AWAs as an individual rather than collective agreement, will be subjected to anti-union discrimination by their employers. Anti-union discrimination is in breach of convention No. 98 Article 1 which states that "workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment".

The government's reliance on the Workplace Relations Act to adequately protect workers from anti-union discrimination is criticised by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR). The most recent investigation by CEACR on Australia's compliance with convention No. 98 found that the sections of the Workplace Relations Act "do not provide adequate protection against anti-union discrimination to workers who refuse to negotiate an AWA and insist on their terms and conditions of employment governed by collective agreements, contrary to Articles 1 and 4 of the Convention"[1].

Further, the CEACR criticised Australia for breaching Convention No. 87 by promoting AWAs, in its investigation into compliance with the convention in 2001. The CEACR considers that the Workplace Relations Act and relevant national practice do not appear to afford adequate guarantees against anti-union discrimination at the time of recruitment and throughout employment, particularly in the negotiation of higher wages through the introduction of AWAs.

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[1] CEACR: Individual Observation concerning Conventio NO. 98, Right to Organise and Collective Bargaining, 1949 Australia (ratification: 1973) Published: 2005.

We, thus, hold great concerns that the Industrial Relations reforms being proposed by the government will mean that Australia continues to be in breach of its international obligations.

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